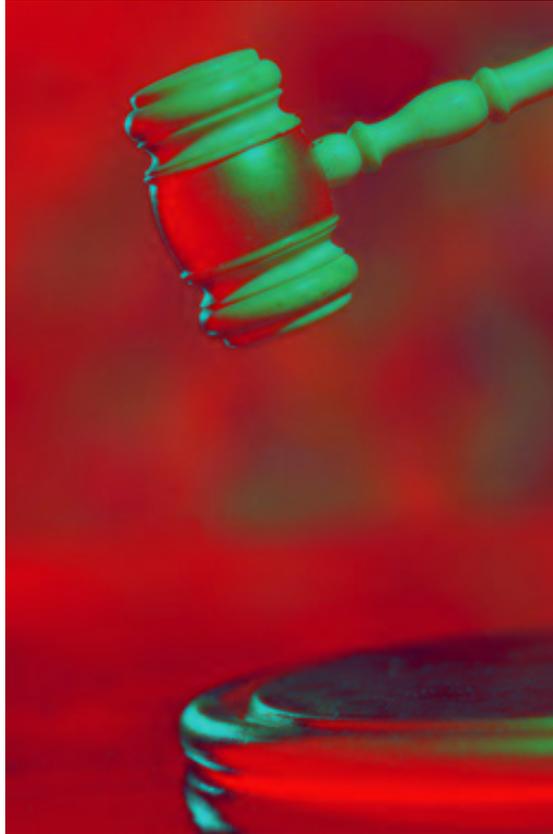




Legal Vice Presidency
The World Bank

Lebanon

Legal and Judicial Sector Assessment



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Foreword

Legal and judicial reform constitutes one of the main pillars of the World Bank's Comprehensive Development Framework (CDF) to promote economic growth and alleviate poverty. Consistent with the CDF philosophy, legal and judicial reform requires working on several levels – changing the laws, improving institutions and their capacity, and integrating efforts into the overall country strategy. A critical element of the World Bank's approach is to conduct country-specific assessments. The outcomes of these assessments are used as a starting point to identify challenges and priorities; they also facilitate discussions with government to define objectives, design activities, and sequence individual lending operations. In tandem, other assessments review the impact of a country's legal framework, policies and regulations on a wider spectrum of society, including social, gender and environment. As legal and judicial reform is a long term process, requiring full commitment by key stakeholders, dissemination of information on the sector is a *sine qua non* for the country to reach consensus and action plans for future reforms.

Since the end of the civil war over ten years ago, Lebanon has slowly started the process of rebuilding its government and public institutions. In many regards, Lebanon has been making great strides in this reconstruction. The European-Mediterranean Partnership Agreement was recently signed with the EU and Lebanon has benefited from a steady relationship with donor countries. Additionally, the Government has engaged in a series of fiscal and privatization reforms to bolster its economy, though these reforms are jeopardized by the current political situation in the Middle East.

The legal and judicial sector is still, however, suffering from the lingering effects of the civil war. Though Lebanon has a long standing history of prominence in this field, much of the sector was demolished by the war. The institutions and actors in this sector are now starting to undertake reforms to regain their prominence. The issues that plague this system are similar to those of many countries - the courts are backlogged from a shortage of judges and court staff, the rule of law has not prevailed, and there are concerns about the judiciary's independence in the political system in place. More importantly, attitudes and public confidence in the judiciary and legal system as a whole must be reestablished and retained.

As Lebanon emerges as a financial hub in the region, its legal and judicial system must reflect the levels of excellence and professionalism that have been demonstrated in other sectors of the country. The Government has committed itself to reforms and this Assessment will hopefully facilitate a dialogue on this issue as well as provide a starting point for the defining of objectives, strategies and programs.

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This Legal and Judicial Sector Assessment was prepared by a team led by Maria Dakolias (LEGLR), which included Doug Ierley (Consultant, LEGLR) and Karine Abdelnour (Consultant, LEGLR). This assessment benefited from review and comments by Jean-Marc Baïssus and Beth Dabak (LEGLR); Dominique Bichara and Hadi Abushakra (LEGMS); Richard Symonds (LEGPS); and Omar Razzaz, Lebanon Resident Mission (MNCLB).

The Lebanese Ministry of Justice reviewed the draft and provided helpful suggestions. Comments were also provided on the main findings of the report by government officials, members of the judiciary, and representatives from civil society, the private sector, and the legal profession during workshops held in Beirut in June 2003. Special thanks to Lana Mourtada, Lebanon Resident Mission (MNCLB) for her assistance in the preparation of this assessment.

I. INTRODUCTION

Lebanon has benefited from recent developments in its relations with donor countries and the EU. The European-Mediterranean Partnership Agreement was signed between the EU and Lebanon in June 2002. The agreement falls within the EU's goal of establishing a stable European-Mediterranean region based on political dialogue, democratic values, and human rights, and provides for the establishment, over the course of a transition period, of a free trade area, with gradual liberalization of trade in goods and services (including financial services), and capital movement.

November's Paris II donor's meeting secured US\$ 4.3bn in pledges for Lebanon, US\$3.1bn of which was in the form of concessionary loans to help restructure Lebanon's massive public debt, a needed boost to Lebanon's beleaguered economy. Public debt currently equals 170% of the GDP, the servicing of which severely restricts funds available for capital investment and other uses. The government has adopted a program of fiscal discipline, privatization, and securitization to decrease levels of debt.

Attempts at economic reform, however, are also subject to the political situation in the region. The lack of a comprehensive Middle East peace agreement continues to negatively impact Lebanon's ability to attract foreign investment, and is a source of occasional shocks to the economy.

Lebanon has had an illustrious legal and judicial history in the Middle East, notably, having trained judges to serve throughout the region and having established a legal framework to support its previous preeminence as a financial center. Despite the end of the civil war over ten years ago, however, Lebanon has not regained its footing in the legal and judicial sector. In part, this is an ongoing legacy of the war. The institutions of the sector by and large did not function during this period and the rule of law suffered accordingly. The institutional cost associated with the war and its aftermath, such as the atrophying of skills and lack of institutional development, combined with Lebanon's continued economic difficulties, have created a long-standing need for investment in human resource development. A backlog in cases is one manifestation of this problem, as the Government has been unable to hire additional judges or train court staff.

At the same time, there are concerns regarding the independence of the judiciary and the need for legal and judicial reform resulting from structural and political problems: a system for transferring judges through the courts is tied, in part, to performance issues; confessional considerations influence judicial selection; and there is a perception that there is political interference in the courts, albeit in the minority of cases. Such perception inadvertently affects public confidence. As a consequence of this lack of confidence in the court system, excessively high court fees, and a lack of adequate legal representation for the indigent in criminal and civil cases, substantial portions of the Lebanese public are either unable to access the judicial system or have no desire to do so.

Lebanon is committed to retaking a leading position in the financial sector in the region, a process which is facilitated by a well-functioning judiciary. Potential investors must rely on timely, predictable and just resolution of conflicts to have sufficient confidence to invest. Relieving congestion is high on the list of priorities. Lawyers in the private sector discussed the issue of delay, noting the increasing frequency with which they recommend arbitration or informal dispute resolution to clients and the decreasing frequency with which they pursue cases in court. There has been some progress by the courts in addressing the case backlog, but more is needed.

There is interest amongst legal and judicial professionals in Lebanon to improve continuing education for judges, legal drafting, and training for court staff. Such improvements may be limited by the hiring freeze presently in effect. Public awareness of the judiciary's functions would assist in reestablishing credibility. For potential investors as well, there is a shortage of understandable information on the general rules and procedures governing the Lebanese legal system and the resolution of disputes.

II. SUMMARY OF MAIN RECOMMENDATIONS

Priority recommendations for legal and judicial reform include the following:

- Improvement in the independence of the judiciary, as well as legal reforms to improve overall government accountability.
- Resume continuing education for judges and training for court staff. Improve management of courts.
- Enhance the capacity of the Legislation and Consultation Department of the Ministry of Justice to fulfill its mandate for legislative review.
- Monitoring by the Judicial Inspection Unit (JIU) of qualitative and quantitative factors in the performance of the judiciary. Revise the performance review system based on criteria for evaluation articulated by the JIU, working with input from recently appointed and long-serving judges.
- Investigate allegations of corruption in a transparent and public process and based on a written code of conduct for judges.
- Computerize in stages, as part of a larger strategy for modernizing overall court administration.
- Expand legal representation available for the indigent in civil and criminal cases. Revise eligibility criteria for court fee waivers and legal representation to reflect income levels, not employment status.

Follow-up to the financial sector should include:

- Review drafts of laws on credit card crime, electronic banking and services, including data protection, freedom of information, electronic signature and electronic communications law, modifying the Civil Procedure Code to recognize electronic signature and documents, settlement and netting in payment systems transactions, securities repurchasing agreements, mutual funds, securitization, comprehensive capital market regulation, and securities lending.

- Prepare the legislative and regulatory framework for a mortgage market.
- Identify gaps and weaknesses in all financial laws promulgated in the past ten years.

III. LEGAL SECTOR

A. Basic Legal Framework

The Lebanese legal system is a mixture of Ottoman Law, Canon Law, Napoleonic Code and Civil Law. The principal codes applicable in Lebanon were developed during the French Mandate and, although amended since independence, remain premised on French legal concepts and principles. The legal system is based on the Constitution, the Penal Code, Code of Obligations and Contracts, Code of Commerce, Labor and Social Security, Criminal Procedure Code, and Civil Procedure Code. The Constitution was amended in 1990, the first time since 1945, and proclaimed a Second Republic. The proclamation incorporates into the Constitution the 1989 Taif Agreement (officially, the Document of National Accord) which marked the end of the two-decade civil war. The preamble calls for “the principle of separation, balance and cooperation amongst the various branches of government.” The Taif Agreement states that the courts “guarantee that all officials and citizens are subject to the supremacy of the law,” and seeks to ensure the independence of the judiciary through an election by judges of “a certain number” of members of the Higher Judicial Council.

Because of sensitivity regarding confessional groups (a census has not been carried out since 1932), the agreement provides for the president to be a Maronite Christian. The prime minister is selected by the president in consultation with parliamentary deputies and is a Sunni Muslim. The President of the Chamber of Deputies (speaker) is Shi’i Muslim. Legislative power is vested in the Chamber of Deputies.

All the major Codes are being or have been revised. The Civil Procedure and Penal Codes are being reviewed. The Code of Criminal Procedure was recently revised, formally incorporating the presumption of innocence. In an important development in protecting detainees, the law now allows a detainee to be seen by a doctor during the first 48 hours of detention, the report for which must be filed with the prosecutor and the detainee’s family.

B. Legal Framework for the Financial Sector

Given the challenges Lebanon faces to foster economic growth, there is a pressing need for a legal environment conducive to foreign investment. Government debt stock is estimated at US\$29.7 billion, or 173% of GDP.¹ The government has adopted a program of fiscal discipline, privatization and development of the securities market to decrease levels of debt. The primary challenges to the Lebanese economy include the reduction in

¹ World Bank Group, Republic of Lebanon Update, Third Quarter 2002, at 6.

the fiscal deficit and the need to slow public debt, maintaining confidence in the monetary and exchange rate policies and institutions, and restoring real sector growth.

A key component of establishing the appropriate legal environment to support economic growth is to improve the functioning of the broader judicial sector. The importance of efficient and reliable decision-making is a priority for lawyers and the Government. New financial topics in judicial training, incorporating modern business practices, including contract law and arbitration, trade agreements, investment law, and e-banking are necessary to facilitate judges' decision-making.

Lebanon has prioritized the development of its capital market as part of a multi-pronged effort to regain its stature as a financial center in the region. The Lebanese financial sector, though, remains dominated by banks. The status of the Lebanese stock market is substantially similar to that which existed at the time of the 1999 World Bank/IMF Financial Sector Assessment Program, in terms of both the level of market activity and the regulatory framework.

Twelve stocks were listed at the time of the opening of the Beirut Stock Exchange (BSE) in 1996. As of 1999, Solidere accounted for two-thirds of the US\$3.67 billion market capitalization; the remainder was accounted for primarily by five banks and a cement company. There are sixteen stocks trading on the BSE as of February 2003, with Solidere, Bank of Beirut, Byblos Bank, Blom Bank, and Holcim accounting for the vast majority of the US\$1.4bn in market capitalization. For the month of January 2003, trading volume was US\$17 million, with a daily average of US\$828,350. Daily trading has dropped by over 80% since the market's peak in 1997. The vast majority of company financing in Lebanon still comes from private investment and bank loans. The slow process of the development of intermediaries limits private sector access to alternative sources of capital.

Listing on the BSE requires companies to have capital equivalent to US\$3 million or more in Lebanese pounds and to have been established for at least three years. These companies need to float a minimum of 25 % of their shares to the public and be owned by at least 50 shareholders. A junior market exists for companies whose capital is equivalent to US\$1 million in Lebanese pounds or more and, similarly, they must float a minimum of 25 % of their shares to the public and be owned by at least 50 shareholders. An OTC market exists for companies with capital equivalent to at least US\$ 100,000 in Lebanese pounds. Article 1 of the by-laws of the BSE stipulates that the market is supervised by the Ministry of Finance, and run by a committee consisting of a Chairperson, a Vice-Chair and eight members appointed by a decree issued by the Council of Ministers, in accordance with a proposal by the Minister of Finance.

The failure of the BSE to grow is a result of several factors: the lack of transparency in regulation and corporate financial information, as well as strong returns on the bond market have kept stock market activity limited. Returns in the market are insufficient to compete with the bond market and to compensate investors for increased market risks

arising from a lack of information on corporate practices. The bulk of stocks traded are family-owned businesses, where efforts to increase transparency are customarily difficult.

Legislative Decree No. 120 of September 16, 1983 and Legislative Decrees No. 30 of March 23, 1985 and No. 7667 of December 16, 1995, which amend the law, govern the regulation of brokers, trading operations, fee setting, and sanctions for members, brokers and issuers who contravene the laws, regulations and circulars governing the BSE. Certain changes have been introduced at the exchange, including the introduction of continuous trading, and stocks may now move up to 10% each day (up from 5%), and up to 25% under limited circumstances.

Legislation submitted to the Parliament by the Central Bank establishes an independent National Council of the Financial Markets to monitor soundness and organization of the financial markets and the transparency of information about securities, financial instruments, and issuing instruments. The regulatory body envisioned in law has yet to be established and reasons for the delay are unclear. Significant legislation has been drafted related to capital market development, including laws on fiduciary relations, securitization, and the comprehensive regulation of mutual funds. To complement the capital markets law, priority has been given to drafting a comprehensive securities law which defines the types of securities available, including options and derivatives.

Law No. 529 of June 1996 on developing financial markets put in place a framework to allow managed fiduciary operations on behalf of clients. The fiduciary law gives protection to investors against fraud committed by third party fund managers, the latter of which are supervised by the Central Bank. This protection creates the basis for fund management, such as mutual fund management. Tax exemptions for holdings and off-shore companies, a reduction on corporate tax to a flat rate of ten percent, and a five percent tax on dividends are some of the efforts to improve competitiveness.

Law No. 133 gives authority to the Central Bank to organize the banking sector. A draft law on e-signatures and electronic documents was submitted to Parliament, where it awaits action, as does a draft on electronic payments. The law was modeled on the comparable EC directive.

Central Bank Memo No. 1531 governing Decision No. 6601 of May 23, 1997 requires the approval of the Central Bank to establish a mutual fund. The memo stipulates that the company must be specialized in mutual fund management and that a prospectus must be issued regarding the fund subject to approval by the Central Bank, and financial statements prepared according to the criteria of the Banking Control Commission.

Recommendations

- Review draft laws on credit card crime, electronic banking and services, including data protection, freedom of information, electronic signature and electronic communications law, modification of the Civil Procedure Code to recognize electronic signature and documents, settlement and netting in payment systems

- transactions, securities repurchasing agreements, mutual funds, securitization, comprehensive capital market regulation, and securities lending.
- Prepare the legislative and regulatory framework for a mortgage market.
 - Review legislation to ensure compliance with WTO accession requirements.²
 - Establish a law reform commission to determine key laws in need of revision or amendment that are necessary for economic development.

C. Legal Institutions

Ministry of Justice

The Ministry is subdivided into eight departments: Consultation and Legislation; Litigation; Department for Judicial Personnel, which has human resource responsibility for judges, court staff, notaries, and experts employed by the ministry; Juvenile Justice; Directorate of Prisons; Forensic Medicine; Criminal Evidence; and the Institute for Judicial Studies. Although it falls under the organizational structure of the Ministry of Justice, the Higher Judicial Council is responsible for the operation of the courts of general jurisdiction.

The Directorate General for Administration in the Ministry of Justice handles the relationship between the courts and other ministries and institutions. In terms of overall case management procedures, delays are cited as routine, with notice of hearings often reaching parties after the date scheduled for hearing.

State Litigation Department

The Department represents the Government in legal proceedings within the country and externally, as well as against third parties on behalf of the thirty line ministries. The office functions with thirty-two lawyers and ten judges, with each handling 800-900 cases of the 23,000 cases currently pending. Efforts to add more staff are on hold because of the government-wide hiring freeze and a proposal to add hours to the staff's workweek has been rejected. While a computer system exists, there is an insufficient number of physical computers for the staff to take advantage of the system and those with computers have limited skills to run the program.

Public Prosecutor

Prosecutors in Lebanon are judicial officers, trained as judges and overseen by the Ministry of Justice. The Office of the Public Prosecutor is headed by a judge serving as president and assisted by six other judges.³

² Lebanon submitted its accession application to the WTO in January 1999 and submitted its memorandum on its trade and legal regime in June 2001. The first meeting of the Working Party took place in October 2002.

³ The office also includes a financial prosecutor and a military prosecutor who bring charges against civilians also involved in military cases.

The public prosecutor has responsibility for initiating criminal proceedings on behalf of the state against accused persons. Upon the prosecutor's determination that there is sufficient evidence to bring charges for certain types of serious offenses, the case is submitted to the examining magistrate. When individuals have been injured as a result of a criminal act, they may file civil actions for damages in criminal court where a criminal action has already been filed. The prosecutor may also file criminal charges at the request of citizens.

Institute of Judicial Training

The Institute was established by Decree 7855 in November 1961, and is the oldest judicial training facility in the region, having trained judges from Jordan, Qatar and Tunisia prior to 1975. It functioned only sporadically during the civil war period.

The Institute is divided into three departments: judicial, administrative, and financial. The head of each is represented by the President of the Higher Judicial Council, the President of the Council of State, and the President of the Audit Court, respectively. A board consisting of the General Director of the Ministry of Justice, the President of the Institute, the first President of the Court of Cassation, and two judges appointed by the Ministry of Justice and the Higher Judicial Council oversee the Institute and determine the training program. On average, approximately 50-60 judicial trainees are trained every year. Eighteen were women this year (of the 23 twenty-three who applied). Eighty-five percent of the judges currently serving have been trained by the Institute. The remainder of serving judges are former lawyers elevated to the bench based on prior legal experience and, in some cases, having successfully passed an entrance exam and having participated in a limited training program in the Institute.⁴

Entrance to the program is based on a competitive exam. After the Ministry of Justice obtains information from the Higher Judicial Council on the number of judges needed in the judiciary, the Minister requests the Council to organize an entry exam for the Institute. The Council appoints a commission to prepare the exam. Accepted candidates participate as trainees for the next three years.

In 1993, the Institute's program shifted from largely theoretical training to an emphasis on practical training, the result of the introduction of a more demanding entrance exam. The written and oral exams introduced at the time were seen as providing a more accurate gauge of applicants' knowledge in the field, with the accompanying realization that the prolonged emphasis on theoretical training duplicated many aspects of legal education. The training program now provides six months of course work, followed by two and half years of practical training in courts with two to three month rotations. Courses include real estate, landlord/tenant, Civil Procedure, execution of judgments, computer training, and writing judgments. Courses are planned at the biannual meetings of the Institute's Board. Trainees are also required to prepare a paper on a specific area of law. The President of the Judicial Department of the Institute prepares an evaluation on each trainee.

⁴ See the discussion on the appointment of lawyers to the bench *infra*, page 23.

The Institute is physically located in the Ministry of Justice. There is limited space for classes and as a result, teachers are encouraged to hold classes elsewhere. The library of the Institute is small and lacks current legal materials. The Institute has only two full-time employees in addition to a part-time Director, whose role is divided between managing operations and serving as a president of a chamber of the Court of Cassation. Dual roles are a common practice amongst senior figures in the judiciary.

Due to limited capacity, the Institute has been unable to increase the number of judicial trainees or to carry out its mandate of providing continuing education for judges. In addition, despite a mandate to do so, the Institute has been unable to provide training for notaries, clerks, bailiffs, court staff, and others. As a result, when judges are rotated to new courts, they must learn on the job, which may be, initially, at the expense of well-reasoned judgments. The impact on the judiciary as a result of the lack of continuing education is, therefore, a concern to judges and lawyers. Budget limitations prevent the execution of a mandated three-week course for judges when they are rotated to a new court. As a result, judges have to fill in the gap in knowledge themselves.

The lack of training for court staff also has direct implications for the backlog in cases in the judicial system. Clerks, bailiffs and others without training undermine any chances of improving case management and the overall court administration. The training, however, will only be effective over the long-term if the roles of court staff are redefined and the training is directed toward the new roles. Staff who can serve in a substantive research role to assist judges rather than fulfill a purely administrative role is a relevant example.

In addition to fulfilling its existing mandate, the Institute seeks to require a mandatory period of training for judges who have served five years on the bench, equivalent to a master's program, and wishes to provide seminars for public sector institutions, including ministries, the Central Bank, and other bodies to train staff in new legal developments in their substantive areas of concern.

Recommendations:

- Resume continuing education for judges and training for court staff. The Ministry of Justice has made the improvement of judicial competency a priority, which should be reflected in increased resources. Also, prioritize the improvement of management practices at the Institute.
- The Judicial Training Institute should institutionalize a system of feedback from judges. It could also disseminate innovations being undertaken in individual courts.
- The Institute relies on judges as instructors and it is unclear whether judges are providing an adequate level of course training. A set of criteria should be developed to ensure the employment of the most highly qualified instructors.
- Place an equal emphasis on practical courses such as court and case administration, managing hearings, interacting with lawyers, and courtroom procedures.

- Computer training should be carried out in the context of a strategy for court computerization, with an initial emphasis on judgments produced by word processing.
- Prepare budget arrangements with the Ministry of Justice to allow for consistent funding.
- Consider study tours for exposure to other legal systems.
- Revise the curriculum at the Institute to include courses in new substantive areas of business law, including Banking Law, Contract Law, Financial Institutions, and Trade Law.
- Prepare and circulate a newsletter among judges containing updates on developments in legislation.

Department of Legislation and Consultation

The Department of Consultation and Legislation provides legal opinions for all ministries, and the Council of Ministers. The Department's legal advice is sought in several contexts by the Executive Branch: when ministers require advice on problems in relationships within their own ministry, with other ministries (e.g. conflict of jurisdiction), and in relation to complaints filed by members of the public; when ministers need legal advice in conjunction with issues arising in the Council of Ministers; and when ministries submit draft laws for review.

The Department is very well regarded by judges and lawyers alike. However, it has had a difficult time attracting staff due to the demanding workload. The standard response for the handling of consultation requests is within one week of receipt. The Department received 844 consultation requests in 2000, of which 827 were answered within the same year. There are four full-time judges and one-part time judge who also serves on the Council of State. According to the applicable regulations, there should be twelve judges, but there have never been more than four. A recent proposal to expand the Department to twenty-five judges and to create specialized sub-departments in areas such as internal legislation, private law, public law, and international treaties has been rejected.

The Department's opinions on the consultations received are available back to 1949, providing an important source of legal analysis. The opinions are indexed by year. Staff devote their time almost exclusively to providing consultations and little time to commenting on draft legislation. Poorly drafted legislation often creates uncertainty for judges over whether new laws supplement, amend or replace existing laws. Frequent amendments, often soon after the legislation has been issued, is cited as a problem. The need for well-drafted laws is a fundamental component of a well-functioning legal and judicial sector.

Recommendations:

- Shortcomings in legal drafting must be addressed to ensure a well-functioning legal system. Enhancing the capacity of the Legislation and Consultation Department to provide reviews of draft legislation is an urgent priority. In

addition, along with improving documentation, facilitating exchanges with other legal drafting departments in the line ministries is critical.

- Develop incentive structures for staff.
- Extend efforts to improve capacity for legal drafting to parliamentary committees so as to ensure the quality and understanding of the law.

Higher Judicial Council

The Higher Judicial Council is intended to function as an independent body within the Ministry of Justice that provides general oversight for the judiciary, including approving judicial appointments, promotions and transfers in conjunction with the Ministry of Justice, monitoring court performance and disciplinary actions, and proposing reforms to the judiciary.

The composition of the Higher Judicial Council includes two judges elected by the judiciary, three from amongst judges serving on the Court of Cassation, Courts of Appeals and Courts of First Instance, and five judges appointed by the Council of Ministers. Previously, the composition relied solely on appointments by the Ministry of Justice. The Higher Judicial Council is in need of a legal framework which protects its independent status.

Judicial Inspection Unit

The Judicial Inspection Unit (JIU) serves as a quality assurance unit for the judiciary, with a mandate to monitor the conduct of judges and court staff in the civil and criminal chambers of ordinary courts, the Council of State, as well as the departments of the Ministry of Justice involved in judicial issues.

Five inspectors monitor whether judges are present for judicial proceedings, and are holding hearings and issuing judgments. Some evaluations take place at least once a year, more if required, however not according to a fixed schedule. Inspectors also investigate specific judges in response to written and oral complaints. Grounds for complaints include severe delays in issuing judgments, an absence of grounds upon which the judgment is based, bribery, and corruption. The Inspection Unit may not inquire into the nature of the judgment itself, but rather focuses on whether cases are actually being concluded. If the allegations are serious, the complaint is forwarded to the disciplinary committee of the Higher Judicial Council for further examination. There is, however, no code of conduct for judges. The committee may sanction judges, the most severe of which is removal. The Unit estimates that approximately 90% of complaints that are filed are frivolous, often filed by a losing party dissatisfied with a judge's decision. Sanctions may be applied against court staff without referring the matter to the disciplinary committee.

Monthly reports submitted by each court detailing the disposition of cases are a principal tool for monitoring judges. Based on that information, the Inspection Unit also advises

the Ministry of Justice on the number of judges needed in various courts. The Ministry uses this information to assign new judges and rotate existing judges.

The Unit places emphasis on service to the public and transparency, however some argue that there is too much focus on efficiency in disposing of cases. Efficient decision-making should be prioritized, however, not at the expense of the quality. Judges who are not as efficient can be at risk of being assigned to more remote courts. The independence of judges may be affected through this link between efficiency of decision-making and transfer to other courts.

Corruption investigations are secret and therefore, it is unclear how many investigations have been made and which of those investigations have led to sanctions or removal. Sanctions for corruption are rare. Where wrongdoing is determined, judges are asked to retire. There is no public notice that the judge was involved in corruption or that he or she was asked to leave for that reason. In combination with the secret process for investigating corruption, the public is left ill-informed as to both existing problems of corruption in the judiciary and the Government's efforts to solve them.

Recommendations:

- The Judicial Inspection Unit should equally emphasize qualitative and quantitative factors in monitoring the performance of the judiciary. A revised system should aim to be quality-enhancing, with the criteria for evaluation articulated by the Unit, working with input from judges.
- Investigations of allegations of corruption should be carried out in a transparent process based on a specific written code of conduct for judges.

Office of the Minister of State for Administrative Reform (OMSAR)

OMSAR plays a significant role in preparing draft legislation for structural reform in the Lebanese government, including anti-corruption legislation, the establishment of an ombudsman's office, establishing a code of conduct for civil servants, and creating a citizens' charter.

The Citizen's Charter, which seeks to encourage transparency in and improve the quality of service by the public sector, identifies the need to improve relations between citizens and the state by simplifying transactions and prioritizing the right to access of information.

OMSAR has also drafted anti-corruption legislation, which sets out sanctions including fines and imprisonment for the destruction of official documents, theft of money or information, private gain resulting from an official position, or accepting money on behalf of a political group. A draft law addressing the relationship between the state and its citizens creates access to administrative documents and the need for justifications given for administrative decision-making.

A Code of Conduct for Civil Servants prepared by OMSAR was approved by the Council of Ministers in 2002 and established the Code as part of the development of efficient services for the public, which the ministry identifies as an “essential feature of democratic systems.” The Code does not set out detailed ethical rules, but emphasizes ethical principles in the workplace, including avoiding conflicts of interest, prohibiting the use of one’s position to directly or indirectly benefit family members, and counseling against the establishment of relationships with persons whose interests are affected by the decisions of public servants. The code also sets out broad guidelines related to appropriate behavior between workplace colleagues and toward the public.

Office of the Ombudsman

OMSAR has proposed a draft law to establish an ombudsman’s office following a working session in 2001, co-sponsored with the Bar Association, which brought together representatives from ombudsmen’s offices in France, Cyprus, Greece, Switzerland and Tunisia.⁵ The draft law creates an independent Office of the Ombudsman to address citizen complaints regarding their interactions with government employees, after having exhausted their available administrative remedies. The Ombudsman is also empowered to intervene based on his or her own initiative in any matter affecting the public interest.

Bar Association

Decree No. 655 of 1921 established two Bar Associations in Lebanon, one in Beirut and the other in Tripoli. Membership in one of the two bars is required in order to be able to practice law, in addition to a law degree and a three-year apprenticeship in a law office. Decree 655 was amended by Law No. 8/70, which requires that a lawyer must have an office in the area of the Bar to which he or she belongs, and that the Tripoli Bar registers the names of all lawyers practicing in the northern district of Lebanon while the Beirut Bar registers the names of lawyers practicing in all other districts in Lebanon. There are approximately 7,500 members of the Beirut Bar and 1,500 in Tripoli, approximately one lawyer for every 422 persons in Lebanon. There appears to be competition among lawyers for business, but limited supervision of the quality of legal services provided.

The administrative structure of each Bar Association includes a general assembly, council and president. The general assembly is the supreme authority of the Bar and meets annually. The general assembly elects the president and members of the council. Candidates for president must have been registered with the Bar for at least twenty years.

The council’s responsibilities include deciding on Bar applications, amending by-laws, implementing the resolutions of the general assembly, preparing the annual budget, convening the general assembly, mediating disputes between lawyers related to the practice of law, collaborating with government agencies on matters related to the practice of law, assisting new lawyers in arranging apprenticeships, and granting financial assistance to lawyers when necessary. The president is responsible for supervising the administration of the Bar, presiding over general assembly meetings, representing the Bar

⁵ This draft law has not yet been adopted by the Council of Ministers.

in legal actions, appointing and terminating bar representatives in each judicial district, and appointing lawyers to represent indigent clients and/or minors.

The Bar receives funding from private and public sources. Lawyers pay approximately US\$400 per year to the Bar for operating costs and contribution to a retirement fund. The Bar also receives funds from the Ministry of Justice to cover a portion of the costs associated with the provision of legal aid. This is critical, as most cases require representation by a lawyer.

The Bar has several bodies working to improve the functioning of the legal and judicial sector in Lebanon. The Institute for Human Rights is an organization within the Bar devoted to advocacy in Lebanon. The Institute focuses on human rights training for lawyers, judges and others, as well as on efforts to incorporate international human rights conventions into domestic law, and dissemination of international human rights instruments. Current activities of the Institute include working against the death penalty in Lebanon through advocacy and legal assistance for criminal defendants who have been sentenced to death, and supporting freedom of expression and good governance. The Institute has worked with OMSAR to develop the draft law on the creation of an Ombudsman's Office, for which it is preparing a manual for utilizing the Ombudsman's Office by the public. The Institute also monitors trials, and has distributed publications on the standards for fair trials and for the treatment of prisoners.

The Bar has proposed to create an Institute for Lawyers to provide compulsory training for lawyers on new laws, such as WTO agreements and intellectual property. As noted earlier, the current training program for lawyers entails working in a law firm and it is not yet clear whether this would be for new lawyers or continuing legal education.

The Bar also plays a consultative role in the legislative process through the Parliamentary Commission on Legislation, which provides comment on draft legislation.

Lawyer's fees are negotiated with clients based on fees defined in the Code of Obligations and Contracts. Contingency fees of up to 20% are permitted. Historically, fees have been based on the task, with a fixed-cost contract. A recent Court of Appeals decision held that a lawyer was not permitted to charge a 2% contingency fee on a US\$100m case because it was determined that his services rendered were not commensurate with the fee negotiated. As a result, the case has raised questions about the use of contingency fees. The Bar plans to regulate fee agreements more to ensure that lawyers prepare written contracts with clients that clearly state fee arrangements. The Bar does penalize lawyers that do not sign written contracts with clients, requiring them to pay a penalty to the Bar.

According to the Bar, there are approximately 200-300 complaints against lawyers filed each year, 8-10% of which are determined to have merit. Complaints are commonly filed by losing parties against their lawyers because even when complaints are dismissed, clients are aware that such complaints can be troublesome for a lawyer's reputation.

Clients can file complaints against lawyers in two ways. The first option is to file a complaint directly with the president of the Bar Association. The president reviews the complaint and interviews both the lawyer and the complainant. If the president determines that there is no basis for the complaint, it is dismissed. If the president determines that the complaint is justified, a warning can be issued to the lawyer, or the president refers the matter to the Bar's Disciplinary Council. The Council then investigates and determines whether sanction is warranted. The second option is to file a complaint with the office of a judge. The judge then requests that the three members of the Bar's Disciplinary Council, who are appointed to the position by the president of the Bar Association, decide. A final decision by the Council can be appealed to the Court of Appeals, where two members of the Disciplinary Council will sit with the appellate court panel. The Disciplinary Committee has the authority to temporarily or permanently suspend a lawyer's license to practice.

The independence of lawyers is a priority for the Bar, whose procedures require the lawyer's consent before a warrant for arrest or any judicial proceeding can be initiated against them, and a search of a lawyer's office can only take place in the presence of the president of the Bar.

The Bar has recently prepared a Code of Conduct for lawyers. The new Code of Conduct focuses on ethical guidelines rather than on providing specific prohibitions. Article 2 emphasizes the importance of transparency in the practice of law, while Article 17 prohibits lawyers from using "influence or illegal methods" to win a case. Other articles set out parameters including the need to defend the independence of the judiciary, and the importance of coordinating with the Higher Judicial Council on matters affecting the justice sector. Article 40 provides for disciplinary sanctions for specific behavior while practicing law, including: holding public office other than membership in the Chamber of Deputies, municipal and administrative councils and non-remunerated public services; working as a journalist; holding a position as chairperson of the board or general manager of a private company; and being President of the Parliament or the Council of Ministers. Lawyers who are appointed as cabinet ministers may not, for one year after leaving office, take part in cases relating to the ministry for which he or she worked.

The Bar has made several proposals to reform the judiciary, including increasing the number of judges, using single judges in all first instance cases,⁶ and limiting the influence of the military courts. The Bar Association is widely perceived as a leading voice in Lebanon for legal and judicial reform, however, when reforms are targeted at the Bar, there appears to be less support.

Recommendations:

- The judicial selection process would benefit greatly from the input of the Bar Association in the evaluation of candidates for the bench. The Bar has already expressed an interest in evaluating the qualifications of lawyers who are considered as candidates for the bench. Extending this to all judicial

⁶ First instance courts use both single judges and three-judge panels.

appointments would be an important step in improving public trust in the appointment process.

- The new code of conduct for lawyers would benefit from clear criteria regarding prohibited behavior by lawyers.
- The credibility of the legal profession would be improved by a disciplinary process that sanctions lawyers in a timely and effective manner.

D. Legal Education and Training

Five universities in Lebanon offer a four-year law degree, four of which are private (Université St. Joseph, University of the Holy Spirit, La Sagesse, and Arab University) and one public (Lebanese University). The vast majority of students, nearly 70% of the approximately 12,000 law students, attend Lebanese University, which charges no fees. In 2001, women accounted for approximately 38% of all laws students, and are the majority in St. Joseph and University of the Holy Spirit. A four-year degree is required for students who seek a judicial career, or wish to practice as a lawyer or notary. The current curriculum would benefit from a revision to account for more global issues.

Law school exams take place at the end of each academic year. Those students that fail one or more subjects are permitted to retake the exams the following September. A second round of failure requires repeating the previous academic year. The degree of *Licence en droit* is awarded upon graduation. After concluding the four-year degree, law graduates may apply for a three-year training program. Eligibility for training requires a Lebanese Baccalaureate Certificate, a law degree from a Lebanese university, no criminal convictions, Lebanese citizenship for at least ten years, and at least twenty years of age.

Although no precise figures are available for all law graduates, the University of St. Joseph estimates that 75-85% of their graduates enter private legal practice. Those graduates who pursue a judicial career apply to the Judicial Training Institute.⁷

The three-year training required after graduation takes place in a lawyer's office. Trainees attend occasional lectures organized by the Bar concerning legal practice and theory. Trainees are supervised by a senior lawyer, under whom they will represent clients in court. Supervising attorneys also establish their own requirements, including participation in a specific number of trials. A more formalized training program is under consideration by the Bar Association.⁸

⁷ See discussion *infra*, page 9.

⁸ See discussion *supra*, page 14.

IV. JUDICIAL SECTOR

A. Ordinary Courts

Court of Cassation

The Court of Cassation is the highest court in Lebanon. There is one first president for the entire court, and then a president for each of the eight chambers; each chamber consists of the president and two associate judges. The president of the Court distributes cases to the chambers. There are currently approximately 3,500 cases pending in the Court and it is estimated that this number will increase to 5,000 by 2005. The Court has jurisdiction over cases involving appeals based on law and not fact, where a dispute arises between a judicial and ecclesiastical court, between a judicial and a *Shari'a* court, or between two different ecclesiastical or *Shari'a* courts.

The Court of Cassation includes a Public Prosecution Department (PPD) headed by the Attorney General who supervises all public attorneys in the judicial system. The Attorney General also functions as the Commissary of the Government at the Military Court of Cassation.

Courts of Appeal

The courts of appeal sit as three-judge panels, similar to the Court of Cassation, with a president and two associate judges. The Court of Appeal has jurisdiction over all cases decided by first instance courts, as well as other cases for which it has original jurisdiction. There is a Court of Appeal in each of Lebanon's six districts.

Each Court of Appeal has a Public Prosecution Department headed by an Attorney General, working in conjunction with public attorneys, and an Investigation Department to investigate crimes.

Courts of First Instance

Cases filed in the courts of first instance are heard either by a single judge or a three-judge panel. Article 86 of the Code of Civil Procedure states that a single judge hears all cases involving moveable and immovable property with a value less than a hundred million Lebanese pounds (approximately US\$ 65,000), wills where the beneficiaries are named, landlord/tenant, labor, real estate, and the execution of judgments from both single and three judge first instance courts. All other civil and commercial cases are heard by three-judge panels, composed of a president and two associate judges. Both single- and three-judge courts are represented in each of Lebanon's six regions. Single judges decide penal cases where the crime involves a sentence of three years imprisonment or less.

B. Specialized Courts

Judicial Council

The Judicial Council hears cases related to state security that have been referred by the Council of Ministers at the suggestion of the Minister of Justice. Its decisions are final and not subject to appeal.

Supreme Council

The Supreme Council's function is to hear cases related to public officials, including the President and Prime Minister of Lebanon and ministers. The Council consists of seven deputies elected by the Chamber of Deputies and eight of the highest ranked judges. The most senior judge serves as the president of the council.

Constitutional Council

The Constitutional Council reviews the constitutionality of legislation at the request of the head of the executive, legislative and judicial branches or ten members of Parliament. The head of each of Lebanon's religious communities have the right to consult the Council regarding laws governing personal status, religious education, and religious practice. The Council's jurisdiction includes settling disputes resulting from presidential and parliamentary elections. The Council consists of ten judges, half of whom are appointed by the Executive and one half of whom are elected by Parliament. Judges elect the president and vice-president of the Council. Public individuals have no recourse to the Council.

Religious Tribunals

Separate laws exist for each of the religious communities in Lebanon. The Muslim, Christian, Orthodox, and Jewish populations, and the sects within each, have developed their own laws concerning domestic relations, which are interpreted and applied by religious courts. For non-Muslims, civil courts have jurisdiction over inheritance and Christian and Jewish religious courts handle marriage, divorce and custody cases. One set of laws governs the jurisdiction and authority of religious tribunals. The Law of April 2, 1951 governs the non-Muslim community and the Law of July 16, 1962 governs the Muslim community. Roman Catholics have a final avenue of appeal through the Sacred Roman Rota in the Vatican. A judge is appointed by the Ministry of Justice to inspect *Shari'a* courts, but this is not done for courts serving the Christian community.

Labor Court

The Labor Arbitration Council was created by Article 77 of the Labor Law of 1946, and consists of a chair, who is a judge, and two members who are not judges, all of whom are appointed by a decree issued by the Council of Ministers. One member represents employers and the other member represents workers. The jurisdiction of the Council

includes disputes between employers and employees under the Labor Law and the Workmen's Compensation Law. The decisions of the Council can be appealed to the Court of Cassation. *Pro se* representation in labor cases is permitted and there are no associated court fees. There are eleven labor courts in the country.

Land Court

Legislation was issued during the French Mandate which regulated the delimitation of real property and created a land registry. The applicable law established procedures for determining the rights to real property, which were vested in committees consisting of a judge and two members. Currently, the committee is composed of a single judge hearing the matter. While the judge is considered part of the judicial system and subject to judicial supervision, coordination of the work governing the delimitation of real property is under the administrative authority of the Land Department in the Ministry of Finance.

Customs Committee

The Customs Committee has jurisdiction to hear violations of customs law and regulations, as well as cases brought by the Customs Department. Most often cases involve efforts to collect customs duties and fines. The committee is composed of a chair and two senior customs officials.

Military Courts

Military Courts have official jurisdiction over misdemeanors and crimes committed by military personnel, civilian employees of the military, and internal security forces. The Military Courts, according to Military Justice Law No. 24/68, are composed of single, civilian judge courts in each district of Lebanon. Judges may also be military personnel with law degrees. The law also establishes a permanent military court in Beirut composed of an army officer serving as president and four members, one of whom is a civilian judge. There is a Military Court of Cassation in Beirut composed of a civilian judge as president and four army officers. The Attorney General of the Court of Cassation acts on behalf of the Government in cases in the Military Court of Cassation. Military courts also try civilians allegedly involved in terrorism or issues of national security, or where a crime is committed together with a member of the military.

Juvenile Court

Cases involving minors fifteen years of age or younger are heard by a single judge from the Juvenile Court. The minor, his or her parents, an attorney, and a representative of the Juvenile Protection Society are present during the case. The trial itself is not open to the public, though sentencing in a criminal case is.

A department within the Ministry of Justice provides assistance and monitors cases of minors in the criminal justice system, ensuring that legal procedures are followed, their identities are protected, and that they are treated fairly. The department ensures that

judges are kept informed of new developments in the law which affects minors. The office also assists juvenile victims of crime.

Audit Court

The Audit Court, which is part of the Office of the Prime Minister, exercises judicial supervision over the expenditure of public funds. The court has both administrative and judicial functions; it monitors the use of public funds, ensures compliance with existing laws and regulations, and prosecutes public employees for violations. In addition, the Court may, at the request of the Ministry of Finance or other ministries, provide an opinion on financial issues.

Council of State

The Council of State, which includes six chambers, hears cases filed by individuals against the state, municipalities, or any public institution. The Council also gives opinions regarding government decrees at the request of a ministry. The Council of State is the only administrative tribunal. Where there is a question of jurisdiction between administrative and civil courts, a Conflicts Tribunal consisting of judges from the Court of Cassation and the Council of State determines competency. The Council judges are prohibited from handling a case in which he or she may have given an opinion on a related decree. Judgments by the Council are binding on the state.

Legislative Decree No. 119 of June 12, 1959 provides the Council with jurisdiction over specific administrative and regulatory matters, including petitions for compensation from damage resulting from public works; government contracts and procurement; tax cases; salary and pension disputes of government employees; cases governing occupancy of the public domain; disputes related to the election of Administrative Councils; discipline of government employees; and petitions to interpret or give opinions on the validity of administrative acts. While the Council of State is located in Beirut, it is supposed to have additional locations.

A law calling for the establishment of courts of the Council of State to be established elsewhere in Lebanon has not been implemented. In terms of efficiency, the Council has made a strong commitment to resolving backlogged cases. Lawyers have noted, however, that cases continue to languish.

Recommendations:

- Courts are supervised by a number of entities, which leads to problems of accountability and consistency. The establishment of a centralized oversight entity for the courts would help resolve these problems and strengthen the independence of the judiciary.
- Military courts should only have jurisdiction over exclusively internal military matters.

C. Court Administration

The Ministry of Justice is responsible for court administration. There are approximately 1,000 support staff for the 384 judges in the judicial system. Each court is staffed with a bailiff, clerk and recorder, each of whom must pass an entrance exam. The court recorder maintains the court's files and provides access to them. In Lebanon, all court files are paper-based, with no computerization. Judgments are prepared longhand. Given the lack of technology available in the courts, transcripts do not necessarily reflect a verbatim account of court proceedings. Statements made by the parties are restated by the judge in classical Arabic and then handwritten by the court recorder. This process requires the judge to constantly stop proceedings, and risks an edit or an omission in the restatement by the judge. Court clerks register cases, set dates for hearings, record court proceedings, and ensure court procedures are followed.

There is no judicial database of court decisions available to judges. As a result, judges rely on obtaining one of the private subscription services available. However, legislation has been placed on CDs by private publishers, and is distributed to all judges by the Ministry of Justice; but since not all judges have a computer, it is difficult for them to take advantage of the CDs.

Court staff receive no training, are under-equipped, and poorly paid. Training for court staff is the responsibility of the Institute of Judicial Training, however, this Institute does not currently provide it. Low staff salaries have led to accusations that staff "sell" their services to parties and lawyers, often to speed up filings and serve notice.

Infrastructure is also a problem caused by to budgetary restrictions. Court space is at a premium throughout the country and conditions are often poor. In Tripoli apartments are rented and judges sometimes utilize their offices to hold court.

Recommendations:

- Training for court staff is necessary to improve efficiency and effectiveness of case management. The Institute for Judicial Training should implement a program for court staff.
- Salary levels of court staff should be reviewed. Cases of corruption involving court staff should be investigated, and sanctions applied where corruption is determined.
- Case management should be developed and manual procedures should be revised to modernize court administration. Computerization of the revised process should be done as part of an overall strategy.
- Consideration should be given to providing judges with staff that can conduct legal research. Furthermore, staff with appropriate educational and professional skills should address legal issues. Options for this include retraining of current staff or new hiring of staff with such skills.

D. Judges

Judicial Selection and Appointment

There are currently 384 judges serving in Lebanon out of 543 positions called for in the applicable legislative decree of 1983, 27% of which are women. There is no consensus across the Lebanese legal and judicial sector as to the appropriate number of judges needed to ensure timely resolution of cases. The Ministry of Justice seeks the ability to fill all the allocated positions for judges provided for in the law.

The selection and appointment of judges has a significant impact on public confidence in the judiciary. Thirty five percent of judicial positions are vacant. One explanation is that most law graduates, including the best qualified, choose the private sector over a judicial position. In addition, there is a high failure rate for the judicial exam, making the applicant pool even smaller.

Although the three-year training program with the Institute of Judicial Studies is the established route for entering a judicial career, there have been exceptions permitted to increase the number of judicial appointments. Because the Institute did not function consistently during the war, the number of judges after the war was very limited. As such, decree 33/91 of April 1993 appointed as judges seventeen lawyers who had successfully completed an exam and had at least six years of legal experience. Additionally, decree 56/78 of September 1994 appointed 39 lawyers who had a minimum of 13 years of experience. The latter were not required to take an exam nor participate in any preparation classes before appointment.

A bill passed by the Parliament permitted the recruitment of 100 lawyers over the next four years to be appointed as judges. The lawyers will be required to have 7-10 years of experience and will take a six-month preparatory course before being appointed.⁹ To date, no judge has been appointed. One explanation is that the lawyers who applied to become judges have been unsuccessful in their legal careers. In an effort to improve the quality of appointment, the Bar is proposing to review the candidates for the Institute of Judicial Studies and the Higher Judicial Council.

Until recently, appointments, transfers and promotions of judges were negotiated between the Ministry of Justice and the Higher Judicial Council (HJC). In December 2001, Decree No. 389 gave the latter the ultimate responsibility to make judicial appointments when there is a dispute, provided at least seven of the ten judges on the Council are in favor of the appointment.¹⁰ However, this process has not yet been utilized. Once a judge is appointed, the Judicial Personnel Office in the Ministry of Justice issues a decree which is circulated to all government agencies and published in the Official Gazette.

⁹ Consideration is being given to including law professors with over ten years of experience as judges on the Council of State in order to expand the pool of potential judges.

¹⁰ A reform which would have provided automatic selection of the Council's suggested candidate where the Minister failed to comment within a fixed period was rejected.

The transfer of judges between courts takes place prior to the start of each judicial year. Judges are rotated between courts every two to three years. Rotation of this kind can be a vehicle to limit corrupt behavior as long as the transfer is not done in a way to undermine judges' independence.

The selection of judges is based on merit and confessional representation. The Government has identified the need to eliminate sectarian considerations in public sector hiring in the 1990 Constitution, but the practice remains in effect, and reflects the sensitive nature of power sharing between the Muslim and Christian communities in Lebanon. The most immediate impact is that such considerations limit the available candidates, and becomes ever more difficult at the appellate level. For example, a position on the Court of Cassation held by a Maronite judge has remained vacant because of the failure to find another Maronite with a sufficient level of seniority. The greater concern is the extent to which this practice undermines merit-based selection, a key quality for an impartial judiciary.

Recommendations:

- Consideration should be given to enhancing the independence of the Higher Judicial Council and implementing the law governing judicial selection. It should have the role as the supreme body overseeing the judiciary in Lebanon.
- A system of incentives should be established to encourage qualified law graduates to pursue a judicial career.
- While diversity in the judiciary should be valued, confessional considerations should be removed as a criteria in judicial selection.
- Compulsory rotation should take place preferably every four to six years to allow for greater continuity.

Judicial Efficiency

Efficiency in the courts has been one of the most pressing issues in the Lebanese judicial system. Delays have resulted in the effective denial of court access, in investors avoiding the judiciary, and in decreasing public confidence. There has been some improvement in the efficiency in the courts, however, a backlog remains.

The causes of inefficiency are more complex, however, than simply a large caseload and an inadequate number of judges. Overall, inefficiency can be attributed to: the lack of training of court staff, weak court administration where the allocation of judges is not based on caseloads and courts whose needs are not greatest; a vulnerable economy resulting in insufficient funds for hiring support staff or judges; the multiple roles of judges; the lack of computerized case management; increased caseloads within certain cumbersome areas of law accounting for a substantial percentage of litigation, and procedural defects that encourage delays in decision-making.

The appellate courts in Beirut and Mt. Lebanon, for example, have a comparable numbers of cases, although the former has thirteen chambers and the latter only eight.

Furthermore, the presidents of courts also serve in other roles. The president of a chamber of the Court of Cassation, for example, also serves as the head of the Judicial Studies Institute. Although serving in dual roles may be a recognition of a judge's distinguished performance, there is some suggestion that the demands may adversely affect the performance of both jobs. Identifying other systemic weaknesses is an important step in preparing a comprehensive response to the situation.

The judiciary entered the 1990s with a substantial backlog of cases leftover from the war. That factor, combined with an increase in cases filed once the judicial system became operational, and a relatively small number of judges, created delays which the judicial system has been addressing with some success. A 1994 report prepared by the Ministry of Justice and financed by the World Bank showed that for the period 1991-1993, the number of pending cases increased by 21%.¹¹ Figures for the period October 2000 - September 2002 show that the increase in the number of cases pending was 7%, a decrease of 14%. A significant backlog is affecting the Court of Cassation, where the number of pending cases is projected to increase from 3,500 to 5,000 over the next two years.

Between 2000-2002, the number of cases disposed increased by 16%.¹² This is reflected in the clearance rate,¹³ which improved from 82% to 87%. While this is comparable to certain courts in Italy, Argentina, and Romania, there is still room for improvement to meet levels of efficiency like those in Japan, France and Denmark.¹⁴ The congestion rate over the period decreased from 228% to 211%.¹⁵ As the end of 2002, there were 184,715 cases pending in the Lebanese courts.

The structure of first instance courts has been recently reformed in the interest of improving efficiency. Three-judge panels now hear only civil cases involving more than approximately US\$ 65,000, with any lesser-valued cases heard by a single judge. Criminal cases involving a sentence of less than three years are also heard by single judges. Proposals have been put forward to completely eliminate three-judge panels at the first instance level courts. This proposal has encountered opposition because judges can gain experience by serving as part of a three-judge panel, and the belief that a panel will issue better reasoned decisions.

There are significant procedural considerations that affect efficiency. Improvements to the notification process have not been implemented. This leaves in place an inefficient system which often fails to properly notify parties, resulting in the frequent postponement of hearings. A proposal has been put forth by the Court of Cassation judges to make pre-

¹¹ See Dr. Wassim Harb, *Strangulation of the Judiciary*, Lebanese Ministry of Justice (1995)(original in Arabic).

¹² Cases increased from 165,377 to 191,769.

¹³ The ratio of cases disposed to cases filed. Maria Dakolias, *Court Performance around the World*, World Bank Technical Paper No. 430 (1999).

¹⁴ *Legal and Judicial Sector at a Glance: Worldwide Judicial Indicators*, available at <http://www4.worldbank.org/legal/leglr/>.

¹⁵ Ratio of cases pending at the beginning of the year plus those filed during the year to those cases disposed of during the year.

trial discovery more efficient by eliminating court hearings to exchange briefs. This proposal came about as repetitive hearings to exchange documents over prolonged periods of time were widely cited as a cause of delay.

A large number of cases are delayed because lawyers do not attend hearings. Opposing counsel agrees to a continuance of the case rather than seeking judgment from the court as a courtesy to the lawyer. Given the heavy workload of many judges, a continuance can serve their needs as well. Article 463 of the Civil Procedure Code stipulates that requests for delays based on the absence of a party should not be granted, absent serious reasons, but this is not adhered to.

Delays are also a result of particular substantive areas of law. The vast majority of cases involve insufficient fund cases, real estate issues, and the execution of judgments. Notification requirements in real estate cases are extremely demanding. Execution of judgments remain problematic owing to an extremely complex code, which in effect create a new case to resolve rather than enforce the original decision. The situation would improve with a simplified code and, failing that, to have the same judge that issues the original decision also handle the execution.

The Council of State, like the ordinary courts, has experienced substantial delays in rendering judgments. Delays, according to the Council, are the by-product of prolonged periods provided for in the law for filing briefs and replies as well as a backlog of pending cases, which has reached approximately 3,500 cases. New cases, however, are being settled within one to two years. In 2002, 1,100 cases were filed and settled. Pending cases are being prioritized in an attempt to clear the docket. There are sixty-six positions for judges on the Council of State, but currently there are only thirty-four judges.

Recommendations:

- Training of judges and court staff in court administration and case management is an ongoing and urgent need.
- Provide graduates an opportunity to work with judges for three- or six-month periods to provide research assistance as part of the three-year training period.
- Simplify the procedures for resolving real estate, insufficient fund cases and executions of judgments.
- Review the system for notification. Mailboxes for lawyers would be an effective way to ensure efficiency of the notification process.
- Engage in a systematic compilation of statistics on cases which are made public. Use of data, statistics, and future estimates of workload to provide input into the allocation of resources and judicial positions.

Judicial Impartiality & Independence

There are several issues impacting on the independence of the judiciary: rotation of judges, judicial salaries budget control, confessional considerations, and a perception of corruption. Overall, judges are transferred from court to court based on the needs of the judicial system. Judges that are new to the bench may be rotated more frequently to increase their exposure to various areas of the law. This system of rotation can help insulate judges from corruption in the presence of a uniform policy that applies consistently to all judges. However, it is perceived that efficiency of decision-making by judges is taken into account when judges are rotated through the courts.

There is frustration with the centralized control of budgeting and expenditure by the Ministry of Justice. The smallest expenditure within the Lebanese judiciary requires authorization from the Ministry. A lack of funds is, as elsewhere, problematic, with some judges needing to purchase supplies for their offices with their own funds. Although the Ministry of Justice is generally responsive to the needs of the judiciary, formulation and oversight of the budget remains strictly in the hands of the Ministry.

Judicial salaries are comparable in scale to the level paid to directors in the civil service, and increases with length of service. Judges do receive benefits including health care and paid education for children. Judges' salaries increased in 1998, but are still relatively low compared to those lawyers in the private sector, who may earn five times or more the salary level of judges. Currently, 86% of the Ministry of Justice's budget goes to pay judges' salaries and benefits.

A salary increase is relevant in the context of efforts to attract qualified law school graduates to the judicial career and to minimize corruption. Remuneration, however, should not be seen as a guarantor of a corruption-free judiciary.

Confessionalism also hampers the independent functioning of the courts. The Lebanese Constitution does call for the abolition of confessionalism over a transitional period based on recommendations to be made by a committee composed of the President, Prime Minister, President of the Parliament, and leading intellectual, political, and social figures. During the transitional phase, confessional groups are to be represented "in a just and equitable fashion" in the cabinet. The principle of confessional representation extends to public sector posts, the judiciary, the military, and security forces.

The most commonly identified problem related to judicial independence and impartiality is political influence. Political intervention in criminal cases appears to be more common than in civil cases. Determining the precise number of cases of alleged corruption is difficult as the number of corruption investigations and the results of investigations are not available to the public. While there is probably only a very small number of judges involved in corruption, the lack of both a transparent system for investigating corruption,

combined with limited public access to information facilitates a greater perception of corruption.¹⁶

Judicial conduct is regulated by two sources. First, the Higher Judicial Council sends notices to judges regarding prohibited conduct on an *ad hoc* basis. When an issue comes before the Council, notices are sent if the subject is deemed sufficiently important. Second, rules applicable to all public employees are also applicable to the judiciary. Decree-law number 15703 (6/3/1964), amended by Law No. 144 (5/16/92), precludes joining professional organizations or unions, undertaking any other paid work except for teaching, serving as a “member of the board of directors of a joint stock or limited partnership company or maintain tangible interests directly or through others in an establishment subject to his or her control” or administration, serving as an MP or municipal official, performing any paid work which reflects poorly on his or her position, disclosing official information during or after public service, or organizing collective petitions. Amended Article 15 prohibits a public employee from “soliciting or accepting, directly or indirectly, because of his or her job, any presents, bribes, or grants of any nature whatsoever.” Judges are prohibited from engaging in *ex parte* communication, and are required to disclose their assets upon entering judicial training, and when leaving the profession. A code of conduct specifically for judges would help rehabilitate the image of the judiciary in the eyes of the public, and provide transparent standards against which judicial behavior can be measured.

Judges are subject to two disciplinary procedures under the disciplinary committee of the Higher Judicial Council, one internal, and one external. The external process is utilized in situations in which there has been intentional misconduct by the judge or gross recklessness. In such situations, the judge can either be sued in “a special court” or the state can be sued for the judge’s actions. An internal procedure applies to all other cases. A recent revision in the law allows the Higher Judicial Council to remove a judge for misconduct without having to consult with or seek clearance from the Ministry of Justice, provided that eight of the ten members support the removal.

Judges themselves have taken various steps to protest the lack of judicial independence. In 1997, for example, 300 judges signed a petition directed to the Higher Judicial Council complaining about a lack of respect for the independence of the judiciary in Lebanon.

Recommendations:

- As emphasized earlier in this report, corruption investigations should be transparent, based on a code of conduct for judges.
- Efforts to improve judicial independence should be undertaken.
- The rotation of judges should not be linked with performance on the bench, which, it could be argued, undermines judicial independence.

¹⁶ The government is facing a problem recently noted by the Minister of State for Administrative Reform where “a misdemeanor by one judge stains the whole judicial body.” *OMSAR June 2002 Monthly Bulletin*.

- Acknowledging the need for diversity on the bench and steps to eliminate confessionalism should be encouraged due to its effects on judicial independence and impartiality.
- The budget for the judicial sector should be prepared and overseen by the Higher Judicial Council based on a detailed assessment of court needs. Mechanisms to give responsibility for expenditures to the courts should be established.

Public Perception

The public's perception of the judiciary in Lebanon is poor. According to a UN-commissioned corruption assessment, six out of ten respondents "strongly agreed" or "agreed" that the judiciary is not independent in its decision-making.¹⁷ Arguably, the lack of trust in the judiciary can be influenced by a single high profile case.

For example, two recent cases received extensive coverage locally and internationally. The domestic byproduct has been broader recriminations against the judiciary. Judges are prohibited from commenting in the press and there has been little effort by the Government or the Bar to either raise awareness regarding the courts or to combat the image that has been created as a result of these cases.

Recommendations:

- Regaining public trust will require greater information regarding the judges' accountability for corrupt behavior and a program which promotes and supports judicial independence.
- A public campaign to improve the image of the judiciary and its importance for the rule of law.

V. ACCESS TO JUSTICE

A. Legal Aid & Public Defenders

Access to justice in Lebanon is in a crisis due to the limited availability of legal aid and public defender programs, high court costs, and large sectors of the population in need of legal representation. In any country the poor face multiple obstacles to access the courts. The situation is more severe in Lebanon because the government scheme for legal aid and public defense sets an exceptionally high threshold for qualification: only the unemployed are eligible.

According to a 2000 report by the International Fund for Agricultural Development, 12.5% of all households live on two dollars per day.¹⁸ Despite increases in the minimum wage over the period 1990-2000, the rise experienced by wage earners has been

¹⁷ (cite UN corruption assessment)

¹⁸ Centre for World Food Studies and MAA-DATA Statistical Consulting Centre, *Rural Poverty Assessment and Mapping in Lebanon*, International Fund for Agricultural Development (2000) at 28.

outstripped by increases in rent, interest rates and other components of GDP.¹⁹ None of these persons would be eligible for legal representation under current guidelines.

In addition, migrant workers do not have access to the courts because they also do not qualify for legal aid under government laws. Inexpensive foreign labor is relied upon in the construction sector and for the provision of domestic help. It is estimated that there are 200,000 – 500,000 Syrian laborers working in Lebanon. A 1998 estimate of Sri-Lankans in Lebanon, almost exclusively women working as domestic help, was 100,000. These numbers are significant in a country of less than four million people. Absent physical abuse, the most common problem facing migrant workers is their dependence on the good behavior of employers rather than on adequate protection in the legal system. Where migrant workers do come into contact with the courts, many are at a disadvantage because they do not understand Arabic or French. Migrant workers represented 55-60% of the legal aid and representation scheme recipients in the past several years.

The Bar Association created a Legal Aid Committee in 1993 to provide legal representation for the indigent in civil and criminal cases. The existing scheme is funded by the Bar, however the available resources are limited. In criminal cases, the Bar represents persons based on its own criteria, including whether the person has been detained, has requested a lawyer, and their income is low enough that it would not be possible for them to pay for representation. The Dutch government has provided \$100,000 for the program. In criminal cases, the Government forwards requests for lawyers to the Bar from the Office of the Public Prosecutor.

The Bar has less funding for representation in civil cases. As such, representation is determined by law, which requires that a person must be unemployed. Upon a court's certification of this status, the Bar may provide representation, depending on available resources. The availability of both programs has not been widely publicized out of concerns that it cannot possibly meet additional demands.

The Bar estimates that approximately 5% of the legal representation that it provides is for civil cases. Lawyers take cases on a *pro bono* basis. In practice, this has meant the lawyers representing clients are often less experienced, as the Bar has a difficult time encouraging experienced lawyers to take the cases. The Bar provided assistance in approximately 3,000 criminal cases in 2000. In 2003 it is estimated that the number will be 1,000-2,000 due to a lack of funding.

The Bar program is a significant improvement over the Government's public defenders scheme. It was common practice to have a judge appoint any lawyer available in the courtroom or nearby, on the spur of the moment, with the lawyer essentially entering a plea for the defendant and ending his or her involvement at that point. The Bar's efforts to apprise judges of its program has minimized the practice of appointing lawyers solely for entering pleadings. The Bar estimates that in 90% of criminal cases, judges now

¹⁹ Social Outlook, Consultation and Research Institute, *Post-War Economic Adjustments and Living Conditions* 1-22 (September 2001).

contact the Bar to arrange representation, although even with this scheme demand outweighs supply offered by the Bar.

Recommendations:

- Legal representation for the indigent in civil and criminal cases remains substantially below the demand. As funds become available to expand programs, priority should be given to providing greater levels of assistance for legal aid.
- It is critical that legislation be implemented which would revise the qualifying criteria for legal assistance based on income levels rather than employment.
- Access to the courts without legal representation is currently limited to the Labor Court. Efforts should be made to expand *pro se* opportunities to cases of nominal value and, where appropriate, to consider the use of paralegals for more complex cases, as well as legal clinics at the law faculties. Legal clinics can provide valuable assistance to the poor under the supervision of qualified lawyers, as well as a way to provide practical training.

B. Civil Society

There are hundreds of civil society organizations in Lebanon working in the areas of the environment, health, disability, human rights, culture, economic development, and other fields. There is limited civil society participation, however, in the legal and judicial sector. With few exceptions, the Government does not actively involve stakeholders through civil society organizations, which could increase accountability and momentum for reform. Several civil society organizations are active in the area of access to justice, and sometimes work in conjunction with the Bar Association.

The Lebanese NGO Forum represents all confessional communities and its work focuses on prisoners, women and children. The Forum provides lawyers for women suffering from domestic abuse, women seeking divorce where husbands have tried to block their efforts to engage lawyers, or women encountering abuse or discrimination in the workplace. This has taken place as part of an effort to take test cases, five of which have been funded to date. The Forum's program has been publicized through the media and the Bar and widely supported.²⁰ Through the cases the Forum is challenging the enforcement of Lebanon's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other international conventions.²¹

The Forum works closely with the Human Rights Institute of the Bar Association in the areas of human rights training and awareness raising related to Lebanon's obligations under international instruments. The Forum has held training for NGOs from the region

²⁰ A report on the progress made in the cases and the details of the issues involved is due to be released in April during a press conference to draw attention to the situation of women in Lebanon.

²¹ The forum also monitors Lebanon's commitments under CEDAW. Lebanon ratified CEDAW in 1996, but reserved the articles on a woman's right to pass on her nationality to her children in cases where Lebanese women are married to foreign men, and giving women equal status under personal status laws.

regarding the minimum standard of treatment for prisoners, attempting to bring a regional focus on mistreatment and torture during interrogation.

The Lebanese League of Women's Rights works to raise women's awareness of their rights under Lebanese and international law, to advocate changes to Lebanese laws affecting women, and to undertake studies on issues affecting women. Lawyers that are members of the League provide free advice on issues related to family law, divorce and domestic violence. Requests for legal representation, which generally involve domestic abuse and/or divorce, are referred to the Bar Association for assistance.

The Lebanese League of Women's Rights, an affiliate of the International League, has successfully lobbied for several changes to Lebanese law. Based on a study conducted by the League which was submitted to Parliament, the Parliament extended maternity leave in the private sector from forty to forty-nine days, and scaled back the right of employers to fire pregnant employees to the first four months of pregnancy rather than the first five (the League is working to eliminate employers' right to dismiss pregnant employees at all). The provision in the Penal Code which permitted honor killings has also been eliminated, although it remains a mitigating factor at sentencing. The League is lobbying for further reform to treat honor killings as any other killing.

The Lebanese Council to Resist Violence Against Women also provides limited legal representation for women facing abuse and seeking restraining orders and/or divorces. The Council also maintains a hotline for women in domestic violence situations.

Recommendations:

- Civil Society participation in the legal and judicial sector, including input on legislation, access to justice, policy development, and judicial selection would have a positive impact on reform efforts.

C. Court Costs

Court costs in Lebanon are prohibitively expensive for civil cases, in which a percentage of the value of the matter in dispute must be paid at the outset of the case. Consequently, court costs present a sizeable barrier to many more people than just the low-income sectors of society. Provisions for the waiver of court fees follow the same standard as those for legal representation: only the unemployed are eligible for the waiver. The high level of civil court costs may be one reason that encourages criminal filings, where possible, because of the absence of a fee regime.

The Courts of First Instance require fees for a broad range of services. The clerk's office requires payment for case registration, summons fee, notification fee, and a photocopying fee. Within each of these subcategories are additional fee schemes. For instance, according to Article 2 of the Judicial Charges Law governing Tariffs of the Courts of First Instance, the production of a document needed for two cases requires paying a registration fee twice. There are fees for registration, summons, and notification. A

photocopy fee of LL 2,000 (approximately US\$1.33) is required for copies of judgments or any other documents requested by a party, but only if all other fees are paid. While the amounts involved are often nominal, compounded, they can be a substantial barrier to access for the poor. The appeals courts and Court of Cassation have similarly complex and more expensive fee schemes.

Recommendation:

- Court fees should be reviewed with consideration given to flat fees and eligibility for waivers to reflect income levels as qualifying criteria, not employment.

D. Notaries

Government regulations in Lebanon currently allow for 210 notaries. Notaries are “public agents” rather than civil servants, but are regulated by the Ministry of Justice. Their salary is based on dues received for their work rather than a salary from the Ministry. Similar to judges and lawyers, notaries must obtain a four-year law degree from a Lebanese university and are also required to pass a competitive exam to enter the profession. Notaries principally authenticate and certify documents for submission to court and government agencies, prepare and register wills, draft power of attorney, certify translations, and other activities related to document preparation.

Notaries occasionally play a slightly broader role encompassing dispute resolution, a source of frustration for some lawyers who believe only lawyers should handle disputes. Notaries can help resolve a dispute between two parties if requested by the parties themselves. The settlement recommended by the notary is binding on the parties, but one or both of the parties may challenge the settlement in court if they are not satisfied with the result. Notaries can also serve as arbitrators.

The fees received by notaries are fixed by the law. Complaints against notaries are submitted to the president of the personnel section in the Ministry of Justice, who submits the complaint to the Minister of Justice. Serious complaints are submitted to a three-judge committee at the Judicial Inspection Unit appointed by the Ministry of Justice. If the committee determines that there is wrongdoing, the disciplinary committee for judges will make a final determination in the case.

Recommendation:

- Review the reasons for limiting the number of notaries and the reasons why there should be barriers to entry to this profession.

E. Legal Information

The *Official Gazette* is published by the Ministry of Justice every Thursday and contains the full text of new legislation. New legislation is also available through two privately-issued publications, *As-Sadr*, and *Society*. Court decisions are available only through private sources: *Cassandre* publishes all decisions by the Court of Cassation and major decisions by the lower courts; *Al-Adl*, which has been published since 1967, includes major court decisions; *Hatem* summarizes important decisions by all courts; *Baz* has recorded all Court of Cassation decisions since 1950; and *Decision*, which is published every two to three months contains major decisions. *Justice Bulletin*, a publication by the Ministry of Justice, stopped production due to a lack of resources. The Bulletin contained major court decisions with commentaries, and all decisions by the Constitutional Court and the Council of State. It was viewed as an indispensable reference guide for jurisprudence. The Council of State releases the *Administrative Law Report*, providing updates on recent administrative decision-making by the Council.

Recommendation

- The prevalence of private sources of case law and legislation does not diminish the need for a source available to judges, lawyers, other personnel in the legal and judicial sector, and the public. Arrangements should be made with private publishers to provide case law to public sector lawyers and judges.

VI. ALTERNATIVE DISPUTE RESOLUTION

A. Arbitration

Arbitration has emerged as a somewhat popular alternative to litigation given delays in the courts and is utilized by the Lebanese private sector in three settings: the Lebanese Center for Arbitration, *ad hoc* arbitration, and the ICC.²²

The Lebanese Center for Arbitration was established at the initiative of the Tripoli, Zahleh, Beirut and Saida branches of the Chamber of Commerce, the Bankers Association, the Association of Lebanese Industrialists, the Beirut Traders Association, the Association of Insurance Companies, and the Association of Construction and Public Works Contractors. The Center spent the period from 1995-98 informing the private sector of the availability of the arbitration and with that arbitration clauses in contracts became more common, particularly for large Lebanese companies.

Lebanese law gives the Center the right to hear arbitration cases. Law No. 440 of 2002 also permits the state or any public body to submit to arbitration, both locally and internationally. Where contracts do not have arbitration clauses, the Center helps parties reach informal agreements through arbitration. The Center has heard 65 cases since

²² The Lebanese Representative to the ICC estimates that approximately one case per month from Lebanon is heard in Paris.

1998. A group of eight former senior judges selected by the Center's board, a "court," chooses the arbitrator for each case based on a variety of factors, including the will of the parties, the nature of the dispute, and the cost. The parties may request one arbitrator or a three-judge panel. Arbitrators include former judges, law professors and lawyers, the latter of whom should have at least twenty years of practice experience. The average amount in dispute is approximately LL 750,000,000 (approximately US\$ 500,000). Arbitrators are also permitted to appoint experts. Because of the cost associated with arbitration decisions, parties do not consider arbitration for cases involving less than LL 75,000,000 (US\$ 50,000).

The group of eight former judges selected by the chamber reviews the procedures of the draft arbitral award but not the substance. Article 18 of the Rules for Conciliation and Arbitration require decisions to be made within six months, although the arbitrator may request an extension for complex cases. Awards are submitted to court to execute orders. The time to dispose of cases is approximately seven months, including the issuance of an execution order.

The Center has developed a good reputation resolving disputes and in addition to Lebanese companies, is used by companies in the region. The Tripoli Chamber of Commerce offers a smaller scale version of the Center for purely local disputes involving smaller claims. Parties also have recourse to *ad hoc* arbitration, but the arbitral awards have been invalidated by the courts with some regularity, a problem never encountered by any decisions issued by arbitrators of the Center.

The fees for arbitration are based on administrative expenses and the arbitrator's fee. Administrative expenses range from a minimum of LL 1.13 million (US\$750) for disputes involving LL 75 million) or less (US\$ 50,000), to LL 52.5 million (US\$35,000) for disputes over LL 120 billion (US\$80 million). The arbitrators fee ranges from a minimum of LL 3 million (US\$2,000) to a maximum of 10% for smaller claims, and from 0.01% to 0.025% of disputes in excess of LL 150 billion (US\$100 million).

B. Mediation

The Ministry of Justice has proposed that small claims be resolved through mediation as a tool to relieve case backlog. The proposal has not been implemented, despite broad support for mediation in smaller cases, particularly landlord/tenant disputes and small community disputes. The proposal also contains a provision for mandatory mediation prior to trial, which has been rejected. The Bar Association is also proposing a mediation scheme for the informal resolution of civil and commercial disputes. A training program was recently organized by the Bar on commercial law to prepare lawyers to offer mediation services. The fee will be split between the parties, offering a less expensive and speedier resolution of disputes. The Bar estimates one to two years will be needed to promulgate rules for mediation and to build up a cadre of lawyers with mediation skills. There is some internal opposition to the scheme because of concerns that it will have a negative impact on the overall amount of work available to lawyers.

Recommendation:

- Given the ongoing problems with extensive case backlogs, there is substantial scope for broadening the use of mediation. Although the Bar is working to increase the use of mediation, it has had limited application. Relying upon civil society organizations to expand the availability of mediation would increase access to greater numbers of people. Consideration should also be given to extending mediation to community-based resolution of disputes. Ideally, court annexed mediation should be established as a prerequisite for certain cases.
- Expansion of the availability of arbitration for small, local commercial disputes could also relieve congestion in the courts.

VII. INITIATIVES IN THE LEGAL AND JUDICIAL SECTOR

A. Government

The Ministry of Justice together with the judiciary and others are actively seeking reforms in the legal and judicial sector. The focus is on: improving the level of public awareness regarding the role and function of the judiciary as a first step toward improving the perception of the judiciary and improving access to the courts; increasing the availability of training for judges, court clerks, recorders, bailiffs and others; implementing IT and associated training for judges and court staff; training court staff in administration and court management; making legal decisions available to judges on-line; altering the program of training for new law graduates to incorporate a national exam (One year of the three year training period would be devoted to study and preparation for a new national exam to be administered to all law students; the exam would replace the existing entrance exam for lawyer trainees.); and improving the legislative process as well as the capacity to draft legislation according to international standards.

B. Donors

European Union

In January 2003 the EU brought a Belgian judge to carry out a one-week review of the judiciary in Lebanon as a precursor to beginning projects in the sector. A twenty-four month, 1-2 million Euro program is planned, focusing on several components: 1) holding conferences on various areas of law, including trade, maritime, bankruptcy, and banking, using visiting experts; 2) providing computers and training for clerks in eight commercial courts; and 3) disseminating commercial law, including working with the Bar Association to produce regular information on recent legal developments.

The EU has also supported Assistance to Rehabilitate Administration in Lebanon (ARLA), a three year project to build capacity in OMSAR, rehabilitate and modernize the management capacities of central and local administration, and support administrative reform through technical assistance to OMSAR. Within ARLA, are components to

modernize court administration, and improve access to justice by creating greater public awareness.

France

French Cooperation has had a long-standing program of support for the legal and judicial sector in Lebanon. At the moment it is planning its support to the sector.

Spain

Spain sponsored visits by its magistrates in October and December 2002 to draft a program proposal. The Embassy is in consultation with the Lebanese Government to reach final agreement on the program. Envisioned components include improving the functioning of the personnel section of the Ministry of Justice, holding seminars on topics defined by the judiciary in Lebanon, arranging for study visits by judges to the Spanish judicial training institute, and encouraging direct links between Lebanese and Spanish judges. A working group with the Bar Association has also been established to identify potential projects.

USAID

USAID has sponsored several study tours to the US for Lebanese judges, in a number of cities, meetings with state and federal judges, observing court proceedings, and reviewing how areas of the law such as intellectual property are treated in US courts.

UNDP

UNDP is focusing on four areas: a pilot project to streamline first instance courts; disseminating information about the courts and citizens' rights and responsibilities; providing policy advice on legal aid; and helping to develop mediation in cases involving small claims. UNDP has established two technical committees for the pilot court and dissemination projects, respectively. The committee for the pilot courts project has members from the Ministry of Justice, a judge and a clerk which has provided guidance and oversight for the project. The committee for the transparency project has two judges interested in IT issues.

The pilot courts project has several components, including a help desk for use by the public, computerization and training for court clerks, booklets on court procedures for public distribution, and a booklet to be produced on each court, to be carried out in conjunction with Amideast. The transparency project will focus on expanding the use of the help desk and expanding the use of a website developed for the court to other jurisdictions.

VIII. CONCLUSION

The recommendations outlined throughout this report are consistent with the recommendations from the February 2003 Second Cairo Justice Conference on Supporting and Promoting the Independence of the Judiciary. The recommendations adopted by the conference include guaranteeing the financial independence of the judiciary, providing the public with information on trial procedures, introducing greater transparency to the appointment, promotion and discipline of judges, calling for a code of conduct for judges, the abolition of laws that preclude rights of appeal, and strengthening judges' freedom to express their opinions through the establishment of judicial associations.

Moving forward on the reform of the legal and judicial sector in Lebanon will require progress on three tracks. First, progress toward specific technical goals, such as the training of court staff in case management techniques and the start of continuing education for judges. Second, and equally critical, is an ongoing commitment for legal and judicial reform, particularly related to the independence of the judiciary. Third, efforts are needed to update legislation both for the judiciary as well as to promote private sector development, which requires an enhanced capacity to draft and review proposed legislation. In the past, reform efforts have not been successful due to a lack of consensus and political will for change. There is a broad spectrum of reforms that are critical and it appears that the current Government is interested in reforming the sector.

There appears to be enthusiasm by all branches of government, as well as the private sector and the Bar Associations, to take concrete actions. However, such actions may be limited. It will be critical that a plan of action with defined goals and stages is adopted. Sustainable reform requires a long-term program to ensure that the legal and judicial sector in Lebanon is based on principles of efficiency, quality, independence, integrity and transparency. To accomplish this, therefore, a technical team is necessary to facilitate program implementation.

ANNEX I: List of Recommendations

Financial Sector

- Review draft laws on credit card crime, electronic banking and services, including data protection, freedom of information, electronic signature and electronic communications law, modification of the Civil Procedure Code to recognize electronic signature and documents, settlement and netting in payment systems transactions, securities repurchasing agreements, mutual funds, securitization, comprehensive capital market regulation, and securities lending.
- Prepare the legislative and regulatory framework for a mortgage market.
- Review legislation to ensure compliance with WTO accession requirements.
- Establish a law reform commission to determine key laws in need of revision or amendment that are necessary for economic development.

Judicial Sector

Judicial Training

- Resume continuing education for judges and training for court staff. The Ministry of Justice has made improving the competency of the judiciary a priority, which should be reflected in increased resources. Improving management practices at the Institute should also be prioritized.
 - The Judicial Training Institute should institutionalize a system of feedback from judges. It could also disseminate innovations being undertaken in individual courts.
 - The Institute relies on judges as instructors and it is unclear whether judges are providing an adequate level of course training. A set of criteria should be developed to ensure the employment of the most highly qualified instructors.
 - Place an equal emphasis on practical courses such as court and case administration, managing hearings, interacting with lawyers, and courtroom procedures.
 - Computer training should be carried out in the context of a strategy for court computerization, with an initial emphasis on judgments produced by word processing.
 - Prepare budget arrangements with the Ministry of Justice to allow for consistent funding.
 - Consider study tours for exposure to other legal systems.
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- Revise the curriculum at the Institute to include courses in new substantive areas of business law, including Banking Law, Contract Law, Financial Institutions, and Trade Law.
 - Prepare and circulate a newsletter among judges containing updates on developments in legislation.

Monitoring Judicial Performance

- The Judicial Inspection Unit should equally emphasize qualitative and quantitative factors in monitoring the performance of the judiciary. A revised system should aim to be quality-enhancing, with the criteria for evaluation articulated by the Unit, working with input from judges.
- Investigations of allegations of corruption should be carried out in a transparent process based on a specific written code of conduct for judges.

Judicial Governance

- Courts are supervised by a number of entities, which leads to problems of accountability and consistency. The establishment of a centralized oversight entity for the courts would help resolve these problems.
- Military courts should only have jurisdiction over exclusively internal military matters.

Judicial Selection & Appointment

- Consideration should be given to enhancing the independence of the Higher Judicial Council. It could have the role as the supreme body overseeing the judiciary in Lebanon.
- A system of incentives should be established to encourage qualified law graduates to pursue a judicial career.
- While diversity in the judiciary should be valued, confessional considerations should be removed as a criteria in judicial selection.
- Compulsory rotation should take place preferably every four to six years to allow for greater continuity.

Judicial Efficiency

- Training of judges and court staff in court administration and case management is an ongoing and urgent need.
 - Provide graduates an opportunity with judges for three- or six-month periods to provide research assistance as part of the
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three-year training period.

- Simplify the procedures for resolving real estate, insufficient fund cases and executions of judgments.
- Review the system for notification. Mailboxes for lawyers would be an effective way to ensure efficiency of the notification process.
- Engage in a systematic compilation of statistics on cases which are made public. Use of data, statistics, and future estimates of workload to provide input into the allocation of resources and judicial positions.

Judicial Impartiality & Independence

- As emphasized earlier in this report, corruption investigations should be transparent, based on a code of conduct for judges.
- Efforts to improve judicial independence should be undertaken.
- The rotation of judges should not be linked with performance on the bench, which, it could be argued, undermines judicial independence.
- Acknowledging the need for diversity on the bench, steps to eliminate confessionalism should be encouraged due to its effects on judicial independence and impartiality.
- The budget for the judicial sector should be prepared and overseen by the Higher Judicial Council based on a detailed assessment of court needs. Responsibility for expenditures should be devolved to the courts.

Court Administration

- Training for court staff is necessary to improve efficiency and effectiveness of case management. The Institute for Judicial Training should implement a program for court staff.
 - Salary levels of court staff should be reviewed. Cases of corruption involving court staff should be investigated, and sanctions applied where corruption is determined.
 - Case management should be developed and manual procedures should be revised to modernize court administration. Computerization of the revised process should be done as part of an overall strategy.
 - Consideration should be given to providing judges with staff that can conduct legal research. Perhaps clerks can be trained to handle some of this until staff with appropriate educational and professional skills can be hired.
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Public Perception of the Judiciary

- Regaining public trust will require greater information regarding the judges' accountability for corrupt behavior and a program which promotes and supports judicial independence.
- A public campaign to improve the image of the judiciary and its importance for the rule of law.

Legal Sector

Legislative Drafting

- Shortcomings in legal drafting must be addressed to ensure a well-functioning legal system. Enhancing the capacity of the Legislation and Consultation Department to provide reviews of draft legislation review is an urgent priority. In addition, along with improving documentation, facilitating exchanges with other legal drafting departments in line ministries is critical.
- Develop incentive structures for staff in the Department.
- Extend efforts to improve capacity for legal drafting to parliamentary committees so as to ensure the quality and understanding of the law.

Legal Profession

- The judicial selection process would benefit greatly from the input of the Bar Association in the evaluation of candidates for the bench. The Bar has already expressed an interest in evaluating the qualifications of lawyers who are considered as candidates for the bench. Extending this to all judicial appointments would be an important step in improving public trust in the appointment process.
- The new code of conduct for lawyers would benefit from clear criteria regarding prohibited behavior by lawyers.
- The credibility of the legal profession would be improved by a disciplinary process that sanctions lawyers in a timely and effective manner.
- Review the reasons for limiting the number of notaries and the reasons why there should be barriers to entry to this profession.

Legal Information

- The prevalence of private sources of case law and legislation does not diminish the need for a source available to judges,
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lawyers, other personnel in the legal and judicial sector, and the public. Arrangements should be made with private publishers to provide case law to public sector lawyers and judges.

Access to Justice

- Legal representation for the indigent in civil and criminal cases remains substantially below the demand. As funds become available to expand programs, they should be allocated to legal aid for civil and criminal cases.
- It is critical that legislation be implemented which would revise the qualifying criteria for legal assistance based on income levels rather than employment.
- Access to the courts without legal representation is currently limited to the Labor Court. Efforts should be made to expand *pro se* opportunities to cases of nominal value and, where appropriate, to consider the use of paralegals for more complex cases, as well as legal clinics at the law faculties. Legal clinics can provide valuable assistance to the poor under the supervision of qualified lawyers, as well as a way to provide practical training.
- Civil Society participation in the legal and judicial sector, including input on legislation, access to justice, policy development, and judicial selection would have a positive impact on reform efforts.
- Court fees should be reviewed and consideration given to flat fees, with eligibility for waivers to reflect income levels as qualifying criteria, not employment.

ADR

- Given the ongoing problems with extensive case backlogs, there is substantial scope for broadening the use of mediation. Although the Bar is working to increase the use of mediation, it has had limited application. Relying upon civil society organizations to expand the availability of mediation would increase access to greater numbers of people. Consideration should also be given to extending mediation to community-based resolution of disputes. Ideally, court annexed mediation should be established as a prerequisite for certain cases.
 - Expansion of the availability of arbitration for small, local commercial disputes could also relieve congestion.
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ANNEX II: Documents Consulted

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