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**Building the rule of law in Oman
Phase 2.**

**Report for an inception Mission To Oman.
(Sept. 28 – Oct. 8, 2000)**

Conducted by the International Development Law Institute (IDLI) , Rome, Italy in cooperation with the U.S Embassy ,Muscat under a grant from the U.S State Department through the U.S Agency for International Development (USAID).

Rome, 28 December 2000.

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Executive summary

1. Background

This report is based on the several meetings the members of the inception mission had with Omani officials and U.S Embassy officers during 10 working days in Muscat from September 28th to October 8th.

The need for strengthening the judiciary in Oman has been already shown during the inception mission to Oman in February 1999 conducted by Mr.L. Michael Hager, former Director General of IDLI, Mr. J. Hailman and Mr. Tarek Riad.

This report is the continuation of that work.

Mr. Richard Wilbur, Public Affairs Officer in the U.S. Embassy to Oman assumed responsibility for organizing this inception mission.

He served as Embassy Control Officer for the mission and participated in most of these meetings.

Michael Miklaucic Project Officer of the USAID Democracy Center invited the International Law Institute (IDLI) of Rome, Italy, an intergovernmental organization in which the U.S. is one of the members states, to manage the project under an amendment to the existing framework grant agreement from the Democracy Center to support the rule of law.

Néjib Bousedra, Program Legal Counsel, was team leader. He recruited Dr. Tarek Riad, an Egyptian national and partner in the law sphere of Kosheri, Rashed and Riad, Cairo, Egypt, to participate in the inception mission to guarantee continuity with the mission conducted in 1999.

Team members arrived in Muscat September 28 and conducted their on-site work from September 30 through October 8.

2. Members of Inception Mission

M. Nejib Bousedra. (Team leader), Program Legal Counsel at the International Development Law Institute in Rome, Italy, an intergovernmental organization that provides development law training and technical assistance to developing and transition economy countries. He was educated at University of Aix en Provence (France) and holds a PhD from that university. He worked as professor of law at the University of Tunis for twenty years and has been nominated as vice dean of the Institute of commercial studies in Carthage (Tunisia), and practiced as a private lawyer providing consultancy for banks, international agencies, local and foreign investors. He conducted several missions for IDLI in Rome and in other countries including Rwanda, Mali, Yemen, and Tchad serving as a visiting instructor in company law, investment and privatization. He joined IDLI as a staff member on February 2000.

Tarek F. Riad Partner, Kosheri, Rashed and Riad, Cairo, Egypt, Dr. Riad is an Egyptian national who was educated at Cairo University before taking LL.M and S.J.D. degrees from Havard School. His prior experience includes banking and teaching in addition to law practice in the United States. Admitted to both the Egyptian and New York bars, Dr. Riad has served as a member of the Egyptian Council of State (1981), Special Legal Counsel to the speaker of the People’s Assembly (since 1994), and Member of the Legislative Committee of the Ministry of Economy (since 1997). He was a Lecturer in Private International Law at the Cairo University Law School from 1982-88, and currently specializes in international commercial and corporate law and arbitration. Dr. Riad is a fluent speaker of Arabic, English and French

3. Terms of reference

The overall objectives of the rule of law phase 2 in Oman set as set forth in the “program description” attached to the USAID amendment to Grant N° AEP-G-00-97-00031-00,as it follows

- Examine and describe the structure of the new court system and assess its progress;
- Provide training to the prosecutorial authorities pertaining to investigations, case development and transnational crimes such as computer crime, smuggling and narcotics;
- Continue the process of strengthening the judiciary through training; and
- Promote the development of civil society organizations that may contribute to civil society
- Development and increased public sector accountability.

The process to achieve these objectives begins with the Inception Mission To Oman for eight working days to accomplish the following tasks:

- Gather information on the state of implementing the new court system and assess its progress.
- Gather and analyze information about the needs of Omani judges, prosecutors and lawyers in training.
- Identify with Omani officials five workshops for legal professionals on topic including arbitration, anti corruption, commercial law, court administration procedures, governance, investment, international financing, intellectual property, international contracting, public prosecution, privatization, trade.

4. Mission strategy

In order to understand the needs for legal training, the mission interviewed key Omani official responsible for legal affairs in several sectors: judiciary, commercial court, criminal court, ministry of trade, ministry of legal affairs, ministry of social affairs, agencies for investment and privatization, stock exchange market, college of law and chamber of commerce.

The recommendations set below are based on interviews with legal officers and other officials of the concerned Omani ministries.

5. General overview

No real progress has taken place since the last Inception Mission conducted by IDLI in 1999, nevertheless several laws have been promulgated by the Sultan since these among them the following:

- 1- Law no 97 for 1999, promulgated on the 1st of December 1999 concerning handling of criminal litigation.
- 2- Law, no. 9 for 1999 promulgated on the 31st of November 1999, establishing the attorney's general office.
- 3- Law no. 90 for 1999 promulgated on the 21st of November 1999 organizing the judicial authority; i.e. organizing the courts.

What is very interesting is that the main law is Law no. 90 of November 1999 organizing the Courts was supposed to come into effect by June 2000, but the Minister of Justice was allowed to postpone its enforcement until November under the articles of this Law. The Minister of Justice is also allowed to postpone it for another six months, which is currently expected.

The current status of courts in Oman:

Lease and rent related matters are referred to committees that have judicial powers and are subject to appeal in front of higher committees that may have a judge as a member.

Issues related to real estate are referred to judicial committees and the decisions appealed in front a higher judicial committee that may have a judge as a member.

Legal matters concerning social affairs and labor are referred to committees, and again these decisions could be appealed in front of a higher judicial committee that may have a judge as a member.

Decision concerning rent mentioned above is also subject to appeal in front of the commercial courts.

All matters relating to personal status and civil disputes are referred to the Shariaa Courts.

It might be worth noting in that regard that there is no civil law that the Shariaa Courts could apply.

All commercial matters are referred to commercial courts. Commercial Courts are of First Degree and Appeal.

All criminal matters, whether misdemeanors or felonies are referred to the Criminal Courts (المحكمة الجزائية) and the Criminal Court has two stages for misdemeanors 1st degree and then misdemeanors are appealed and of course felonies are one degree.

6. Problems related to implementation Of the new court system

All the above-mentioned new laws were supposed to come to effect on June 2000. The Minister of Justice is allowed to postpone them to November 2000 and currently they are expected to be postponed to June 2001.

From discussions with different parties including among others the Chief Justice of the Criminal Court, the following has come to our attention:

1) The new law establishing the new judicial authority has reduced the number of courts from 45 courts to 6. Such reduction from 45 courts to 6 courts will have a negative effect on justice and will cause undue hardship on the people of Oman in order to litigate their matters. i.e. A plaintiff may have to travel for 200 to 300 km in order to litigate a very minor matter, including of course other related matters like transportation of witnesses, documents and the parties themselves. These issues cannot be underestimated. Under the previous system there was a Wally -a governor for each governorate- and there are around 50 governorates in Oman. The office of each Wally has close by a Shariaa Court, to which any Omani can come in with any Shariaa or civil dispute to that court in order to seek justice. By establishing only 6 courts, as indicated above, this would result undue hardship on the litigants and may result that a lot of them may lose their trust in the justice system and may prevent them, for cost related reasons, from pursuing their rights.

Needless to say, the above is also an important issue with regard to the political stability of Sultanate in general. In other words, if the people believe they have no justice, it is possible that the stability of the county may be affected.

2) The number of judges estimated by the ministry of Justice for enforcing the new law is around 700 judges, which is currently not available. What is currently available is only 48 judges in criminal court and around the same number in the commercial court and 120 judges in the Shariaa Courts. The number of 700 judges may be practically impossible to achieve at this point.

3) One cannot also underestimate logistical problems relating to find the right building for the Courts of First Instance and the Courts of Appeal.

4) Another main practical obstacle is rehabilitation of the Shariaa judges where some of them have been judges for more than 40 years and are not open to change.

These Shariaa judges exercise a lot of political influence in the areas where they are appointed as judges. Therefore, absorbing them in the justice system is a very crucial element and rehabilitating them in order to be able to cope with the new laws is very important.

Needless to say that the Ministry of Justice and specifically the Minister and the under-secretary Sheikh Zaher are both of them very aware of this problem, taking into consideration –interalia- that the Shariaa Courts were the only courts that was part of Ministry of Justice before.

5) The head of the Commercial Courts and the head of the Criminal Courts, both are uncomfortable with the idea of loosing their independence. i.e.: Before promulgation of the new law, Criminal Courts were totally independent courts that reported directly to the Sultan. Now under the new system, they have to report to the Minister of Justice and the same applies to the Commercial Courts that were under the supervision of the Minister of Justice but he had no political or actual powers over them. Under the new system, they are totally under the Ministry of Justice.

6) There is a big question mark about whether the country is ready for a new Administrative Court to handle administrative matters even if that Administrative Court does not report to the Minister of Justice but reports to the Sultan.

In conclusion, the mission believes that the new law still has to be revised in order to take into consideration the above-mentioned problems and find appropriate solutions. We therefore think that the evaluation of the new system should be postponed until it is implemented. We suggest to conduct such evaluation during one of the five workshop extending that period by three days to allow IDLI's representative do the evaluation while on duty in Oman.

7. Identification of five workshops.

In each of the meetings the mission had with Omani officials working in the judiciary or out of the judiciary, a free discussion took place on the needs training taking into account the specificity of the department involved.

All of the officials the mission met expressed their deep interest in the training proposed by IDLI with the support of USAID. Topics included in the proposal made to USAID were proposed and discussed with Omani representatives. They all met their preoccupations of the moment but choice had to be made among the topics proposed.

The final choice that was agreed on, according to the proposal and the accurate needs of Omani departments, consists in the following topics:

1) WTO and disputes resolution.

This topic was the most urgently asked for because of the recent adhesion of Oman to WTO (October 10th). His Excellency Ali Messaoud Al-Sunaidy, under secretary for commerce and industry and some of his counsels said they can even offer support for such a training. The mission thinks that this topic must be the first one to be conducted in the Sultanate.

This workshop will be attended by 25 to 30 persons involved in trade and dispute resolutions whether they belong to the ministry of commerce or to the ministry of economy, the chamber of commerce, the stock exchange market, judges. A “dosage” must be made among all of these officials and emphasis must be on those working in that particular field.

By the end of the course, participants must be able to identify:

- The role of the WTO as a legal and regulatory framework for world trade,
- The organizational and institutional structure of the WTO;
- The multilateral trading system prior to the WTO
- The key legal principles underpinning the WTO system such as the application of Most Favored Nation (MFN) and national treatment standards in international trade, the prohibition of quantitative restrictions and tariff bindings and concessions;
- The permitted exceptions to these principles for developing countries and regional arrangements, commercial defense measures, (e.g. antidumping, subsidies and countervailing duties and safeguards); or policy measures (e.g. balance of payments);
- Implementation of WTO obligations into domestic law; and notification requirements.
- The principles common to the individual Agreements that comprise the WTO system.
- The WTO Trade and Development Committee and the WTO’s role in providing technical co-operation and assistance to developing countries;
- Special and differential provisions for developing and transition economy countries.
- Dispute Settlement under the WTO

2) NGO’s and it’s relevance to development.

This topic was discussed with her Excellency Dr Thuwayba Bint Ahmed Al Barwani, undersecretary of social affairs, labour and vocational training. She and her staff agreed on the relevance of the topic and explained that the minister has a department that deals with NGO’s. She also made arrangement for meeting with some NGO’s staff. They expressed their needs for training in that matter focusing on fundraising, governance and sustainability.

The workshop will be attended by management of the existing NGO’s, and the department within the ministry who is in charge of that dossier. Judges and other lawyers did not express interest in this workshop.

By the end of the workshop, participants must be able to:

- Recognize ways in which existing legislation and other legal issues affect a nonprofit organization and identify important provisions to be included in revised NGO legislation;
- Implement an effective structure for NGO governance and understand the respective roles and responsibilities of Boards of Directors, Advisory Boards and other governing bodies;
- Understand the professional obligations of senior NGO managers vis-à-vis an organization's Board of Directors, its membership and/or constituency and comprehend the importance of issues regarding transparency and accountability;
- Implement strategic planning and management control and improve techniques for budgeting, programming and reporting;
- Identify potential revenue sources and outline strategies which can be used to assist an organization to sustain itself financially;
- Learn how NGO leaders can use interest-based negotiation techniques to collaborate effectively and share limited resources; and
- Use mediation as a tool in resolving problems within an organization and among organizations.

3) Prosecution new crimes within new legislation and techniques.

This theme was discussed mainly with Cheikh Ali Nassir seif Al- Bualy, chief of the public Prosecution and also with the president of the criminal court and the acting president of the commercial court. It was decided that this course will be open for prosecutors(20 to 25), judges (3 to 5) and top police officers having strong legal background (3 to 5).

It was also decided that the course should include training in civil prosecution and that the workshop should take place after the implementation of the new court system that reshape public prosecution.

By the end of the course, participants should be able to:

- Identify the correct role of prosecutor in regard of other stakeholders involved in the criminal procedure;
- Identify proper ways to collaborate with other stakeholders involved in criminal procedure;
- Understand and use new methods of investigation in computer crimes, money laundry, smuggling and narcotics;
- Identify shady dealings to prevent corruption and improve transparency, which is a key element for sustainable development.
- Understand and interact with civil prosecution;
- Use legal ways for international collaboration in international crime.

4) Privatization and investment

All officials met by the mission explained their concern about improvement of investment. Officials in charge of the privatizations in Oman emphasized their needs for skills in monitoring the after privatization. The president of the chamber of commerce and industry and the acting director general of investment promotion and the executive president of the capital market authority showed enthusiasm and said they will help identify key persons to attend the workshop. The acting president of the commercial court asked the mission to include also some judges in that training.

This workshop is intended to 25 up to 30 senior officials involved in privatization and investment among which 3 or 5 judges and 1 to 3 private lawyers.

By the end of the course, participants should be able to:

- Identify proper ways to liberalize the economy or some sectors of the economy.
- Identify proper ways to privatize state owned firm.
- Make the difference between privatization and contracts on utilities such as BOT, or concessions or contract on management skills;
- Identify and use best way to improve transparency in privatization and in investment policies;
- Identify proper ways to enhance local and international investment regardless of tax exemptions;
- Understand the role of capital market in improving investment;
- Understand the mechanisms for setting export processing zone;
- Avoid or minimize the negative aspects of export processing zone;
- Understand and develop Alternative Dispute Resolution in order to attract more foreign investors.

5) Arbitration and court justice.

The same stakeholders involved in the previous workshop expressed the same deep interest for this course. Judges supported this theme because of the links that exist between the two mode of dispute resolution and the possibility for judges to play a role in the arbitration matter. President of the chamber of commerce explained there is within the chamber an arbitration unit and that they can provide some facilities for the workshop.

This workshop is aimed to the same audience than the above, except that it will address more judges and more officials involved in arbitration within the chamber of commerce and industry.

By the end of the course, participants should be able to:

- Understand definition and different sources of arbitration;
- Make the difference between domestic and international arbitration;
- Make the difference between ad hoc and institutional arbitration;
- Understand the role of the Common Court of Justice and Arbitration (CCJA) in administering arbitration proceedings, in setting up the arbitration panel or court, in reviewing and enforcing arbitration awards, and the role of the judge in the various stages of arbitration;

- Understand the effectiveness of arbitration clauses;
- Know the key international conventions and the general rules of international arbitration that apply to international commerce transactions;
- Identify problems related to nomination of arbitrators;
- Identify ethical issues to which arbitrators must comply i.e. independence, avoid conflict of interest.

8. Miscellaneous.

8-1 The mission was granted the great support of Majlis EDDAOUALA who offered to sponsor or co-sponsor one or all of the five workshop in case we would find any difficulty in identifying counterparts willing to offer concrete support.

In fact, the chief of the public prosecutor is ready to sponsor the seminar in public prosecution when his budget will be voted. The dean of the college of law and Shariaa, the acting director of Investment Promotion and the president of Chamber of commerce and Industry offered their premises to host workshops.

Of course, identifying counterparts was not among the objectives of the Inception Mission, but the mission could not miss the opportunities given by Omani officials. IDLI representative can shape one or more Memoriam Of Understanding during his stay in Oman for the workshop on WTO that is highly marketable and that can take place on the first week of March 2001.

8-2 It was also decided that training must be given mostly in Arabic and in English with translation to Arabic when needed.

8-3 President of Majlis Eddaoula , Undersecretary of Minister of justice, president of criminal court and acting president of commercial court was told about the three fellowships granted by USAID to three Omani judges to attend the IDLI regional course on judicial reform scheduled in Cairo on June 2001. They were asked to make proposals to IDLI and promised to do so.

9. Annexes

Persons contacted

American Embassy Muscat

H.E John Craig, Ambassador
Mr Gary Grappo, Deputy Chief of Mission
Mr Richard Wilbur, Public Affairs Officer
Mr Said al- Harthy, Public Affairs Assistant

Majlis Eddaoula

H.E Sheikh Hammoud Bin Abdallah Al Harthy, President
Mr Khalid Bin Salim AL-SAIDI, General Secretary

Ministry of Justice

H.E Sheikh Zahir Bin Abdallah Al-Abri, Undersecretary
Sheikh Abdullah Bin Sheikh Al Jazouli, Legal Advisor to the Minister

Ministry of Legal Affairs

H.E Mohammed Bin Nasr Al Alawi, Minister
Mr Abdullah Al Lamki, Legal Advisor

Ministry of commerce & Industry

H.E Aly Messaoud Al Sunaidy, Undersecretary

Ministry of social affairs, Labour & vocational training

Dr. Thuwayba Bint Ahmed Al Barwani, Undersecretary

Royal Oman Police

Colonel Ali Nassir seif Al-Bualy, Criminal Public Prosecution

Commercial Court

H.E Sheikh Othman Bin Abdallah Bin Hamed Al Yahyai, Deputy chairman

Criminal Court

H.E Sayyid Said Al Busaidi, President

Oman Center of Investment Promotion & Export Development

Mrs . Malak Ahmed Al-Shaibani, Acting Director General

Capital Market Authority

Mr. Yahya Bin Said Bin Abdallah Al-Jabri, Executive President

Oman chamber of commerce & industry

Mr. Mohamad Nasir Al-Shoraiki, Director General

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