
ARAB JUDICIAL STRUCTURES

**A STUDY PRESENTED TO
THE UNITED NATIONS DEVELOPMENT PROGRAM
PROGRAMME ON GOVERNANCE IN THE ARAB REGION
POGAR**

BY

NATHAN J. BROWN

PROFESSOR OF POLITICAL SCIENCE AND INTERNATIONAL AFFAIRS

THE GEORGE WASHINGTON UNIVERSITY

NBROWN@GWU.EDU

(WITH THE ASSISTANCE OF NIDA AL-AHMAD)*

AUGUST 2001

* The author gratefully acknowledges the comments and assistance provided by Ibtisam al-Kitbi, Anna Wuerth, Adel Omar Sharif, George Sfeir, and Mustafa Marei.

INTRODUCTION

Despite divergent histories and forms of government, there is surprising resemblance among the various judicial systems of the Arab world. Some Arab countries experienced French rule; others were occupied by Great Britain; still more managed to maintain complete independence. Some Arab countries are republics; others are monarchies. Some have tried to build viable parliaments; others have avoided this. Some experienced a wave of socialism; others never attempted a socialist experiment. All these differences have left their imprint on the judicial system, but an external observer is still far more struck by the similarities in court structure, judicial organization, administrative support for the courts, judicial training, and so on.

Because of their similarity, Arab judicial structures tend to have certain common strengths and weaknesses. Their strengths are notable; a professional and respected judicial corps has been built in most Arab countries, sometimes in spite of economic and political difficulties. Procedures have been written to guarantee citizens the assurance that their disputes will be handled seriously and competently; if mistakes are made then avenues for appeal are clear. And many Arab countries have taken strong, positive steps to increase the integrity and the professionalism of their judiciaries in recent years. Some countries have raised salaries; some have reorganized their judicial councils to give them greater independence; some have reined in exceptional courts; and some have devoted resources to training and continuing education.

Taken as a whole, the body of Arab judiciaries has begun an important reform process. In order to continue that reform, attention might be paid to the following areas (all of which are suggested and debated in the Arab countries rather than imposed from the outside):

- Administration of justice.

Here two issues have arisen in most Arab countries. First, it is very common to hear from those involved in the legal system that administrative support for the courts is inadequate. Clerks, experts, process servers, and other key personnel are overworked and underpaid. In some countries, the effort to improve training and salaries for judges has paid off in a greater level of professionalism. However, without a similar effort being launched aimed at other key personnel, the full benefits of reform may not be felt.

Second, in many Arab countries, tensions have emerged between the judiciary and the Ministry of Justice over budgeting and administrative support for the courts. The strongest judiciaries in the region have been entrusted with a high degree of oversight over such issues without the participation of executive branch officials. Those countries that have not allowed their judiciaries a strong role are likely to come under continued pressure to reform.

- Exceptional courts

Resort to exceptional forms of justice is far less frequent in the Arab world than it was a couple decades ago. Those countries that feel that security or other concerns necessitate special procedures have often worked to turn exceptional courts (which have procedures and jurisdiction defined on an emergency basis) into specialized courts (that are far more well grounded in law). This is a clear step in the direction of improving the rule of law. However, such a strategy can work best if such specialized courts have procedures that resemble the regular judiciary as much as is practicable and also a degree of oversight and participation from professional and trained judges. Even in such cases, the move against a unified judicial system has its costs for the rule of law.

- Constitutional language

Earlier Arab constitutions generally contained only brief provisions for the judiciary. As constitutions grew longer, many in the Arab world began to regard them cynically as promises made that were never meant to be kept. Such cynicism is a mistake. Constitutions can be very accurate reflections of political reality, and strong constitutional provisions for the judiciary do help protect it from politicization. Further, the judiciary can assist in cultivating a sense of respect for the constitution, as it has recently done in Egypt. In general, the move toward accepting judicial review and to specifying (rather than merely proclaiming) the principle of judicial independence are hopeful signs. The draft Palestinian constitution may provide a model for other Arab countries in its specificity.

- Judicial training

In most Arab countries, law schools prepare students for a variety of occupations; in many countries they are not the most selective of university faculties. This situation has led to the common complaint that it is becoming difficult to attract bright, well-trained graduates to a judicial career. In many countries, judicial training academies complain that they are forced to focus on what should have been covered in law school.

The result is that there have been insufficient resources to other forms of training (such as education of non-judicial personnel, practical rather than academic training, research, and continuing education). Most Arab countries have made some efforts in these areas, but current judicial training academies often find that they cannot carry out all the tasks demanded of them without new resources.

There is perhaps no area where regional cooperation could be more helpful. Few countries have the resources to single-handedly meet all these tasks. But cooperation among judicial training academies—or perhaps a regional center—would allow countries to pool their efforts. This would especially be helpful for advanced areas such as research, continuing education, or efforts to understand the legal aspects of globalization.

- Cooperation and information sharing

There have been some efforts made at regional cooperation in judicial affairs. In 1983, the Riyadh Agreement for judicial cooperation instituted a formal level of judicial cooperation, and recent years have seen an upsurge in conferences and other forms of cooperation (for instance, the various constitutional courts in the region are establishing a body to share information).

Yet these efforts are still in their infancy, especially in areas in which great progress needs to be made (such as information technology or understanding of developments in international commercial law). Indeed, it is difficult even to collect information on Arab judicial structures. Where information is available, the forms are not comparable. Morocco and Palestine might be seen as models in this regard. The Moroccan Ministry of Justice has an informative website; the Palestinians have put their *Official Gazette* on line. But this is only the beginning of efforts to build transparency and share information.

CONSTITUTIONAL PROVISIONS ON THE JUDICIARY					
	<i>Guarantees independence of judiciary</i>	<i>Specifies court structure</i>	<i>Judicial review of constitutionality of legislation</i>	<i>Provides for Specialized courts</i>	<i>Specifies judicial council and its composition</i>
Algeria	Yes, few detailed provisions	Little detail	Constitutional council	Yes	Yes, places president as its head
Egypt	Yes, few detailed provisions	Little detail	Constitutional court	Yes	Yes, places president at its head (but legislation passed in 1984 has allowed most of its competencies to be exercised through exclusively judicial body)
Jordan	Yes, few detailed provisions	Some detail	Limited	Yes, limited details	No
Kuwait	Yes, few detailed provisions	No	Constitutional court	Limited provisions	Yes, composition left to legislation
Lebanon	Yes, very general provision	No	Constitutional council	No	No
Morocco	Yes, few detailed provisions	No	Constitutional council	Very limited	Yes, composition specifies executive branch participation
Palestine (DRAFT)	Yes, some detailed provisions	No	Constitutional court	Some limited provisions	Yes, composition left to legislation
Saudi Arabia	Yes, few detailed provisions	Limited	No	Some limited provisions	No
Sudan	Yes, some detailed if somewhat weak provisions	Yes	Constitutional court	Some provisions	Yes, leaves composition to legislation; leaves much authority in hands of chief justice and president
Syria	Yes, few detailed provisions	No	Constitutional court	Some provisions	Yes, headed by president
Tunisia	Yes, few detailed provisions	No	Constitutional council	Limited provisions	Yes, composition left to legislation
UAE	Yes, some detailed provisions	Yes	Yes, in Federal Supreme Court	No	No
Yemen	Yes, some strong and detailed provisions	No	Yes, in Supreme Court	Prohibited by constitution	Yes, composition left to legislation

STRUCTURE OF COURT SYSTEM

<p>Algeria</p> <ul style="list-style-type: none"> - Three levels: Civil and criminal, first instance, Supreme Court 	<p>Egypt</p> <ul style="list-style-type: none"> - Three levels: Summary and primary, appeals, cassation - Separate administrative court system
<p>Jordan</p> <ul style="list-style-type: none"> - Religious and special courts retain jurisdiction as specified by the constitution or law - Civil courts have three levels: primary and magistrate, appeals, cassation - High Court of Justice hears administrative cases 	<p>Kuwait</p> <ul style="list-style-type: none"> - Three levels: Summary and first instance, appeals courts, cassation
<p>Lebanon</p> <ul style="list-style-type: none"> - Courts of general jurisdiction have three levels: first instance, appeals, cassation - Administrative court system 	<p>Morocco</p> <ul style="list-style-type: none"> - Three levels of courts for general jurisdiction: Communal, district, and primary courts, appeals, Supreme Court
<p>Palestine/ Palestinian National Authority</p> <ul style="list-style-type: none"> - Currently two levels: magistrate and district courts, court of appeals Plans to construct a court of cassation - High Court for administrative cases 	<p>Saudi Arabia</p> <ul style="list-style-type: none"> - Basis for court system are the shari'a courts - There are trial courts (two levels), appeals court and a Supreme Judicial Council - There are a number of specialized tribunals (details discussed in Specialized Courts)
<p>Sudan</p> <ul style="list-style-type: none"> - Three levels: general or summary, appeals, Supreme Court 	<p>Syria</p> <ul style="list-style-type: none"> - Three levels: magistrate, juvenile, customs, and first instance; appeals; cassation
<p>Tunisia</p> <ul style="list-style-type: none"> - Three levels: cantonal and first instance, appeals, cassation 	<p>United Arab Emirates</p> <ul style="list-style-type: none"> - Federal court system has three levels: primary, appeals, Supreme Court - Local court system has two courts: shari'a courts and rulers' courts
<ul style="list-style-type: none"> • Yemen - Three levels: first instance, appeals, Supreme Court 	

PERSONAL STATUS ISSUES

<p>Algeria</p> <ul style="list-style-type: none"> - No separate shari'a courts - A code for personal status cases implemented by courts of general jurisdiction 	<p>Egypt</p> <ul style="list-style-type: none"> - No special personal status or shari'a court - Special sections in regular courts deal with personal status cases according to religiously codified laws and sectarian laws
<p>Jordan</p> <ul style="list-style-type: none"> - Handled by the religious court system, especially shari'a courts 	<p>Kuwait</p> <ul style="list-style-type: none"> - No separate shari'a judiciary - Handled by sections of civil courts according to religiously codified laws
<p>Lebanon</p> <ul style="list-style-type: none"> - Handled by specialized confessional courts - Two shari'a courts, there are also courts for Christians, Druze and Jews 	<p>Morocco</p> <ul style="list-style-type: none"> - No separate shari'a courts - Judges have special training in shari'a and hear cases in designated chambers of the regular court system
<p>Palestine/ Palestinian National Authority</p> <ul style="list-style-type: none"> - Handled by a special court system - Each religious community has its own courts 	<p>Saudi Arabia</p> <ul style="list-style-type: none"> - Shari'a laws have general jurisdictions, including jurisdiction over personal status issues
<p>Sudan</p> <ul style="list-style-type: none"> - A unified personal status court system is implied in the 1998 constitution but not explicitly required 	<p>Syria</p> <ul style="list-style-type: none"> - Separate court system for personal status cases - Handled by religious courts for different religious communities
<p>Tunisia</p> <ul style="list-style-type: none"> - No separate shari'a or personal status judiciary - Handled by specialized sections in the civil courts in accordance with codified law 	<p>United Arab Emirates</p> <ul style="list-style-type: none"> - Shari'a courts are dominant in personal status issues
<p>Yemen</p> <ul style="list-style-type: none"> - No separate personal status courts - Handled by specialized chambers of the courts of general jurisdiction 	

PROSECUTION SYSTEM

<p>Algeria</p> <ul style="list-style-type: none"> - Niyaba system - Investigation of crimes often handled by the judicial police 	<p>Egypt</p> <ul style="list-style-type: none"> - Niyaba system
<p>Jordan</p> <ul style="list-style-type: none"> - Niyaba system which is part of the Ministry of Justice 	<p>Kuwait</p> <ul style="list-style-type: none"> - Niyaba system
<p>Lebanon</p> <ul style="list-style-type: none"> - Niyaba system - The system is both a judicial and an executive branch function 	<p>Morocco</p> <ul style="list-style-type: none"> - Niyaba system - It is a quasi-judicial function, where the public prosecution is part of the executive branch
<p>Palestine/ Palestinian National Authority</p> <ul style="list-style-type: none"> - Niyaba system - The system is still establishing itself 	<p>Saudi Arabia</p> <ul style="list-style-type: none"> - Investigation and prosecution of crimes are the functions of the police and Ministry of Interior
<p>Sudan</p> <ul style="list-style-type: none"> - Niyaba system that is not completely adopted - The system is an executive-branch function under the Ministry of Justice 	<p>Syria</p> <ul style="list-style-type: none"> - Niyaba system - Though described in the constitution as judicial in character, the niyaba is headed by the minister of justice
<p>Tunisia</p> <ul style="list-style-type: none"> - The system is largely judicial though prosecutors fall within the Ministry of Justice 	<p>United Arab Emirates</p> <ul style="list-style-type: none"> - Niyaba system - It is a judicial function that is overseen by the Ministry of Justice
<p>Yemen</p> <ul style="list-style-type: none"> - Niyaba system 	

APPOINTING/ ASSIGNING/ EVALUATION OF JUDGES

<p>Algeria</p> <ul style="list-style-type: none"> - There is direct role of the executive in these processes 	<p>Egypt</p> <ul style="list-style-type: none"> - Most of the appointments and assignments are made by the Supreme Judicial Council - Judicial inspection and discipline are supervised by the Ministry of Justice
<p>Jordan</p> <ul style="list-style-type: none"> - These functions are largely judicial processed by the High Judicial Council; the Council has not yet achieved total independence from the Ministry of Justice 	<p>Kuwait</p> <ul style="list-style-type: none"> - Judicial council with limited executive branch involvement - Non-Kuwaiti judges are brought on contracts that are originated and administered by the Ministry of Justice
<p>Lebanon</p> <ul style="list-style-type: none"> - Appointments and promotions are made by the Ministry of Justice and approved by the Supreme Judicial Council 	<p>Morocco</p> <ul style="list-style-type: none"> - The Supreme Judicial Council is composed of members from both the judicial and executive branches - Supervision and inspection are the responsibility of the Ministry of Justice
<p>Palestine/ Palestinian National Authority</p> <ul style="list-style-type: none"> - A presidential-appointed Supreme Judicial Council oversees the appointments, assignments, and promotions - The Council is mostly judicial, but its mechanisms, internal management, and legal basis are still being defined 	<p>Saudi Arabia</p> <ul style="list-style-type: none"> - The judiciary is governed by a Supreme Judicial Council - Members of the Council are largely appointed by a royal order; however, the Council has been an autonomous organization in practice
<p>Sudan</p> <ul style="list-style-type: none"> - The president of the republic along with the Supreme Judicial Council are responsible for judicial appointments - The Council's composition is a mix of members from the judicial and the executive branches as well as public figures - The evaluation and administration of the judiciary falls to the chief justice, sometimes working with the Ministry of Justice 	<p>Syria</p> <ul style="list-style-type: none"> - The constitution provides for the Supreme Judicial Council - The Council's administration and functions are performed with the participation of the executive branch
<p>Tunisia</p> <ul style="list-style-type: none"> - Judicial matters are overseen by the Supreme Judicial Council - The Council is composed of members from both the judicial and executive branches 	<p>United Arab Emirates</p> <ul style="list-style-type: none"> - Appointments of federal judges are performed by the UAE president, nominated by the minister of justice - Judicial council has extensive participation from executive - Judges who are citizens of the UAE are appointed for life, unless proven to be incapable or unfit Non UAE citizens are appointed on contract bases - Charges against judges are heard by an exclusively judicial body
<p>Yemen</p> <ul style="list-style-type: none"> - The Supreme Judicial Council exercises significant authority over the judiciary, though senior judicial positions are appointed by the president - Members of the Council come from both the judicial and executive branches - Judicial inspection is performed by the Ministry of Justice, and disciplinary issues by the Supreme Judicial Council 	

ADMINISTRATION AND RELATIONSHIP WITH THE MINISTRY OF JUSTICE

<p>Algeria</p> <ul style="list-style-type: none"> - Most judicial matters are not under judicial control 	<p>Egypt</p> <ul style="list-style-type: none"> - The judiciary has a considerable amount of budgetary and administrative autonomy from the Ministry of Justice, though the Ministry retains a role in some matters
<p>Jordan</p> <ul style="list-style-type: none"> - The budget and administration are largely within the Ministry of Justice 	<p>Kuwait</p> <ul style="list-style-type: none"> - The Ministry of Justice, with consultation of the Supreme Judicial Council, oversees most budgetary and administrative support of the court
<p>Lebanon</p> <ul style="list-style-type: none"> - The budget and administration of the courts largely falls within the Ministry of Justice 	<p>Morocco</p> <ul style="list-style-type: none"> - The Ministry of Justice still plays the predominant role
<p>Palestine/Palestinian National Authority</p> <ul style="list-style-type: none"> - The budget of the courts is overseen by the Ministry of Justice - Since the legislative basis for courts is still being established, the Ministry of Justice plays a major role in court administration, though a newly-established judicial council is taking on some important functions 	<p>Saudi Arabia</p> <ul style="list-style-type: none"> - Much of the administrative support for the courts comes from the ministry of Justice - Budgetary matters are most probably within the Ministry of Justice, but it is difficult to obtain information on this area
<p>Sudan</p> <ul style="list-style-type: none"> - Most of the budgetary oversight and implementation falls to the chief justice along with the Supreme Judicial Council - Supervisory and administrative functions are assigned to the chief justice - The chief justice is a presidential appointment 	<p>Syria</p> <ul style="list-style-type: none"> - Budgetary issues are within the Ministry of Justice - The Ministry of Justice has responsibility for virtually all administrative functions related to the judiciary and oversees support personnel for the courts
<p>Tunisia</p> <ul style="list-style-type: none"> - The budget and administration of the courts fall largely within the Ministry of Justice 	<p>United Arab Emirates</p> <ul style="list-style-type: none"> - The Ministry of Justice retains oversight virtually over all aspects of court administration - The Federal Supreme Court has some autonomy - The portfolio for justice is combined with Islamic Affairs and Awqaf (religious endowment)
<p>Yemen</p> <ul style="list-style-type: none"> - The budget is largely the responsibility of the Ministry of Justice - The Supreme Court has an independent budget that is overseen by its president - The Ministry of Justice has a close administrative relationship with the Supreme Judicial Council and other judicial organs 	

**SPECIALIZED COURTS
and their jurisdictions**

<p>Algeria</p> <ul style="list-style-type: none"> - Military courts: crimes committed in military zones in association with members of the armed forces - Audit Court: state finances - High Court of State: crimes by the president - Council of State: administrative cases - Tribunal of Conflicts: settle conflicts between the Council of State and the Supreme Court 	<p>Egypt</p> <ul style="list-style-type: none"> - Security courts - Military courts - Court of Ethics - Parties Court - Supreme Constitutional Court - Council of state (administrative cases)
<p>Jordan</p> <ul style="list-style-type: none"> - Two special quasi-judicial bodies: <ol style="list-style-type: none"> 1. The High Tribunal 2. The Special Tribunal - Military and state security 	<p>Kuwait</p> <ul style="list-style-type: none"> - Specialized constitutional court - Military courts
<p>Lebanon</p> <ul style="list-style-type: none"> - Military courts - Court of Audit - The Judicial Council - The Supreme Council - The Constitutional Council 	<p>Morocco</p> <ul style="list-style-type: none"> - Military courts - High Court of Justice - Constitutional Council
<p>Palestine/ Palestinian National Authority</p> <ul style="list-style-type: none"> - State Security Court, which has two structures: <ol style="list-style-type: none"> 1. The Supreme State Security Court 2. The regular State Security Court - Elections Court 	<p>Saudi Arabia</p> <ul style="list-style-type: none"> - Committee for the Settlement of Commercial Disputes - Board of Grievances - Labor Board - Other similar bodies for monetary, traffic, and customs
<p>Sudan</p> <ul style="list-style-type: none"> - A constitutional court - A special Employees Justice Chamber - Local tribunals - Special Courts 	<p>Syria</p> <ul style="list-style-type: none"> - Military field courts. - Economic Security Courts. - Supreme State Security Court. - Council of State (administrative cases) - Supreme Constitutional Court
<p>Tunisia</p> <ul style="list-style-type: none"> - Military courts - Council of State - High Court. - Constitutional Council 	<p>United Arab Emirates</p> <ul style="list-style-type: none"> - The UAE does not have specialized courts.
<p>Yemen</p> <ul style="list-style-type: none"> - There are no specialized courts, though there are specialized chambers within courts of general jurisdictions - The constitution prohibits special courts 	

JUDICIAL EDUCATION

<p>Algeria</p> <ul style="list-style-type: none"> - Judges required to complete year at National Judicial Training Institute 	<p>Egypt</p> <ul style="list-style-type: none"> - Cairo's National Center for Judicial Studies is constructing a two-year program for new members of the judicial corps and initiated some efforts to provide continuing education for judges - Some training of non-Egyptian judges
<p>Jordan</p> <ul style="list-style-type: none"> - The Jordanian Judicial Institute works to train judges and raise the legal knowledge of existing judges 	<p>Kuwait</p> <ul style="list-style-type: none"> - Kuwait has still not been able to train sufficient numbers of judges to staff all of its courts - The Kuwait Institute for Judicial and Legal Studies administers training session for judges, prosecutors, court personnel, and state legal advisors - Some training completed in other Arab countries
<p>Lebanon</p> <ul style="list-style-type: none"> - The Institute for Judicial Studies provides for initial training for Lebanese judges 	<p>Morocco</p> <ul style="list-style-type: none"> - New judges go through a mandatory three-year training period in the National Institute of Judicial Studies
<p>Palestine/ Palestinian National Authority</p> <ul style="list-style-type: none"> - There is no formal system of training Palestinian judges, but Palestinian universities have begun to build law schools; one university conducts some judicial training - Some judges complete training in other countries 	<p>Saudi Arabia</p> <ul style="list-style-type: none"> - Judges receive university training in Islamic law before attending the High Institute of the Judiciary for further training - Some university courses are offered in the regulatory legal system
<p>Sudan</p> <ul style="list-style-type: none"> - Judges are expected to undergo a year of specialized judicial training and a year of practical training after receiving a law degree 	<p>Syria</p> <ul style="list-style-type: none"> - Required training is accomplished through practical training rather than formal study
<p>Tunisia</p> <ul style="list-style-type: none"> - The High Magistrates Institute - The Center for Legal Judicial Studies, which is a research body 	<p>United Arab Emirates</p> <ul style="list-style-type: none"> - Many judges are borrowed from other Arab countries - Native UAE judges are mostly trained overseas
<p>Yemen</p> <ul style="list-style-type: none"> - New members of the judicial corps have to go through three years of mandatory course of study at then High Judicial Institute after receiving their law degrees 	

SOURCES ON ARAB JUDICIARIES

There are few comprehensive written sources on judicial structures in the Arab world. It is generally possible to obtain basic legal information (such as on legal framework or court structure) on individual countries, though this information is not often well circulated internationally. The most accurate information is often obtained from examining the texts of the laws themselves, but for this one must often resort directly to a country's *Official Gazette*, a publication that is often difficult to obtain outside of the country except in specialized research libraries. And public information on more administrative or technical aspects of judicial structures (such as judicial training, budgeting, or administrative personnel) is generally extremely scanty. In recent years, there have been several important Arab conferences dealing with legal and judicial matters, though not all of the proceedings have been published.

Information on Arab judicial structures is beginning to appear on the internet, though quite unevenly. Perhaps the most prolific contributors are the human rights organizations. This work is often quite helpful, but it naturally focuses on a specific area of the administration of justice. Most organizations do not attempt to provide comprehensive overviews of judicial structures. Perhaps the most legally-oriented organization is the Lawyers Committee for Human Rights (www.lchr.org). Human Rights Watch (www.hrw.org) also has some useful information. The human-rights reports issued annually by the United States Department (most recently at <http://www.state.gov/g/drl/rls/hrrpt/2000>) are broader, but even they provide incomplete coverage. Most constitutions in the Arab world can be found at <http://www.uni-wuerzburg.de/law/home.html>, though the site is not completely up to date. And country studies produced by the United States Library of Congress often have coverage of the judicial structure, though the information is sometimes dated (<http://lcweb2.loc.gov/frd/cs/cshome.html>).

Two universities have very useful websites for Arab legal systems. The School of Oriental and African Studies at the University of London's Centre of Islamic and Middle Eastern Law has a very comprehensive site at <http://www.soas.ac.uk/Centres/IslamicLaw>. Emory University's Islamic Family Law project (<http://www.law.emory.edu/IFL>) has capsule overviews of the legal systems of each Arab state. A commercial site with some basic legal information on Gulf states is <http://gulf-law.com/index.html>.

In addition, there are several country-specific sites worth mentioning:

- Algeria: Constitutional Council <http://www.conseilconstitutionnel-dz.org/>
- Egypt: State Information Service <http://www.sis.gov.eg/>; Constitution (in English) http://www.parliament.gov.eg/en_aconst4.htm#begin
- Jordan: Links to government websites <http://www.nis.gov.jo/orgstruc/eorgchrt.htm>; legislation and constitutional documents <http://www.lob.gov.jo>
- Kuwait: information on the judiciary http://www.kuwait.kw/main/Story_Of_Kuwait/Oil_Era/New_era/laws_qada.html
- Morocco: the Ministry of Justice has perhaps the most detailed official site in the Arab world: <http://www.justice.gov.ma>
- Palestine/PNA: the Institute of Law at Bir Zeit University provides information on Palestinian law, education, and on-line access to the *Official Gazette* at <http://lawcenter.birzeit.edu/news.html>

ALGERIA

The Algerian judiciary has continued operating through two difficult periods since independence. First, in the 1960s, the country's leadership was less friendly to the idea of separation of powers than almost any other Arab state. Second, the political upheaval of the 1990s made it difficult for many state institutions to function for an extended period. Part of the attempt to resolve the disputes that wracked Algeria during that period involved strengthening judicial institutions, but that process has only begun.

1. Constitutional provisions for the judiciary

Algeria has experienced some instability in its constitutional order. While constitutions have been in effect, they sometimes insisted that ideological principles be honored by the judiciary even while speaking of judicial independence. Critics charged that the effect was to subordinate the judiciary to official ideology as defined by the ruling party. Algeria's 1996 constitution, however, has extensive provisions for the judiciary and abandoned the attempt to prescribe a specific ideology.

Article 138 The judicial authority is independent. It is exercised within the framework of the law.

Article 139 The judicial authority protects the society and the liberties. It guarantees, to all and to everyone, the safeguard of their fundamental rights.

Article 140 Justice is founded on the principles of lawfulness and equality. It is the same for all, accessible for all and is expressed by the respect of the law.

Article 141 Justice is dispensed on behalf of the People.

Article 142 Punishments should comply with the principles of lawfulness and individuality.

Article 143 Justice shall provide recourse against the decisions of administrative agencies.

Article 144 The decisions of justice are justified and pronounced in public hearing.

Article 145 All the qualified State bodies should ensure, at any time, in any place and in any circumstances, the execution of justice decisions.

Article 146 Justice is pronounced by magistrates. People's assessors may assist them in accordance with the conditions defined by law.

Article 147 The judge is subject only to the law.

Article 148 The judge is protected against any foam of pressure, interventions or maneuvers that prejudice his mission or the respect of his free will.

Article 149 The magistrate is answerable before the Supreme Judicial Council and within the forms prescribed by the law on the way he accomplishes his task.

Article 150 The law protects the litigants against judicial abuse and deviation.

Article 151 The right for defense is recognized. In penal matters, it is guaranteed.

Article 152 The High Court is the regulating body for the activities of the courts and tribunals. A Council of State is instituted as a regulating body of activities of the administrative jurisdictions. The High Court and the Council of State are responsible for the unification of jurisprudence throughout the country and see to the respect of the law.

A Tribunal of Conflicts is instituted to settle conflicts of competency between the High Court and the Council of State.

Article 153 The organization, the functioning and other attributions of the High Court, the Council of State and the Tribunals of Conflicts are defined by an organic law.

Article 154 The Supreme Judicial Council is headed by the President of the Republic.

Article 155 The Supreme Judicial Council decides, within the conditions defined by the law, the appointment, transfer and the progress of the magistrate's careers. It provides for the respect of the provisions provided for the statute of the magistracy and of the control of discipline under the chairmanship of the First President of the High Court.

Article 156 The Supreme Judicial Council gives a prior consultative opinion to the exercise of the right of free pardon by the President of the Republic.

Article 157 An organic law defines the composition, the functioning and the other prerogatives of the Supreme Judicial Council.

Article 158 A High Court of State is instituted to deal with actions that can be qualified of high treason committed by the President of the Republic, with crimes and infringements committed by the Head of Government during their of office. An organic law defines the composition, the organization and the functioning of the High Court of State as well as the procedures of implementation.

Article 163 A Constitutional Council is instituted to guarantee respect of the constitution. The Constitutional Council also ensures proper process in referenda, election of the President of the Republic, and legislative elections. It proclaims the results of these operations.

Article 164 The Constitutional Council is composed of nine members: three appointed by the President of the Republic among whom is the President, two elected by the People's National Assembly, two elected by the Council of Nation, one elected by the Supreme Court of Nation, one elected by the Council of state. Once elected or appointed the members of the Constitutional Council cease any other mandate, function, responsibility or mission. The President of the Republic appoints the President of the Constitutional Council for a single mandate of six years. The other members of the Constitutional Council fill a unique mandate of six years and are renewed by half every three years.

Article 165 In addition to the prerogatives explicitly bestowed upon it by other provisions of the constitution, the Constitutional Council pronounces on the constitutionality of treaties, laws and regulations, either through an opinion if these are not enforced or, otherwise, through a decision. The Constitutional Council, called upon by the President of the Republic, expresses a binding opinion on the constitutionality of the organic laws following their adoption by the Parliament. The Constitutional Council also pronounces on the conformity of the rules of procedures of each of the two chambers of the Parliament with the Constitution accordance with the provisions of the above mentioned paragraph.

Article 166 The Constitutional Council is summoned by the President of the Republic, the President of the People's National Assembly or by the President of the Council of Nation.

Article 167 The Constitutional Council deliberates in camera; its opinion or its decision is given within twenty (20) days following the date it was referred to. The Constitutional Council defines the rules of its functioning.

Article 168 When the Constitutional Council considers that a treaty, an agreement, or a convention is not constitutional, its ratification cannot take place.

Article 169 When the Constitutional Council considers that a legislative or regulatory provision is not constitutional, it loses its effect from the date the decision is taken by the Council.

Article 170 An Audit Court is instituted with the task of controlling a posteriori the finances of the State, the territorial collectivities and public services. The Audit Office establishes a yearly report that is addressed to the President of the Republic. The law defines the prerogatives, the organization and the functioning of the Audit Office as well as the sanctions of its investigations.

2. Structure of court system

The Algerian court system has three levels. *Da'ira* courts serve to hear disputes in civil and some criminal matters. The second level consists of *wilaya* courts that serve as the courts of first instance for remaining criminal cases and as courts of appeal for the *da'ira* courts. Finally, the Supreme Court sits at the apex of the system, with separate chambers for civil and commercial cases, social cases, and criminal cases.

3. Personal status issues

Algeria has a code for personal status cases implemented by the courts of general jurisdiction; there are no separate shari'a courts.

4. Prosecution system

While Algeria has a *niyaba* system, investigation of crimes is often handled initially by the judicial police. In recent years, the government has worked to bring some judicial supervision over the judicial police and ensure that the police follow legal procedures.

5. Appointing/assigning/evaluation of judges

The composition of the Supreme Judicial Council in Algeria is prescribed in the constitution as headed by the president of the republic. This gives the executive a direct role in assigning, promoting, and transferring judges.

6. Administration and Relationship with the Ministry of Justice

Unlike many other Arab countries, the Algerian judiciary does not have the ability to act as a corporate body with executive leadership of the Supreme Judicial Council. Most administrative matters are therefore not under judicial control.

7. Specialized courts

While special courts existed to deal with political crimes, they were abolished in 1995 and their work assigned to the courts of general jurisdiction.

Military courts do have the ability to try civilians but the law of the military courts restricts this jurisdiction to crimes committed in a military zone or in association with members of the armed forces.

Like some of its North African neighbors, Algeria has an Audit Court to oversee state finances.

The constitution also calls for a High Court of State to deal with crimes by the president.

A Constitutional Council has been created, with its members appointed by the president, the Supreme Court, and the parliament.

Algeria had a separate Council of State including jurisdiction over administrative cases, but it was abolished in the 1960s. A separate chamber of the Supreme Court heard administrative cases. However, the 1996 constitution called for a return to the older system, and the Council of State was therefore reborn in 1998.

The addition of the administrative courts to Algeria's judicial system prompted the architects of the 1996 constitution to introduce a new body to settle conflicts of jurisdiction between the Council of State and the Supreme Court; this body is called the Tribunal of Conflicts.

8. Judicial education

Algeria requires judges to complete a mandatory year of training at its National Judicial Training Institute.

EGYPT

Egypt has one of the most highly developed and influential judicial structures in the Arab world. Because modern judicial reform began in Egypt much earlier than other countries, and because of the early development of legal education in Egypt, many Arab countries have drawn on Egyptian models, Egyptian experts, and often Egyptian personnel when embarking on their own programs of judicial reform.

1. Constitutional provisions for the judiciary

Egypt has one of the oldest constitutional traditions in the Arab world. Its 1971 constitution contains provisions for the judiciary that reflect this heritage. There is strong language guaranteeing the right to litigation, the presumption of innocence and to resort to one's "natural judge." There are also some influences from Egypt's socialist period, with provisions for popular participation in justice and for a "Socialist Public Prosecutor." In recent years, the more liberal provisions of the Egyptian constitution have come to the fore, especially under the watchful eye of the country's Supreme Constitutional Court. Other elements—such as the Socialist Public Prosecutor—have not been repealed but they have diminished in importance.

Article 165 The judicial authority shall be independent. It shall be exercised by courts of justice of different sorts and competences. They shall issue their judgments in accordance with the law.

Article 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.

Article 167 The law shall determine judicial organization and competences and shall organize the way of their formation and prescribe the conditions and measures for the appointment and transfer of their members.

Article 168 The status of judges shall be irrevocable. The law shall regulate the disciplinary actions with regard to them.

Article 169 The sessions of courts shall be public, unless a court decides to hold them in camera for considerations of public order or morality. In all cases, judgments shall be pronounced in public sessions.

Article 170 The people shall contribute to maintaining justice in accordance with the manner and within the limits prescribed by law.

Article 171 The law shall regulate the organization of the State Security Courts and shall prescribe their competences and the conditions to be fulfilled by those who occupy the office of judge in them.

Article 172 The State Council shall be an independent judiciary organization competent to take decisions in administrative disputes and disciplinary cases. The law shall determine its other competences.

Article 173 A Supreme Council, presided over by the president of the republic shall supervise the affairs of the judicial organizations. The law shall prescribe its formation, its competences, and its rules of action. It shall be consulted with regard to the draft laws organizing the affairs of the judiciary organizations.

Article 174 The Supreme Constitutional Court shall be an independent judicial body in the Arab Republic of Egypt, having its seat in Cairo.

Article 175 The Supreme Constitutional Court alone shall undertake the judicial control in respect of the constitutionality of the laws and regulations and shall undertake the interpretation of the legislative texts in the manner prescribed by law. The law shall prescribe the other competences of the court, and regulate the procedures to be followed before it.

Article 176 The law shall organize the way of formation of the Supreme Constitutional Court, and prescribe the conditions to be fulfilled by its members, their rights and immunities.

Article 177 The status of the members of the Supreme Constitutional Court shall be irrevocable. The Court shall call to account its members, in the manner prescribed by law.

Article 178 The judgments issued by the Supreme Constitutional Court in constitutional cases, and its decisions concerning the interpretation of legislative texts shall be published in the Official Gazette. The law shall organize the effects subsequent to a decision concerning the unconstitutionality of a legislative text.

2. Structure of court system

The Egyptian court system dates back over a century and has grown fairly complex. However, the courts of general jurisdiction are similar to their counterparts in other Arab countries; indeed, they have served as a model for much of the Arab world. There are three levels— the summary (*juz'i*) and primary (*ibtida'iyya*), appeals (*isti'naf*), and cassation (*naqd*). Sections exist for civil, criminal, commercial, personal status, and labor cases.

Yet the Egyptian court structure is complicated by an unusually developed system of other, specialized courts. Some of these (such as the administrative court system and the Supreme Constitutional Court) have become vital parts of the Egyptian judicial order, although both were controversial when founded. Other special courts—such as those for state security or ethics—continue to provoke controversy.

3. Personal status issues

Personal status issues are dealt with by the courts of general jurisdiction. There is no special personal status or shari'a judiciary, though the regular courts do have designated sections for personal status cases. Personal status law has been codified for Muslims and Coptic Christians. In other cases, the judiciary works to apply sectarian law.

4. Prosecution system

Egypt pioneered in its adoption of a "niyaba" system in which the investigation and prosecution of crime is a judicial function. Members of the *niyaba* are part of the Egyptian judicial corps, and many (though hardly all) judges begin their careers as members of the *niyaba*. The *niyaba* is headed by the Attorney-General (*al-na'ib al-'amm*).

The members of the *niyaba* are treated similarly to judges in all respects and thus have a large degree of independence.

5. Appointing/assigning/evaluation of judges

The Egyptian constitution of 1971 provides for a "Supreme Council of Judicial Organizations." The creation of this body occasioned considerable controversy, because it included executive branch appointments and seemed to remove some of the Egyptian judiciary's hard-won autonomy. Accordingly, in 1984, most of the appointment and assignment of judges was returned to the "Supreme Judicial Council" which consists entirely of judges (most of whom serve by virtue of their office) or judicial personnel. This makes the Egyptian judiciary one of the most independent in the Arab world.

While the Supreme Judicial Council is thus an important bulwark of Egyptian judicial independence, its authority over some matters involves consultation or approval rather than initiation of action. This is especially the case with some very senior judicial appointments (such as the Attorney-General).

Other judicial bodies (such as the Council of State and the Supreme Constitutional Court) have separate procedures. Many (but not all) of these contain their own guarantees of independence even if they lay outside of the Supreme Judicial Council.

Judicial inspection and discipline are carried out by judicial personnel seconded to the Ministry of Justice; their recommendations are submitted to the Supreme Judicial Council.

6. Administration and relationship with Ministry of Justice

The Egyptian judiciary has not yet achieved as much budgetary and administrative autonomy from the Ministry of Justice as it would like, though it has greater autonomy than many of its Arab counterparts. In recent years, there has been a dedicated effort to maintain judicial salaries (though the government has not been able to be as generous with support personnel for the courts). Some courts complain that they suffer from under-budgeting, forcing them to make periodic requests for supplementary funds from the Ministry.

Over time, the judiciary has successfully obtained a considerable degree of autonomy from the Ministry of Justice. There have been some reversals in this process, most notably in the 1960s and 1970s. However, since 1984 there can be no doubt that the basic framework for Egyptian judicial independence has been laid. In the years immediately following the 1984 reform, there were occasional clashes between the judiciary and the Ministry on the application of the law, but those have been largely resolved.

7. Specialized courts

Egypt has several systems of specialized and exceptional courts. The regular court system has specialized courts for some matters (such as taxation and customs).

There is also a dual system of security courts. Permanent state security courts have two levels and draw their judges from the regular court system. In addition, a “State Security Court—Emergency Section” exists with much more direct executive involvement in its composition and jurisdiction. The permanent state security courts allow some basis for appeal; the Emergency Section allows no judicial appeal, but the military governor (under a state of emergency) is allowed to affirm the verdict or order a retrial.

Military courts exist generally to try those cases involving the armed forces, but during a state of emergency the president is authorized by the law of the military courts to transfer crimes to them.

A Court of Ethics was created to try cases of corruption and illicit economic gain. The Socialist Public Prosecutor is the only body authorized to bring cases to this court. While most of its members are professional judges, respected public personalities are added to the bench as well. The Court of Ethics has two levels.

When Egypt’s constitution was amended to allow a multi-party system, a new body was created to determine the legality of new parties and their eligibility to contest elections. While generally referred to as the “Parties Court,” this body is as much a political as a judicial body.

There is an extensive administrative court system, attached to the State Council (*Majlis al-Dawla*). Established in 1946, the Egyptian administrative courts are among the most developed in the region. They have jurisdiction over any case in which the state is a party.

Finally, the Supreme Constitutional Court is an independent judicial body that has jurisdiction over matters of constitutional interpretation. The Court receives cases referred to it by other courts when there is a question regarding the constitutionality of a law, regulation, or administrative decision. Its decisions are final and binding on all official bodies. The Court also may offer constitutional interpretations when requested by certain official actors and it also plays a role in cases when there is a clash of jurisdiction among judicial bodies.

8. Judicial education

Egyptian judges generally begin their careers when they graduate from law school and are selected on a competitive basis.

Cairo's National Center for Judicial Studies, one of the leading judicial training bodies in the region, has been called upon to play an increasing role in preparing judges for their work. The Center is constructing a full two-year program for new members of the judicial corps. The Center has also stepped up some efforts to provide continuing education for judges. Some other Arab countries send judges for training to the Center as well.

JORDAN

Jordan's judiciary has evolved over the past century: it began the twentieth century under Ottoman rule and large elements of Ottoman law remained effective in Jordan until recently. Jordan then experienced a British mandate, though British influence over the legal system remained restricted. Since full independence in 1947, Jordan's legal and judicial structure has grown to resemble that of other Arab countries such as Syria and Egypt.

1. Constitutional provisions for the judiciary

Jordan's constitution contains detailed provisions for all of the country's courts and judicial structures:

Article 97 Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law.

Article 98 Judges of the civil and shari'a courts shall be appointed and dismissed by a royal decree in accordance with the provisions of the law.

Article 99 The courts shall be divided into three categories: (i) Civil Courts (ii) Religious Courts (iii) Special Courts

Article 100 The establishment of the various courts, their categories, their divisions, their jurisdiction and their administration shall be by virtue of a special law, provided that such law provides for the establishment of a High Court of Justice.

Article 101 (i) The courts shall be open to all and shall be free from any interference in their affairs. (ii) The sittings of the courts shall be public unless the court considers that it should sit in camera in the interest of public order or morals.

Article 102 The civil courts in the Hashemite Kingdom of Jordan shall have jurisdiction over all persons in all matters, civil and criminal, including cases brought by or against the Government, except those matters in respect of which jurisdiction is vested in religious or special courts in accordance with the provisions of the present Constitution or any other legislation in force.

Article 103 (i) The civil courts shall exercise their jurisdiction in respect of civil and criminal matters in accordance with the law for the time being in force in the Kingdom, provided that in matters affecting the personal status of foreigners or in matters of a civil or commercial nature which in accordance with international usage are governed by the law of another country, such law shall be applied in the manner designated by the law. (ii) Matters of personal status are those which are defined by law and in accordance therewith fall within the exclusive jurisdiction of the shari'a courts where the parties are Muslims.

Article 104 The religious courts shall be divided into: (i) The shari'a courts; and (ii) The tribunals of other religious communities.

Article 105 The shari'a courts shall in accordance with their own laws have exclusive jurisdiction in respect of the following matters: (i) Matters of personal status of Muslims. (ii) Cases concerning blood money (*diya*) where the two parties are Muslims or where one of the parties is not a Muslim and the two parties consent to the jurisdiction of the shari'a courts. (iii) Matters pertaining to Islamic *awqaf*.

Article 106 The shari'a courts shall in the exercise of their jurisdiction apply the provisions of the shari'a law.

Article 107 The organization of the affairs Muslim *awqaf* and the administration of their financial matters, among other matters, shall be regulated by a special law.

Article 108 The tribunals of religious communities are those for the non-Muslim religious communities that have been or will be recognized by the government as established in the Hashemite Kingdom of Jordan.

Article 109 (i) Tribunals of religious communities shall be established in conformity with the provisions of laws pertaining thereto. Such laws shall define the jurisdiction of such tribunals in matters of personal status and *awqaf* constituted for the benefit of the community concerned. Matters of personal status of

any such community shall be the same matters as are, in the case of Muslims, within the jurisdiction of the shari'a courts. (ii) Such laws shall determine the procedure to be followed by the tribunals of the religious communities.

Article 110 Special courts shall exercise their jurisdiction in accordance with the provisions of the laws constituting them.

2. Structure of court system

The civil court system has general jurisdiction; special courts and religious courts retain jurisdiction in areas specified by the constitution or by law.

The civil (*nizamiyya*) courts have three levels. Cases are first heard in either primary or magistrate (*sulh*) courts) according to their seriousness. Appeals are then directed to the Court of Appeals for both courts. At the apex of the appeal structure stands the Court of Cassation.

The civil courts also include the High Court of Justice, which hears directly all administrative cases. There are also specialized sections of the court for technical matters including taxation and customs.

3. Personal status issues

Personal status issues are handled by the religious court system. Since the great majority of Jordanians are Muslims, the shari'a courts form the primary venue for hearing personal status cases. The constitution protects the separate status of the religious courts, which remain distinct from the civil courts.

4. Prosecution system

Jordan follows a *niyaba* system in which investigation and prosecution of crimes is pursued as a quasi-judicial function. The *niyaba* is part of the Ministry of Justice.

5. Appointing/assigning/evaluation of judges

Jordan has a High Judicial Council. Unlike some of its counterparts in the Arab world, the Council is headed by a judge and thus represents an important guardian of judicial independence. Its composition is largely judicial, but it also includes a representative from the Ministry of Justice. The Council plays an important role in the appointment, assigning, and evaluation of judges.

Nonetheless, it does not exercise its authority with complete independence from the Ministry of Justice. The Ministry has been drafting a law to transfer this remaining authority to the Council (and other judicial reforms are also under consideration), but as of this writing no judicial reform has been passed into law. Adoption of a law would render Jordan's judiciary among the most independent in the Arab world.

6. Administration and Relationship with Ministry of Justice

The budget and administration of the courts remains largely within the Ministry of Justice.

The relationship between the Ministry of Justice and the judiciary in recent years has reflected the growing independence and professionalism of Jordanian judges. Calls for political reform have extended to the judiciary, as some Jordanians have felt that the judiciary has reached the level where it can administer most of its own affairs. Plans to arrange for this through new legislation have met no overt resistance and are proceeding but have not yet borne fruit.

7. Specialized courts

Besides the specialized sections of the regular courts, Jordan has several specialized courts, as the constitution allows.

Two special quasi-judicial bodies are specifically required by the Constitution. Both blend judicial and non-judicial members in light of their special responsibilities. Neither is a standing body; both are formed only when needed:

The High Tribunal, according to article 57 of the constitution, consists of “the Speaker of the Senate as President and eight members, three of whom shall be selected by ballot by the Senate from amongst its members and five members to be selected from amongst the judges of the highest Civil Court in order of seniority. In case of necessity, the number shall be completed from the presidents of the lower courts, also in order of seniority.” The Tribunal is granted two major powers. First, it is the body that tries ministers. Second, it has the right to interpret the Constitution when requested by the cabinet or either house of parliament. Its interpretations are binding.

The Special Tribunal may, upon request of the Prime Minister, interpret the provisions of any law that have not been interpreted by the courts. It consists of the President of the highest civil courts, two other senior judges, a senior administrative official appointed by the cabinet, and a senior official appointed by the concerned minister. Its interpretations are binding.

In addition, Jordan has both military and state security courts. The end of the state of emergency has removed the military courts from trying security crimes. Instead, the state security court (with a blend of military and civilian judges) tries such cases. A special state security prosecutor brings cases to this court. Its judgments may be appealed to the High Court.

There have been calls for construction of a specialized constitutional court, and Jordan’s National Charter of 1988 endorses these efforts, but no such court has yet been constructed. Jordan’s civil courts have asserted a right to judicial review of the constitutionality of legislation, but the decision asserting this right remains controversial.

8. Judicial education

The Jordanian Ministry of Justice established the Jordanian Judicial Institute in 1988. It works to train new judges and raise the legal knowledge of existing judges.

KUWAIT

The civil court system in Kuwait is one of the oldest in the Arabian peninsula and, unlike other GCC states, comprises personal status cases (and thus avoids the civil court-shari'a court dualism prevalent in its sister states).

1. Constitutional provisions for the judiciary

Kuwait's constitution was adopted in 1962 and has never been amended. Thus it is one of the oldest documents governing an Arab country (only Lebanon, Tunisia, and Jordan have older constitutions and all have been amended). The constitution contains a section on the judiciary with twelve articles:

Article 162 The honor of the Judiciary and the integrity and impartiality of judges are the bases of rule and a guarantee of rights and liberties.

Article 163 In administering justice, judges are not subject to any authority. No interference whatsoever is allowed with the conduct of justice. Law guarantees the independence of the Judiciary and states the guarantees and provisions relating to judges and the conditions of their irremovability.

Article 164 Law regulates the Courts of various kinds and degrees and specifies their functions and jurisdiction. Except when Martial Law is in force, Military Courts have jurisdiction only over military offences committed by members of the armed and security forces within the limits specified by law.

Article 165 **Sittings** of the Courts are to be public, except for the cases prescribed otherwise by law.

Article 166 The right of recourse to the Courts is guaranteed to all people. Law prescribes the procedure and manner necessary for the exercise of this right.

Article 167 (1) The Public Prosecution Office conducts penal charges on behalf of society. It supervises the affairs of judicial police, the enforcement of penal laws, the pursuit of offenders, and the execution of judgments. Law regulates this body, lays down its duties, and defines the conditions and guarantees for those who assume its functions. (2) As an exception, law may entrust to the public security authorities the conduct of prosecutions in misdemeanors in accordance with the manner prescribed by law.

Article 168 The Judiciary has a Supreme Council which is regulated, and its duties defined, by law.

Article 169 The law regulates the settlement of administrative suits by means of a special Chamber or Court, and prescribes its organization and the manner of assuming administrative jurisdiction including the power of both nullification and compensation in respect of administrative acts contrary to law.

Article 170 The law organizes the body that renders legal advice to ministries and public departments and drafts bills and regulations. Law also regulates the representation of the State and other public bodies before the Courts.

Article 171 A Council of State may be established by a law to assume the functions of administrative jurisdiction, rendering legal advice, and drafting bills and regulations, mentioned in the preceding two Articles.

Article 172 The method of resolving conflicts of jurisdiction or of judgments between the various kinds of Courts is prescribed by law.

Article 173 (1) The law specifies the judicial body competent to deciding disputes relating to the constitutionality of laws and regulations and determines its jurisdiction and procedure. (2) The law ensures the right of both the Government and the interested parties to challenge the constitutionality of laws and regulations before the said body. (3) If the said body decides that a law or a regulation is unconstitutional, it is considered null and void.

2. Structure of court system

Kuwait's court system is unusually unified. The civil courts have three levels. Initially, summary (*juz'i*) or first instance (*kullli*) take cases according to their gravity. The next level is an appeals court. A Court of Cassation (*mahkamat al-tamyiz*) stands at the apex of the system.

Rather than construct separate court systems, Kuwait has generally favored a unified approach. Thus, while its constitution permits (without requiring) a separate administrative court system, Kuwait has opted instead to construct sections of existing courts for administrative disputes. Other sections deal with criminal, commercial, personal status, labor, and rental cases.

There are some specialized courts (for instance, traffic courts), but they fall within the regular civil judiciary.

3. Personal status issues

Personal status cases are not assigned to a separate shari'a judiciary; instead, sections of the civil courts are designated for hearing personal status cases. For Muslims, the courts rule on the basis of codified Sunni law or Shi'i (*ja'fari*) law depending on the litigants. Non-Muslims are governed by their own laws.

4. Prosecution system

Kuwait largely follows the *niyaba* system in which the investigation and prosecution of crimes is a judicial function. The Attorney General heads the *niyaba* which is judicial in character. It is directed by a judicial official appointed by the minister of justice and approved by the Supreme Judicial Council. However, many lesser crimes are investigated and prosecuted by the police. In addition, a special and independent *niyaba* is formed for the Court of Cassation by the Supreme Judicial Council.

5. Appointing/assigning/evaluation of judges

Kuwaiti judges are formally appointed by the amir who acts on the advice of the Supreme Judicial Council. The Council is almost exclusively judicial in character, but a representative from the executive branch (the deputy minister of justice) employees serves. Judicial inspection is similarly carried out by judicial personnel.

Kuwait is still reliant on a significant number of judges from other Arab countries. Their contracts are concluded with the Ministry of Justice. Those contracts cannot be ended except after consultation with the Supreme Judicial Council, but the role of the Ministry is still paramount in originating and renewing contracts.

6. Administration and Relationship with Ministry of Justice.

The Ministry of Justice oversees most budgetary issues and administrative support for the courts. Since a 1996 reform, the Ministry is required to consult with the Supreme Judicial Council on such issues, and the Council gives its opinions not only to the Ministry but also directly to the parliament (which approves the budget).

The 1996 reform was a major step in elevating the role of the Supreme Judicial Council in its dealings with the executive branch. Because of the 1996 reform, the Supreme Judicial Council is a more powerful body and takes more responsibility over judicial affairs. The Ministry of Justice retains a role in the Supreme Judicial Council (one member is from the ministry), some senior appointments, and in administrative matters. However the role of the Council in all these areas has been enhanced. For instance, the Council now is required to issue an annual report that goes not only to the Ministry but also to the cabinet.

7. Specialized courts

Kuwait has a specialized constitutional court, though its members are all senior judges from the civil judiciary. It has the authority to issue binding rulings concerning the constitutionality of laws and regulations. The court also rules in election disputes.

The constitution does allow for martial law courts, which have been formed in Kuwait on two occasions: in 1967 and 1991. On both occasions, the declaration of martial law allowing the courts to operate lasted only a few months. The law provides for such courts to have both military and civilian judges.

Unless Kuwait is under martial law, military courts have no jurisdiction over civilians or non-military cases.

State security courts existed from 1975 until they were abolished in 1995. These courts were criticized inside the country because their judges were appointed by the minister of justice (though they were professional judges) and they did not provide for a right of appeal. While a challenge to their existence was rejected by the Constitutional Court in 1976, the Kuwaiti parliament revoked the legislation establishing them in 1995.

8. Judicial education

Kuwait has the oldest law school in the GCC region. However, Kuwait has still not been able to train sufficient numbers of judges to staff all of its courts. Judges are therefore brought in from other Arab countries. If they are seconded from their own judiciaries, they are often only able to serve on short-term contracts.

In 1994, the amir issued a decree establishing the Kuwait Institute for Judicial and Legal Studies within the Ministry of Justice. While the minister of justice appoints the director, he does so only after consulting with the Supreme Judicial Council. The Institute administers training sessions for judges, prosecutors, court personnel, and state legal advisors. The Institute was given a deeper legal basis in the 1996 reform.

There have also been some efforts to establish a Judges Club in Kuwait, and the 1996 law explicitly allows such a body. In some countries (such as Egypt) such an organization can act as a corporate voice for the judiciary and carry out some education activities.

LEBANON

Lebanon's judicial system has shown remarkable continuity despite the political turmoil the country has experienced.

1. Constitutional provisions for the judiciary

Lebanon's constitution is one of the oldest in the region, dating back to the days of the French mandate. It was thus written before extensive provisions for judicial bodies became common. While it has been amended, there has been no attempt to spell out provisions for the judiciary, with the exception of an amendment to create a constitutional council in 1990. That amendment came out of the Al-Ta'if Agreement, which was designed to strengthen national institutions and bring an end to Lebanon's civil war. That Agreement also called for strengthening the Supreme Judicial Council (though that clause was not given constitutional expression) and for implementation of a constitutional provision for a special tribunal for trying senior political officials.

As amended in 1990, Lebanon's constitution has only two articles devoted to the judiciary (an additional article, Article 80, deals with trying ministers and presidents).

Article 19 A Constitutional Council is established to supervise the constitutionality of laws and to arbitrate conflicts that arise from parliamentary and presidential elections. The President, the President of the Parliament, the Prime Minister, along with any ten Members of Parliament, have the right to consult this Council on matters that relate to the constitutionality of laws. The officially recognized heads of religious communities have the right to consult this Council only on laws relating to personal status, the freedom of belief and religious practice, and the freedom of religious education. The rules governing the organization, operation, composition, and modes of appeal of the Council are decided by a special law.

Article 20 Judicial power is to be exercised by the tribunals of various levels and jurisdictions. It functions within the limits of an order established by the law and offering the necessary guarantees to judges and litigants. The limits and conditions for the protection of the judges are determined by law. The judges are independent in the exercise of their duties. The decisions and judgments of all courts are rendered and executed in the name of the Lebanese People.

2. Structure of court system

Lebanon's courts of general jurisdiction have three levels: first instance (composed of *sulhiyya* and *bida'iyya* courts that apportion work in accordance with the seriousness of the case; appeals (*isti'naʿ*) and cassation (*tamyiz*).

There is also an administrative court system, known as the State Consultative Council (*Majlis shura al-dawla*).

3. Personal status issues

Personal status issues fall under the jurisdiction of specialized confessional courts. The *shari'a* courts have two levels and are divided into Sunni and Shi'i (*ja'fari*) sections. There are also courts for the various Christian sects, Druze, and Jews.

4. Prosecution system

Lebanon follows a *niyaba* system in which prosecutors are considered part of the judicial corps. However, public prosecution remains under the Ministry of Justice rather than the Supreme Judicial Council. As such, it is not simply a judicial but also an executive branch function.

5. Appointing/assigning/evaluation of judges

Lebanon has laid the groundwork for an independent judiciary, though some areas of controversy remain.

The Supreme Judicial Council is exclusively judicial in composition. In the 1960s some executive branch participation was briefly introduced, but that change was reversed after only a few years. While all members are from judicial ranks, some are appointed to the Council are appointed by the executive.

The Council plays a role in judicial appointments and promotions. However, Lebanon's delicate sectarian balance has led the Ministry of Justice to take the initiative in order to guarantee adequate representation by all groups. Its decisions are submitted to the Council for approval.

6. Administration and Relationship with Ministry of Justice

The budget and administration of the courts generally fall within the Ministry of Justice. The courts have been overburdened in recent years, leading some to suggest an increase in the number of judges.

The Lebanese judiciary relies on the Ministry of Justice for much of the administrative support for the courts. In addition, the Ministry plays a role in forming the Supreme Judicial Council, appointing judges, and overseeing public prosecution and investigation. This has occasionally led to proposals to increase the autonomy granted to the judiciary.

7. Specialized courts

Besides the courts of general jurisdiction, administrative courts, and confessional courts, Lebanon has several judicial or quasi-judicial bodies. For instance, there are quasi-judicial or arbitration bodies for labor, real estate, and customs disputes. Military courts deal with military affairs and some security matters. The Court of Audit is attached to the Prime Minister's office and oversees cases related to public funds.

The Judicial Council, composed of senior judges, considers cases related to state security. It receives cases that are referred from the cabinet upon the suggestion of the minister of justice. Its decisions are not subject to appeal.

In addition, there are two new elements in Lebanon's judicial system. First, while Article 80 of the constitution provides for a "Supreme Council" to try presidents and ministers, implementing legislation was never passed until after the Al-Ta'if accords. That body consists of judges and parliamentary deputies.

Second, in 1990 the Lebanese constitution was amended to provide for a "Constitutional Council." Judges for that body are selected by the parliament and the cabinet. Only official actors may bring cases, and then only for a short period after the law is passed. The Council is also the designated body for election disputes.

8. Judicial education

The Institute for Judicial Studies was established in the 1960s to provide for initial training for Lebanese judges.

MOROCCO

The process of political reform in Morocco over the past decade is beginning to make itself felt in the judicial arena. The constitutional and judicial framework provide for some notable overlap between the executive and the judiciary, but strong efforts to professionalize the judiciary have begun to result in a more autonomous body of judges.

1. Constitutional provisions for the judiciary

Morocco's constitution contains general rule-of-law provisions and three chapters devoted specifically to the Constitutional Council, the judiciary more generally, and the High Court of Justice.

THE CONSTITUTIONAL COUNCIL:

Article 78 A Constitutional Council shall be established.

Article 79 The Constitutional Council shall be made up of six members appointed by the king for a nine-year period. Upon consultation with parliamentary groups, six other members shall be appointed for the same period, half of them by the president of the House of Representatives and the other half by the President of the House of Counselors. A third of each category of members shall be renewed every three years. The chairman of the Constitutional Council shall be selected by the king among the members appointed by him. The chairman and the members of the Constitutional Council shall serve for a non renewable term of office.

Article 80 An organic law shall govern the organization and work of the Constitutional Council as well as the procedure it shall adopt, particularly with respect to deadlines set for referred disputes. Likewise, this organic law shall determine the functions which may not be compatible with that of Council member, the conditions of the first two renewals for a three -year term, as well as the procedure for replacing inactive members, either as a result of resignation or death during their term of office.

Article 81 The Constitutional Council shall perform the functions assigned by the articles of the constitution or the provisions of the organic laws. It shall furthermore decide on the validity of the election of the members of Parliament and that of referendum operations. Organic laws (before promulgation) and the rules of procedure of each House (before implementation) shall be submitted to the Constitutional Council to examine their consistency with the constitution. Before promulgation, laws may, for the same reason, be referred to the Constitutional Council by the king, the prime minister, the president of the House of Representatives, the president of the House of Counselors or one-fourth of the members making up one House or the other. The Constitutional Council shall have one month to decide upon the special instances stated in the preceding two paragraphs. However, in case of emergency, the deadline may be reduced to eight days if so requested by the government. Regarding these instances, referring law to the Constitutional Council shall entail the suspension of the deadline of the promulgation thereof. No unconstitutional provision shall be promulgated or implemented.

Decisions of the Constitutional Council shall, in no way, be put into question. They shall, furthermore, be binding upon all public authorities, administrative and judicial sectors.

THE JUDICIARY

Article 82 The Judiciary shall be independent from the legislative and executive branches.

Article 83 Sentences shall be passed and executed in the king's name

Article 84 Upon recommendations made by the Supreme Council of the Judiciary, judges shall be appointed by royal decrees.

Article 85 Judges on the bench shall be irremovable.

Article 86 The Supreme Council of the Judiciary shall be presided over by the king. It shall further consist of (a) the minister of justice as vice-president; (b) the first president of the Supreme Court; (c) the prosecutor-general in the Supreme Court; (d) the president of the First Chamber the Supreme Court; (e) two representatives elected among magistrates of the Court of Appeal; and (f) four representatives elected among magistrates of first degree courts.

Article 87 The Supreme Council of the Judiciary shall ensure the implementation of the guarantees granted magistrates regarding their promotion and discipline.

THE HIGH COURT OF JUSTICE

Article 88 Members of the government shall be criminally responsible for crimes and felonies they may commit while exercising their functions.

Article 89 They may be indicted by the two Houses of Parliament and referred to the High Court of Justice for trial.

Article 90 The proposed draft for indictment must be signed by at least a quarter of the members of the House in which it was tabled first. It shall be examined successively by the two Houses and shall be approved only when an identical vote is cast by each House by secret ballot and a two-thirds majority of its members with the exception of those members called upon to take part in conducting the prosecution and the investigation process and issuing the verdict.

Article 91 The High Court of Justice shall consist of equal numbers of members elected from the House of Representatives and the House of Counselors. Its President shall be appointed by royal decree.

Article 92 An organic law shall determine the number of the High Court members, the method of their election and the Rules of Procedure to be adopted.

2. Structure of court system

There are three levels of courts of general jurisdiction: communal and district courts [*jama'at wa-muqati'at*] and primary courts [*ibtida'iyya*] that hear cases first, appeals courts, and the Supreme Court [*al-majlis al-'ala*]. These courts are divided into chambers with various specializations, such as personal status, civil, criminal, and administrative.

3. Personal status issues

Personal status cases are heard by designated chambers of the regular court system. While the personal status courts are thus integrated with the rest of the court system, judges in the courts have special training in the shari'a.

4. Prosecution system

Morocco uses a *niyaba* system in which prosecution is a quasi-judicial function. However, in Morocco, the public prosecution remains part of the executive branch.

5. Appointing/assigning/evaluation of judges

The Moroccan constitution provides for the establishment of a Supreme Judicial Council as well as its membership. The Council is headed by the king; the minister of justice also serves. Such significant participation by the executive is not common in the Arab world, though it is not unknown. The remainder of the Council is exclusively judicial in composition.

Judicial supervision and inspection is a generally the responsibility of the Ministry of Justice, although judicial personnel are used extensively in the task. Each level of courts carries some responsibility as well and sanctions are meted out by the Supreme Judicial Council.

6. Administration and Relationship with Ministry of Justice

The Ministry of Justice oversees administrative matters connected with the courts, including budgetary issues. There have been some complaints in recent years that salaries are low and the Ministry of Justice has worked to improve the situation in order to combat opportunities for corruption.

The Moroccan constitution clearly endorses the principle of separation of powers, but the Ministry of Justice still plays a significant role in judicial affairs.

A new reform era for the justice sector began with the appointment of a respected jurist and human-rights figure as minister of justice in 1997. Since that time, efforts have been made to strengthen the autonomy of the judiciary, combat corruption, and provide the judiciary with the necessary administrative and budgetary resources.

7. Specialized courts

Morocco's judicial structure is fairly unified. For instance, personal status cases and administrative cases fall under the jurisdiction of the courts of general jurisdiction, though each has special chambers.

In addition to the courts of general jurisdiction, however, a few specialized courts exist. First, military courts can try specific cases referred by the government. Second, a High Court of Justice can be established by the parliament to try ministers for criminal offenses. Third, an audit court system exists (with a central court and regional courts), entrusted by the constitution to oversee implementation of the budget. Finally, Morocco's constitution establishes a constitutional council. In general, constitutional councils differ from constitutional courts in that their composition is more political and standing to bring cases is limited to official actors. Morocco's constitutional council fits this pattern.

8. Judicial education

Morocco has established the National Institute of Judicial Studies which has a mandatory three-year training period for new judges. The Institute is working to expand its offerings for continuing education for judicial personnel. All judges trained in recent years are graduates of the National Institute for Judicial Studies, where they undergo 3 years of study heavily focused on human rights and the rule of law.

PALESTINE/PALESTINIAN NATIONAL AUTHORITY

The history of Palestine has been anything but continuous. It is therefore something of a surprise that courts in the West Bank and Gaza have been continuously operating since the beginning of the British Mandate. These courts have passed through several phases—as part of the British-administered government of Palestine, as part of the Jordanian judiciary (in the West Bank) and an autonomous Palestinian judiciary under Egyptian supervision (in Gaza), and under Israeli military occupation. The courts are currently operating under the supervision of the Palestinian National Authority which has worked to prepare them for statehood. The Palestinian judiciary has thus functioned continuously in many difficult settings.

1. Constitutional provisions for the judiciary

Palestine has no constitution, though much attention has been given to developing an appropriate constitutional framework. Under Jordanian rule, the West Bank was governed by the Jordanian constitution. Egypt issued a constitutional document for Gaza. Some provisions of these constitutional orders are still regarded as applicable by Palestinian legal figures, but their precise legal status remains unclear.

The Palestinian Legislative Council passed a basic law to serve as a provisional constitution during the interim period leading (as Most Palestinians assumed) to eventual statehood. That document contained strong provisions for an independent judiciary, but it has not been approved by the president of the Palestinian National Authority.

A committee of Palestinian legal figures has drafted a constitutional document for statehood. This document is not authoritative and was intended to serve primarily as a starting point for public discussion of a constitutional order. The committee reports to the Central Committee of the Palestine Liberation Organization which has encouraged its work but not endorsed it. The judicial provisions of the current draft are reproduced here with the caveat that they may serve as an indication of what a Palestinian constitution might contain but at present represent only the views of the committee.

Article 171 Judicial authority shall be assumed by the courts under the supervision of the Supreme Judicial Council.

Article 172 The judiciary shall be independent. It shall be the responsibility of the courts, whose varieties, levels, jurisdictions, and conditions for appointment of their judges shall be regulated by law. Care shall be taken to prevent dismissal of judges except in cases defined by law and in a manner that guarantees the independence of the judiciary.

Article 173 A shari'a judicial council shall be established. The law shall define the manner of its formation and its competence.

Article 174 The regular courts shall be entrusted with ruling in all disputes and crimes. Exceptional courts may not be formed.

Article 175 A court may not abstain from ruling on a case within its jurisdiction. A court may not decide in a case not within its jurisdiction according to the law by which it is regulated.

Article 176 Court sessions are public unless the court decides they shall be closed for reasons: related to public order or morals; pursuant to a request by the opposing parties. In all circumstances, the judgment shall be pronounced in public session.

Article 177 Judicial judgments shall be issued according to law. They shall be announced and executed in the name of God and in the name of the people.

Article 178 The crime of obstructing execution of a final judicial ruling shall be punishable by law.

Article 179 The state shall guarantee compensation for judicial error according to law. The responsibility of judges for substantial errors shall be regulated by law.

Article 180 Litigation procedures are regulated by law to guarantee justice and expeditious decisions in cases.

Article 181 Judges are independent. There is no authority over them in their judicial duties except the law. Interference in the work of the judiciary or the affairs of justice shall be considered a crime punishable by law in which charges shall have no statute of limitations.

Article 182 Appointment, transfer, seconding, promotion, and regulation of the affairs of judges shall be by law. Combining judicial work with any other profession or membership in the representative Councils or political parties shall be prohibited.

Article 183 Qualified jurists shall exercise the judicial function. They shall be chosen according to the law regulation the judicial branch. Extraordinary or special judges may not be appointed.

Article 184 Those who have taught law in colleges of law achieving the professorial rank, or attorneys who have practiced the legal profession for a period not less than twenty years may be appointed justices in the Court of Cassation and the High Administrative Court.

Article 185 The Supreme Judicial Council shall make decisions on appointments, assignments, transfers, promotions, and disciplinary measures related to judges in accordance with the law and organizing regulations.

Article 186 A judge shall swear the legal oath before the Supreme Judicial Council in the manner prescribed by the law of the judicial branch. He shall be responsible to it.

Article 187 Upon appointment, a judge shall submit a personal financial statement for himself, his spouse, and his minor children. The statements shall be kept by the Supreme Judicial Council. They may not be viewed except by with the permission of the president of the council.

Article 188 The judicial branch shall be headed by the Supreme Judicial Council, the formation and competencies of which shall be determined by law.

Article 189 Without prejudice to article 173, a court of cassation shall be constructed with jurisdiction over appeal in criminal and civil manners. Its formation and procedures for its operation shall be determined by law.

Article 190 A supreme court of justice shall be constructed to decide in administrative disputes. Its establishment, the regulation of the principles of its operation, the terms of appointment of its judges and employees, and the procedures followed before it shall be defined by law. Lower administrative courts may be established by law.

Article 191 A military court shall be established by law. It shall not decide any case outside the military sphere.

Article 192 A constitutional court shall be established by virtue of the constitution to exercise its authority independently in safeguarding the legality of the work of state institutions. It shall be composed of 9 judges with the following conditions: The Legislative Council shall select three. The president of the state shall select three. The Supreme Judicial Council shall select three. Their election shall be for one term of 9 years; it shall not be renewed or extended.

Article 193 The selection of judges of the Constitutional Court shall be from among legal figures who have worked in the legal professions, as judges, public prosecutors or attorneys with the condition that they have not less than twenty years of expertise in the fields of law, or from among those who taught law in the universities, provided that they have obtained professorial rank.

Article 194 The judges of the Constitutional Court elect a president for the Court for a three-year term.

Article 195 One-third of the judges of the Constitutional Court shall be replaced every three years in accordance with the law regulating the work of the Constitutional Court.

Article 196 Constitutional Court judges may not be dismissed without a judicial ruling.

Article 197 Constitutional Court judges shall enjoy the same guarantees enjoyed by deputies in the Legislative Council. They may not be tried nor may any procedures against them be taken except after obtaining the consent of the Supreme Judicial Council.

Article 198 The president of the Court and the judges in the Constitutional Court swear the legal oath in front of the president of the state, the speaker of the Legislative Council, and the president of the Supreme Judicial Council.

Article 199 A judge on the Constitutional Court may not assume any other public employment or conduct any commercial, political, or partisan activities, with the exception of academic work.

Article 200 Membership of a judge in the Constitutional Court terminates: at the end of the nine-year term; by voluntary resignation; by loss of one of the conditions of assuming it; by death; or by judicial conviction of a felony. A successor shall be selected within one month of the position becoming vacant by nomination of the authority that appointed the predecessor.

Article 201 The Constitutional Court shall examine the following questions, pursuant to a request from the president of the state, the speaker of the Legislative Council, or five members of the Council, or to a request from the courts, the attorney general, or someone whose constitutional rights have been violated: the constitutionality of laws before they are promulgated by request of the president of the state or five members of the Legislative Council when it is raised during the period of objection to it; the constitutionality of laws, ordinances, and regulations whose constitutionality have been challenged before the courts; deciding jurisdictional disputes among the branches of government or judicial bodies; the constitutionality of measures of indictment of the president of the state or the Legislative Council's request to the court that it decide his loss of competence; the constitutionality of parties and their activities and measures dissolving and suspending them; the constitutionality of legislative or presidential election and the conducting of elections or public referendum on schedule; the constitutionality of signing treaties and the measures implementing them; the constitutionality of procedures of the branches of government that violate basic constitutional rights; or any other jurisdiction constitutionally based.

Article 202 The Law of the Constitutional Court shall regulate the procedures for the courts to refer constitutional challenges submitted to them when they examine them in disputes falling within their jurisdiction.

Article 203 Judicial decisions of the Constitutional Court shall be final and may not be appealed in any manner and bind all branches of government and individuals. The Law of the Constitutional Court shall regulate the procedures for the courts to refer constitutional challenges raised before them when they examine them in disputes falling within their jurisdiction.

Article 204 The Constitutional Court shall render void an unconstitutional law, regulation, or measure, or end its effectiveness in accordance with the circumstances and conditions specified in the law organizing its operation.

Article 205 The Constitutional court shall determine its own by-laws.

Article 206 Amendments of the constitutional provisions regulating the Constitutional Court, either by cancellation or additions, shall be by constitutional law adopted according to the same conditions and procedures of amending the constitution and with the agreement of two-thirds of the members of the Legislative Council.

Article 207 The Office of the Attorney General is an organ of the judicial branch governed by the Law of the Judicial Branch which must regulate the method of its formation, its competencies, and the terms of appointment, transfer, promotion, financial status and accountability of its members.

Article 208 The Attorney General shall be appointed at the head of the Office of the Attorney General by nomination of the Supreme Judicial Council and decision by the head of state, to be approved by the Legislative Council. His competencies, his assistants, and their duties shall be defined by law.

Article 209 The Office of the Attorney General shall pursue public cases in the name of the people in accordance with the provisions of law.

Article 210 The judicial police are directly subject to the judicial branch.

Article 211 The Ministry of Justice shall be entrusted with the administration of judicial facilities without infringing on the supervision of the judiciary by the Supreme Judicial Council.

Article 212 The legal profession shall be regulated by law.

2. Structure of court system

The Palestinian court system is moving to construct a three-tiered system of courts. Depending on the seriousness of a case, it is first assigned to single-judge magistrate courts (*mahakim al-sulh*) or multi-judge

district courts (*mahakim markaziyya*). Appeal from either of these goes to the second level, the Court of Appeals. Branches of the Court of Appeals sit in Gaza and Ramallah.

Palestinian courts have had an additional, third level in the past. Under Jordanian rule, Palestinians on the West Bank could appeal from the Court of Appeals to the Court of Cassation in Amman. In 1967, Israel divorced the West Bank courts from the Jordanian system and barred appeals to Amman. It is likely that statehood (and the need to unify the West Bank and Gazan judiciaries) will some day result in the construction of a Palestinian Court of Cassation.

The Palestinian courts do not have a separate administrative judiciary, but (following the old Jordanian system), the judges of the highest court (the Court of Appeals) can also sit as the High Court to hear administrative cases.

There are also specialized courts within the regular judiciary to handle tax matters and municipal affairs.

3. Personal status issues

Personal status issues are handled by a separate court system. Shari'a courts operate for Muslims and the other Palestinian religious communities have their own courts.

4. Prosecution system

Palestine has a public prosecution system on the *niyaba* model. At present, the Attorney General who heads the *niyaba* is appointed by presidential decree. The system is still establishing itself.

The harsh security and political conditions under which the PNA operates have led to actions by security forces which bypass the normal prosecution system. This has attracted both domestic and international criticisms.

5. Appointing/assigning/evaluation of judges

Until 1999, judges were appointed by presidential decree. Management of the judiciary remained unclear, however, in this period. The West Bank judiciary still operated largely on Jordanian law, which provided for a judicial council (which was not created for some time). The Gazan judiciary operated under the oversight of the Chief Justice (*qadi al-quda*), an office that continued but its oversight over the West Bank was unclear. And the Ministry of Justice also saw itself as playing a role in the appointment and assignment of judges pending the establishment of a formal system.

In order to clarify the situation, the Palestinian Legislative Council drafted and passed a law governing judicial affairs. Its draft provides for a Supreme Judicial Council that would oversee this process. The composition of the Supreme Judicial Council would be exclusively judicial (unusual in the Arab world). Thus, if adopted, the law would provide for one of the most independent judiciaries in the Arab world. The president has delayed signing it and is instead suggesting some modifications in the legislation.

In the interim, the president first issued a decree in 1999 assigning the authority of the Judicial Council to a new, widely-respected Chief Justice. While this increased the independence of the judiciary, many in the Palestinian legal community felt that this authority was better vested in a council (especially one blending West Bank and Gazan judges) rather than an individual. Accordingly, the president appointed a Supreme Judicial Council by decree in 2000. It is headed by the Chief Justice; he is joined by senior judges from the West Bank and Gaza. Only one representative from the executive branch (the deputy minister of justice) sits on the Council. The Council oversees judicial appointments, assignments, and promotions. The system thus potentially provides for considerable independence. However, it is not yet anchored in

legislation and its members are appointed as individuals rather than by office. Full judicial independence awaits final agreement between the Palestinian Legislative Council and the president on a law.

6. Administration and Relationship with Ministry of Justice

The budget of the courts is overseen by the Ministry of Justice. Even before the outbreak of the current intifada, Palestinian courts experienced funding difficulties. The courts have continued operating during the intifada, but the closure (which prevents lawyers, litigants, and witnesses from travelling to courts) and the fiscal crises of the PNA (with Israel holding up transfers of tax revenues) have severely diminished their operating capacity.

Because the legislative basis for the courts is still being established, the Ministry of Justice plays a far larger role in court administration than may eventually be the case. The formation of the Supreme Judicial Council in 2000 was a major step toward separating the executive and legislative branches, but the Council has yet to be established in legislation. And the outbreak of the intifada shortly after the establishment of the Council makes its effective operation more difficult.

7. Specialized courts

Besides the specialized sections of the regular civil courts, the PNA has established some specialized courts.

First, state security courts were established by presidential decree in 1995. These courts provoked great controversy among Palestinians because they did not provide full judicial safeguards and tried cases extremely quickly. Besides security cases, the courts have also been assigned price and supply cases. In addition, the president has referred several crimes that provoked public outrage to the courts in order to ensure quick adjudication.

In 1998, the State Security Court began to divide into two structures. One was the Supreme State Security Court; it handled the extremely sensitive security cases that had originally led to the creation of the security courts in 1995. The second structure was the regular State Security Court with two levels; it handled the less sensitive cases and provided greater judicial safeguards (such as the possibility of appeal). A State Security Prosecutor was also appointed in 1999.

These bodies exist by virtue of presidential decrees and interpretation of pre-1967 law. The Palestinian Legislative Council has not yet given them any clear legislative basis. Since it remains very suspicious of the State Security Court system, it is not likely that the executive and the legislature will agree on appropriate legislation soon.

In addition to the State Security Courts, the Palestinian election law of 1995 establishes a special court to try election disputes. Judges were named as individuals to the court for the 1996 elections. Since 1996, the Elections Court has not been active, though if local or national elections were held it would presumably be reinvigorated.

8. Judicial education

There is no formal system for training Palestinian judges, but Palestinian universities have begun to build law schools. This will make it possible to have a generation of Palestinian-trained judges. Bir Zeit University has administered some judicial education programs with support from the World Bank. Some Palestinian judges have also studied at other judicial training academies in the Arab world. Some external donors (such as the World Bank and USAID) have given assistance in this area.

SAUDI ARABIA

Saudi Arabia stands distinct from the rest of the Arab world in that the shari'a courts have never lost their status as courts of general jurisdiction, and the Islamic shari'a remains the fundamental basis of the legal system. This is not to say that other Arab states have no role for the Islamic shari'a—far from it. The Islamic shari'a is often accorded special constitutional status in the Arab world, it is taught in law schools, it informs vast areas of law (most notably personal status), and many countries strive to insure that their legal order does not violate any clear provision of the shari'a. The result in these other countries is an amalgamated legal system (generally combining a civil law orientation with the Islamic shari'a). Traces of a similar amalgamation or hybrid system can be found in parts of the Saudi legal order, but the foundation of the Saudi order is wholly shari'a-based.

1. Constitutional provisions for the judiciary

Saudi Arabia did not receive a comprehensive written constitution until 1992, by which time the current judicial system was well established. Thus the Saudi Basic Law did not so much establish the judicial order as describe it, codifying current practice. Indeed, the Basic Law does not even describe itself as a constitution, proclaiming in its first article that the Qur'an and the Sunnah form the constitution of Saudi Arabia. In a sense, the shari'a is therefore seen superior to any positive legal or judicial order. Despite this modesty, the Basic Law does have a section on the judiciary comprising nine articles. These provisions assume a unified, shari'a-based judiciary, independent of the ruler but respected by him, supplemented by a "Board of Grievances" and other supporting bodies:

Article 46 The judiciary is an independent authority. There is no control over judges in the dispensation of their judgements except in the case of the Islamic shari'a.

Article 47 The right to litigation is guaranteed to citizens and residents of the Kingdom on an equal basis. The law defines the required procedures for this.

Article 48 The courts will apply the rules of the Islamic shari'a in the cases that are brought before them, in accordance with what is indicated in the Book and the Sunnah, and statutes decreed by the Ruler which do not contradict the Book or the Sunnah.

Article 49 Observing what is stated in Article 53, the courts shall arbitrate in all disputes and crimes.

Article 50 The King, or whoever deputizes for him, is responsible for the implementation of judicial rulings.

Article 51 The authorities establish the formation of the Higher Council of Justice and its prerogatives; they also establish the seniority of the courts and their prerogatives.

Article 52 The appointment of judges and the termination of their duties is carried out by Royal decree by a proposal from the Higher Council of Justice in accordance with the provisions of the law.

Article 53 The law establishes the seniority of the Board of Grievances and its prerogatives.

Article 54 The law establishes the relationship between the investigative body and the Prosecutor-general, and their organization and prerogatives.

2. Structure of court system

The basis of the court system are the shari'a courts. There are two levels of trial courts; cases are assigned according to their seriousness. There is also an appeals court. The appeals court may reverse or affirm a ruling; it may also seek greater information from the trial court. In a limited number of very serious cases, it is possible to appeal to the Supreme Judicial Council (which is described in more detail in #5 below).

A number of specialized tribunals also exist. These are detailed in #8 below. In some cases, the tribunals are sufficiently developed that there are two levels (with the higher tribunal hearing appeals from the lower one). There have been some efforts in recent years to bring these specialized tribunals under the shari'a courts or to transfer their jurisdiction. Some unification seems to be anticipated by the Basic Law, which makes no provision for them (other than the Board of Grievances). But to date no unification has taken place.

3. Personal status issues

With the shari'a courts having general jurisdiction, there is no special set of personal status courts or a personal status code.

4. Prosecution system

The investigation and prosecution of crimes is generally the task of the police and the Ministry of Interior. In recent years, an effort was begun to train judicial personnel in this task. Should this be successfully completed, prosecution would effectively shift from the Ministry of Interior to the Ministry of Justice. Saudi Arabia's system would then more closely resemble the *niyaba* system prevailing in much of the Arab world, though the prosecutors would be trained in Islamic rather than legislated criminal law. However, as of this writing, public prosecution remains largely a task of the Ministry of Interior.

5. Appointing/assigning/evaluation of judges

The Saudi Arabian judiciary is governed by a Supreme Judicial Council with eleven members. Five members are full-time; they are appointed by royal order from among senior judges. The remaining six members consist of the president of the council (appointed by royal order), the president of the appeals court, the deputy minister of justice, and three other senior judges.

With the exception of the deputy minister of justice and potentially the president, therefore, all the members of the Supreme Judicial Council, all members are judges. While the role for royal appointment is great, in practice the Council has been an autonomous organization.

6. Administration and Relationship with Ministry of Justice

The Supreme Judicial Council has wide jurisdiction over judicial matters, but much of the administrative support for the courts comes from the Ministry of Justice. It is difficult to obtain precise information on budgetary matters, but there is little evidence of controversy in the matter. It is probable that the Ministry of Justice maintains oversight over the budget of the courts, but this does not seem to have diminished their autonomy.

The Ministry of Justice is a fairly recent creation, dating back only to 1970. Thus by the time the Ministry itself was established, the courts were strong and autonomous. Traditionally the Minister of Justice is appointed from the body of religious scholars in the Kingdom and thus retains the respect of the shari'a judiciary. There is little evidence of tension between the Ministry and the judiciary, though the judiciary is traditionally reluctant to accept all of the administrative regulations in place in the Kingdom that do not derive directly from the shari'a.

7. Specialized courts

Since the beginning of the Kingdom, regulations (*nizams*) have been periodically issued to govern administrative matters or those not covered by existing Islamic jurisprudence. While these regulations do not derive from the shari'a, an effort is made to ensure that they do not conflict with its provisions.

However, the shari'a judiciary has been historically reluctant to supplement shari'a with such regulations, leading to the creation of a series of specialized boards, tribunals, and committees to apply this body of law. The only such body to be mentioned in the Basic Law, the "Board of Grievances," has a longer standing, higher public profile, and greater prestige than most of the other such bodies. Among the most important are:

Committee for the Settlement of Commercial Disputes. This is one of the oldest specialized tribunals, with antecedents in the Ottoman period. The committee is part of the Ministry of Commerce. In 1969, the body was reformed so that a majority of two on each of its three-person panels would be shari'a judges. The third member would come from the Ministry of Commerce. In 1987, its jurisdiction was assigned to the Board of Grievances. This step was to be temporary, to eliminate the backlog of cases and to define the relationship between the specialized tribunals and the shari'a courts. However temporary this measure was intended to be, it is still in effect.

Board of Grievances. This is the broadest of the specialized tribunals. Its structure was formalized in 1955, and it now operates on the basis of a 1982 law. The most significant area of its jurisdiction consists of cases in which a government agency is a party; this makes it roughly comparable to administrative courts. The Board of Grievances also deals with enforcement of foreign judgments and, since 1987, commercial disputes. While separate from the shari'a court system it is respectful of it, refraining from ruling on matters clearly dealt with by Islamic jurisprudence. The Board of Grievances is an independent body, serving directly under the King.

Labor Board. The Labor board is a set of tribunals within the Ministry of Labor that deal with disputes arising under Saudi Labor laws. The Board has two levels, a lower level with general jurisdiction over such disputes, and an upper level, which serves as an appeals body.

Other, similar bodies exist for monetary issues, traffic, and customs. The Kingdom has made an effort to bring these various bodies under the shari'a courts, but no concrete steps have yet been taken.

8. Judicial education

Most judges in the shari'a court system have a traditional shari'a education (Hanbali school). Some have received a portion of their education abroad; in recent years all judges have been university-trained. Following their university training in Islamic law, candidates for judicial position attend the High Institute of the Judiciary. In addition, there is a period of practical training in which they are attached to specific courts.

The specialized regulatory system is also taught in Saudi institutions. Some universities offer courses on the regulatory system and an "Institute of Public Administration" (founded in 1961) also offers academic training in the regulatory system.

SUDAN

The current Sudanese judicial system is the product of several diverse sources of influence. First, Sudan is predominantly an Islamic society as well as a member of the Arab League. Thus, there is strong influence of the shari'a on Sudanese law, as well as influence from the civil law systems adopted in many Arab countries. Second, Sudan also has a federal system giving it a degree of internal legal diversity matched only by the (far smaller) UAE in the Arab world. Finally, during the colonial period, Anglo-Saxon common law influenced Sudanese legal development more than other countries that were controlled by Britain. The result today is an amalgamation of these different traditions. Indeed, much political debate in Sudan since independence has focused on the proper legal and judicial system for the country.

1. Constitutional provisions for the judiciary

Since independence, Sudan has experienced several dramatic political changes. After each change, a new constitutional order, with new provisions for the judiciary, was enacted. Sudan received its current constitution in 1998.

Article 99 Judicial competence in the Republic of the Sudan shall be vested in an independent authority to be known as the "judiciary" to assume the judicial power in adjudication of disputes and judgments on the same in accordance with the Constitution and the law.

Article 100 The judiciary shall be responsible for the performance of its work before the president of the republic.

Article 101 (1) Judges are independent in the performance of their duties and have full judicial competence with respect to their functions; and they shall not be influenced in their judgments. (2) A judge shall be guided by the principle of the supremacy of the Constitution and the law and he shall protect this principle, giving due regard to the establishment of justice in thoroughness and impartiality without fear or favor. (3) State organs shall execute judicial judgments.

Article 102 (1) The judiciary shall have a president to be known as the "Chief Justice" who shall be the president of the Supreme Court and the Supreme Council of the Judiciary and be responsible for the administration of the judiciary before the Supreme Council of the Judiciary. (2) The judiciary shall have a council to be known as the "Supreme Judicial Council." Its composition and functions shall be prescribed by law. Its functions shall include planning and general supervision over the judiciary and presenting recommendations to the president of the republic for the appointment, promotion, and termination of service of the judges, as well as the preparation of the budget of the judiciary and expressing opinion on legislative bills relating to the judiciary.

Article 103 The judicial structure shall consist of a supreme court, appeals courts and courts of first instance. The structure shall be organized by a law that specifies divisions, jurisdiction and any other matters relating to the judiciary.

Article 104 (1) The president of the republic shall appoint the chief justice and his deputies according to law. (2) The president of the republic shall appoint other judges upon the recommendation of the Supreme Judicial Council. (3) The law shall determine the terms of service, discipline and immunities of judges. (4) No judge shall be removed save under disciplinary measures and upon a recommendation from the Supreme Judicial Council.

Article 105 (1) There shall be established an independent Constitutional Court. The president of the republic shall appoint its president and members from persons of high experience in matters of justice, with the approval of the National Assembly. (2) The Constitutional Court shall be the custodian of the constitution and shall have the jurisdiction to consider and adjudicate any matter relating to the following: (a) interpreting constitutional and legal provisions submitted by the president of the republic, the National Assembly, half the number of governors or half the States' Assemblies; (b) claims by the aggrieved for the protection of freedoms, sanctities or rights guaranteed by the constitution; (c) claims of conflict of competence between federal and state organs; and (d) any other matters referred thereto

by virtue of the constitution or the law. (3) The law shall determine the number, emoluments of the judges, and the procedure of the court.

Article 106 Legal counsels working in the public service and attorneys shall strive to express the values of justice, truth, legality, protection of public and private rights, tender advice and render legal services to the state and citizens, and shall perform their functions truthfully and impartially in accordance with the constitution and the law.

Article 107 (1) The profession of advocacy shall be established to express the values of justice, the righteousness and legality, fend off injustice and seek conciliation between adversaries, observe neutrality in the just proof of right, impartiality in pursuit of the truth and facilitate legal aid for the needy in accordance with the provisions of the law. (2) The law shall regulate the conditions for the practice of the profession.

Article 127 (1) There shall be established by federal or State law an Employees Justice Chamber for employees in public service, having competence to consider and determine the grievances of employees; and the law shall specify its functions and powers. The supervision and appointment of the president of the Chamber shall be by the president of the republic or the governor as the case may be. (2) Decisions of the Employees Justice Chamber shall be final, not to be reviewed by courts.

2. Structure of court system

Sudan's 1998 constitution is unusual in prescribing the various levels of courts. Like most of the Arab world, Sudan's courts of general jurisdiction have three levels. The courts of first instance are either general (*`amm*) or summary (*juz'i*). The second level consists of appeals courts (*isti'naf*); the Supreme Court (*al-mahkama al-ulya*) stands at the apex of the order.

3. Personal status issues

Until 1983, Sudan had separate personal status courts. At that time, the civil court system and the personal status courts were unified. At a later date, a new code was issued for personal status law. The 1998 constitution implies a unified system, though it does not explicitly require it.

4. Prosecution system

Sudan has not completely adopted the *niyaba* system and prosecution remains an executive-branch function under the Ministry of Justice. In recent years, the minister of justice has simultaneously served as attorney general. There is a separate prosecutor general who is quasi-judicial but serves in the Ministry of Justice.

5. Appointing/assigning/evaluation of judges

According to the 1998 constitution, the chief justice and the senior judges are appointed directly by the president of the republic. Other positions fall under the Supreme Judicial Council, which consists of the chief justice, his deputies, the directors of judicial agencies, the prosecutor general, the head of the Bar Association, and the dean of the College of Law at the University of Khartoum. Sudan is unusual in including public figures who belong neither to the judiciary nor the executive branch in its judicial council. Most of the evaluation and administration of the judiciary falls to the chief justice, sometimes working with the Supreme Judicial Council.

6. Administration and Relationship with Ministry of Justice

Both the constitution of 1998 and the 1986 Law of the Judicial Authority require that the Supreme Judicial Council prepare the judicial budget. Much of the oversight and implementation falls to the chief justice along with the Supreme Judicial Council.

The position of chief justice is far stronger in Sudan than it is in most of the Arab world. Some of the supervisory and administrative functions shared between the Ministry of Justice and the judicial council in many Arab countries are assigned instead to the chief justice in Sudan. While this gives the judiciary more autonomy from the Ministry of Justice, the fact that the chief justice is a presidential appointment is of greater significance.

7. Specialized courts

The 1998 constitution provides for two specialized courts. First, a constitutional court was constructed (and shortly after the constitution was adopted, the new court was created). The court is authorized to issue binding interpretations of the constitution and entertain constitutional challenges (including from individuals, provided that all other remedies have been exhausted). The members of the court are appointed by the president with the concurrence of the National Assembly.

Second, a special "Employees Justice Chamber" exists for grievances of those in public service. Its decisions may not be appealed to the regular courts.

In addition, in some southern areas, tribunals exist to settle disputes within local communities.

Finally, Special Courts can be created under a 1989 law. These combine military and civilian judges in a variety of cases. They are probably most prominent in security cases, but the government has also called upon them to deal with the backlog of criminal cases. No appeal to the regular courts is possible, though they are supposed to follow the same procedures as the regular criminal courts. Those convicted may appeal to the chief justice.

8. Judicial education

Sudanese judges are expected to undergo a year of specialized judicial training and a year of practical training after receiving a law degree.

SYRIA

The current Syrian court system has gone through a long historical evolution, beginning in the Ottoman period, passing through the brief Syrian Arab Kingdom (1919-1920), the French Mandate, the post-independence republican regime, the union with Egypt (the United Arab Republic, 1958-61), the post-secession republic, and the current republic. All these political systems have affected the evolution of the Syrian judicial structure.

1. Constitutional provisions for the judiciary

Syria has one of the oldest constitutional traditions in the Arab world, dating back to 1920. The current Syrian constitution of 1973 shows some Egyptian influence as well.

Article 131 The judicial authority is independent. The president of the republic guarantees this independence with the assistance of the Supreme Judicial Council.

Article 132 The president of the republic presides over the Supreme Judicial Council. The law defines the method of its formulation, its powers, as well as its internal operating procedures.

Article 133 (1) Judges are independent. They are subject to no authority except that of the law. (2) The honor, conscience, and impartiality of judges are guarantees of public rights and freedoms.

Article 134 Sentences are issued in the name of the Arab people of Syria.

Article 135 The law organizes the judicial system along with its categories, types, and grades of judges. It also defines the regulations pertaining to the jurisdiction in the different courts.

Article 136 The law defines the terms of appointment, promotion, transfer, discipline, and removal of judges.

Article 137 The public prosecution is a single juridical institution headed by the minister of justice. The law organizes its functions and powers.

Article 138 The Council of State exercises administrative jurisdiction. The law defines the terms of appointment, promotion, discipline, and removed of its judges.

The Supreme Constitutional Court

Article 139 The Supreme Constitutional Court is composed of five members, of whom one will be the President, and all of whom are appointed by the President of the Republic by decree.

Article 140 It is not permissible to combine the membership of the Supreme Constitutional Court with a ministerial post or membership in the People's Assembly. The law defines other functions which cannot be combined with court membership.

Article 141 The term of membership of the Supreme Constitutional Court is 4 years subject to renewal.

Article 142 Members of the Supreme Constitutional Court cannot be dismissed from court membership except in accordance with the provisions of the law.

Article 143 Before assuming their duty, the president and members of the Supreme Constitutional Court take the following oath before the president of the republic and in the presence of the speaker of the People's Assembly: "I swear by the Almighty to respect the country's constitution and laws and to carry out my duty with impartiality and loyalty."

Article 144 The Supreme Constitutional Court determines the validity of the special appeals regarding the election of the members of the People's Assembly and submits to it a report on its findings.

Article 145 The Supreme Constitutional Court looks into and decides on the constitutionality of laws in accordance with the following: (1) Should the president of the republic or a quarter of the People's Assembly members challenge the constitutionality of a law before its promulgation, the promulgation of such law is suspended until the court makes a decision on it within 15 days from the date the appeal was filed with it. Should the law be of an urgent nature, the Supreme Constitutional Court must make a decision within 7 days. (2) Should a quarter of the People's Assembly members object to the constitutionality of a legislative decree within 15 days of the date of the People's Assembly session, the Supreme Constitutional Court must decide on it within 15 days from the date the objection was filed

with it. (3) Should the Supreme Constitutional Court decide that a law or a decree is contrary to the Constitution, whatever is contrary to the text of the Constitution is considered null and void with retroactive effect and has no consequence.

Article 146 The Supreme Constitutional Court has no right to look into laws that the president of the Republic submits to public referendum and are approved by the people.

Article 147 The Supreme Constitutional Court, at the request of the president of the republic, gives its opinion on the constitutionality of bills and legislative decrees and the legality of draft decrees.

Article 148 The law determines the procedure of hearing and adjudicating in matters coming under the jurisdiction of the Supreme Constitutional Court. It also defines the court staff, the qualifications of its members, and prescribes their salaries, immunities, privileges, and responsibilities.

2. Structure of court system

The courts of general jurisdiction in Syria are divided into three levels. The first level consists of the Magistrate Courts (*mahakim al-sulh*), the Courts of First Instance (*mahakim al-bidaya*), Juvenile Courts (*mahakim al-ahdath*) and Customs Court (*al-mahkama al-jumrukiyya*). These courts are assigned jurisdiction according to the nature of a case.

The second level of court are for appeals (*mahakim al-isti'naf*); they are divided into civil and criminal chambers. The top level is the Court of Cassation (*mahkamat al-naqd*) which has three sections: civil and commercial, criminal, and personal status.

3. Personal status issues

There is a separate court system for personal status cases; the law provides for shari`a courts (for both Sunni and Shi'i Muslims), Druze courts, and other religious courts (for Christians and Jews). There is a degree of integration between the personal status judiciary and the courts of general jurisdiction, because appeals are allowed from the personal status courts to the Court of Cassation.

4. Prosecution system

On the one hand, the Syrian constitution clearly mandates the *niyaba* system and describes the *niyaba* as judicial in character. On the other hand, the constitution includes an unusual provision defining the minister of justice as the head of the *niyaba*.

5. Appointing/assigning/evaluation of judges

The constitution provides for the Supreme Judicial Council, which is headed by the president of the republic. He may deputize the minister of justice. The Attorney-General, the chief of judicial inspection, the deputy minister of justice, the president of the Court of Cassation, and his two most senior deputies also serve. The Council acts on suggestions from the minister of justice for appointments, transfers, and disciplines.

6. Administration and Relationship with Ministry of Justice

Budgetary issues are almost wholly within the domain of the Ministry of Justice.

The Ministry of Justice has responsibility for virtually all administrative functions related to the judiciary and oversees support personnel for the courts. The Court of Cassation does have a general body (*hay'at `amma*) that can present the needs and suggestions of the judiciary in some matters and the Supreme Judicial Council can suggest laws related to judicial affairs.

7. Specialized courts

In addition to the courts of regular jurisdiction and the personal status courts, Syria has several specialized court systems with jurisdiction over specific kinds of cases.

First, the military can establish field courts and try cases (including those involving civilians) referred by the minister of defense and prosecuted by the military prosecutor.

Second, Economic Security Courts are established under Syrian law to look into cases involving economic crimes. The Economic Security Courts do not stand wholly apart from the courts of general jurisdiction because they do include judges from the regular judiciary (who serve along with other judges who are not from the regular courts) and judgments can be appealed to the Court of Cassation.

Third, a Supreme State Security Court hears cases related to national security. Its judgments are not subject to appeal nor is it bound by the same procedures as the courts of regular jurisdiction. The president of the republic must approve a verdict; he may also cancel it and ask for a retrial.

Fourth, an administrative court system in Syria is stipulated in the constitution. During the period of union with Egypt, the Syrian "Council of State" was brought into harmony with the Egyptian model and it remains similar to its Egyptian counterpart until today. There are two levels of courts to hear administrative cases; the Council of State (which includes advisory as well as judicial functions) remains independent and separate from the courts of general jurisdiction. The Syrian administrative courts have demonstrated some independence in reviewing government actions.

Finally, Syria has a Supreme Constitutional Court. Under the 1973 constitution the president of the republic appoints all the members to four-year, renewable terms. The Court can serve in an advisory capacity; it can also rule on the constitutionality of laws referred to it by a small number of official actors. It cannot examine the constitutionality of a law passed by referendum. The Court also has some ancillary duties, including jurisdiction over election disputes and trial of the president of the republic.

8. Judicial education

Syrian law requires judges to receive necessary training. To date, that is largely accomplished through practical training rather than formal study.

TUNISIA

The Tunisian judiciary is fairly unified by regional standards. The relationship between the Ministry of Justice and the judiciary is also unusually close.

1. Constitutional provisions for the judiciary

Tunisia's constitution provides for an independent judiciary, a High Court, and a Council of State. However, most details are determined not in the constitution but instead in regular legislation.

Article 64 Judgments are rendered in the name of the people and in the name of the president of the republic.

Article 65 The judiciary is independent; the magistrates in the exercise of their functions are not subjected to any authority other than the law.

Article 66 Magistrates are nominated by decree of the president of the republic upon the recommendation of the Supreme Judicial Council. The modalities of their recruitment are determined by law.

Article 67 The Supreme Judicial Council, whose composition and attributions are determined by law, watches over the application of the guarantees accorded to magistrates in the matter of nomination, advancement, transfer, and discipline.

Article 68 The High Court meets in a case of high treason committed by a member of the Government. The competence and the composition of the High Court as well as the procedure applicable before it are specified by law.

Article 69 (1) The Council of State is composed of two organs: 1) The Administrative Tribunal; 2) The Court of Accounts. (2) The composition and the competence of the Council of State as well as the procedure applicable before it are determined by law.

2. Structure of court system

The regular courts in Tunisia have three levels. The first level—cantonal (*mahakim al-nawahi*) and first instance (*al-mahakim al-ibtida'iyya*) hear cases in accordance with their gravity. The third level is the appeals court. At the apex stands the Court of Cassation (*mahkamat al-ta'qib*).

The various levels of courts have sections for civil, commercial, criminal, social and personal status cases.

Specialized courts (for matters such as real estate) exist within the regular court system.

3. Personal status issues

Tunisia does not have a separate shari'a or personal-status judiciary. Specialized sections of the civil courts rule in personal status cases in accordance with the country's personal status law. While the personal status law is based primarily on Islamic jurisprudence, it has introduced some reforms. It governs personal status issues for all Tunisians, regardless of religion (the vast majority of Tunisians are Muslims).

4. Prosecution system

The prosecution system in Tunisia is largely judicial (in that prosecutors are comparable to judges), but prosecutors fall within the Ministry of Justice. The judicial police play an active role. They are responsible to the Ministry of Interior, but the public prosecution exercises some oversight.

5. Appointing/assigning/evaluation of judges

The Supreme Judicial Council oversees judicial matters. It is headed by the president of the republic and includes the minister of justice and one other official from the ministry. Other members come from the judiciary or the prosecutors. Judges do elect some members.

The Council has a separate disciplinary body that is headed by the president of the Court of Cassation and is largely judicial in composition.

6. Administration and Relationship with Ministry of Justice

The budget and administration of the courts fall largely within the Ministry of Justice.

Because the Supreme Judicial Council has very significant participation by executive branch officials, the judiciary is unusually closely connected to the Ministry of Justice.

7. Specialized courts

Military courts, with participation of a civilian judge, may try security cases. In addition, the State Security Court was established in 1968; it consists of judges appointed by the president. From among existing judges. It has not been active lately.

A separate administrative court system, the Council of State, is required by the constitution. It has recently set up a network of branches throughout the country, giving it two levels. A council was established in 1995 to settle conflicts between the administrative and regular judiciaries.

The High Court, which deals with cases such as high treason by high officials, consists of a chief judge, four other judges and three deputies. The chief judge is appointed by presidential order; the others are selected by the parliament from among senior judges. The court is called by the president of the republic after consultation with the parliament.

Tunisia introduced a Constitutional Council system in 1987 by presidential decree. Its members are judges appointed by the president. In 1990 a law was passed to govern the Council. It rules on matters referred to it by the president. In 1987 a Tunisian court struck down a law and asserted a right to judicial review by the regular court system, but its judgment was reversed the following year by the Court of Cassation which ruled that the regular courts had no such right.

8. Judicial education

The Tunisian Ministry of Justice oversees the High Magistrates Institute. A research body, the Center for Legal and Judicial Studies, was also established in the Ministry in 1992.

UNITED ARAB EMIRATES

The United Arab Emirates remains unusual for the Arab world because of its federal structure. The country was formed out by its seven member emirates in 1971, but most judicial structures remained initially at the emirate rather than the federal level. In 1973 a Supreme Federal Court was created and in 1978 some judicial matters were transferred from member emirates to that Court. In 1983 a comprehensive law governing the federal judiciary was issued, creating a full federal judicial system, though the member emirates retain significant and varying degrees of judicial autonomy. Laid on top of this federal structure is another division between civil and shari'a judiciary. This gives the UAE a fairly complex judicial structure.

1. Constitutional provisions for the judiciary

The constitution of the United Arab Emirates dates back to independence in 1971; it was made permanent in 1996.

Article 94 Justice is the basis of governance. Judges shall be independent and shall be subordinate to no authority but the law and their own consciences in the performance of their duties.

Article 95 The Union shall have a Federal Supreme Court and federal courts of first instance as described hereafter.

Article 96 The Federal Supreme court shall consist of a president and no more than five judges who shall be appointed by decree issued by the federal president with the approval of the Supreme Council. Law shall prescribe the number of departments in the court, their organization and their procedures, conditions of service, and retirement for its members and the prerequisites and qualifications required of them.

Article 97 The president and judges of the Supreme Court shall not be dismissed while they administered justice. Their administration shall not be terminated except for the following reasons: (1) death; (2) resignation; (3) completion of term of contract for individual on contractor completion of term of seconding; (4) reaching of retirement age; (5) permanent incapacity to carry the burdens of their duties because of ill health; (6) disciplinary discharge based on reasons and proceedings stipulated by law; or (7) appointment to other offices, with their agreement.

Article 98 The president and judges of the Federal Supreme Court shall, immediately before taking up duties, swear an oath before the federal president and in the presence of the federal minister of justice, that they will render judgement justly and without fear or favor and that they will be faithful to the constitution and the laws of the Union.

Article 99 The Federal Supreme Court shall be competent to render judgment in the following matters: (1) Miscellaneous disputes among member emirates in the Union, or between any one emirate or more and the government of the Union, whenever such disputes are remitted to the Court on the basis of a request from any one of the interested parties; (2) Examination of the constitutional legality of Union laws, if they are challenged by one or more of the emirates on the grounds of violating the constitution of the Union; examination of the constitutional legality of legislation promulgated by one of the emirates, if it is challenged by one of the Union authorities on the grounds of violation of the constitution of the Union or of Union laws; (3) Examination of the constitutional legality of laws, legislation, and regulations generally, if such a request is remitted to it by any state court during a case under consideration before it. That court shall be bound to accept the ruling of the Federal Supreme Court in the case; (4) Interpretation of the provisions of the constitution, when so requested by any authority of the union or by the government of any emirate. Any such interpretation shall be considered binding on all; (5) Interrogation of ministers and senior officials of the union appointed by decree concerning their actions taken in the conduct of official duties on the basis of a request by the Supreme Council and in accordance with the relevant law; (6) Crimes directly affecting the interests of the Union, such as crimes relating to internal or external security, forgery of the official records or seals of any of the Union authorities, and counterfeiting of currency; (7) Conflict of jurisdiction between the Union

judicial authorities and the local judicial authorities in the emirates; (8) Conflict of jurisdiction between the judicial authority in one emirate and the judicial authority in another, and the classification of the principles relating thereto in a federal law; and (9) Any other jurisdiction stipulated in this constitution, or which may be assigned by a federal law.

Article 100 The Federal Supreme court shall convene in the capital of the Union. It may convene when necessary on an exceptional basis in the capital of any one of the emirates.

Article 101 The judgments of the Federal Supreme Court shall be final and binding upon all. If the Court, in rendering judgment on the constitutional legality of laws, legislation, and regulations, rules that federal legislation is inconsistent with the constitution of the Union, or that local legislation or regulations under consideration contain provisions which are inconsistent with the federal constitution or a federal law, the authority concerned in the union or the emirate shall be obliged to take the necessary steps to remove or rectify the constitutional inconsistency.

Article 102 The Union shall have one or more federal courts of first instance which shall sit in the permanent federal capital or in the capitals of some of the emirates in order to exercise judicial powers within the scope of their jurisdiction in the following cases: (1) Civil, commercial, and administrative disputes between the union and individuals whether the union is plaintiff or defendant; (2) crimes committed within the boundaries of the permanent federal capital, except such matters as are reserved for the Federal Supreme Court under Article 99 of the constitution; (3) Personal status actions, civil actions, commercial actions, and other actions between individuals which arise in the federal capital.

Article 103 All matters connected with the federal courts of first instance in respect to their organization, formation, departments, local jurisdiction, procedures to be followed before the, oaths to be sworn by their judges, conditions of service for their judges, and the means of appealing against their judgments shall be regulated by law. The law may stipulate that appeals against the judgments of these courts shall be heard before one of the departments of the Federal Supreme court, in the circumstances and manner prescribed.

Article 104 The local judicial authorities in each emirate shall have jurisdiction in all judicial matters not assigned to the federal judiciary in accordance with this constitution.

Article 105 All or part of the jurisdiction assigned to the local judicial authorities in accordance with the preceding article may be transferred by a federal law issued at the request of the emirate concerned to the federal courts of first instance. Circumstances in which appeals against judgments by the local judicial authorities in penal, civil, commercial, and other cases may be made before the federal courts shall be defined in a federal law, provided that the judgment of the federal courts in such appeals is final.

Article 106 The Union shall have a public prosecutor who shall be appointed by federal decree issued with the approval of the cabinet. He shall be assisted by a number of members of the public prosecutor's office. Matters relating to the members of the federal public prosecutor's office shall be prescribed by law with respect to the method of appointment, grades, promotion, retirement, and the qualifications required of them. The federal law of criminal procedure and courts shall prescribe the jurisdiction of this body and its procedures and the powers of its assistants over the police and the public security services.

Other provisions of the UAE constitution guarantee the right to litigation, non-discrimination among citizens, reliance on the Islamic shari'a as a source of legislation, and equality before the law.

2. Structure of court system

The UAE has two networks of civil court systems: the federal system and the local systems. While most (but not all) emirates have ceded civil jurisdiction from the local to the federal level, a network of shari'a courts still functions in each emirate.

The federal court system consists of three levels: primary courts, appeals courts, and the Supreme Court. Unusually, this system was established on a framework proposed by the judiciary itself. The provisions of the UAE constitution did not make clear how the federal system could establish a structure of federal

courts beyond the Federal Supreme Court. The Ministry of Justice therefore sought guidance from the Federal Supreme Court on how the constitution was to be interpreted; the resulting interpretation helped form the basis for the three-tier federal system.

The local systems are far older, dating back to the pre-independence era and sometimes well before. Local systems generally consisted of two kinds of courts: shari'a courts and rulers' courts. Shari'a courts generally operate on the presumption that they have general jurisdiction in a manner similar to the Saudi courts. The courts of the rulers of the member emirates originated out of the view that settling disputes was an integral part of governing. These courts formalized to varying degrees, some staffed with professional judges and operating on the basis of codified law.

With the creation of the federal system, all but two emirates (Dubai and Ras al-Khayma) opted to cede their jurisdiction over civil, criminal, and administrative cases. Shari'a courts continue to operate however, throughout the UAE.

3. Personal status issues

Despite the absence of any codification of personal status issues, there is little dispute that personal status cases are to be dealt with in accordance with the Islamic shari'a and the shari'a courts therefore remain the dominant court in personal status matters.

Throughout the UAE (with the partial exception of Abu Dhabi) the relationship between the shari'a courts and the civil courts (local and federal) has not been clarified in legislative texts. This can lead to some overlap of jurisdiction, though civil courts accept the jurisdiction of shari'a courts in personal status cases.

In addition, civil judges are enjoined to rely on the shari'a in the absence of clear legislative texts. Further, the law of the Federal Judicial Authority places the rules of the shari'a among the sources of authority over judges. This lessens the potential for conflict between the two judicial systems.

4. Prosecution system

The UAE operates according to a *niyaba* system in which investigation and prosecution of crimes is a judicial function. The *niyaba* is headed by the Attorney General and overseen by the Ministry of Justice. Qualifications for a *niyaba* position are similar to those for a judgeship. As with judges, the Attorney General and members of the *niyaba* are appointed by the UAE president after nomination by the minister of justice. The two emirates retaining jurisdiction over local criminal cases have their own prosecution systems.

5. Appointing/assigning/evaluation of judges

The formation of the Federal Supreme Court is provided in the constitution: it has a president and no more than five members; they are all appointed by the UAE president with the approval of the Supreme Federal Council.

Other federal judges are appointed by the UAE president after nomination by the minister of justice. Judges who are citizens of the UAE may not be dismissed before death or retirement unless it is proven that they cannot carry out their duties for reasons of health or disciplined in accordance with legal procedures. Those legal procedures allow the minister of justice to bring charges, but the complaint is heard by an exclusively judicial body which renders judgment. Judges who are citizens of other Arab countries have contracts for a specified number of years, subject to renewal.

A Federal Supreme Judicial Council was formed in the 1983 law governing the judiciary. It is headed by the minister of justice, the deputy minister, the attorney-general, the director of the office of judicial inspection, and three senior judges. It is consulted in matters related to assignments and promotion.

6. Administration and Relationship with Ministry of Justice

The Ministry of Justice retains oversight of virtually all aspects of court administration. The Federal Supreme Judicial Council has an advisory role, and the judges of the Federal Supreme Court form a general assembly to administer internal affairs.

The Federal Ministry of Justice was founded in 1973, two years after the creation of the United Arab Emirates. Unlike most Arab governments, the portfolio for justice is combined with Islamic Affairs and Awqaf [religious endowments].

The Ministry of Justice is thus more directly involved in court affairs than is often the case in the Arab world. This is partly due to the small size of the UAE and the fact that the federal judiciary remains fairly new. Judges are consulted through a variety of structures and they do exercise some supervisory functions over non-judicial personnel attached to the courts.

7. Specialized courts

Many of the matters handled by specialized courts in other Arab countries fall within the jurisdiction of the regular civil judiciary in the UAE. For instance, administrative disputes are addressed by a section of the regular civil judiciary rather than by a separate set of administrative courts. Similarly, the UAE does not have a specialized constitutional court, but the Federal Supreme Court is specifically authorized by the constitution to interpret the constitution. It can thus review the constitutionality of federal legislation as well as the legislation of any member emirate.

8. Judicial education

The UAE has developed its own legal education system but is not yet able to train sufficient judges to staff all of its courts. Thus, many UAE judges are borrowed from other Arab countries. Even many of the native UAE judges have studied overseas.

YEMEN

Yemen's judicial structure is unusual (though not unique) in three respects: first, Islamic jurisprudence plays a larger role in legal and judicial training than in most other Arab states. Second, the judiciary is unusually unified; Yemen does not have the series of specialized courts that has arisen in many Arab countries. Third, the executive branch has a strong presence in the Supreme Judicial Council, though there has been some promise of reform to enhance judicial independence.

1. Constitutional provisions for the judiciary

Yemen's constitution dates back to 1991, with significant amendments introduced in 1994. The constitution includes some general rule of law guarantees as well as some specific provisions for the judiciary:

Article 147 The judicial authority is autonomous in its judicial, financial and administrative aspects and the Public Prosecution is one of its sub-bodies. The courts shall judge all disputes and crimes. Judges are independent and not subject to any authority, except the law. No other body may interfere in any way in the affairs and procedures of justice. Such interference shall be considered a crime that must be punished by law. A charge regarding such interference cannot be nullified with the passing of time.

Article 148 The judiciary is an integrated system. The law organizes this system in terms of ranks, responsibilities, the terms and procedures of appointment, transfer and promotion of judges, and their other privileges and guarantees. Exceptional courts may not be established under any conditions.

Article 149 Members of the judiciary and Public Prosecution office shall not be dismissed except under the conditions stipulated by the law. They may not be transferred to non-judicial posts except with their own consent, the approval of the relevant judicial council, unless that was taken as a disciplinary measure. The law shall regulate the disciplinary trial of the judiciary and it shall organize the legal profession.

Article 150 The judiciary shall set up the Supreme Judicial Council. The law shall organize it, clarify its functions and system of nominating and appointing its members. The Supreme Judicial Council shall execute these guarantees for the judiciary in the fields of appointment, promotion, discharge and dismissal according to the law. The Council shall study and approve the judicial budget in preparation for inserting it as one item within the overall budget of the state.

Article 151 The Supreme Court of the Republic is the highest judicial authority. The law shall specify how it can be formed, clarify its functions and the procedures to be followed before it. It shall undertake to do the following:

- a. Judge cases and pleas that laws, regulations, bylaws and decisions are not constitutional;
- b. Judge disputes over conflict of jurisdiction;
- c. Investigate and give opinions regarding appeals referred by the House of Representatives which relate to its membership;
- d. Rule on appeals of final judgments in civil, commercial, criminal, personal and administrative disputes and disciplinary cases according to the law;
- e. Try the President of the Republic, the Vice-President, the Prime Minister, his deputies, the ministers and their deputies in accordance with law.

Article 152 Court sessions are open to the public unless a court determines, for reasons of security or public morals, to hold sessions behind closed doors. In all cases, verdicts shall be announced in an open session.

2. Structure of court system

Yemen's courts of general jurisdiction have three levels: first instance (*ibtida'iyya*), appeals, and the Supreme Court. Higher level courts are divided into specialized sections (civil, criminal, commercial, and personal status).

The Supreme Court is given a number of duties: it serves as a court of appeals (on points of law, as a court of cassation), an administrative court, a constitutional court, a court for trying high officials, and a court adjudicating election disputes and conflicts of jurisdiction among other courts. It does so generally by forming specialized chambers for these areas. It also has a military division.

3. Personal status issues

Yemen has no separate personal status courts. Personal status issues are handled by the courts of general jurisdiction (sometimes in specialized chambers). Islamic law informs Yemeni jurisprudence and legal training, reducing the gap between personal status and other areas of law.

4. Prosecution system

Yemen has adopted a *niyaba* system and the *niyaba* is constitutionally defined as a judicial organ. The head of the *niyaba* is appointed by the president.

5. Appointing/assigning/evaluation of judges

Yemen has a Supreme Judicial Council, as prescribed by the constitution. The Council exercises significant authority over the judiciary, although the senior judicial positions are direct presidential appointments.

The Council is headed by the president and has two other executive branch members (the minister of justice and the deputy minister). The other members are judicial, though all are presidential appointments (directly or indirectly).

Judicial inspection is conducted by a special office in the Ministry of Justice composed of judicial personnel. Any disciplinary issues for judges or members of the *niyaba* are handled by the Supreme Judicial Council.

6. Administration and Relationship with Ministry of Justice

The budget for the judiciary is largely the responsibility of the Ministry of Justice, although the constitution has strong provisions for fiscal and administrative autonomy for the judiciary. The constitution grants the Supreme Judicial Council a significant role in drafting draft budget. The Supreme Court, however, has an independent budget which is overseen by its president.

The Ministry of Justice has a close administrative relationship between the Ministry with the Supreme Judicial Council and other judicial organs. The president has pledged to introduce reforms that would remove him from heading the Supreme Judicial Council. Unlike some other Arab states, Yemen has no constitutional stipulations for the membership of the Council, meaning that such a reform could be accomplished by ordinary legislation.

7. Specialized courts

Yemen has an unusually unified judicial system. The courts of general jurisdiction do have specialized chambers to deal with some matters (such as public funds, or juveniles). Bu there is not the series of

specialized courts (administrative, personal status, constitutional, security, etc.) that have arisen in many Arab countries. The constitution prohibits exceptional courts.

8. Judicial education

Yemen has a High Judicial Institute, established in 1981. It offers a mandatory three-year course of study for new members of the judicial corps who have recognized law degrees. The Institute has expressed interest in offering more specialized and advanced training, but at the current state it focuses almost all of its resources on general training for new judges to supplement their law school education.