



**STRENGTHENING THE INDEPENDENCE OF THE JUDICIARY AND
CITIZEN ACCESS TO JUSTICE IN LEBANON (SIJCAJ Project)**

A USAID Project Implemented by National Center for State Courts

**Report on Short Term Technical Assistance
May 17-26, 2009**

**Richard Van Duizend
Principal Court Management Consultant
National Center for State Courts**

Submitted: June 3, 2009

This publication was produced for review by the United States Agency for International Development. It was prepared by Richard Van Duizend.

REPORT ON SHORT TERM TECHNICAL ASSISTANCE

DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

TABLE OF CONTENTS

I. Technical Assistance Provided.....	4
II. Observations and Suggestions.....	4
A. Pilot Court.....	4
1. Communication.....	4
2. Caseflow Management.....	5
3. Inconsistent Interpretation of the Law.....	5
4. Notice.....	6
5. Providing Perspective.....	6
6. Sustainability of Improvements.....	6
B. Judicial System Leadership.....	6
1. Uniform Court Policies.....	7
C. Judicial Training Institute.....	7
III. Conclusion.....	9
Appendix A Strategic Change Presentation & Group Exercise 1.....	10
Appendix B Case Management Presentation.....	22
Appendix C JTI Presentation.....	33
Appendix D Judicial Leadership Presentation & Group Exercises 2 and 3.....	44
Appendix E Goals, Strategies and Actions Identified in Group Exercises 1, 2, & 3.....	54

I. Technical Assistance Provided

Between arriving in Lebanon on May 18, 2009 and departing early on May 26, I offered three training sessions. On the afternoons of May 19 and May 22, 2009, I provided training to the judges and staff of the Judgment Executions Court of Beirut, which has been selected as the Pilot Court for the SIJCAJ Project. The training addressed four topics:

1. An introduction to strategic planning,
2. The principles of case management,
3. The role of judges as leaders of the judicial system, and
4. The elements of a vision statement for the judicial system.

The workshops included a series of strategic planning exercises to identify goals, develop strategies for implementing those goals, and determining the initial actions required. Copies of the Powerpoint slides and of the results of the exercises are attached in Appendices A through E.

On May 21, 2009, I offered a lecture for the Judicial Training Institute (JTI) to approximately 60 judges. The lecture included abbreviated versions of the presentations on topics 2 through 4.

In addition, I met with the Hon. Ghaled Ghanem, President of the Supreme Judicial Council, the Hon. Jean Fayed, First President of the Beirut courts, the Hon. Soheil Abboud, Deputy Executive Director of the Judicial Training Institute; and three of the five judges of the Judgment Executions Court; toured the Beirut courthouse with special attention to the current facilities of the Judgment Executions Court; and reviewed the plans for the new Judgment Executions Court facility.

II. Observations and Suggestions

The following observations and suggestions are based on the results of the workshops and the conversations with the leadership of the Lebanese courts.

A. Pilot Court:

1. Communication: I was very encouraged by the active participation from the Pilot Court. Both staff and judges enthusiastically engaged in the small group work and encouraged each other during the report back sessions. The open and frank communication between the staff and judges demonstrated in the Pilot Court is not always found in courts in the region (or in the US for that matter). The inclusion of active staff/judicial collaboration in the action plans developed by both groups of staff and the group of judges is noteworthy and should provide a foundation on which the Project can build as it moves forward.

As part of the strategic planning session, the workshop participants were able to identify areas in which improvement is needed:

- Communication within the Court,
- Communication with other judgment executions courts and governmental agencies preferably through electronic means (e.g., the Security Forces for enforcement of orders; property, commercial, automobile registries; personnel status registries; taxing authorities),

- Communication with lawyers and litigants (to respond to inquiries regarding the status of a case or an order).¹

Each of these areas presents opportunities for the Project. *Within the Court, the Project can encourage the use of judge/staff workgroups around specific change issues, e.g., the design of the new case tracking and management system. Communication with other courts and with governmental agencies will require targets of opportunity, i.e., agencies that are already automated and interested in establishing electronic links to the Judicial Execution Court or international funders interested in automating one of the registries and establishing the means for data exchange. The caseflow tracking and management system will provide an opportunity for better communicating with lawyers and litigants regarding the status of their cases as well as better informing the Court about its operations.*

2. Caseflow Management: The Pilot Court judges, as well as President Fahed, indicated that cases are being processed quickly and smoothly, and that at least for the Judgment Executions Court, delay, with one possible exception was not an issue. Given the nature of the Court, this perception may be accurate. Without data, there is no way to determine whether cases are determined within a matter of hours or weeks as suggested, or whether at least some types of cases experience unnecessary delay. The inclusion of the use of a suggestion box as one of the strategies for improving communication, indicates that the Pilot Court will be open to public comment and ideas.

Therefore, *the Project should consider moving forward quickly with the court user survey and conducting a limited case file review to assess caseflow and identify other possible areas for improvement in the Pilot Court.* The draft survey is currently being reviewed by President Fahed. The case file review should consist of an examination of a random sample 100 files of each of the major types of cases heard by the Judgment Executions Court to determine the total time from filing to disposition, and the elapsed between each major stage of the process. The sample should be drawn court-wide so that all judges are represented. Conducting this case file review will also aid design of the case tracking and management system and the routine management reports that the system will generate.

The exception noted relates to the process for gaining enforcement of orders by the Security Forces. The judges comment on the “need to pass through the administrative and bureaucratic routine which is known as the ‘paralyzing system.’” *Addressing this issue may lie beyond the scope of the Project; nonetheless, the possibility of redesigning the procedures to yield greater efficiency should be explored.* At a minimum, the Project should learn more about the enforcement process when the Security Forces are involved and then a decision about whether seeking to improve this process in Year 3 is possible and feasible.

3. Inconsistent Interpretation of the Law: An issue mentioned during the strategic planning exercise by one of the staff groups and picked up subsequently by the judges was the inconsistency of judicial decisions. Strategies for addressing this issue ranged from a National Commission on the Improvement of Laws, to regular meetings of the judges assigned to the Court. *This appears to be topic that the Project could address as part of Enhancing Judicial Independence.* Again, more information is required before determining what course can be pursued. At a minimum, the Project could help initiate informal judges

¹ It should be noted that the Judgment Executions Court is a lawyers’ court. Few litigants, self-represented or represented, appear.

meetings initially within the Pilot Court and eventually including other Judgment Execution Courts to resolve those legal questions that can be resolved in-house and to identify areas of uncertainty that may require a seminar by local experts under the auspices of the JTI or a clarifying amendment to the Code supported by the Supreme Judicial Council.

4. Notice: One issue that arose in the JTI presentation, but that is likely to an issue for the Pilot Court is notice. As in many countries, effecting service of process is difficult. Difficulties may result from irregular addresses, multiple residences, corruption of process servers, and other issues. *Although notice issues are not expressly included in the Project Workplan, they may be a topic to address in the Pilot Court that could have general application throughout Lebanon.* This is another issue that requires more information before the best means for addressing it can be determined.

5. Providing Perspective: The experience of the Pilot Court judges appears to be limited to Lebanon and, as demonstrated by the individualized filing “system”, the staff certainly does not have an inkling of how similar courts operate in other countries. The judges appear interested in how their Court in particular and Lebanese courts in general compare, as evidenced by a question during the workshop. *A study tour to comparable judgment execution courts in Europe would be helpful in allowing the leadership of the Pilot Court see with their own eyes how more efficient judicial systems handle the cases; file, maintain, and retrieve case files; and communicate with lawyers, litigants, and governmental.* Some research will be needed to determine what European countries still utilize separate enforcement courts and which of these judicial systems operate efficiently. Possibilities based on their general leadership in court management and automation include Austria, Finland, and the Netherlands. I can check with European contacts if this would be helpful.

6. Sustainability of Improvements: It was noteworthy and refreshing that one of the goals identified by the Pilot Court participants during strategic planning exercises was how to ensure that the improvements achieved as a result of the Project could be sustained. Strategies for doing so included:

- Training,
- A specific budget for the Judgment Executions Court, with line items for supplies, cleaning, equipment, and maintenance,
- An employee performance evaluation system that includes incentives for excellence,
- Judicial/employee teams to address administrative issues and set standards and policies.

Each of these strategies already lies within the scope of the Project Workplan. The fact that they were identified by the Pilot Court judges and staff should facilitate justification and implementation.

B. Judicial System Leadership

During my brief discussions, both the President of Supreme Judicial Council and the President of the Beirut courts appeared strongly committed to the modernization of the Lebanese court system and the strengthening of the independence and leadership role of Lebanese judges. They are knowledgeable and realistic about both the needs of the judicial system and the opportunities for change.

1. Uniform Court Policies: There appear to be few, if any, system-wide administrative policies for the Lebanese Court System. Initiating a policy development process could have a major impact on the operation of the system. Three areas appear ripe for development of a policy:

- a national system for numbering cases;
- a national records retention/destruction policy;
- a set of personnel policies including performance evaluation and performance-based salary adjustments.

A fourth, more ambitious area, would be negotiation of data exchange standards for electronically communicating data among courts, and between courts and government agencies.

The Project should initiate discussions with the President of the Supreme Judicial Council about establishing a Policy Development Committee or Task Force. The initial focus should be on establishing a uniform case numbering system and a records retention/destruction policy that lies within the bounds of current Lebanese law.

C. Judicial Training Institute

The Judicial Training Institute appears to have a solid leadership team that combines long-term vision and attention to administrative detail. Its involvement in the Lisbon Group of judicial education organizations should provide ideas and additional incentives to broaden and deepen the scope of the training it provides. In our brief discussions, the leadership set forth clear priorities.

- First, improve the quality of training provided to new judges.
- Second, develop the capacity to provide continuing judicial education.
- Third, expand the capacity of the JTI to enable it to provide training to court staff.

Currently, the JTI has very limited capacity. The new facility will provide it with space and equipment to provide effective adult education. As indicated in the Project Workplan, the role of the Project is to develop the JTI's technical capacity in order to be able to utilize the new space appropriately. This will require a multi-step process:

1. For each priority in turn, determining what topics should be addressed,
2. For each topic, developing a course curriculum that incorporates modern adult education methods,
3. Pilot testing, evaluating, and refining each course curriculum.

Dr. Mansour has promised to develop a list of training topics. It is not clear whether these topics are intended for new judge training, continuing judicial education, or both. *The Project should review the list provided by Dr. Mansour, select two topics for the current work-year, and assist JTI staff in developing course curricula that include an array of instruction modalities, evaluating the initial effectiveness of the training, and refining the course material. In Year 3, the JTI staff should take the lead in developing, testing, and refining at least two other curricula with the Project experts playing only a guidance/observation role.* Certainly one topic that should be considered, whether or not it is

on the list, is the leadership role of judges and how they can and should seek to improve the courts to which they are assigned.

With regard to court staff, the selection of 700 new clerks within the next few weeks provides both an opportunity and a challenge. This influx of the first group of new court employees in 20 years, provides a reason for initiating staff training by the JTI before its judicial education goals have been full fulfilled.

Of necessity, most of the training for these new clerks will be on-the-job. However, development and presentation of a program introducing the court system, setting forth the basic judicial values, and explaining the role and importance of deputy clerks to the process would be helpful in laying a foundation for future improvements. ***Working with the court leadership, ACOJURIS, and the JTI, the Project should explore the possibility of developing this basic orientation to the judicial system. Curricular materials should be developed, evaluated, and refined, so that it can be used for future sets of new court employees.***

III. Conclusion

The interest in modernization and sophistication of the Lebanese court system presents a great opportunity for strengthening the rule of law and administration of justice. Please let me know if additional information or clarification regarding any of the above suggestions would be helpful.