fidh
International Federation for Human Rights

JUDICIAL COUNCILS REFORMS FOR AN INDEPENDENT JUDICIARY.

Examples from Egypt, Jordan, Lebanon, Morocco and Palestine

Universal Declaration of Human Rights. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. International Covenant on Civil and Political Rights. Article 14. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. […]. Arab Charter on Human Rights. Article 12: All persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary

n°523a
May 2009

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ACKNOWLEDGEMENTS

FIDH should like to thank everyone who helped with making the Amman seminar a success and with the preparation of this report. We acknowledge the Amman Center for Human Rights Studies, (ACHRS), an FIDH member organisation in Jordan for its precious assistance in preparing and organising the seminar, which was held in Amman on 23 and 24 November 2008. We also wish to acknowledge the members of the tracking group who volunteered their assistance and worked with us on drafting this report, namely, Mr. Abdeslam Al-Imani, Mr. Abdelaziz Al-Nouaydi, Mr. Hossam El-Gheriani, Mr. Assad Mubarrak, Mr. Nizar Saghieh and Mr. Sameeh Sonoqrut. We thank Mrs. Aida Chouk for carefully proofreading the report and for her wise comments, and to our volunteer translators for their hard work.

Very special gratitude goes to Mrs. Farah Chami for her professionalism, her precision and her heartfelt involvement from the beginning of the seminar preparation phase to the completion of this report.

INTRODUCTION

The principle of an independent judiciary, as guaranteed by international and regional instruments for the promotion and protection of human rights, is essential to the existence of the rule of law. To guarantee impartiality in applying legal standards and ensuring respect of citizens' rights, the Judiciary must be independent of the Executive and the Legislative powers. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter of Human and Peoples' Rights[1] require the states to guarantee their citizens a fair, public trial before an independent, impartial court[2]. Similarly, the Arab Charter on Human Rights, which entered into force on 15 March 2008, reads: "*The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats*"[3].

To guarantee and reinforce judicial independence, most of the countries in Europe but also in civil law countries in Latin America, Africa, Asia and the Middle East, have created an institution whose role is to guarantee the independence of the Judiciary. The name of the institution differs from one country to the next. In this paper the term "Judicial Council" or "Council"[4] has been selected. We use this term to refer to a body that is independent of the Executive and the Legislature, and is responsible for career management within the Judiciary and administration of the courts[5].

Although intended as a guarantee of independence, the Judicial Council, in some cases, can be more of a barrier that "an avenue to judicial independence and accountability, particularly in countries where ... the Judiciary is controlled by the Executive."[6] This means that the composition of the Council and the scope of its functions and prerogatives impact its real capacity to guarantee the independence of the Judiciary.

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1 The Charter, which was adopted on 27 June 1981 in Nairobi, Kenya, at the 18th Conference of the Organisation of African Unity, entered into force on 21 October 1986. Egypt ratified the Charter; Morocco did not. To consult the relevant provisions of the conventions and declarations mentioned below, see Annex 1.

2 According to article 10 of the Universal Declaration of Human Rights and article 14, para-1 of the International Covenant on Civil and Political Rights. Although it does not have the status of a treaty, the Universal Declaration of Human Rights, adopted by a resolution of the United Nations General Assembly on 10 December 1948, is considered to be legally binding. The International Covenant on Civil and Political Rights, adopted in 1966 and applicable as of 1976, was ratified by Lebanon in 1972, Jordan in 1975, Morocco in 1979, and Egypt in 1982. In June 2006, Jordan published the treaty in its Official Gazette, thus giving it the strength of a law. Since it is not a state, the Palestinian Authority did not ratify the Covenant, which is only applied to the Occupied Territories if Israel approves.

3 This refers to Article 12 of the Arab Charter on Human Rights, adopted in Tunis in May 2004 at the 16th Summit of the League of Arab States. The Charter entered into force in March 2008. Of the countries covered in this report, Jordan and the Palestinian Authority are the only ones that ratified the Charter.

4 This institution is called the «high judicial council» *(Conseil supérieur de la magistrature / 'al majlis al a'la lil qada')* in all the countries in this study except for Jordan where it is called the «Judicial Council» *(Conseil judiciaire / al majlis al qada'i)*. Although official translations in English include other terminology such as the Supreme Judicial Council (Egypt) and the High Judiciary Council (Lebanon), for reasons of consistency, the term «Judicial Councils» will be used throughout this report.

5 Judicial courts have been created for a variety of reasons. In south-west Europe, Africa, Asia and the Middle East, they were created as part of reforms to protect the Judiciary from interference by the Executive. In northern Europe and Latin America, the judicial courts were created to improve court administration and to control the Judiciary's budget and staff. Cf. International Foundation for Election System (IFES), *Global Best Practices: Judicial Councils: Lessons Learned from Europe and Latin America, April 2004, p.6-7.*

6 *Ibid*, p.1.

Criteria defined with reference to various international and regional instruments and documents are available to determine to what extend the Judicial Councils can contribute to strengthening the independence of the Judiciary. The United Nations Basic Principles on the Independence of the Judiciary do not explicitly refer to the judicial councils, but emphasises that the selection and career development processes for judges must be independent of the Executive and the Legislature[7]. Other international enactments, such as the Guidelines and Principles on the Right to a Fair Trial and to Legal Assistance in Africa[8], the Universal Statute of the Judge[9] the European Charter on the Statute of the Judges[10] or the Statute of the Judges in Africa[11], establish the conditions in which these councils[12] can effectively contribute to establishing and securing an independent judicial system. These provisions dwell on the non-interference of the Executive in the composition of the Council or the method for selecting its members. They also establish the attributions and prerogatives that enable the Council to play its due role in the judges' career management.

Although the representatives of the governments and the ministers of justice of Egypt, Lebanon and Morocco, by supporting the Bamako Declaration of 3 November 2000 and the Paris Declaration of 14 February 2008, pledged to ensure the independence of the magistracy[13], no regional initiative relating to the operating methods of the Judicial Councils have been taken at the inter-governmental level. The Beirut Declaration, adopted in June 1999 and the Cairo Declaration on the independence of the Judiciary, adopted in February 2003[14], broadly reflect the opinion of the legal profession throughout the region, i.e. that it is high time to "reform the processes of the appointment, promotion and discipline of judges ... by referring judicial affairs to Judicial Councils"[15]. Further, many other seminars have been held during the last few years on the independence of the Judiciary in Arab countries, targeting a large variety of audiences.

Several judicial reform plans have been drawn up in North Africa and the Middle East. But the question of altering the status of the judicial council was seldom considered directly, despite the conclusions of the Second Arab Conference on Justice, (Cairo, 2003) which noted "that the Executive interferes in matters that should be under the Judiciary, including the appointment, reassignment, promotion, dismissal and professional management of judges and that this impedes the establishment of an independent judiciary"[16].

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7 *Cf.* articles 7, 10 and 13 of these Principles, adopted by the United Nations 7th Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985 and confirmed by the United Nations General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

8 Principles adopted by the African Commission on Human and Peoples' Rights in July 2003.

9 Adopted in 1999 by the International Association of Judges and unanimously approved by the Central Council of the International Association of Judges in Taipei (Taiwan) on November 17, 1999.

10 Adopted in July 1998 at a multilateral meeting on the status of judges in Europe, organised by the Council of Europe.

11 Prepared and adopted by the Africa Regional Group of the International Association of Judges in Tunis, Tunisia, on 10 September 1995.

12 These texts refer to the creation of an independent body or organisation, similar to the Judicial Council, as defined here, or at least a body with most of the same prerogatives.

13 The Bamako Declaration on democracy, rights and freedoms and the Paris Declaration were adopted respectively on 3 November 2000 and 14 February 2008 at meetings of the ministers of justice and representatives of governments of members states of the Organisation internationale de la Francophonie.

14 These two declarations were adopted by the first and second Arab Justice Conference organised, respectively, in Beirut in June 1999 and in Cairo in February 2003 at the initiative of the Arab Center for the Independence of the Judiciary and the Legal Profession (ACIJLP) and attended by representatives of international institutions, the legal profession, the national authorities and non-governmental organisations.

15 Third recommendation of the Cairo Declaration on Judicial Independence.

16 Unofficial translation.

Aware of the importance of an independent judicial council in strengthening the independence of the Judiciary and the need for far more significant and tangible initiatives in this field, the International Federation for Human Rights (FIDH), together with the Amman Center for Human Rights Studies (ACHRS) held a seminar on 22-23 November 2008 on the potential role of judicial councils in promoting and protecting the independence of the Judiciary. The seminar focused on five countries in North Africa and the Middle East: Egypt, Jordan, Lebanon, Morocco and the Palestinian Territories.

Several reforms have taken place in these countries either as part of a transition to democracy or through initiatives driven by non-state bodies, e.g. revisions of certain legal measures concerning the judicial councils. In Lebanon, for instance, reform no. 389 of 21 December 2001 introduced the principle of electing a certain number of judicial council members. Elsewhere, pressed by the Judges' Club, in 2006 the Egyptian Minister of Justice adopted a new law on judicial authority that introduces the principle of financial autonomy for the Judiciary. And in 2005, the Jordanian judges took the initiative to write a judicial ethics code. As for Morocco, the national Truth and Reconciliation Commission, established by the King in 2004, strongly recommended the revision of the status of the Judicial Council to the King and the Moroccan government in December 2006.

These initiatives created great hopes but, up to now, have led to much disappointment. In Egypt, the new law on judicial authority only includes a small part of the draft law written by the Judges' Club and grants extensive judicial powers to the Executive[17]. This law was criticised by the U.N. Special Rapporteur on the Independence of Judges and Lawyers whose 2007 report mentioned the fear expressed by Egyptian judges that it would "weaken judicial independence", *inter alia,* by allowing the Minister of Justice to have considerable power over the judicial councils[18]. In Morocco, recommended reforms to the Judicial Council had not been implemented by the time the seminar was being prepared.

This was the situation when FIDH, partnering with ACHRS, decided to examine the barriers that continue to prevent the judicial councils in these five countries from operating as independent bodies or introducing reform measures, on the one hand, and, on the other, preventing the identification of strategies to overcome these barriers. With this in mind, FIDH decided to use the Amman seminar as an opportunity to invite judges, lawyers, representatives of ministries of justice, representatives of local, regional and international NGOs, and regional and international experts to spend two days together to assess the level of independence of the judicial councils in the five target countries and to identify what prerogatives these councils should have in an independent judicial system. Discussions

17 The amendments to the law on judicial authority did indeed reduce the Minister of Justice's court oversight authority and his authority to issue warnings to and take disciplinary action against the judges, and did provide for an independent budget for the Judiciary, but the composition of the Judicial Council has not been changed. It still has seven *ex officio* members, selected on the basis of their position in the judicial hierarchy.The proposal drawn up by the Club of Judges stipulated that four of the seven members would be elected by the General Assembly of the Court of Cassation and the Cairo Court of Appeal.

The judges also requested that judicial inspection service be attached to the Judicial Council rather than to the Ministry of Justice, as is the case at present. See, particularly, Nathalie Bernard-Maugiron *«Vers une plus grande indépendance du pouvoir judiciaire en Egypte?»* in *Revue Internationale de droit comparé* (RIDC), 1, 2007.

18 *Cf.* 2007 Report of the United Nations Special Rapporteur on the Independence of Judges and Lawyers, Leandro Despouy, «Addendum-Situations in specific countries or territories» p.72.

also focused on strategies that should be implemented by the national authorities, the funding agencies and the national, regional and international organisations for the purpose of incorporating judicial council reforms in the judicial system reform process. At the end of the seminar, a work group was set up, composed of one or two participants from each of the five countries. The group's brief was to complete and finalise a report, which could be used as the basis for discussions on formulating follow up strategies, especially at the national level.

The report, entitled "Judicial Councils Reforms for an Independent Judiciary" describes the functioning of the Judicial Council in the target countries with special emphasis on the international standards and principles applied to the independence of judges. It draws on analyses made by the participants and on constitutional and legislative measures relating to the functioning, composition and purview of the Judicial Council in these countries. In all the countries in this study, prosecutors are full-fledged members of the magistracy. But discussions throughout the seminar bore mainly on the judges in the bench, although it was not possible to reach a unanimous opinion on the competency (or lack thereof) of the judicial councils with regard to the career management of the prosecutors. Hence this report only deals with the role of the judicial councils in relation to the judges.

The report includes seminar recommendations for the national level (national authorities, civil society associations, judges, etc.), and parties external to the judicial reform (funding agencies, regional and international organisations, etc.). The implementation of these recommendations and the effectiveness of the reforms depend on enhanced cooperation among all parties concerns, *viz*. authorities of the Executive, the Legislature and the Judiciary, professional associations, national and international civil society organisations and intergovernmental players at both the regional and international level.

I. FRAMEWORK OF LEGAL STANDARDS FOR THE JUDICIAL COUNCIL

Executive control over the composition, structure and operating methods of the Judicial Council (JC) tends to sidetrack the Council from its mandate, i.e. protecting and strengthening the independence of the Judiciary, and, at times, turns it into an instrument to serve the Authorities. To avoid this pitfall and maintain its full independence, the Council needs legal guarantees.

Complying with international standards on guarantees for the independence of the magistrates, the seminar participants identified the main criteria for the independence of the Judicial Council.
An independent Judicial Council is usually composed of a majority of judges, elected by their peers. It plays a key role in the appointment, career management and discipline of the judges. It has financial autonomy and determines the budget of the Judiciary and is responsible for managing the Judiciary. The independence of the Judicial Council in the countries covered in this report will be assessed on the basis of these criteria. In the following section, the term "Judicial Council" will be replaced by the name given to the body in official translations found in the national legislation. In the sections thereafter, the more generic term "Judicial Council" will be used.

1. Egypt

a/ Legal basis of the Council

The determination of the Executive to control the magistracy in Egypt led to the creation of two bodies, the Supreme Judicial Council chaired by the President of the Court of Cassation and the Higher Council of Judicial Institutions chaired by the President of the Republic.

The Supreme Judicial Council was created by Law no. 66 of 1943 on the independence of judges. But in 1969, it was replaced by the Higher Council of Judicial Institutions in accordance with article 173 of the Constitution that states that "a Council comprising chiefs of judicial bodies and chaired by the President of the Republic shall be formed to administer their common affairs. The law shall define its composition, competencies and working modalities." The judges' opposition to this new body controlled by the Executive led to Law no. 35 of 1984 that creates the Supreme Judicial Council thus amending Law no. 46 of 1972 on judicial authority. This law provides for the creation of a Supreme Judicial Council chaired by the President of the Court of Cassation. Although the Higher Council of Judicial Institutions still exists, its authority in appointing and managing the career of the judges has been transferred to the Supreme Judicial Council. Law no. 142 of 2006 recently granted greater powers to the Supreme Judicial Council.

b/ Composition

The Egyptian Supreme Judicial Council is chaired by the President of the Court of Cassation, who is a judge. The other members are: the President of the Cairo Court of Appeal, the Attorney General, the two most senior vice presidents of the Court of Cassation and the two most senior presidents of the other appeals courts. Independence in the process for selecting, or more precisely, appointing the members of the Egyptian Supreme Judicial Council is not sufficiently guaranteed although the process devolves exclusively to the judges

Actually, the President of the Republic appoints two of the Council members, namely, the President of the Court of Cassation and the General Prosecutor. The other members are selected on the basis of seniority.

c/ Attributions

- Recruitment of judges

Judges are appointed by presidential decree with the agreement of the Supreme Judicial Council (art. 44 of the law of 1984). But consultations on the appointment of judges is limited since the judges are selected from among the prosecutors (art 49 of the law of 1972) who are originally appointed by presidential decree based on the recommendation of the Minister of Justice after consulting the General Prosecutor and the Supreme Judicial Council (art. 119, 121 and 122 of the law of 1972). In application of reform no. 142 of 2006, the General Prosecutor, who is also appointed by presidential decree, is no longer accountable to the Minister of Justice, as provided in article 125 of the law of 1972.

- Promotion, assignment and transfer of judges

The 2006 reform gives added importance to the role of the Supreme Judicial Council whose approval, and not only opinion, are henceforth required with regard to the promotion and assignment of judges. Judges are promoted by presidential decree (art. 44 of the law of 1984). The reassignment of judges from the primary jurisdiction to other judicial institutions or to the Ministry of Justice is decided by the Minister of Justice, with the approval of the High Judicial Council (art. 55 - 64).
Prosecutors are reassigned by decree of the Minister of Justice upon a proposal from the General Prosecutor and with the agreement of the Supreme Judicial Council (art. 121).

Further, a decision of the President of the Republic, and the agreement of the Supreme Judicial Council are required to assign judges to foreign governments or international institutions.

- Disciplinary measures

In Egypt, despite the improvements made through the 2006 reform, the Executive branch still largely controls the disciplinary actions within the magistracy. Article 94 of the law of 1972 empowered the Minister of Justice to address warnings to the presidents and judges of the primary jurisdictions. The

new law on judicial authority transfers this authority to the President of the Committee of the Judicial Inspection, which is responsible for disciplinary procedures to investigate the conduct of the judges. But this Committee is located at the Ministry of Justice and, in fact, is accountable to the Minister of Justice (art. 78 of the law of 1972).
Furthermore, disciplinary procedures against judges of the primary jurisdiction are initiated by the General Prosecutor, on his own initiative, following a request from the Minister of Justice or the Court where the judge is serving (art. 99 and 129 of the law of 1972).

d/ Financial and administrative autonomy

The Minister of Justice is responsible for the administrative supervision of the courts (art. 93) and for the administrative supervision and control of the prosecutors (art. 125).
Reform no. 142 of 2006 sets out the principles of financial independence for the Judiciary and grants the Supreme Judicial Council the right to allocate and administer court budgets. But there are no provisions for implementing this reform, thus leaving financial management of the justice department in the hands of the Executive.

e/ Ethics

Egypt does not have a written code of rules for judicial ethics although some general rules are set out in the laws and in Egyptian judicial literature (publications of the Judges' Club, conferences at the Egyptian Supreme Judicial Council, etc.).

2. Jordan

a/ Legal basis of the Council

In Jordan, Law no. 15 of 2001 on the independence of the Judiciary provides for the Judicial Council, including its composition and *modus operandi*. This law replaces Law no. 49 of 1972. Since there is nothing in the Constitution on guaranteeing the independence of judges through a specific body, the JC is subjected to the uncertainties of the prevailing political will.

b/ Composition

The JC is composed of eleven judges, the President of the Court of Cassation, the President of the Supreme Court, the Attorney General to the Court of Cassation, the two most senior judges of the Court of Cassation, the three presidents of the Courts of Appeals, the most senior inspector of the ordinary courts, the Secretary General (*amin 'am*) of the Ministry of Justice and the President of the Court of First Instance of Amman (art. 4). The method of recruiting Council members seriously affects its independence. No members of the Council are elected, and certain members are directly appointed by the Executive. The President of the Court of Cassation, who is also the President of the Judicial Council, is appointed and dismissed by royal decree. The President of the Supreme Court is

also appointed by royal decree based on the opinion of the Judicial Council. Further, the Secretary General of the Ministry of Justice is appointed by the Judicial Council upon recommendation of the Minister of Justice (art. 24).

c/ Attributions

- Recruitment of judges

According to 14/A, judges are appointed by the JC upon recommendation of the Minister of Justice**.** The role of the JC in this recruitment procedure is purely formal since the list of judges to be appointed is drawn up by the Executive.

- Promotions, assignment and transfer of judges

Judges are assigned by decision of the JC in agreement with the President of the Council (art. 22/A and 23/A). The President of the Council has the authority to transfer judges to special assignments: to provide support for ordinary and special courts, to exercise the functions of the attorney general and to carry out inspections (art. 22/A and 23/A). These special assignments may not last more than three months a year. Judges are promoted on the basis of reports from the Judicial Inspection Service (JIS), which is located at the Ministry of Justice and is accountable to the Minister of Justice (art. 19). The role played by the Executive in appointing the President of the Council and controlling the JIS compromises the authority of the JC in promoting and assigning judges.

- Disciplinary measures

The President of the Judicial Council is empowered to supervise the judges and send them warnings about their conduct in discharging their judicial functions (art. 27 and 28). The independence of the JC in this area is compromised by the very composition of the Council, which prevents guaranteed independence from the Executive. Further, the decision to dismiss a judge is taken by the JC and the King. The JC sets up disciplinary committees (art. 31) but the JIS reports to the Ministry of Justice (art. 41).

d/ Financial and administrative autonomy

The JC does not have its own budget, although the President of the Council has considerable authority to increase wages (art. 21) and to exercise administrative supervision over the judges (art. 27).

e/ Ethics

As part of the reform programme called the Judicial Upgrade Strategy (JUST), the Jordanian Government, in response to an initiative of the American Bar Association, drew up a Code of Ethics after consulting over 500 Jordanian judges. The Code was published in 2005 and is based on the

Bangalore Principles of Judicial Ethics[19]. In April 2006, the Ethics and Accountability Committee was created, under the auspices of the JC. Its role is to ensure respect of the Code of Ethics.

3. Lebanon

a/ Legal basis for the Council

There is no constitutional basis for a Lebanese judicial council although the Taef Agreement, which is valued as a constitution, provides for a "Higher Judiciary Council".
Law no 150 of 16 September 1983 on the status of the magistracy governs the functions and attributions of this Council.

b/ Composition

The Higher Judiciary Council is composed of ten judges. Most of them are appointed by the Executive. Prior to reform no. 389 of 21 December 2001, article 2 of the law of 1983 empowered the Executive to appoint ten Council members. The reform introduced the principle of electing two of them, following a provision of the Taef Agreement stating that, "to ensure the independence of the Judiciary, a certain number of the Higher Judiciary Council's members shall be elected by the judiciary body". Three other Council members, *viz.,* the President of the Court of Cassation who is the President of the Higher Judiciary Council, the Attorney General to the Court of Cassation and the President of the Judicial Inspection Committee, are appointed by a decree of the Council of Ministers. The other members are judges appointed by decree, upon proposals of the Minister of Justice.

c/ Attributions

- Recruitment of judges

According to article 59, the Minister of Justice evaluates the need to recruit judges (and the exact number), after consulting the Higher Judiciary Council. The judges are recruited on the basis of a competitive examination and then attend the Institute for Judiciary Studies. The Higher Judiciary Council is responsible for organising the entrance examination and setting up an examination commission composed of judges. Article 68 authorises the appointment of any candidate with a doctoral degree in law to join the Institute for Judicial Studies as a trainee-judge. Appointments are made by decree, issued upon the proposal of the Minister of Justice and approved by the Higher Judiciary Council. The fact that recruitments are made through appointments by the Executive exonerates the candidate from the entrance examination and essentially empowers the Executive to recruit judges.
After three years of training at the Institute for Judiciary Studies, the Higher Judiciary Council gives its opinion of the aptitude of the student-judges to exercise their duties, but final appointments require a decree of the Council of Ministers with the approval of the Minister of Justice and the Higher Judiciary Council. The Executive is not obliged to accept the opinion of the Council.

19 Principles adopted by the Judicial Group on Strengthening Judicial Integrity, The Hague, November 2002.

- Promotion, assignment and transfer of judges

The promotion of a judge requires a decision of the Minister of Justice after approval from the Higher Judiciary Council.
The transfer of a judge requires a proposal from the Higher Judiciary Council after approval from the Minister of Justice. In case of disagreement between the Council and the Minister of Justice, the Council votes again on the plans for transferring judges. A vote of seven out of ten makes the plan "definite and binding" (art. 5 of the 1983 law, amended by the 2001 law).

The Higher Judiciary Council and the Minister of Justice thus share authority in promoting and transferring judges. But the method of recruiting members of the Council shows that the Executive has the upper hand in exercising both functions.
Furthermore, judges in Lebanon are transferred to another court at the beginning of each year and are locked into a system of rotation every two years. Since these systems are not governed by set criteria, they can be used to exercise pressure on the judges.

- Disciplinary measures

The Disciplinary Council is composed solely of judges, *viz*. the President of the Court of Cassation (Council President) and two presidents of the Chamber at the Court of Appeal appointed by the President of the Higher Judiciary Council at the beginning of each year. A judge can be called before the Disciplinary Council at the request of the Council of the Inspection Service.
The Council of the Inspection Service is composed of judges appointed for their seniority, by a decree of the Council of Ministers. They discharge their duties under the supervision of the Ministry of Justice (art. 100 and 101 of the law of 1983).
The 2001 reform authorises the Higher Judiciary Council, upon a majority vote of eight out of ten, to dismiss any judge it deems incompetent.
It therefore seems that authority only lies with the Higher Judiciary Council and the judges of the Disciplinary Council and the Council of the Inspection Service. But the fact that these judges are appointed directly by the Executive or by the Council of Ministers reduces the independence of the judicial branch in this field.

d/ Financial and administrative autonomy

The Higher Judiciary Council is not empowered to establish the budget of the Judiciary or court administration services. The budget of the Judiciary is part of the Ministry of Justice budget. The Executive is responsible for court administration; the Judiciary, thus, has no financial or administrative autonomy.

e/ Ethics

In 2005, a committee composed of the President of the Higher Judiciary Council, the President of the Council of State (*Conseil d'Etat*) and the President of the Judicial Inspection Board drew up a

document entitled "fundamental rules of jurisdictional ethics", with eight major rules of ethics for the judiciary: independence, impartiality, integrity, discretion *(obligation de réserve),* courage, modesty, loyalty and diligence. The document was ratified by the Minister of Justice and made available to the judges as of 25 January 2005.

4. Morocco

a/ Legal basis for the Council

The Constitution of Morocco provides for the Supreme Council of Magistracy and describes its composition and its responsibilities in recruiting, promoting and sanctioning the magistrates. The law of 11 November 1974 on the status of the magistracy regulates the functions of the Council.

b/ Composition

Article 86 of the Constitution of Morocco reads: "the Supreme Council of Magistracy shall be presided over by the King. It shall further consist of: the Minister of Justice as Vice-President, the First President of the Supreme Court, the Prosecutor General in the Supreme Court, the President of the First Chamber to the Supreme Court, two representatives elected among magistrates of the Court of Appeal, four representatives elected among magistrates of first degree courts." Most of the members of the Moroccan Supreme Council of the Magistracy are judges who are elected by their peers. This seeming guarantee of independence is compromised by the role played by the Minister of Justice, whose membership puts the Council under the supervision of the political authorities.

c/ Attributions

- Recruitment of judges

In Morocco the Executive controls the whole recruitment procedure, from the entrance examination to the appointment. Justice attachés *(attachés de justice)* are recruited on the basis of competitive examinations, with all decisions on the conditions of admission, test programmes, grades, and jury members taken by the Executive (art. 5 of the law of 1974). The applicants who pass the examination are appointed *attaché de justice* in an order signed by the Minister of Justice (art. 6). After two years of training, they are appointed by *dahir,* upon recommendation of the Supreme Council of Magistracy (art. 7). Article 3 of the 1974 law also allows the Minister of Justice, after receiving the opinion of the Supreme Council of the Magistracy, to appoint lawyers, academics and civil services to certain ranks in the magistracy. All this indicates that the Supreme Council of the Magistracy only plays a consultative role in the recruitment of judges.

- Promotion, assignment and transfer of judges

According to article 55 of the 1974 law, judges may be transferred to a post within their field of

specialisation elsewhere, at their own request, as a promotion, because of the elimination or creation of a jurisdiction, or because of a staff shortage that serious affects the efficiency of a jurisdiction. Transfers are notified in a *dahir,* upon recommendation of the Supreme Council of the Magistracy. Further, the Minister of Justice may sign an order delegating a judge to a post for a period of three months that may be renewed once, without notification from the Council (art. 57).
As concerns promotions, the Supreme Council of the Magistracy plays a consultative role, as spelled out in article 23 of the 1974 law. Each year a list of judges who are eligible for promotion is drawn up and approved by the Minister of Justice, on the basis of a recommendation from the Supreme Council of the Magistracy. But according to article 13 of the Council's by-laws, drawn up in October 2000 by the Ministry of Justice, the Council is only consulted after the eligibility list has been prepared by the Minister of Justice. Hence it is the Executive, and not the Supreme Council of the Magistracy that decides on promotions for the judges.

- Disciplinary measures

Disciplinary measures are largely controlled by the Minister of Justice, who is the President of the Disciplinary Council and is empowered to instigate proceedings against judges, examine their case and take first degree disciplinary action against them (art. 61). The Minister of Justice can also suspend a judge without prior consultation with the Supreme Council of the Magistracy (art. 62).

d/ Financial and administrative autonomy

The Supreme Council of the Magistracy does not have its own budget. The Ministry of Justice defrays the operating costs of the Council. Further, the Executive is responsible for the financial and administrative management of the Judiciary. Since it does not have its own offices, the Supreme Council of the Magistracy holds its meetings at the Ministry of Justice.

e/ Ethics

A code of ethics, initiated by the American Bar Association and inspired by the Bangalore Principles and the Riad Charter[20], is now being finalised by the *Amicale Hassania des magistrats*[21].

5. Palestinian Territories

a/ Legal basis of the Council

Article 91 of the basic Palestinian law provides for the High Judicial Council. Its powers are set out in Law No. 1 on judicial authority, dated May 2002.

20 Riad Charter on the ethics and conduct of Arab judges, Unofficial translation.
21 L'amicale Hassania is an association of Moroccan judges created in 1995. The association has been criticised by certain judges and lawyers for its lack of independence and impartiality.

b/ Composition

The High Judicial Council is composed of nine members, the President of the Supreme Court (HJC President), the most senior Vice President of the Supreme Court, two of the most senior judges of the Supreme Court selected by the members of the Court, three presidents of the appeal courts, the Attorney General, and the Deputy of the Minister of Justice *(wakîl),* whose presence, as a representative of the Executive may compromise the independence of the Council. All the members are judges except for the representative of the Ministry of Justice whose presence, as a representative of the Executive, may jeopardise the independence of the Council.

c/ Attributions

- Recruitment of judges

The judges are appointed by the President of the Palestinian Authority after being selected by the High Judicial Council (art. 18 of the law). The Council, furthermore, defines the rules for appointments to the various levels of the magistracy.

- Promotions and assignments of judges

The High Judicial Council decides on the reassignment of judges although, with the agreement of the High Judicial Council, the Minister of Justice can temporarily transfer a judge to another position for reasons of national interest. The law does not stipulate the duration or conditions of such transfers (art. 23 of the law). The President of the Palestinian Authority decides on the promotion of judges, upon a proposal from the High Judicial Council.

- Disciplinary measures

The High Judicial Council controls the judge evaluation process but does not participate in the disciplinary procedure. The HJC defines the operating methods and the scoring system used by the Judicial Inspection Committee to evaluate the judges. This committee sends its inspection reports regularly (art. 43) to the High Judicial Council (art. 42). If there are grounds to instigate proceedings against a judge, the disciplinary proceeding is brought before the Disciplinary Council composed of judges from the Supreme Court as the following, the president of the Council and two members of the Court of Appeals (art 48). The High Judicial Council is responsible for implementing the decisions of the Disciplinary Council (art. 55).

d/ Financial and administrative autonomy

Article 3 of the law on the independence of the Judiciary grants financial autonomy to the judicial authorities, under the supervision of the High Judicial Council. The Council is responsible for evaluating the budget of the Judiciary and keeping the Minister of Justice informed. “The Council is responsible for budget allocations by the Judiciary. In theory the Minister of Justice exercises

administrative supervision over the courts (art. 47) but in practice, courts are administrated by the HJC".

e/ Ethics

In decision no. 3 of 10 May 2006, the Palestinian High Judicial Council sets out a code of good conduct with rules of judicial ethics.

II. REFORMS TO ENSURE THE INDEPENDENCE OF THE JUDICIAL COUNCILS

The principle of judicial independence is enshrined in the constitution or fundamental law of each of the countries studied. However, there is, - through legislation or in practice, - constant interference of the Executive in what is theoretically the field of judicial authority, including what should be the primary responsibility of the Judicial Council. Therefore, in light of the legal provisions relating to the functioning of the Councils in the countries concerned and based on international and regional guarantees of judicial independence, seminar participants identified the major legislative reforms that need to be implemented in order to ensure an independent Judicial Council with powers that enable it to contribute effectively to the promotion of and respect for an independent Judiciary. While referring to all pertinent international and regional texts, participants particularly relied on the works of the Consultative Council of European Judges (CCEJ) which, to date, has done the most in-depth work on issues related to guarantees of the independence of judicial councils[22].

1. Constitutional consecration

The principle of constitutional consecration, consisting of a constitutional provision defining the duties and powers of the Judicial Council, is a protection against any attempt to limit the powers of the JC. Constitutional guarantees relating to the JC are particularly important in countries where the democratic process remains incomplete and the risk of Executive interference in judicial matters is high. In its Opinion no. 10, the Consultative Council of European Judges specified the content of these provisions. According to the Opinion the provisions must «(...) be made for the setting up of such body, for the definition of its functions and of the sectors from which members may be drawn and for the establishment of criteria for membership and selection methods.» [23]

Although no constitutional provision provides for the creation of an institution guaranteeing the independence of the Judiciary in Jordan and Lebanon[24], in the three other countries, constitutional provisions relating to the Judicial Council are insufficient in their current state. The existence of a Judicial Council is certainly expected, but the constitutions allow the law to determine its composition and powers. The provisions of current laws give the Executive wide-reaching powers in judicial matters and thereby contradict the constitutional principle of an independent Judiciary. It is therefore recommended that the Constitution or the basic Law of each of these countries provide explicitly for the existence of an authority independent of the Executive and the Legislative and is competent for making decisions relating to the recruitment, appointment, career and dismissal of judges.

22 The Consultative Council of European Judges (CCJE) is an advisory body of the Council of Europe on issues related to the independence, impartiality and competence of judges. It is composed exclusively of judges. Reference if made herein to CCJE Opinion no. 10 to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society, 23 November 2007.

23 CCJE, principle no.11.

24 In Lebanon, the creation of a Higher Judiciary Council is provided for in the Taef Agreement, which is valued the same as a constitution.

2. Composition and procedures for appointing members of the Judicial Council

The Judicial Council must be so composed as to ensure its independence. Various international and regional documents relating to judiciary independence, without formally deciding the issue, agree on a Council composed exclusively or predominantly of judges[25].

Participants still stressed the risk of corporatism if the Judicial Council is composed exclusively of judges, thus agreeing with the Consultative Council of European Judges that stated "a mixed composition would present the advantages both of avoiding the perception of self-interest, self protection and cronyism and of reflecting the different viewpoints within society, thus providing the Judiciary with an additional source of legitimacy."[26] The participants agreed on the need for representation of other professions within the Judicial Council, and also agreed that it is up to each country to determine the procedures for appointing these members, but without entrusting those procedures to a political authority. The method for selecting members other than judges, in any case, should be based on a consensus with guarantees that persons are selected for their qualifications.

In the countries studied, the Judicial Council is composed mainly (Morocco, Palestinian Territories) or entirely (Egypt, Jordan, Lebanon) of judges. In the case of a Council composed exclusively of judges, the principle of electing its members is considered essential. The Consultative Council of European Judges believes that "these should be judges elected by their peers. When there is a mixed composition (judges and non judges), the CCEJ considers that, in order to prevent any manipulation or undue pressure, a substantial majority of the members should be judges elected by their peers"[27] Last, the judges on the Council should be representative of the members of the Judiciary so as to avoid over-representation of the judicial hierarchy. But in every State concerned, with the exception of Morocco, most judges are appointed by the Executive. In Jordan or Egypt for example, none of the members of the Judicial Council are elected, and some of them are also members of the Executive. In the Palestinian Territories, a representative of the Ministry of Justice is a Council member. In Morocco, the Minister of Justice is the Vice-President of the Council.

3. Attributions of the Judicial Council

"In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute *[of the European Charter on the Statute for Judges]* envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the Judiciary."[28] The Judicial Council is the authority responsible for recruitment, career management and discipline of judges.

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25 The Opinion of the Consultative Council of European Judges stipulates that the Council for the Judiciary "can be either composed solely of judges or have a mixed composition of judges and non judges." Opinion no. 10 Consultative Council of European Judges, principle no. 16.

26 *Ibid*., principle no. 19.

27 *Ibid*., principles nos. 17 and 18.

28 European Charter on the Statute for Judges, Strasbourg, July 1998, principle 1.3.

a/ Recruitment of judges

Article 9 of the Universal Charter of the Judge states that "the selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification… selection should be carried out by an independent body, that includes substantial judicial representation." Two criteria must also prevail in the recruitment of judges. On the one hand, the responsibility for selecting judges should fall to the Judicial Council. On the other hand, the Council must act according to pre-established criteria, including the law, and base its decisions on the qualifications of candidates.

In Egypt and Jordan, the selection process of judges does not fall to the Judicial Council. In Jordan, the judges are appointed on the recommendation of the Minister of Justice, while in Egypt, they are chosen from among the prosecutors, who themselves are appointed by Presidential Decree on the recommendation of the Minister of Justice.

In Morocco and Lebanon, the recruitment of judges is done primarily through a competitive process. Although, this method of selection unquestionably is more egalitarian than selection by commissions, when implemented by the Executive it does not ensure a satisfactory degree of independence. In fact, in Morocco, the government determines the conditions for admission to the competition, the examination schedule and scoring, and the composition of the Examination Board. A competitive selection system implemented by the Judicial Council would contribute to making the magistracy more independent.

Palestine, but none of the other countries, has, in theory, established a system that gives the Council a decision-making role in the appointment of judges, despite the fact that judges are formally appointed by the President of the Palestinian Authority. For countries "where the constitutional or legal provisions and traditions allow judges to be appointed by the government»[29] because of the nature of this prominent role, particularly in the Palestinian Territories but also in Morocco, where appointments are made by *dahir* and in Egypt where they take effect upon a Presidential Decree, the Council of Europe recommended, in its decision on the independence, efficiency and role of judges, the creation of "a special independent and competent body to give the government advice, which it follows in practice." [30] In other words, the appointment process is considered to be distinct from the selection process[31]. A provision also states that even if the appointment must be made by the Head of State, it nevertheless must comply with the selection made by the Judicial Council. But in most countries studied, the Judicial Council is only marginally involved in the judicial selection process. In accordance with the laws in force the Council has consultative powers that, in practice, are not binding for the authority responsible for appointments.

b/ Training of judges

Seminar participants, in particular those from the five target countries, stressed the need for involvement

29 Recommendation of the Committee of Ministers of the Council of Europe Rec (94)12E on the independence, efficiency and role of judges, 13 October 1994, principle I-2-c-i.

30 Recommendation of the Committee of Ministers of the Council of Europe, Rec (94)12E on the independence, efficiency and role of judges, 13 October 1994, principle I-2-c-i.

31 Reference here is to the appointment of judges at the time of recruitment, not to promotions or transfers.

of the Judicial Council in the organization and supervision of training for judges. Its involvement is particularly important in the design of programmes implemented by the higher institutes for the magistracy. The Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa provide that "States shall establish, where they do not exist, specialised institutions for the education and training of judicial officials." [32]

The Consultative Council of European Judges formally recognizes the Councils' responsibility for training, stating that "the responsibility for organizing and supervising judicial training should in each country be entrusted not to the ministry of justice or any other authority answerable to the legislature or the executive, but to the judiciary itself or preferably to the Council for the Judiciary."[33] The 2002 reform of the Moroccan Higher Institute of the Magistracy represents an attempt at separating this institution from the Ministry of Justice. Law No. 09-01 of 3 October 2002 establishes the Higher Institute of the Magistracy as a public institution, a legal entity with financial and administrative autonomy. However, the law stipulates that the Minister of Justice shall be the President of the Institute's Board of Directors, thus maintaining the institute under the authority and control of the Executive.

c/ Assignment and promotion of judges

The principle of tenure security for judges is one of the main guarantees of the Judiciary's independence. Protecting the judge from any dismissal, re-assignment or removal outside the objective criteria defined by law, it protects members of the judiciary against the influences of both Executive powers and private interests. This principle is guaranteed in many international and regional texts[34] and in the constitutions and laws of most of the countries studied.[35] Thus, Article 8 of the Universal Charter of the Judge states, «A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only by decision in the proper disciplinary procedure.» The laws relating to the assignment of judges in the countries studied involve the Judicial Council in the transfer of a judge. The intervention of the Council during this process is still insufficient when it occurs in the absence of a legal framework defining the conditions for the transfer of judges.

The promotion of judges must also meet the criteria and principles of objectivity and transparency. The 13th Basic Principle on the Independence of the Judiciary states that the «promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity

32 Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, *cf supra,* principle B-b.

33 *Cf supra* CCJE, principle no. 65.

34 *Cf.* in this respect principle 12 of the Basic Principles on the Independence of the Judiciary and principle 1 of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, both stipulate that "Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists."

35 The principle of irrevocability is only constitutionally guaranteed in Egypt and Morocco. The Egyptian and Moroccan constitutions respectively declare that «the status of judges shall be irrevocable» (article 168) and that «Magistrates in the bench shall be irremovable» (article 85). In Lebanon, article 44 of law no. 150 of 16 September 1983 stipulates, "transfers and dismissals must conform to rules set out in this law." And in Palestine, article 22 of the Law of the Judicial Authority of May 2002 guarantees that "judges shall not be assigned, transferred or dismissed except in circumstances and under conditions set out in law".

and experience.» The evaluation of these criteria rests with the Judicial Council.[36] When not based on seniority, a system of promotion is based exclusively on the qualities and merits observed in the performance of duties entrusted to the judge, by means of objective appraisals performed by one or several judges and discussed with the judge concerned. Decisions as to promotion are then pronounced by the authority [Judicial Council] or on its proposal, or with its agreement (Principle 4-1 of the European Charter on the statute for judges). The jurisdiction of the Councils in the promotion of judges varies in the countries studied. While in Lebanon the texts provide a shared jurisdiction between the Council and the Ministry of Justice, and in the Palestinian Territories, the Council has decision-making powers in this area, in Jordan and Morocco, the Executive retains a dominant role in the promotion of judges. In fact in Jordan, judges' assessment reports are completed by the Judicial Inspection Service, which is headquartered at the Ministry of Justice. In Morocco, a list of the most suitable judicial candidates for promotion is drawn up and adopted by the Minister of Justice. In these countries, the Judicial Council only intervenes to confirm a decision that has already been made by the Executive. However, just as for the appointment of judges, promotions that are set out in an official act of the Head of State must also be in accordance with the opinion of the Judicial Council and its established criteria.

d/ Discipline of judges

In order to protect judicial independence, disciplinary actions should be carried out by an independent judicial council that only takes action in the event of disciplinary misconduct defined by law.[37] The European Charter on the statute for judges provides that «the dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges.»[38] But in the countries studied, the disciplinary process is largely a matter of Executive authority, namely that of the Ministry of Justice. In Egypt and Jordan, competent judicial inspection services to investigate the behavior of judges depend on the Ministry of Justice. In Morocco, the whole disciplinary process is under the jurisdiction of the Minister of Justice, from initiation of proceedings to the imposition of sanctions against judges. As such, the Judicial Council is virtually absent from disciplinary proceedings taken against judges, with the exception of the Palestinian Territories, where the judicial inspection committee depends on the Judicial Council and where the disciplinary committee is comprised exclusively of judges.

4. Financial and administrative autonomy

The budgetary and administrative autonomy of the Judiciary is an important element of judicial independence. The Judicial Council should have financial resources, full staff, and sufficient room and means to carry out its mandate independently.

36 *Cf* in this respect, principle 56 of the aforementioned CCJE Opinion.
37 *Cf* article 11 of the Universal Charter of the Judge.
38 Principle 5-1, European Charter on the Statute for Judges.

According to the Consultative Council of European Judges, "the courts can only be properly independent if they are provided with a separate budget and administered by a body independent of the Executive and Legislature, whether it is a Council for the Judiciary or an independent agency."[39] With the exception of Palestine, the budget for the Judiciary is managed by the Ministry of Justice.[40] Yet, in 1999, the Beirut Declaration for Justice recommended to the Arab States "to guarantee an independent budget for the Judiciary, including all its branches and institutions. This budget shall be included as a single item in the State budget, and shall be determined upon the advice of the higher judicial councils within the judicial bodies."[41] Similarly, in its conclusions, the Cairo Declaration called on States «to include an article on judicial independence in the budget and balance of the state.»[42] In Egypt, reform No 142 of 2006 grants the Judicial Council the power to determine and manage the budget of the courts. However, no means have been considered for the implementation of this reform.

The principle of financial autonomy aims both to preserve the Judicial Council from external interference by providing the resources necessary for its own operations, while also granting it decision-making power in determining the budget of the Judiciary and the allocation of funds to the courts. The Judicial Council must also have an appropriate premises and adequate technical and logistical means. The fact that the Council's headquarters, as in Morocco, are located within the Ministry of Justice restricts the powers granted to the Council, and placing it *de facto* under a ministry increases the risk of interference by the Executive in Council affairs.

5. Accountability and Transparency

"Given the prospect of considerable involvement of the Council for the Judiciary in the administration of the Judiciary, transparency in the actions undertaken by this Council must be guaranteed. Transparency is an essential factor in the trust that citizens have in the functioning of the judicial system and is a guarantee against the danger of political influence or the perception of self-interest, self protection and cronyism within the Judiciary."[43] This affirmation of the Consultative Council of European Judges implies the responsibility of the Judicial Council in several respects. On the one hand, it must be held accountable for its decisions, which implies the possibility of appeal against decisions made by the Council before a higher court. On the other hand, it must aim to inform the public and other institutions of its initiatives and actions in order to establish and strengthen public confidence in the Judiciary.

39 C*f supra,* CCJE Principle no. 74.

40 Egypt reform No. 142 of 2006 grants the Judicial Council the power to determine and manage the budget of the courts. However, no means have been considered to implement this reform.

41 Second recommendation of the Beirut Declaration for Justice, Recommendations of the first Arab Conference on Justice, Beirut, 14-16 June 1999, unofficial translation.

42 Principle set out in the Cairo Declaration on Judicial Independence; Recommendation of the Second Arab Justice Conference, February 2003.

43 *Cf supra,* CCJE Principle no. 91.

a/ Judiciary control

The fundamental principle of «double degree of jurisdiction» accounts for the possibility of a contentious appeal against decisions of the Judicial Council, especially when it rules on disciplinary matters. A judge, once sanctioned, must be able to appeal a decision on penalties to a higher court. Judicial control of decisions of the Judicial Council guarantees citizens and the Judiciary in particular better protection of their rights.

b/ Public stewardship

The Judicial Council has a role in informing the general public about the administration of justice in general, and has a duty to be transparent about the activities it carries out, in particular to strengthen public confidence in the judicial system. In this regard, Article 8 of Law No. 15 of 2001 on the Independence of the Judiciary in Jordan requires the Judicial Council to publish an annual report on the status and operation of the courts for the preceding year. In the Palestinian Territories, the Judicial Council maintains a website updated regularly with the activities of the Council and the decisions it has taken. The Council also publishes a report describing its past achievements, future projects and the obstacles it encountered. This regular method of informing the public contributes to the development of a direct and responsible relationship between citizens and the Judiciary.

III. CONCLUSION AND RECOMMANDATIONS

1. Conclusions

a/ Reforming the Judicial Council: no single model

In the seminar findings and this related report, the main approach draws on the hypothesis that compliance of Judicial Councils (composition and prerogatives), as described herein, with international standards and the provisions of competent international and regional bodies constitutes a legal framework that supports proponents of Judicial Councils and, further, independent judicial systems, in legitimising their claims.

Yet it is important to remember that there is no standard legal framework for all judicial councils, an ascertainment borne out by the fact that the international standards have no precise provisions on this issue and that the expert groups that produced various documents on this issue did not take a precise stand on the composition of the judicial council or on some of its prerogatives. An example can be taken from the judicial council that counts a representative of the Executive amongst its members; membership of a representative of the Executive, who only has an honorary position on the council is not tantamount to interference by the Executive. On the other hand, a judicial council composed exclusively of judges is not automatically free of manipulation and/or corruption. The same can be said about many other aspects of the councils' scope of activities.

This report has not been structured to analyse the functioning of judicial councils in the target countries but rather as a tool that can be used as the basis for national level assimilation of the work and thoughts stemming from the Amman seminar. It unarguably behoves the implementers, drawing on their own experience, to analyse and select the model that fits the national context best. As part of their responsibilities, they will also have to identify the main barriers to the independence of the judicial councils and, more broadly, the Judiciary and to any reforms launched or already under way in this field. Last, the report could serve as the basis for identifying ways to overcome the barriers and impediments.

The participants gave special emphasis to the fact that the existence of a legal framework for the judicial council, and even for the Judiciary, should provide guarantees for their independence, but actually did not provide incontrovertible assurance of such independence. Examples of the gulf, sometimes abyssal gulf, between theory and practice in judicial independence are legion, with especially many attempts to obstruct it. Hence, the judicial council reform process automatically must be seen as part of a more global process to ensure the independence of the Judiciary.

b/ The need to incorporate the Judicial Council reform in a global reform of the Judiciary

Seeing the reform of the Judicial Council as an essential element in protecting and strengthening judicial independence, FIDH decided to focus on this issue, so little considered in North Africa and the Middle East. But a judicial council reform is not an end in and of itself. If it is to provide better

protection for human rights and reinforce the state of law, it has to be part of a global process for judicial reform. A global strategy of this type requires a stepwise process, going from guarantees of a fair trial, via support for a civil society committed to establishing a state of law, to the fight against corruption. During the seminar, the participants gave special emphasis to the essential inter linkage between guaranteed judicial independence, (thanks to judicial council reforms) and the all-important impartiality of the judges for which major guarantees can be found in the respect of the judges' right to freedom of association, on the one hand, and, on the other, the judges' recognition of their obligation of accountability.

In several of the countries in the study, the political authorities still prohibit the judges to create or belong to associations. In Morocco, judges are not allowed to join a political party or association, nor to form or join a trade union. Yet the right of association is a fundamental right set out in various international standards that apply to judges. Article 12 of the Universal Statute of the Judge stipulates that the right of a judge to belong to a professional association must be recognised in order to permit the judges to be consulted, especially concerning the application of their statutes, ethical and otherwise, and the means of justice, and in order to permit them to defend their legitimate interests. Principle no. 9 in the Basic Principles of the Independence of the Judiciary adds: Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence."
The judge's right of association is also set out in the fifth recommendation of the Cairo Declaration which refers to "...strengthening the judges' freedom to establish associations of judges enabling them to express their opinion and defend their independence".
The existence of an association of lawyers facilitates the judges' efforts to oppose interference by the Executive in the functioning of the Judiciary and often impel judicial reforms that may contribute to strengthening the independence of the Judiciary. In Egypt, the Judges Club was instrumental in securing the adoption of the 1943 law on the independence of the Judiciary and the 1984 law on the creation of the judicial council. The 2006 reform relating to the new law on judicial authority was adopted after the Judges' Club made its voice loud and strong. These associations play a decisive role in judicial reforms and could certainly support or trigger a reform of the judicial council.

Furthermore, the independence of the Judiciary does not only concern the Judiciary as an institution, but also the judges taken individually. The question of assigning responsibility and empowering the judges, thus, is crucial to the judicial reform and reminds us that, going beyond constitutional and legal guarantees on the independence of the Judiciary, much also depends on the conduct of the judges, who spearhead the drive for judicial independence. With this in mind, the Cairo Declaration that supports justice, the rule of law, human rights and development, and that was adopted in 1995 by the Ministers of Justice of the OIF *(Organisation internationale de la Francophonie)* countries, recommends, in the part on the independence of the Judiciary "the adoption and observation of rules of ethics and deontology that can preserve the dignity of the judges and the prominent role of justice"[44].

44 Declaration and Plan of Action adopted by the Third Conference of Ministers of Justice of the *Organisation internationale de la Francophonie*, Cairo, 1 November 1995, (unofficial translation).

Rules of conduct are also needed to consolidate the independence of the Judiciary within the judicial system itself. Several states have drawn up codes of judicial ethics, a summary of good practices for the magistracy. This text sets out the general principles underpinning the professional responsibilities of the judges (independence, impartiality) as well as their individual conduct in exercising their profession. Several states, such as Morocco and Jordan, drew inspiration from the Bangalore Principles on judicial ethics and on the Ryiad Charter on the rules of ethics for Arab judges, to develop their own code of ethics for their national judges; the Ryiad Charter itself drew on the Bangalore Principles.

According to the Bangalore principles: "the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country"[45]. In the Palestinian Territories, following a decision published in 2003, the Judicial Council drew up a set of rules of conduct for the judges. In Jordan, an ethics committee in charge of ensuring respect for the rules of judicial conduct was created alongside the Judicial Council. It has fortified the independence of the Judiciary, which is now replacing the Executive in formulating and monitoring the rules of conduct.

2. Recommendations

At the end of the seminar, the participants made the following recommendations aimed at protecting the independence of the Judiciary by revising the status and purview of the Judicial Council. They launched the following appeals:

a/ to the national authorities:

- to undertake a constitutional, legislative and administrative reform of the Judicial Council, and, in order to do this:

a/ provide measures in the Constitution for the existence of a body that is independent of the Executive and Legislative, herein known as the Judicial Council, and is empowered to take decisions concerning the recruitment, appointment, careers and dismissal of judges;

b/ guarantee a diversity of members on the Judicial Council so that the majority is composed of judges elected by their pairs and members with no connections to any judicial functions or any Executive or Legislative authorities;

c/ grant the Judicial Council authority to recruit, promote, assign, transfer and discipline judges, and allow the Council to exercise this authority without interference from the Executive or Legislative branches;

d/ empower the Judicial Council to make decisions in this field or give the Council the power to make recommendations that are binding on the other authorities;

45 Preamble to the Bangalore Principles on Judicial Conduct, 2002.

e/ involve the Judicial Council in the training of judges;

f/ guarantee the financial independence of the Judicial Councils and grant adequate financial resources for the Council to carry out its activities;

g/ guarantee the administrative independence of the Judicial Council and provide the Council with its own premises and technical/logistical means to carry out its activities;

h/ empower the Judicial Councils to decide on the budget of the Judiciary;

i/ task the Judicial Council to prepare a code of judicial ethics;

j/ establish a system to appeal decisions of the Judicial Council through recourse to a higher jurisdiction;

k/ inform the public about the activities of the Judicial Council by publishing regular activities reports;

- and more generally:

l/ respect their international and regional commitments and make their national legislation conform with the relevant international and regional instruments;

m/ undertake a global reform of the Judiciary;

n/ guarantee freedom of association for judges and recognise their right to form professional associations.

b/ to all parties (institutional, civil society) at the national, regional and international levels:

Several judicial reform projects in the Arab world, have been launched by the European Union (MEDA, European Neighbourhood Policy Instrument ENPI, etc.), and both foreign and international organisations, (UNDP, USAID, etc.). Some of the projects have national offices and activities, e.g. the American Bar Association in Jordan and Morocco, and the national reports of the Justice project at the Euro-Mediterranean Human Rights Network. There are also activities focusing on several Arab countries, such as the France/Arab countries bilateral judicial programme[46]. But there are not many projects or initiatives that consider the problem of reforms for the Judicial Councils. Most of the national programmes emphasise modernisation of the Judiciary through computerisation, better technical infrastructure in the courts, etc. and also through professional training for the judges.
Recommendations to international partners stress the development of programmes devoted solely to

46 A detailed list of these programmes can be found in the report of the Euro-Mediterranean Human Rights Network (EMHRN) entitled «Initiatives in the Field of Judicial Reform in the Euro-Mediterranean Region», January 2008.

overhauling the Judicial Council and providing support to regional and national initiatives designed for this purpose.

At the regional level, judicial reform programmes have been launched by a variety of organisations over the last few years. In 2006, the Arab Center for the Rule of Law and Integrity (ACRLI) organised a regional conference in Jordan where initiatives were launched to introduce reforms, especially in the Judiciary. The main one was the "Arab Focus Group on Rule of Law Reform" (AROL), a coalition of civil society organisations responsible for developing projects on the state of law and judicial reforms in the region. Other organisations such as the Arab Center for the Independence of the Judiciary and the Legal Profession (ACIJLP) and the Arab Council for Judicial and Legal Studies (ACJLS) hold workshops and conferences regularly, especially on subjects such as judicial independence. Furthermore, the participants to the Second Arab Justice Conference in Cairo prepared a series of recommendations for the regional level. Some of them were taken up by the seminar, *viz.*:

a/ the call for the civil society to establish a regional Arab network related to the status of justice and judicial independence, the aim being for the network to coordinate efforts to enhance popular support for strategies to promote judicial independence;

b/ the establishment of a regional network of judicial institutions and civil society organisations to control and analyse the status of judicial independence in each country and to publish periodical reports on respect for the principles of judicial independence in each country;

c/ the establishment of a non-governmental organisation to facilitate regional cooperation, exchange experiences and support the independence of the Judiciary;

The participants added the following recommendations:

d/ the creation of an association of Arab judges;

e/ in the countries under study, the establishment of a work group to draw up a Judicial Council reform project for the national level. The group should be composed of representatives of all the parties concerned, viz., judges, lawyers, Ministry of Justice, Human Rights NGOs, etc.

f/ the creation of an observatory for the support and defence of Arab judges. Its brief would be to identify and denounce repressive measures applied to the judges.

The decision of the Egyptian authorities to prevent Mr. Baroudi, an Egyptian judge, from attending the Amman meeting is a good example of the repression of judges in the region. The participants also regretted that Mr. Nasser Rayyes, a representative of Al Haq, a Palestinian organisation, was unable to attend the seminar because the border between the West Bank and Jordan was still closed.

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http://www.coe.int/t/e/legal_affairs/legal_co-operation/legal_professionals/judges/instruments_and_documents/charte%20eng.pdf

Statute of the Judges in Africa
http://www.iaj-uim.org/old/ENG/frameset_ENG.html

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www.icj.org/IMG/pdf/Guide.pdf

Reports and studies

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USAID Office de la démocratie et la gouvernance, *Guidance for Promoting Judicial Independence and Impartiality*, January 2002
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Documents per country

Egypt

Egyptian Constitution
http://aceproject.org/ero-en/regions/mideast/EG/Egyptian%20Constitution%20-%20english.pdf/at_download/file

Law no. 82 of 1969 on the Supreme Council of Judicial Organizations
Law no. 46 of 1972 on the judicial system
Law no. 35 of 1984 on the judges
New law of June 2006 on judicial authority

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El Gheriany Hossam, "Independence of the Supreme Judicial Council", *El Koda,* January 2009 (article published following the Amman conference)

Jordan

Constitution of the Kingdom of Jordan
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Law no. 15 of 2001 on judicial independence
http://www.lob.gov.jo/ui/laws/search_no.jsp?year=2001&no=15

Euro-Mediterranean Human Rights Network (EMHRN), *Independence and Impartiality of the Jordanian Judiciary*, January 2008

Al-Tarawneh Mohamed, "Functioning of the Judicial Council in Jordan"[47]

Lebanon

Constitution of Lebanon
http://www.lp.gov.lb/Version%20Francaise/constitution/menu.htm

Law no. 150 of 16 September 1983 (150/1983) on the status of the magistracy

International Foundation for Election System (IFES) and the Arab Centre for the Development of Rule of Law and Integrity (ACRLI), *Report on the judicial system in Lebanon* (in Arabic)

The Lebanese Centre for Policy Studies, *Etude critique du discours sur la réforme judiciaire*, (Critical study on discourse on judicial reform*)* July 2008

Chelhoub Elie, "*Les critères qui permettent de déterminer le niveau d'indépendance des Conseils supérieurs de la magistrature - guide des bonnes pratiques*"
(Criteria to determine the level of independence of judicial council - guide of good practices) [48]

Morocco

Constitution of the Kingdom of Morocco
http://www.parlement.ma/fe/textesdebase1.php

Law of 11 November 1974 *sur le statut de la magistrature*
www1.worldbank.org/publicsector/civilservice/epublishdocs/NewAssets/Legislation/Morocco/MoroccoMagistratesLaw.pdf

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2009

El Imani Abdesslam, "L'expérience marocaine en matière de réforme de justice"[49]

47 Text based on presentation at Amman conference. For complete text in Arabic, contact FIDH.
48 Text based on presentation at Amman conference. For complete text in Arabic contact FIDH.
49 Text based on presentation at Amman conference. For complete text contact FIDH.

Palestinian Territories

Palestinian Basic Law
http://www.palestinianbasiclaw.org/2003-amended-basic-law

Law no. 1 on judicial authority, June 2002
http://www.courts.gov.ps/atemplate.aspx?id=50

Decision no. 3 of the High Judicial Court of 2006 on judicial conduct
http://www.courts.gov.ps/atemplate.aspx?id=34

High Judicial Court, 2007 report
http://www.courts.gov.ps/atemplate.aspx?id=207

Mubarak Assaad, "The High Judicial Council in Palestinian Territories"[50]

Abou Azzam Saddam, "Competence of the High Judicial Councils and barriers to their independence"[51]

50 Text prepared for Amman conference. For complete text in Arabic, contact FIDH.
51 Text based on presentation at Amman conference. For complete text in Arabic, contact FIDH.

Annex 1: International and regional standards to guarantee the independence of the Judiciary

Relevant sections of selected international and regional texts

1/ International legal sources: binding

- **The Universal Declaration of Human Rights**[52]

Art 10 : Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

- **International Covenant on Civil and Political Rights**[53]

Art 14, para-1 : All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. […].

2/ Non binding international legal sources

- **Basic Principles on the Independence of the Judiciary**[54]

1. **The independence of the Judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country.** It is the duty of all governmental and other institutions to respect and observe the independence of the Judiciary.

52 Adopted by the United Nations General Assembly Resolution 217 A (III) of 10 December 1948. Although the Universal Declaration of Human Rights does not have the status of a treaty, it is still considered to be legally binding.

53 Adopted in 1966, entered into force in 1976. Lebanon ratified the covenant in 1972, Jordan in 1975, Morocco in 12979 and Egypt if 1982. In June 2006, Jordan published the treaty in the national Official Gazette thus giving it the status of a law. Since it is not a state, the Palestinian Authority did not ratify the Covenant, whose application to the Palestinian Territories depends entirely on Israel.

54 Adopted by the United Nations Seventh Congress on the Prevention of Crime and Treatment of Offenders, held in Milan from 26 August to 6 September 1985, and confirmed by the United Nations General Assembly in Resolution 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, **without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect**, from any quarter or for any reason.

4. **There shall not be any inappropriate or unwarranted interference with the judicial process**, nor shall judicial decisions by the courts be subject to revision.

7. **It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.**

10. **Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives.** In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, ...

11. **The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.**

12. **Judges, whether appointed or elected, shall have guaranteed tenure** until a mandatory retirement age or the expiry of their term of office, where such exists.

13. **Promotion of judges, wherever such a system exists, should be based on objective factors**, in particular ability, integrity and experience.

3/ Regional instruments: binding régionaux contraignants :

- **Convention for the Protection of Human Rights and Fundamental Freedoms**[55]

Art 6, para-1 […] everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

- **African Charter of Human and Peoples' Rights**[56]

Art 7: Every individual shall have the right to have his cause heard. This comprises: […] the right to be tried within a reasonable time by an impartial court or tribunal.

55 European Convention on the Protection of Human Rights and Fundamental Freedoms, 1950.

56 Adopted on 27 June 1981 in Nairobi, Kenya at the 18th Conference of the Organisation of African Unity (OAU). Entered into force on 21 October 1986. To date, ratified by 53 member states of ex-OAU, in other words, all the countries of Africa except Morocco.

Art 26: States parties to the present Charter shall have the duty to guarantee the independence of the Courts […].

- **Arab Charter on Human Rights**[57]

Art 12: All persons are equal before the courts and tribunals. **The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats.** They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels.

4/ Regional instruments: not binding

- **Recommendation No. R(94)12 of the Committee of Ministers to Member States on the independence, efficiency and role of judges**[58]

Principe I, 2.c : All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. **The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules**.

Principe VI.3 : **Where measures under paragraphs 1 and 2 of this article *(disciplinary measures)* need to be taken, states should consider setting up, by law, a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ**, or which is a superior judicial organ itself.

- **European Charter on the Statute for Judges**[59]

1-3. **In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary**.

57 New version of this Charter, adopted in May 2004, in Tunis, at the 16th Summit of the League of Arab States. The Charter entered into force on 15 March 2008. Jordan and Palestine have ratified it; Egypt and Morocco have signed it.
58 Recommendation adopted by the European Committee of Ministers on 13 October 1994.
59 Adopted in July 1998 at the multilateral meeting on the statute for judges in Europe, organised by the Council of Europe.

2-3. The statute ensures by means of appropriate training at the expense of the State, the preparation of the chosen candidates for the effective exercise of judicial duties. **The authority referred to at paragraph 1.3 hereof, ensures the appropriateness of training programmes and of the organization which implements them, in the light of the requirements of open-mindedness, competence and impartiality which are bound up with the exercise of judicial duties**.

3-1. **The decision to appoint a selected candidate as a judge, and to assign him or her to a tribunal, are taken by the independent authority referred to at paragraph 1.3 hereof or on its proposal, or its recommendation or with its agreement or following its opinion.**

4-1. When it is not based on seniority, a system of promotion is based exclusively on the qualities and merits observed in the performance of duties entrusted to the judge, by means of objective appraisals performed by one or several judges and discussed with the judge concerned. **Decisions as to promotion are then pronounced by the authority referred to at paragraph 1.3 hereof or on its proposal, or with its agreement. Judges who are not proposed with a view to promotion must be entitled to lodge a complaint before this authority.**

5-1. **The dereliction by a judge of one of the duties expressly defined by the statute, may only give rise to a sanction upon the decision, following the proposal, the recommendation, or with the agreement of a tribunal or authority composed at least as to one half of elected judges...**

- Principles and guidelines on the right to a fair trial and legal assistance in Africa[60]

A-1 : ..... everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body.

A-4 : Independent tribunal

a- The independence of judicial bodies and judicial officers shall be guaranteed by the constitution and laws of the country and respected by the government, its agencies and authorities.

f- There shall not be any inappropriate or unwarranted interference […]

g- **All judicial bodies shall be independent from the executive branch.**

h- **The process for appointments to judicial bodies shall be transparent and accountable and the establishment of an independent body for this purpose is encouraged. Any method of judicial selection shall safeguard the independence and impartiality of the judiciary.**

i- **The sole criteria for appointment to judicial office shall be the suitability of a candidate for such office by reason of integrity, appropriate training or learning and ability.**

60 Adopted by the African Commission of Human and Peoples' Rights in July 2003.

l- **Judges or members of judicial bodies shall have security of tenure** until a mandatory retirement age or the expiry of their term of office.

m- The tenure, adequate remuneration, pension, housing, transport, conditions of physical and social security, age of retirement, disciplinary and recourse mechanisms and other conditions of service of judicial officers shall be prescribed and guaranteed by law.

u- **States may establish independent or administrative mechanisms for monitoring the performance of judicial officers** and public reaction to the justice delivery processes of judicial bodies. **Such mechanisms, which shall be constituted in equal part of members the judiciary and representatives of the Ministry responsible for judicial affairs, may include processes for judicial bodies receiving and processing complaints against its officers.**

B-b : **States shall establish, where they do not exist, specialised institutions for the education and training of judicial officials […].**

5/ Declarations by non-governmental organisations

- **Beirut Declaration: Recommendations of the First Arab Conference on Justice, June 1999**

2- **The state shall guarantee an independent budget for the judiciary,** including all its branches and institutions. **This budget** shall be included as one item into the state budget, and **shall be determined upon the advice of the higher judicial councils within the judicial bodies.**

3- The executive power shall not intervene in the activities of judicial inspection in any form, nor shall it breach the independence of the judiciary through orders or circulars

5- Judges shall have immunity associated with their jobs. Except in cases of illegal acts no **judicial measures shall be taken unless upon permission issued by the highest council.**

12- Assuming the position of judge shall be possible, without discrimination, for all those who meet the requirements. The appointment of judges shall be made through the higher councils of the concerned judicial bodies.

13- No judges shall be appointed by virtue of temporary contracts. **They cannot be disciplined unless by boards made from their bodies...**

14- The law shall stipulate the rules for appointing, delegating, transferring, promoting, and disciplining judges, as well as for all other matters related to their affairs, particularly those concerning

their livelihood while in office and in retirement. The aim of this is to guarantee in all cases their independence from the executive.

- **Cairo Declaration on Judicial Independence - Recommendations of the Second Arab Justice Conference, February 2003**

c- ... establish a network of judicial and civil society institutions in the Arab region. Its mandates shall be analysing the status of the independence of judiciary, and issuing periodical reports of each Arab country on developments in the field of principles that provided by national legislations in conformity with the practical implementation of these principles.

d- ... establish a regional non-governmental organization for Arab judges in order to promote the solidarity, exchange experiences, and strengthen the independence of judiciary.

e- **Guarantee the financial independence for the judicial authority and include an article in the budget of the judicial financial independence in the balance sheet of the state.**

3- **Introduce reforms to the processes of the appointment, promotion, and disciplinary of judges in order to achieve more transparency and objectiveness, and refer the judicial affair to the high judicial councils.**

4- **Preparation of a code of conduct for judges.**

5- Strengthen the judges' freedom to establish associations of judges enabling them to express their opinion and defend their independence.

6- Establish specialized judicial institutions to provide training for judges.

6/ Declarations by professional associations of lawyers

- **The Universal Charter of the Judge** [61]

Art 1 : Independence

Judges shall in all their work ensure the rights of everyone to a fair trial. They shall promote the right of individuals to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in the determination of their civil rights and obligations or of any criminal charge against them. **The independence of the judge is indispensable** to impartial justice under the

61 Adopted in 1999 by the International Association of Judges. The text of the Charter has been unanimously approved by the delegates attending the meeting of the Central Council of the International Association of Judges in Taipei (Taiwan) on November 17, 1999.

law. It is indivisible. All institutions and authorities, whether national or international, must respect, protect and defend that independence.

Art 2 : Status

Judicial independence must be ensured by law creating and protecting judicial office that is genuinely and effectively independent from other state powers. The judge, as holder of judicial office, must be able to exercise judicial powers free from social, economic and political pressure, and independently from other judges and the administration of the judiciary.

Art 8 : Security of office

A judge cannot be transferred, suspended or removed from office unless it is provided for by law and then only by decision in the proper disciplinary procedure.
A judge must be appointed for life or for such other period and conditions that the judicial independence is not endangered. Any change to the judicial obligatory retirement age must not have retroactive effect.

Art 9 : Appointment

The selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification. Where this is not ensured in other ways, that are rooted in established and proven tradition, **selection should be carried out by an independent body, that include substantial judicial representation.**

Art 13 : Remuneration and retirement

The judge must receive sufficient remuneration to secure true economic independence. The remuneration must not depend on the results of the judges' work and must not be reduced during his or her judicial service.

- **The Judges Statute in Africa** [62]
-

I - The rule of the independence of the judge must be included in the Constitution of each African Country.

II - The judge is only accountable to the law. No party or power has the right to interfere in judicial proceedings.

62 Prepared and adopted by the Africa Regional Group of the International Association of Lawyers, Tunis, Tunisia, l0 September 1995.

III - **A special statute must regulate judges when they exercise their activities. This statute must provide for objective criteria for the selection of judges, their promotions, transfers, retirement and the sanctions which can be imposed on them if they do not uphold the dignity of their profession or if they consciously commit a serious mistake..**

IV - **A representative body expressed by the judicial power has to decide on the judges' career.**

VI - **Each African State has to provide judges with the necessary and sufficient resources required for the exercise of their activity by giving the judicial administration its own budget in order to guarantee the correct functioning of the judicial system.**

X - **Judges cannot be transferred without their consent.**

Annex 2: List of participants to the seminar on the reform of Judicial Councils, Amman, November 2008

Nom	Organisation	Pays
Abdelkebir Farhane		Morocco
Abu Yamen Mubarak	Member of Parliament, Jordan	Jordan
Abu Farha Nael	Amnesty – Jordan	Jordan
Al-Dmour Ali		Jordan
Al-Tarawneh Mohammad	Judge	Jordan
Al Majali Zaha'	ACHRS	Jordan
Asran Tarek	EOHR	Egypt
Assad Mubarak	Judge, Palestinian High Court	Palestine
Ayat Mohammad	Legal Adviser, UN and ICTR	International
Bawadi Raeda	Ministry of Justice	Jordan
Benarabia Said	ICJ	International
Chalhoub Elie	ACRLI	Regional
Chouk Aida	French Syndicat de la magistrature	France
El Bouanani Rahhal	Ministry of Justice	Morocco
El-Gheriany Hossam	Judge	Egypt
El Imani Abdesalam	Procureur du Roi	Morocco
El Khoury Roger	Legal Expert	Regional
El-MughaniAhmed	Judge	Palestine
Emam Nour	Jurist	Jordan
Ferzli Michel	Judge	Lebanon
Guerriche Sophie	Independent Expert	International
Hajjar Jamal	Judge	Lebanon
Karam Mohammad	OMDH	Morocco
Liebaut Fabrice	EMHRN	International
Mahadeen Samir	Judge	Jordan
Minnegheer Eric	Attaché, French Embassy	France
Nouaydi Abdelaziz	Adala	Morocco
Olwan Mohammed	Jordan University	Jordan
Orouba Qarain	ABA	International
Paul Morcos	Fondation Justicia pour les droits de l'Homme	Lebanon
Rana Ajwa	Ministry of Justice	Jordan
Saghieh Nizar	Lawyer	Lebanon
Sonqrout Sameeh	Arab Organization for Human Rights in Jordan	Jordan
Zreqat Nisreen	NCHR	Jordanie

Annex 3: Seminar Programme

The International Federation for Human Rights (FIDH)
in cooperation with the Amman Center for Human Rights Studies (ACHRS)

The independence of the Judicial Councils, a challenge in the reform of judicial systems in Northern Africa and in the Middle East

Regional Conference
Amman (Kingdom of Jordan)
22-23 November 2008

22 November

8:30 am
Arrival and registration of the participants

9:00- 9:30 am: Opening Ceremony

Speech by Mr. Mansour Al Hadidi, Ministry of Justice
Speech by Ms Souhayr Belhassen, President of FIDH
Speech by Mr Nizam Assaf, Director of ACHRS

Session I- Powers and Prerogatives of the Judicial Councils

Chairlady: Aïda Chouk, Former President of the French *Syndicat de la Magistrature*

9:30-10:00 am: International and regional standards on safeguards of the independence of the judiciary, with the a focus on provisions related to the Judicial Councils.
Said Benarbia, International Commission of Jurists

10:00-10:45 am: Criteria to identify the level of independence of the Judicial Councils. Presentation of good practices.
Elie Chalhoub, ACRLI

Coffee break

11:00- 12:15 am: **The functioning of the Judicial Councils in the region.**
Chairman: Mohammed Ayat, Legal advisor of the UN, Member of the UN Human Rights Committee

A. Powers and prerogatives of the Judicial Councils and obstacles/ limits to their independence. (15 minutes each)

- Egypt, Tarek Asran (EOHR)
- Jordan, Sadam Abou-Azam, National Center for Human Rights in Jordan

- Lebanon, Nizar Saghieh, Lawyer
- Morocco, Abdel Aziz Nouaydi (Adala)
- Occupied Palestinian Territories, Assad Mubarrak, Supreme Court Judge

12:15 – 13:00 pm: Discussion

Lunch

Session II- The functionning of the Judicial Councils in the region.

14:00 -15:30 pm

Chairman: Mohammed Olwan, Dean of the Faculty of Law

B. National/local initiatives to overcome obstacles to the independence of the Judicial Councils (15 minutes each)

- Egypt : Involvement of the judges. An alternative draft law for the judicial power (2006); Hossam El Gheriany
- Jordan: Role and responsibility of the Jordanian Judicial Council in reforming the institution (i.e. the HJC annual report and its recommandations), Dr Mohammed Al-Tarawneh, Judge
- Morocco: Follow-up of the IER recommendation of the Moroccan Judicial Council reform, Abdeslam El Imani, King's Prosecutor.
- Occupied Palestinian Territories: Involvement of academic institutions to enhance the independence of the judiciary: the partnership between the Palestinian Judicial Council and the Institute of Law of Birzeit University. Assad Mubarak, Supreme Court Judge

Discussion

Coffee break

16:00- 17:30 pm
Chairman: Driss El Yazami, Secretary General of FIDH

Interactive discussion : identification and analysis of common obstacles/ limits to an effective reform of the HJC.

23rd of November

Session III – Involvement of international institutions, NGOs and donors in reforming the Judicial Councils

Chairman: Taleb Al-Saqqaf

9:00-10:30 am
Round-table : Objectives, strategies/tools for implementation and assessment of programs/ recommendations related to the independence of the judiciary and the reform of Judicial Councils, in particular:

- American Bar Association : "Middle East Legal Development Initiative", Orouba Qarain, ABA Legal Consultant
- Bilateral cooperation France/ Arab countries on justice, Eric Minnegheer, Attaché, French Embassy in Jordan
- MEDEL: Sharing experience: the *activities of* MEDEL *(European Judges and Public Prosecutors for Democracy and Fundamental Rights)* in promoting initiatives towards the establishement and reform of the HJCs in European countries, M. Ignacio Gonzales
- "Arab Focus Group on Rule of Law Reform" AROL (Coalition of Arab CSOs and experts), M. Roger Khoury ACRLI.

Discussion: ***analysis of steps forward and obstacles to an efficient implementation of the programs and objectives.***

Coffee break

11:00- 13:00 am

Session IV – Workshops: which strategies to support the reform of the HJCs ?

Workshops : the national level

This workshop will focus on national strategies and will aim at answering questions as follows:

- Who? : Participation of stakeholders, which one? establishement of a coalition?
- What? : What kind of actions: Reform of the law? New initiatives or support to existing initiatives/ programs?
- How? : Lobbying? Monitoring? Training?

Lunch

14:00-17:00 pm

Plenary session: Follow-up strategy and concluding comments

Chairman: Raji Sourani, Vice President of FIDH and Director of the Palestinian Center for Human Rights

Discussion

The workshop outputs and a follow-up strategy of this seminar.

Discussion about the possibility to initiate/ follow a regional approach and if possible, to suggest the main lines of such a regional strategy.

- ***Concluding comments***

Annex 4: Summary table of judicial councils, per country

EGYPT: High Judicial Council (HJC)

LEGAL BASIS	COMPOSITION	ATTRIBUTIONS				ADMINISTRATIVE and FINANCIAL AUTONOMY
		Appointment	Transfer	Promotion	Discipline	
► **Constitution** **Art 65:** The independence and immunity of the judiciary are two basic guarantees to safeguard rights and liberties. **Art 166:** Judges shall be independent, subject to no other authority but the law. No authority may intervene in judiciary cases or in the affairs of justice. **Art 167:** The law shall determine the organisation and jurisdiction of the judiciary, organise appropriate training and prescribe conditions for the appointment and transferring of its members. **Art 168:** The status of judges shall be irrevocable. The law shall regulate the disciplinary actions with regard to them. ► **Law no.82/1969 on the Supreme Council of the Judiciary** ► **Law no.46/1972 on the Judiciary** ► **Law no.5/1984 on Judges** ► **The new Judiciary Authority Law, June 2006**	**Law n°35/1984** **Art 77 bis** The HJC is composed of: • the head of the Court of Cassation • the president of the Court of Appeal of Cairo • the Attorney General • two of the most senior vice-presidents of the Court of Cassation • two of the most senior presidents of the other Courts of Appeal The head of the Court of Cassation and the Attorney General are directly appointed by the President of the Republic.	**Law n°35/1984** **Art 44:** Judicial functions are filled by presidential decree after the approval of the HJC. **Law n°46/1972** **Art 49:** Judges of category b are selected among members of the Public Prosecution according to seniority, their work and the reports established on their conduct. **Art 119:** Members of the Public Prosecution are appointed by presidential decree upon nomination from the Minister of Justice and after consultation of the General Prosecutor and approval of the HJC. Under the new Judicial Authority Law, the General Prosecutor is no longer under the authority of the Minister of Justice, yet remains a presidential appointee. The law stipulates no conditions for eligibility to the office.	**Law n°46/1972** **Art 55 to 64:** The Minister of Justice can assign judges of first instance courts to other courts or to the Ministry of Justice after the approval of the HJC.	**Law n°35/1984** **Art 44:** Judicial functions are filled by presidential decree whether by appointment or promotion.	**Law n°46/1972** **Art 78 (2):** The Minister of Justice prepares the list of judicial inspections with the approval of the HJC. The Judicial Inspection Committee is attached to the Ministry of Justice (Bylaw on Judicial Inspection published by the Ministry of Justice in 1963). **Art 94:** The head of the Judicial Inspection Committee has the right to reprimand the president and judges of first instance courts. **Art 98:** Disciplinary action against the judges of all degrees is within the jurisdiction of a disciplinary council formed as follows: the President of the Court of Cassation, the most senior Presidents of the Court of Appeal and the most senior counsellors of the Court of Cassation.	► **Law n°46/1972** **Art 93**: The Minister of Justice has the right to supervise all courts ► Judges have not obtained the right to prepare an independent budget, through the HJC. ► The new Judicial Authority Law (2006) provides for budgetary independence for the Judiciary. But nothing is said about the implementation of this principle. ► There is no codified law on Judicial Ethics.

JORDAN: High Judicial Council (HJC)

LEGAL BASIS	COMPOSITION	ATTRIBUTIONS				ADMINISTRATIVE and FINANCIAL AUTONOMY
		Appointment	Transfer	Promotion	Discipline	
► **Constitution** **Art 97:** Judges are independent, and, in the exercise of their judicial functions, are subject to no authority other than that of the law. **Art 101/1:** The courts shall be open to all and shall be free from any interference in their affairs. ► **Law no. 15/2001 on Judicial Independence** (Replaced Law no. 49/1972 onjudicial independence).	**Law n°15/2001** **Art 4:**The HJC consists of eleven members, all of whom are regular judges, but none of them is elected by the judges themselves. The President of the HJC is the President of the Court of Cassation. He is appointed and dismissed directly by royal decree. The Vice President of the HJC is the President of the Supreme Court of Justice. He is appointed by royal decree in accordance with the decision of the HJC.	**Loi n°15/2001** **Article 14/A:** Judges are appointed by the HJC upon recommendation of the Minister of Justice. The Minister of Justice has the power to recommend judges to the HJC, which in turn appoints them acting on those recommendations	**Law n°15/2001** **Art 16/A:** The HJC can, upon the recommendation of the President of the Council, order the retirement of any judge who has reached retirement age. **Art 16/B:** The HJC puts an end to a function of a judge or orders his retirement even if he has not yet completed the legal period required to reach retirement. **Art 22/A:** The HJC transfers or seconds judges within the judicial institutions. **Art 23/A:** The President of the HJC delegates, when necessary, may assign a judge to an ordinary or special court, or to assume a function in the public prosecution or to carry out an inspection, for a maximum of three months a year. **Art 24/B:** Transfer of judges within foreign governments or within regional and international organisations is decided by the Council of Ministers upon recommendation of the HJC. **Art 24/A:** The HJC appoints, upon recommendation of the Minister of Justice, a high ranking judge as Secretary General of the Ministry of Justice.	**Law n°15/2001** **Art 19:** Judges are promoted on the basis of merit, evaluated by the HJC on the basis of reports established by the Inspector.	**Law n°15/2001** **Art 26:** The dismissal of a judge is decided by the HJC and the King **Art 27:** The president of the HJC exercises administrative supervision over the judges **Art 28:** The president of the HJC may warn judges about their conduct. **Art 31:** The HJC sets up disciplinary committees. These committees include at least three judges from the HJC's members. **Art 32:** Disciplinary proceedings are initiated by the Attorney General at the request of the President of the HJC and upon a decision the HJC **Art 41:** The Judicial Inspection Service is attached to the Ministry of Justice. The reports on judges, realised by the Inspectors, are submitted to the President of the HJC and the Minister of Justice.	**Law n°15/2001** **Art 8:** The HJC produces an annual report on the situation and functioning of the Courts. **Art 21:** The annual increase of salary is decided by the President of the HJC. **Art 27:** The president of the HJC exercises administrative supervision over judges. ► The HJC as well as the judges are financially dependent on the Ministry of Justice. ► In relation with the Judicial Upgrading Strategy programme (JUST) led by the Ministry of Justice, the American Bar Association has engaged a group of Jordanian judges to draw up a judicial code of conduct.

LEBANON: Higher Judiciary Council (HJC)

LEGAL BASIS	COMPOSITION	ATTRIBUTIONS				ADMINISTRATIVE and FINANCIAL AUTONOMY
		Appointment	Transfer	Promotion	Discipline	
► **Constitution** **Art 20:** Law establishes limits and conditions of irremovability of judges. Judges are independent in the exercise of their duties. ► **Law no.150 of 16 September 1983 (150/1983) on the status of the magistracy** **Art 4:** The Council ensures the proper functioning (dignity, independence) of the judiciary. **Art 44:** Judges are independent in the exercise of their duties. Transfers and dismissals must conform to rules set out in this law.	Ten judges, majority appointed by the Executive: • three members appointed because of their positions: - the Council President, who is the President of the Court of Cassation, - the Council Vice President, who is the Attorney General to the Court of Cassation, - the President of the Judicial Inspection Committee. These members are appointed by a decree of the Council of Ministers. • Five judges appointed by decree upon a proposal from the Minister of Justice. • Two judges elected by the judges since reform no. 389 of 21 December 2001.	**Art 50, 64, 68 and 77 of Law n°150/1983** ► Judges selected by competitive examination after three years training at the Institute for Judiciary Studies. The Council organises the competitive admission examination. ► Appointments are applicable through decree from the Council of Ministers after approval from the Minister of Justice and the Higher Judiciary Council.	Transfers and reassignments require ministerial decree based on proposal from HJC and agreement from Minister of Justice. ► Assignment plans proposed by Council require approval from Minister of Justice. ► In case of disagreement between the Council and the Minister of Justice, the Council votes again on the plan. A vote of seven out of ten makes the plan «definite and binding». .	Promotions are based on decision of Minister of Justice with approval of HJC.	► Judge is convened to Disciplinary Council at request of Council of Inspection Service. ► The Disciplinary Council is composed exclusively of judges. ► The Council of the Inspection Service is composed of judges appointed for their seniority, by a decree of the Council of Ministers. They discharge this duty under the supervision of the Ministry of Justice ► The 2001 reform authorises the Higher Judiciary Council, upon a majority vote of eight out of ten, to dismiss any judge it deems incompetent.	► The HJC does not have its own budget. ► The Judiciary does not have authority over the administrative management of judicial affairs. ► A committee composed of the HJC President and the President of the judicial inspection drew up a document entitled «fundamental rules of jurisdictional ethics» The document, ratified by the Minister of Justice, was made available to the judges as of 25 January 2005.

MOROCCO: Supreme Council of Magistracy (SCM)

LEGAL BASIS	COMPOSITION	ATTRIBUTIONS				ADMINISTRATIVE and FINANCIAL AUTONOMY
		Appointment	Transfer	Promotion	Discipline	
► **Constitution** **Art 32:** The King shall preside over the Supreme Council of the Magistracy **Art 84:** Upon recommendations of by the Supreme Council of Magistracy, Magistrates shall be appointed by Royal Decrees **Art 85:** Magistrates in the bench shall be irremovable. **Art 86:** CSM]. The Supreme Council of Magistracy shall be presided over by the King. **Art 87:** The Supreme Council of Magistracy shall ensure the implementation of the guarantees granted magistrates regarding their promotion and discipline. ► **Law of 11 November 1974** on the status of the magistracy (amended several times) ► **By-laws** of the SCM drawn up by the Ministry of Justice in October 2000.	Six members elected, four ex officio. **Art 86** of the Constitution The Supreme Council of Magistracy shall be presided over by the King and shall comprise: • the Minister of Justice as Vice-President; • the First President of the Supreme Court; • the Prosecutor General in the Supreme Court; • the President of the First Chamber the Supreme Court; • two representatives elected among magistrates of the Court of Appeal; • four representatives elected among magistrates of first degree courts.	Recruitment by competitive examination of on diplomas: **art 4-5-6-7** of the law of 1974 ► The government determines the conditions of admission, the test programmes, their scores and the composition of the jury (art 5). ► The winners of the competitive examination attend a study programme and an internship whose conditions of application and calendar are given in an order of the Minister of Justice (art 6). ► The judges are appointed by a *Dahir* upon proposal of the SCM (art 7).	**Art 55** of the law indicates that the judges in the bench may be transferred to a post within their field of specialisation elsewhere, at their own request, as a promotion, because of the elimination or creation of a jurisdiction, or because of a staff shortage that serious affects the efficiency of a jurisdiction. The transfers are notified through a *Dahir* upon proposal of the SCM. The SCM may make proposals but the Minister of Justice has the leeway to assess the shortage of judges. .	**Art 23** of the law indicates that a judge cannot be promoted unless his name is on the eligibility list which is drawn up annually by the Minister of Justice, upon recommendation from the SCM. Yet, according to **art. 13** of the by-laws, the consultation is held after the list has been drawn up.	**Art 61-62** of the law indicates that the executive branch initiates proceedings against judges, examines the cases, and metes out and enforces sanctions.	► The SCM does not have its own budget; the Ministry of Justice pays for SCM operating expenses. ► It does not have its own offices so meets at the Ministry of Justice. ► A code of ethics for Moroccan judges is being finalised by the Amicale Hassania des magistrats.

PALESTINE: High Judicial Council (HJC)

LEGAL BASIS	COMPOSITION	ATTRIBUTIONS				ADMINISTRATIVE and FINANCIAL AUTONOMY
		Appointment	Transfer	Promotion	Discipline	
► **Basic Law** 2002 amended in 2003 **Art 97 (former art 88):** The Judiciary branch shall be independent. **Art 98 (former art 89):** Judges shall be independent and shall not be subject to any authority other than the authority of law while exercising their duties. No other authority may interfere in the judiciary or in the justice affairs. **Art 100 (former art 91 :** A HJC shall be created. The law shall specify its structure, jurisdiction, and operating rules. The Council shall be consulted about draft laws which regulate any affairs of the Judicial Authority, including Public Prosecution. ► **Judicial Authority Law no. 1, May 2002** **Art 1- 2:** The Judiciary and judges are independent and subject solely to the law.	**Art 37** of the Judicial Authority Law: The HJC consists of nine members. All but one are judges. The HJC is headed by the President of the Supreme Court. It is composed of: • three Supreme Courts judges • three heads of the Appeal Courts • the Attorney General • the Deputy of the Ministry of Justice.	The JC is responsible for the selection of judges. The selection requires endorsement by the Executive. **Judicial Authority Law** **Art 17:** The HJC is in charge of preparing the programmes or courses. The Palestinian Judicial Institute (PJI) conducts the trainings for judges and prepares them to the professions. **Art 18:** Appointment of judges is reserved to the Palestinian Authority (PA) President upon nomination from the HJC. **Art 19:** To be a candidate for a judge's position, the person must be a former judge, lawyer, prosecutor, or law professor. **Art 63:** The appointment of the Attorney General is reserved to the PA President upon nomination from the HJC.	**Art 23** of the Judicial Authority Law: Assignment or transfer of judges is decided by the HJC. .	Promotion of judges is reserved to the PA President upon nomination from the HJC..	A judge may be warned, reprimanded or removed from office for misconduct. **Judicial Authority Law** **Art 42:** The Judicial Inspection Committee is attached to the HJC. The HJC prepares and approves the regulations for the judicial inspection. **Art 48:** A disciplinary committee is formed to examine and decide on such cases. It is composed of two senior judges from the Supreme Court and one senior judge from a Court of Appeals. **Art 49:** Disciplinary proceedings against a judge are engaged by the Attorney General upon the request of the Minister of Justice, the President of the Supreme Court or the President of the Court to which the judge is attached.	The Judiciary is financially independent. **Judicial Authority Law** **Art 3:** 1- The Judicial authority shall have a separate budget. 2- The HJC determines the judiciary's budget that is to be submitted to the Minister of Justice for formal approval. 3- It is the Council's responsibility to oversee how the budget is spent. **Art 47:** The Minister of Justice exercises administrative supervision over the courts. **Art 40:** The HJC meets once a month in the Supreme Court's offices.

Annex 5 : Comparative table of Judicial Council (JC) operating methods in the five countries

Comparative table of HJCs per country: Relative independence, Power shared with the Executive, Power wielded by the Executive

COUNTRY	LEGAL BASIS OF HJC	COMPOSITION	ATTRIBUTIONS				ADMINISTRATIVE and FINANCIAL AUTONOMY
			Appointment	Transfer	Promotion	Discipline	
MOROCCO	Based on constitution and legislation.	• SIx members elected and four ex officio. • Most members are judges but not all are elected.	• Selection based on competitive examination. • The Executive dominates competitive examination procedure.	Council can make proposals.	Council is officially consulted, but actually only informed.	Procedure dominated by the Executive..	• No financial or administrative autonomy. • No code of ethics. • Council by-laws produced by the Executive. .
EGYPT	Based on constitution and legislation.	• Most members are judges but not all are elected. • Council President is appointed by President of the Republic	• No selection based on competitive examination. • Judges are appointed by presidential decree.	Power shared with Executive but Council agreement essential.	Power shared with Executive but Council agreement essential.	• Inspection service is accountable to the Executive. • Disciplinary Committee is composed of judges.	• Law of 2006 grants financial autonomy. Conditions outstanding. • No code of ethics.
JORDAN	No constitutional basis. Created by law	• Eleven members, all judges • None elected by the judges	Council appoints judges on recommendation of the Executive.	Council has decision-making power.	Council decides on basis of reports drawn up by the Executive.	• Inspection service is accountable to the Executive. • Council forms Disciplinary Committee	• No financial or administrative autonomy. • Code of Ethics drafted by judges and published in 2005.
LEBANON	The judicial council has no constitutional basis but was provided for in the Taef Agreement and in a law.	Ten judges. 8 appointed by the executive branch and 2 elected.	• Selection through competitive examination. • Council has consultative role in appointments.	In case of disagreement between the Council and the Executive, the Council decides.	Consultative power	Procedure carried out by judges under supervision of the Executive.	• No financial or administrative autonomy. • Code of Ethics drafted by judges and ratified by the Executive.
PALESTINE	Based on constitution and legislation.	• 8 of the 9 members are magistrates. • Not all magistrates are elected.	The HJC selects the judges who are then appointed by the Executive.	Decision-making powers.	The HJC selects the judges who are then appointed by the Executive.	The HJC supervises the procedure.	• The HJC evaluates and supervises the budget of the judiciary. • In 2006, the HJC drew up a code of good conduct.

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PAO: Céline Ballereau

Imprimerie de la FIDH - Dépôt légal juin 2009 - Fichier informatique conforme à la loi du 6 janvier 1978 - (Déclaration N° 330 675)

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and protect magistrates against any interference, pressure or threats. They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels. African Charter on Human and Peoples' Rights. Article 7: 1. Every individual shall have the right to have his cause heard. This comprises: […] (d) the right to be tried within a reasonable time by an impartial court or tribunal. Article 26: States parties to the present Charter shall have the duty to guarantee the independence of the Courts […]. Basic Princi-ples on the Independence of the Judiciary. 1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution

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