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Report and Recommendations concerning the Judicial Inspection Department of Jordan

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This report was prepared based upon interviews with the Minister of Justice, the Chief Justice / President of the Court of Cassation, the Chief Inspector and other inspectors of the Inspection Directorate, and judges who have been subject to inspection recently. It is also based upon a review of relevant legislation and regulations. Larger issues of judicial independence and the restructuring of the Ministry of Justice are discussed only as they pertain to the Inspection Directorate.

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INTRODUCTION

The Inspection Directorate was authorized by Regulation 12 of April, 1994 (**Ex. 1**) which was recently replaced by Regulation 47, dated July 17, 2005. (**Ex.2**) The current regulation requires that all first instance court judges, execution judges, appeals court judges, attorneys general, and prosecuting judges be evaluated "at least" once a year. The Inspector is charged with evaluating

the proper application of the law and procedure in the cases, fulfilling the litigation and evidence rights, reasons for postponements, the time period needed for issuing a judgment, the grounds for the judgment, the soundness of the decision, and the percentage of cases decided during the year

The report which is to be prepared by the inspector is to contain comments and rate the judge as "excellent (91-100), very good (76-90), good (61-75), average (50-60) or weak (under 50)". The numerical scores correspond to a list of newly created weighted factors concerning the judge's handling of closed cases. The weighted value of all the factors is 100. The Inspector chooses 40 cases at random, examines each file for the factors listed, and then averages the scores of the cases for a final grade. Each judge is evaluated by two different inspectors who then meet to reconcile their findings. A narrative report is prepared which highlights important findings in each category and which states the judge's final score. The report is submitted to the Minister of Justice and the Chief Justice of the Court of Cassation and a copy is provided to the judge. Any judge rated as "average" or "weak" may present an objection to the Minister for resolution by an Objections Committee composed of the Chief Justice of the Court of Cassation, the Attorney General, and the senior judge of the Court of Cassation. Article 41 of the Law of the Independence of the Judiciary of 2001 (hereinafter Law of 2001, **Ex. 3**) provides that judicial inspection is a function of the Ministry of Justice but that reports regarding judges should go to both the Minister and the Chief Justice of the Court of Cassation. Articles 26 to 38 of the Law of 2001 also provide that judicial disciplinary matters are generally the responsibility of the Judicial Council

Pursuant to Regulation 47, the Inspection Directorate is also charged with the responsibility to investigate specific complaints made against judges. The complaint must include specific identifying information about the complainant. If the complaint concerns a postponement of a case, the inspector "may study the file from this point of view and write a report"; if it involves personal behavior the inspector is to write a report that is sent to both the Minister and the Chief Justice. The Inspector has the power to issue subpoenas, review all materials relevant to the accusation, and "use all investigation methods" to conduct the investigation. If the inspector determines that the complaint was made in bad faith the accuser is referred to the Public Prosecutor.

Judicial promotions are governed by Articles 19 to 21 of the Law of 2001. According to Article 19, "judges are promoted to higher levels based upon credentials and excellence of service that are assessed by the {Judicial} Council and according to the reports of inspectors that describe their functions" and "any disciplinary penalties" are to be "taken into account". Judges may not be promoted until he/she has served at least three years at the judge's current level. There are 6 levels of judicial rank and

judges begin at level 6. To be promoted from level two to level one and from level one to the "distinguished level, one must submit an approved "judicial research."

I. THE INSPECTION DIRECTORATE AND JUDICIAL INDEPENDENCE

A. Proper roles in the evaluation process

Regulation 12 (1994) placed responsibility for the Inspection directorate in the hands of the Ministry of Justice. It required that the reports of the Inspectors be submitted to the Minister of Justice. The new regulation, Regulation 47(2005) which replaced Regulation 12, provides that the report be provided to the Chief Justice of the Court of Cassation and the Minister of Justice. Any objections to the report are to be resolved by a committee comprised solely of judicial officers. The previous Regulation had included the Attorney General as one of the committee members.

The new regulation seems to tilt the responsibility for the inspection process slightly away from the executive branch by the creation of an independent Directorate for Inspection. While the shift in this area is subtle and the new regulation continues to say that the Directorate of Inspection is "created at the Ministry {of Justice}" and Article 41, Law of 2001 continues to say that "the judicial inspection apparatus is considered to be a function of the Ministry", there seems in reality to be only a minor administrative role assigned to the Ministry.

Evaluation of judges should not be the role of the executive branch of government. Such control and oversight would deter judges from objectively ruling in cases in which the government has an interest and could pressure the Inspection Directorate to conform its evaluations to the wishes of the government. Any shift away from control by the Ministry over the Inspection Directorate then is a step toward more independence for the judiciary. Abolishing any role for the Ministry in the Inspection Directorate would require the complete separation of the Judiciary from the Ministry including financial control etc. That is a step which perhaps should be taken at some time in the future but which is unlikely to occur in the short term. Many systems in the world contain similar dual roles for the Ministry of Justice and are struggling with similar issues concerning the proper role of the Ministry.

RECOMMENDATION:

THE MINISTRY SHOULD HAVE NO ROLE IN THE EVALUATION PROCESS AND SHOULD NOT SELECT INSPECTORS NOR RECEIVE EVALUATION REPORTS

B. Proper roles in the disciplinary process

In regard to specific complaints against a judge the old regulation required that such complaints be submitted to the Minister of Justice who would give it to the Inspection Directorate. If the complaint involved the postponement of a case it was to be decided by the Chief Judge of the Court involved; if the complaint concerned personal behavior a report was to be prepared by the Inspectors and given to the Minister of Justice "for action". Under the new regulation the complaint may be submitted to either the Chief Justice or the Minister who "may" refer it to the

Inspection Directorate. The new regulation provides that for postponement issues the inspector will write a report and that for personal behavior questions, the report is to be sent to both the Minister and the Chief Justice. The Judicial Council takes any "action"

Once again there seems to be a subtle shift away from the Ministry of Justice and toward the Judiciary as the proper place for judicial discipline to take place. The Ministry's role seems to be more about notification and less about "action". Still it appears that the Ministry continues to want some role in the process and is not ready to abandon all control over the process. As noted above complete separation is probably only possible if the judiciary has complete control over its own affairs

**RECOMMENDATION:
COMPLAINTS SHOULD NOT BE SUBMITTED TO THE MINISTRY OF
JUSTICE**

II. THE EVALUATION PROCESS

A. The criteria used

Very recently, the evaluation criteria stated in Regulation 47 (2005) have been further defined by the Inspection Directorate in a "matrix" of specific items to be checked for each case. (Ex. 4) The criteria include checking the Court file to determine if the judge is properly managing the clerk by noting whether items that are to be written on the file are, in fact, present. Those items include the names of the litigants, dates of hearings, etc. The inspector then checks to see if jurisdiction is proper, if fees have been paid, if there has been proper notice given to the litigants, whether hearings procedures were correct, what evidence was admitted. The inspector also notes the number and duration of postponements and the justifications for those delays. The judgment is checked to determine if legal justifications are present in sufficient detail; whether legal articles are cited. The Chief Inspector emphasized that the judgment is checked only to determine if it sufficiently explains the legal and factual reasons for the decision and not whether the inspector agrees with the result. He stated that the appellate process is the proper place for an analysis of whether the result was correct or not. It is essential that inspectors do not simply substitute their judgment of the merits of the case for that of the judge. Their review should be limited to the form of the judgment: whether it is well reasoned, well written, well researched, etc. As the Chief Inspector noted, the appellate process is the only proper venue for review of the merits of the judge's conclusions.

The use of an objective set of criteria is a major step forward for the Inspection process. Previously the process was entirely the subjective judgment of the inspector who was free to use whatever criteria he chose. The criteria chosen are supposed to have been distributed to all judges so that for the first time they would be aware of the criteria that will be used to evaluate them. This is a major and significant improvement in the process.

The fact that the issue of the propriety of postponements is included in the criteria is also a very important inclusion. While it would be preferable to include more detailed information relating to case management, a recognition that inspectors will be determining if delays were justified, will have a positive effect on judges' interest in managing cases more effectively. A more complete evaluation of case management skills would include items such as whether schedules were created at the outset of the case, the appropriate time that it should have taken to complete various activities in the case, how many cases the judge has decided, and whether the time from filing to disposition was appropriate. The specific factors to be included should be consistent with case management goals and objectives to be developed by the Masaq Project in conjunction with Jordanian judges.

Missing entirely from the criteria are any items relating to the judges courtroom behavior. Factors that should be included are: starting court on time; being prepared for each case; control of the courtroom during hearings; treatment of litigants and lawyers with respect; appearing neutral in all his comments; conducting proceedings

in the courtroom in a transparent manner. (An example of additional criteria is attached as **Ex. 5**) The inspectors expressed a strong desire to observe the judges' courtroom behavior as a part of the process.

Also missing is any consideration of the judge's ethical behavior. The disciplinary process is the place for resolution of serious ethical breaches. However there are behaviors which, though not rising to the level of an ethical breach should be considered for evaluation purposes. For example, if the judge projects an image that the judge favors some lawyers over others, such conduct would warrant comment. So too even innocent *ex-parte* communications are inappropriate and would warrant comment.

In order to incorporate the other criteria suggested, inspectors should have additional training in evaluation techniques and methods.

The Inspectors could also consider whether information from lawyers would be a useful piece of additional information which would aid the inspector in forming an accurate picture of a judge's performance. Lawyer surveys are widely used in some countries to augment the information about judges' performance. There are certainly difficulties in offering lawyers the opportunity to "rate" judges. Some will take the opportunity to express personal feelings which may have no validity. It is especially difficult in settings in which judges and lawyers do not share mutual respect. However lawyer surveys have proved useful even in such environments in countries such as Egypt. Here in Jordan, prior lawyer surveys have shown that lawyers are able on the whole to separate their personal feelings and to present an objective view of the legal system. No judge in any country enjoys being reviewed by lawyers. However lawyers are uniquely positioned to have very relevant information about how judges perform.

Finally, the Chief Judge of a court also has the opportunity to observe the judge in a unique way and his observations should play a role in a judge's evaluation. The Chief Judge has some important insights into the judge's work habits, capacity to handle complex matters, and willingness to cooperate when needed at the court etc. It is not desirable that the Chief Judge's evaluation dominate the evaluation for the reasons noted by several Jordanian judges in their meeting with an inspection judge from France. i.e. the personal relationship of the Chief Judge and individual judges. A simple questionnaire can be created and the Chief Judge could fill it out in a relatively short period of time so that the task of evaluation would not be an additional burden. The Chief Judge's opinions can be added to the other information to present a more complete picture of the judge's performance.

While the use of known, objective criteria is a major improvement in the inspection process, the inclusion of additional items, from additional sources would enhance the effectiveness, validity and transparency of the process.

RECOMMENDATIONS

THE MERITS OF THE CASE SHOULD NOT BE CONSIDERED BY THE INSPECTORS

THE INSPECTION CRITERIA SHOULD BE EXPANDED TO INCLUDE ADDITIONAL CASE MANAGEMENT ITEMS AND TO INCLUDE FACTORS RELATING TO THE JUDGE'S COURTROOM PERFORMANCE AND ETHICAL BEHAVIOR

INSPECTORS SHOULD CONSIDER CHIEF JUDGE EVALUATIONS AND LAWYER SURVEYS TO AUGMENT THE INFORMATION USED TO EVALUATE JUDGES

B. Grading each of the criteria

As noted above, each item in the evaluation criteria is assigned a weight that has been assigned by the Inspection Directorate. More significant items are assigned a higher number and less significant items a lower value. Within the individual criterion however it appears that a judge can obtain either "all the points" or none of the points; there does not appear to be a way to more precisely determine his performance on any item. For some items that is appropriate e.g. either the names of the litigants appear on the file or they don't. But for other items it seems as though there may be more leeway needed. e.g. some of the postponements may have been proper and others not. It would be useful to be able to assign some amount of points rather than all or nothing. For example if postponements have a value of 8 points, the inspector should be able to award 4 points if some of the postponements were justified and others were not. Such an approach would clearly be necessary for the more subjective criteria suggested above, such as courtroom demeanor and ethical behavior.

**RECOMMENDATION:
THE MATRIX SHOULD INCLUDE A SLIDING SCALE OF PERFORMANCE FOR EACH CRITERION**

C The inspectors workload

Article 5 of Regulation 47 (2005) requires that inspections for all "court judges, members of the public prosecution, assistants of civil general attorneys and execution judges" will take place "at least once a year". Judges are required to be inspected before their 3 year provisional appointment can be made permanent and they are also required to be inspected before they are promoted.

While there are various estimates of the number of individuals who are included in the yearly inspection mandate, it seems that a conservative estimate is over 600. Each evaluation is repeated by a second inspector.

The same inspectors are also required to inspect the functioning of the courts themselves. I.e. they inspect various courts and report on the physical, organizational, and administrative functioning of the court. There does not appear to be any follow-up for these reports. Moreover, the same inspectors are required to act as a sort of

reviewer of last resort in certain criminal cases. After all appeals have been exhausted, if an issue of new evidence or serious impropriety is raised in certain criminal cases, the inspection department is assigned to determine if there is any merit to the claim and to report back to the Court of Cassation. Inspectors estimated that these matters could comprise up to 40% of their work. In addition to these tasks the inspectors also function as a legal resource when international treaties are being considered.

There are presently four inspectors in addition to the Chief Inspector. An additional four inspectors have been assigned on what seems to be a part-time temporary basis. Although there is a plan to increase the number of inspectors, it is apparent that only an unacceptably large number of inspectors could ever actually fulfill the yearly mandate contained in Regulation 47. The resources that would be necessary to fulfill that requirement could not be justified. Evaluation when the judge is to be permanently appointed and at each promotion, along with a requirement that a review take place no less than every three years should be more than sufficient to ensure that judges' are motivated to perform at a high level while respecting the judges' desire to be treated as an independent professional and left alone to do his work.

It is unclear why an additional review of completed criminal cases is necessary if there has been the opportunity for appeal to intermediate appellate processes. If further discretionary appellate review is deemed necessary, alternative procedures for such a review could be developed. A method to handle newly discovered evidence can certainly be created in the original trial court. The Court of Cassation could determine if any further review is warranted based upon briefs filed by the parties. In any event, if it is deemed necessary for there to be an additional review in the current form, a specific position should be created within the Court of Cassation to review those cases and make recommendations.

The use of inspectors as a legal department for treaty consideration is also outside the scope of the role of evaluation. That function would seem to belong most clearly in the legal department of the executive branch.

Inspection staff has reported that it is difficult to get files for inspection in a timely manner. Apparently, each time a set of case files is requested, an order must be signed by the Minister of Justice. A prior Minister had signed a blanket order which allowed the Chief Inspector to obtain the needed files. The Minister should be encouraged to give the Chief Inspector the authority to obtain case files needed for review without the need for the Minister's approval for each set of files..

RECOMMENDATION:

THE NUMBER OF INSPECTORS SHOULD BE INCREASED AND THE REQUIREMENT FOR YEARLY EVALUATION SHOULD BE ELIMINATED.

THE RESPONSIBILITY TO INVESTIGATE COMPLETED CRIMINAL CASES AND THE LEGAL IMPACT OF TREATIES SHOULD BE TRANSFERRED TO OTHER ENTITIES.

**THE MINISTER OF JUSTICE SHOULD GIVE THE CHIEF INSPECTOR
THE AUTHORITY TO OBTAIN CASE FILES FOR REVIEW**

D. The use of the evaluation

Evaluations created by the Inspection Directorate are officially used by the Judicial Council to determine whether the 3 year provisional appointment of judges should be confirmed and whether promotions should be granted. Law of 2001. The inspectors prepare a report that contains a short narrative description of the judge's strengths and weaknesses which is based upon the review of the case files. As previously noted the evaluation should be expanded to include other factors. Significantly, the Inspector does not meet with the judge to explain the report or to answer questions the judge might have concerning the items mentioned. That failure to conclude the process with a feedback session misses a good opportunity to use the evaluation process as a learning tool. If a judge has been judged weak in Civil procedure, for example, there is no opportunity to discuss with the judge the specific problems which might be addressed, uncover the reasons the judge has those difficulties, and plan a method to correct whatever problems have been uncovered. Information about needed training should be provided both in aggregate and in individual cases to the Judicial Institute so that programs can be designed to address systemic problems and the opportunity for additional necessary training should be provided to the judge.

RECOMMENDATION:

**AT THE END OF THE EVALUATION AN INSPECTOR SHOULD MEET
WITH THE JUDGE TO GO OVER THE REPORT IN DETAIL AND THE
JUDGE SHOULD HAVE THE OPPORTUNITY TO OBTAIN APPROPRIATE
ADDITIONAL TRAINING**

III THE DISCIPLINARY PROCESS

A. Prosecution and investigation in the disciplinary process

The disciplinary process begins with a complaint being submitted to either the Chief Justice or the Minister. The complaint must contain the name, signature and national number of the complainant as well a specific complaint. Article 11, Regulation 47(2005). It "may" then be referred to the Inspection Directorate. Presumably this permissive language means that the Chief Justice or the Minister may choose not to submit it to the Inspectors. The Judicial Council then determines the validity of the complaint through a detailed process described in Articles 27 to 39 of the Law of 2001. Three members of the Judicial Council make up the disciplinary committee. The Attorney General acts as the prosecutor the charges are filed and the committee conducts an investigation. If the charges include criminal offenses the case is turned over to the Public Prosecutor for prosecution under the law. Resignation or retirement of the judge terminates the disciplinary case. The disciplinary proceedings are confidential. Any adverse finding against the judge may be appealed to the High Court of Appeals. A judge may be disciplined for "any violation of duty and any act that relates to the dignity and honor of the position". Article 37a, Law of 2001. If the judge is found in violation, the judge may receive one of several sanctions: a warning, a citation, a salary deduction, a demotion, relieved from duty, or dismissal from the court. If the judge is found not to have been in violation and the complaint is judged to have been brought in bad faith, the case is sent to the public prosecutor for legal prosecution against the complainant.

As in the evaluation process, the Ministry of Justice seems to actually have a minor role in the disciplinary process, but continues to be involved. It is not clear why he has any role in the process since the investigation and decision are controlled exclusively by the Judicial Council. The executive branch as represented by the Attorney General does have a significant role as prosecutor and apparently decision-maker as well. Such a role can create the opportunity for the executive to unfairly target a judge because of a ruling which displeases the government. The requirement that two of the three members of the disciplinary committee are judges is a check on that possibility although personal considerations could certainly affect one of the judge's decisions. An independent prosecutor, appointed by the Judicial Council, should investigate all complaints, make recommendations about those that should not be pursued, recommend criminal prosecution if warranted, and prosecute those he finds are violation of proper conduct. A professional, independent prosecutor would bring the measure of objectivity needed and prevent any charge that the investigation is politically motivated.

Allowing inspectors to investigate disciplinary matters creates another difficulty. Inspectors are involved in the evaluation of judges and recommendations for improvement. It is understandable that they would be charged with the additional task of investigating complaints about judges. Yet the roles are fundamentally different. One is an evaluative function and the other an investigative, prosecutorial one. It is best if an independent entity fulfills that role freeing the Inspectors to do evaluations.

If it is not possible to appoint an independent investigative and prosecutorial position, then at least a single Inspector should be assigned that specific task to separate as much as possible the evaluative and disciplinary process.

RECOMMENDATION:

A PROFESSIONAL INDEPENDENT PROSECUTOR SHOULD ACCEPT THE COMPLAINT AND CONDUCT THE INVESTIGATION AND PROSECUTION IN DISCIPLINARY CASES

THE EXECUTIVE SHOULD NOT HAVE A ROLE IN THE PROCESS

B. The members of the disciplinary committee

It is certainly appropriate that judges be determining whether a judge has violated his duty. They know what it is like to be a judge and can decide whether actions are reasonable or not, whether complaints constitute serious matters or frivolous ones, whether purported explanations are valid, etc. It is less clear that **only** judges should be involved in the process. Charges will inevitably be made that judges will only protect other judges, complaints will be dismissed without thorough investigation, and any actions taken will be covered up so that the judiciary keeps its reputation intact. Without any measure of public disclosure, citizens will have no way of determining if the system is functioning to discipline judges appropriately. Other countries have disciplinary systems that maintain confidentiality, but also contain citizen or lawyer members of the discipline committee. The balance between effective oversight and intrusion into the judicial function is difficult to strike and all systems struggle to accommodate both interests. At a minimum, however, reports of the discipline committees' actions, without disclosure of individual names, need to be issued on a yearly basis so that the public understands that actions have been taken. Rather than destroying the reputation of the judiciary, such reports give the public confidence that there is appropriate oversight of judges.

RECOMMENDATION:

THE DISCIPLINARY COMMITTEE SHOULD INCLUDE LAWYER AND/OR CITIZEN MEMBERS AND THE COMMITTEE SHOULD REPORT WHAT ACTIONS HAVE BEEN TAKEN ON A YEARLY BASIS

C. The disciplinary criteria

A judge may be disciplined for "any violation of duty and any act that relates to the dignity and honor of the position". Article 37a, Law of 2001 Violations include "delays in rendering judgments; failure to set a date for judgment; discrimination between the parties; breach of confidentiality; absence without excuse; failure to abide by work hours" Article 37 b, Law of 2001. If the judge is found in violation, the judge may receive one of several sanctions: a warning, a citation, a salary deduction, a demotion, relieved from duty, or dismissal from the court.

The criteria as presently stated are much too broad to give fair notice to judges concerning what conduct will subject them to discipline. "Any act" that relates to the dignity of the position could include a whole host of activities and is certainly in the eye of the beholder. What someone would consider fairly innocuous behavior might be scandalous to another person, especially one motivated to create problems for a judge who has issued an adverse ruling.

The criteria should be based upon a Code of Conduct which states as clearly as possible what areas of behavior will be subject to discipline. Of course no Code can or should detail each possible factual circumstance that could lead to a violation. However a well drafted Code can give enough guidance to judges so that they are aware that *ex-parte* communications are prohibited, conflicts of interest require recusal, and any personal illegal conduct is subject to sanction. A Code of Judicial Conduct has been drafted and it awaits approval at this time. When it is approved it should provide the only basis upon which disciplinary cases can be instituted and the complaint should be required to state with specificity which sections of the Code have been violated.

RECOMMENDATION:

COMPLAINTS AGAINST JUDGES SHOULD BE BASED ONLY ON VIOLATIONS OF SPECIFIC PROVISIONS OF A CODE OF JUDICIAL CONDUCT

IV. THE PROMOTION PROCESS

A. The criteria

Judicial promotions are governed by Articles 19 to 21 of the Law of 2001. According to Article 19, "judges are promoted to higher levels based upon credentials and excellence of service that are assessed by the {Judicial} Council and according to the reports of inspectors that describe their functions" and "any disciplinary penalties" are to be "taken into account". Judges may not be promoted until he/she has served at least three years at the judge's current level. Judges may be promoted after one year if the judge is the "most senior of his peers at a given level". There are 6 levels of judicial rank and judges begin at level 6. To be promoted from level two to level one and from level one to the "distinguished level", one must submit an approved "judicial research."

The criteria suggest that promotions are the result of a very subjective analysis of a judge's performance over the passed three years. The only objective criterion is the requirement that 3 years have passed since the previous promotion. In practice judges are most often promoted unless there are some serious questions about the judge that have been raised either in the disciplinary or evaluative inspection processes. Judges certainly should not be pushed along a career track without regard to performance. A rigorous application of more objective criteria would reduce favoritism and nepotism.

Requiring additional training, the passing of objective examinations, and having achieved certain performance standards before a promotion is granted would enhance the quality of the judiciary. For example only judges who have scored excellent or very good would even be eligible for promotion.

Elimination of all subjective judgment is not possible. However, any measures that support merit selection over favoritism build the morale of the judiciary, confidence in the quality of the judiciary, and ultimately enhance the quality of justice.

RECOMMENDATION:

PROMOTIONS AFTER SERVING THREE YEARS SHOULD BE BASED ON MERIT ALONE. SPECIFIC TRAINING AND PERFORMANCE CRITERIA SHOULD BE REQUIRED FOR CONSIDERATION

B. The process

It appears that the Judicial Council determines whether promotions are granted based upon a review of the applicants file. The process is not stated in any specificity. Again whenever processes are unclear, it is an invitation for extraneous factors to play an inappropriate role in the process. If there is a yearly review of each "class" as the three years end, then each judge will know that he has been evaluated and either

granted or denied a promotion. Notice that he has been considered should be given and the results of the process should be communicated to the judge. Not being informed clearly about the process leads to mistrust and misunderstanding. All candidates should be considered and a decision reached on each candidate. Any judge not promoted after the three year period should be told why he was not promoted. Judges who are related to powerful individuals should be judged on an equal footing with other judges. More objective criteria help ensure that is the case, but notice of the reasons for the Judicial Council's actions is also necessary to instill confidence that all judges have been treated equally.

**RECOMMENDATION:
PROMOTIONS SHOULD TAKE PLACE AT A REGULARLY SCHEDULED
TIME AND NOTICE OF THE JUDICIAL COUNCIL'S ACTIONS SHOULD
BE GIVEN TO THE JUDGES**

CONCLUSION

The inspection function for the Jordanian Courts have improved significantly with the restriction of the role of the executive branch, the adoption of an objective set of criteria for evaluation, and the proposal of a Code of Judicial Conduct for disciplinary matters. Enhanced evaluation criteria, more realistic goals for the Inspection Directorate, and better feedback to the judge could further improve the evaluation and promotion system. An independent prosecutor, specific charges based on a known code of conduct, and public disclosure could enhance the disciplinary process. While the basic separations of powers difficulties of civil law systems are present as well, other countries have successfully negotiated such problems to produce a highly competent, efficient, and transparent justice system. There is no reason Jordan can not be just as successful.

As noted in many other reports, however, paper transformations are only as good as their implementation and the support of those in positions of authority. If promotions and evaluation are predetermined by one's status or family connections, then the adoption of objective criteria will be unsuccessful in creating a merit-based judiciary. If cases are brought against judges for political reasons then a disciplinary process which grants extensive due process procedures will be of little value. The most significant factor in creating a fair and effective judicial evaluation and discipline process is a legal culture that supports and protects those processes. That culture is fostered by the actions of those who believe that there is value in supporting principle over expediency and who act on that conviction.

SUMMARY OF RECOMMENDATIONS

I. JUDICIAL INDEPENDENCE AND THE INSPECTION DIRECTORATE

A. Proper roles in the evaluation process

Recommendation:

THE MINISTRY OF JUSTICE SHOULD HAVE NO ROLE IN THE EVALUATION PROCESS AND SHOULD NOT SELECT INSPECTORS NOR RECEIVE EVALUATION REPORTS

B. Proper roles in the disciplinary process

Recommendation:

DISCIPLINARY COMPLAINTS SHOULD NOT BE SUBMITTED TO THE MINISTRY OF JUSTICE

II. THE EVALUATION PROCESS

A. The criteria

Recommendations:

THE MERITS OF THE CASE SHOULD NOT BE CONSIDERED BY THE INSPECTORS

THE INSPECTION CRITERIA SHOULD BE EXPANDED TO INCLUDE ADDITIONAL CASE MANAGEMENT ITEMS AND TO INCLUDE FACTORS RELATING TO THE JUDGE'S COURTROOM PERFORMANCE AND ETHICAL BEHAVIOR

INSPECTORS SHOULD CONSIDER THE USE CHIEF JUDGE EVALUATIONS AND LAWYER SURVEYS TO AUGMENT THE INFORMATION USED TO EVALUATE JUDGES

B. Grading each of the criteria

Recommendation:

THE MATRIX SHOULD INCLUDE A SLIDING SCALE OF PERFORMANCE FOR EACH CRITERION

C. The inspectors' workload

Recommendations:

THE NUMBER OF INSPECTORS SHOULD BE INCREASED AND THE REQUIREMENT FOR YEARLY EVALUATION SHOULD BE ELIMINATED.

THE RESPONSIBILITY TO INVESTIGATE COMPLETED CRIMINAL CASES AND THE LEGAL IMPACT OF TREATIES SHOULD BE TRANSFERRED TO OTHER ENTITIES

THE MINISTER OF JUSTICE SHOULD GIVE THE CHIEF INSPECTOR THE AUTHORITY TO OBTAIN CASE FILES FOR REVIEW

D. Use of the evaluation

Recommendation:

AT THE END OF THE EVALUATION THE INSPECTOR SHOULD MEET WITH THE JUDGE TO GO OVER THE REPORT IN DETAIL AND THE JUDGE SHOULD HAVE THE OPPORTUNITY TO OBTAIN APPROPRIATE ADDITIONAL TRAINING

III. THE DISCIPLINARY PROCESS

A. Prosecution and investigation in the disciplinary process

Recommendations:

A PROFESSIONAL INDEPENDENT PROSECUTOR SHOULD ACCEPT THE COMPLAINT AND CONDUCT THE INVESTIGATION AND PROSECUTION IN DISCIPLINARY CASES

THE EXECUTIVE SHOULD NOT HAVE A ROLE IN THE PROCESS

B. Members of the disciplinary committee

Recommendation:

THE DISCIPLINARY COMMITTEE SHOULD INCLUDE LAWYER AND/OR CITIZEN MEMBERS AND THE COMMITTEE SHOULD REPORT WHAT ACTIONS HAVE BEEN TAKEN ON A YEARLY BASIS

C. The disciplinary criteria

Recommendation:

COMPLAINTS AGAINST JUDGES SHOULD BE BASED ONLY ON VIOLATIONS OF SPECIFIC PROVISIONS OF A CODE OF JUDICIAL CONDUCT

IV. PROMOTIONS

A. Criteria

PROMOTIONS AFTER SERVING THREE YEARS SHOULD BE BASED ON MERIT ALONE. SPECIFIC TRAINING AND PERFORMANCE CRITERIA SHOULD BE REQUIRED FOR CONSIDERATION

B. Process

PROMOTIONS SHOULD TAKE PLACE AT A REGULARLY SCHEDULED TIME AND NOTICE OF THE JUDICIAL COUNCIL'S ACTIONS SHOULD BE GIVEN TO THE JUDGES

NEXT STEPS:

The inspectors should attend training in regard to proper evaluation techniques and procedures from a human resources expert.(one who is aware of current bottom up, wide ranging evaluation techniques) Much of that theory would be applicable to judges despite the claim that "judges are different". After a general presentation of the general evaluation strategies, the inspectors would begin the work of revising the sliding scale criteria for judicial inspection and the process used to collect information. The revisions would incorporate the suggestions made by the inspectors, this report, and the human resources expert. The product for this workshop would be a draft of a revised inspection process and revised criteria.

Progress: The Chief Justice was supportive. The Chief Inspector has agreed that the criteria need to be expanded and is open to the idea of including Chief Judge and lawyer input. He has agreed to the idea of a workshop but the specifics of the program have to be discussed further, the workshop will be conducted after the increase of the number of inspectors and it will include the part time inspectors. In addition MASAQ is assisting the inspection department in automating the inspection matrix, a weight functionality will be build, and will be fed to the application, currently the judicial inspection department are in the process of identifying them.

November 2005

While the objective criteria recently adopted by the Inspection Directorate would govern for this year, during the year a committee containing all the inspectors should continue to work on final revisions to the product of the workshop. Those additional items would be adopted and used in next year's evaluations. The inspectors would finalize the questionnaires to be given to the Chief Judge and lawyers, and would adopt a process of meeting with the judge following the inspection.

November 2005 to March, 2006

Meetings between the Minister and the Chief Justice should determine who should control the Inspection Directorate and the scope of the inspectors' duties. This issue is tied to the general issue of the "Independence of the Judiciary" which is the subject of specific efforts by the MASAQ project.

Regardless of how those institutional issues are decided, other entities need to take over functions that impede the work of the inspectors. Inspectors should no longer review closed criminal cases. A specific position should be created at the Court of Cassation to fulfill that function. The Chief Justice should be encouraged to seek that position.

Similarly someone at the Attorney General's office or elsewhere in the Ministry should assume the duty to review treaties. Further discussion is necessary to determine what other possibilities may exist for those functions to be shifted.

Progress: The ideas have been presented to decision-makers with no commitment to implement them. The inspectors themselves support the recommendations.

November 2005- March 2006

The requirement for yearly inspections needs to be eliminated. Depending upon the success of the discussions concerning the shift in responsibility for the judiciary from the Ministry to the Judicial Council, either the minister's next review of the inspection regulation should drop that requirement or an inspection directive should be issued by the Chief Justice which eliminates it.

Progress: All the parties have agreed that a yearly inspection for all judges is not possible. The Chief Inspector believes that yearly inspections for new judges are still needed. There has been no commitment to change the regulation.

December- March, 2006

The Judicial Council should receive training (either here or in the US) concerning the creation of an independent judicial discipline apparatus, the handling of disciplinary complaints, confidentiality, and public disclosure. (The Disciplinary Committee is presently comprised of a rotating group of three members of the Council.)

Progress: I have contacted CEELI Jordan to see if they would be interested in a joint sponsorship of such a program. Frank McLoughlin of CEELI was a disciplinary lawyer and agreed to consider guiding the presentation of this disciplinary program.

January, 2006

The Director of the Judicial Institute should meet with the Chief Inspector to discuss how best to link the needs uncovered by the inspectors to the training provided by the Institute. Each year the Chief Inspector could send a short summary of the inspectors needs assessment to the Director to help in planning courses. Starting next year, judges should be allowed to sign up for a course they believe would help them.

Progress: The Chief Inspector thought it would be a good idea

September 2006

A judge from a civil law country like France should present the criteria and process used to grant judicial promotions to the Judicial Council with a view toward making the process in Jordan more objective and meaningful

Progress: The idea of criteria for promotions was presented but no comment was received

February, 2006.

There should be a judicial training session to tackle the issue of real judicial independence in decision-making. Presenters could include judges from other Arab countries to discuss standing up to executive power (or higher judicial authority), attempted family or tribal influence, or public pressure. Participants should include the inspectors. The IDLO organization in Rome has presented such a program in the past in Egypt. (Nejib Boussedra of IDLO was the organizer)

Progress: An email has been sent to IDLO to inquire about their interest and availability to present such a program.

May 2006