



# Practical Foundations for Guaranteeing the Independence of the Judicial Power in Syria



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# Executive Summary

In modern societies, the judiciary is the natural avenue for achieving justice, protecting rights, and safeguarding freedoms. However, the judiciary can only fulfil this role when the appropriate institutional foundations are in place. At the heart of these foundations is judicial independence, which serves not only as a safeguard for the judiciary itself, but, above all, as a guarantee for litigants.

Achieving judicial independence requires a number of essential measures aimed at reforming the institutions responsible for safeguarding the independence of the judiciary. Foremost among these is the Supreme Judicial Council, particularly with regard to its composition and the powers that should be vested in it in order to strengthen the role of the judicial branch.

This should be accompanied by strengthening the role of other institutions that contribute to judicial independence, particularly the Judicial Inspection Department and the Legislation Department. Constitutional legality must also be safeguarded through the establishment of a genuinely independent Constitutional Court that is insulated from the influence of the executive branch.

Institutional reform must also extend to the core of the judicial system, namely judges and judicial assistants. This requires strengthening public confidence in their professional integrity and independence, ending the long-standing encroachment of the executive branch on the judiciary, and improving their professional, educational, and financial conditions.

Reforming the institutions supporting the judiciary is likewise an essential priority. At the forefront of these institutions is the Judicial Police, whose work has a direct bearing on human rights and which plays a critical role in criminal proceedings, including fact-finding, apprehending offenders, and enforcing judicial decisions.

Reforming individuals and institutions alone, however, is insufficient in a legislative environment that has failed to keep pace with global legal and technological developments. This is particularly evident in light of the emergence of e-litigation and electronic service of process, as well as the continued existence of a number of outdated laws that require review and reform.

# Significance of the Research

The significance of this research derives from its direct connection to people's lives, the protection of their rights and freedoms, and the institutions responsible for safeguarding those rights. It is also significant in the context of state-building on sound legal foundations that protect the interests of all, contribute to political, social, and economic stability, and establish effective legal institutions capable of enabling individuals to access and exercise their rights.

Such institutions constitute a fundamental safeguard for these rights under constitutions that provide for the protection of rights and freedoms and guarantee the independence of the judiciary as a means of achieving these objectives.

# Research Problem

This research examines a number of challenges surrounding the judicial authority. The central question concerns the extent to which the judiciary in Syria is independent. This overarching question gives rise to several subsidiary issues, including the extent to which the Supreme Judicial Council is independent as a judicial authority; the degree of protection and security of tenure enjoyed by judges, who constitute the core of the judicial institution; the capacity of institutions supporting the judiciary to perform their functions accurately and effectively; the ability of existing legislation to keep pace with modern technological developments that can contribute to the timely administration of justice; and the availability of adequate infrastructure within judicial institutions to enable them to perform their functions.

# Research Objectives

The research seeks to demonstrate how judicial independence can be achieved by presenting the tools and mechanisms required to give effect to this principle, which derives from the broader principle of the separation of powers.

It also seeks to present proposals concerning the formation of the Supreme Judicial Council as the institution responsible for safeguarding the independence of the judiciary, as well as proposals concerning the Constitutional Court, which reviews the constitutionality of laws that form the legal foundation upon which the judiciary and other state authorities operate.

In addition, the research examines the role and potential structure of institutions supporting the judiciary, including the Judicial Police, forensic medicine institutions, and other bodies whose reform is necessary for the effective functioning of the judicial system.

The research further identifies legislation requiring amendment in order to enable justice to be administered effectively in light of new technological developments, while also addressing ways of improving the infrastructure of judicial institutions.

# Research Methodology

In order to achieve its objectives, the research adopts a descriptive approach to examine the current state of the judiciary and identify ways of addressing the challenges it faces. It also adopts an analytical approach to the existing legislative framework with the aim of identifying amendments that would bring the legislation into line with the objectives

of the research.

Unlike conventional academic research, which generally relies extensively on references and sources, this research does not systematically cite the references on which its analysis is based. This is because the research is primarily intended to put forward proposals arising from the realities of the Syrian judicial system, with only brief references to comparable legal frameworks and practices, without engaging in detailed comparative analysis.

Accordingly, the researcher relies primarily on proposals derived from professional and academic judicial experience, as well as from workshops organized by the organization and the ideas generated through those workshops.

## Structure of the Research

In accordance with the objectives set out above, the research is divided into five sections: Section One: Reforming judicial institutions that safeguard and contribute to judicial independence.

This section addresses reform of the institutions at the top of the judicial hierarchy, including the Supreme Judicial Council, the Judicial Inspection Department, the Legislation Department, and the Constitutional Court.

Section Two: Reforming the judicial institution.

This section addresses reform of the core judicial apparatus, namely judges and their judicial assistants. Section Three: Reforming institutions supporting the judiciary.

This section examines institutions such as the Judicial Police and forensic medicine institutions. Section Four: Legislative reform.

This section addresses the amendments required to the Code of Civil Procedure, the Code of Criminal Procedure, and certain real estate-related legislation.

Section Five: Reforming the infrastructure of judicial institutions.

## Introduction

Countries undergoing periods of transition following revolutions often experience social, economic, political, and security instability as a result of social divisions and the legacy left by former regimes, as has been the case in Syria.

Addressing these conditions requires a number of measures, foremost among them

judicial reform, which contributes to the achievement of justice and social stability by protecting rights and freedoms. Judicial reform also contributes to economic development by combating corruption and holding those responsible for misappropriation of public and private funds accountable. In addition, effective judicial reform can contribute to attracting investment, which is a fundamental component of economic prosperity.

Judicial reform in Syria should initially focus on establishing the independence of the judiciary through legislative and institutional reform affecting judicial bodies and institutions supporting the judiciary, together with the necessary legislative amendments and improvements to the infrastructure of judicial institutions.

Judicial independence means insulating the judicial institution from interference by the executive branch in the affairs of the judiciary, the work of judges, or the administration of justice.

Judicial reform in any country is neither an easy undertaking nor an impossible one. It requires an assessment of the existing judicial and legislative environment, followed by the development of plans capable of improving the performance of the judicial authority.

Although there are numerous international experiences in the field of judicial reform, these experiences cannot simply be replicated because the challenges and circumstances differ from one country to another. Judicial reform in Syria therefore requires an examination of the existing legislative framework, identification of its shortcomings, an assessment of the actual functioning of judicial bodies and institutions supporting the judiciary, identification of areas of weakness, and the development of appropriate responses to these challenges.

## **Section I: Reform of Judicial Institutions Guaranteeing and Contributing to Judicial Independence**

Judicial independence is one of the principal outcomes of the separation of powers. Although it is fundamentally recognized as a principle of judicial organization worldwide, it has also been affirmed in international principles and conventions.

Principle 1 of the Basic Principles on the Independence of the Judiciary (1985) provides that the State shall guarantee the independence of the judiciary and that such independence shall be enshrined in the Constitution or laws of the country.

Successive Syrian constitutions have likewise used the concept of judicial independence.

In practice, however, this concept has often remained a principle discussed and articulated in seminars and workshops without being fully reflected in practice.

The Constitutional Declaration has also affirmed the independence of the judiciary. The meaning of independence, however, has both practical and legislative dimensions. In practical terms, it requires judges to be trusted as the decision-makers in the cases before them, while eliminating interference, direction, and pressure intended to influence them in favour of one party or another or in relation to a particular case.

This, in turn, requires the establishment of an authority capable of safeguarding the independence of the judiciary and the judges working within it.

Examining the institutions responsible for overseeing and safeguarding judicial independence therefore requires consideration of the independence of the Supreme Judicial Council, as well as the Constitutional Court, which exercises constitutional review over legislation.

## **Subsection I: Reform of Councils Guaranteeing the Independence of the Judiciary (Supreme Judicial Council)**

The Supreme Judicial Council is the body responsible for overseeing judicial affairs, including the appointment, promotion, disciplinary accountability, and dismissal of judges, as well as judicial transfers. The independence of the Council therefore constitutes a fundamental foundation for consolidating the principle of judicial independence.

The Council's independence depends on examining its composition and functions, as well as the administrative and financial independence granted to it.

### **Branch 1: Composition of the Supreme Judicial Council**

Different countries have adopted different approaches to the composition of their supreme judicial councils. Some favour election, others appointment, while others combine both election and appointment.

Syria itself has experienced several different models for the composition of the Supreme Judicial

Council, reflecting the constitutional developments the country has undergone.

Beginning in 1920, the body responsible for overseeing the administration of the judiciary was the Court of Cassation. In 1950, a Supreme Judicial Council was

established consisting of seven members,

chaired by the President of the Supreme Constitutional Court, alongside two members of the Supreme Court and four judges from the Court of Cassation. This arrangement was repeated in 1953.

Following the establishment of the union with Egypt, the Council was reconstituted to include the President of the Court of Cassation, the Vice-President of the Court of Cassation in Egypt, the Vice President of the Court of Cassation in Syria, the President of the Cairo Court of Appeal, the President of the Damascus Court of Appeal, the Deputy Minister of Justice of Egypt, and the Deputy Minister of Justice of Syria, in addition to the Egyptian and Syrian Public Prosecutors.

Following the dissolution of the union, the composition changed again. The Council consisted of the President of the Court of Cassation, the Vice-President of the Court of Cassation, the President of the Damascus Court of Appeal, the Secretary-General of the Ministry, the Public Prosecutor, and the most senior counsellor of the Court of Cassation.

With the enactment of the Judicial Authority Law, the President of the Republic became the head of the Council, deputized by the Minister of Justice. The Council also included the President of the Court of Cassation, the most senior Vice-President of the Court of Cassation, the Assistant Minister of Justice, the Public Prosecutor, and the Head of the Judicial Inspection Department.

This arrangement continued until the 1973 Constitution, which provided that the President of the Republic would chair the Supreme Judicial Council and that the Minister of Justice would act as his deputy. The Council consisted of the President of the Court of Cassation, the most senior Vice-President of the Court of Cassation, the Assistant Minister of Justice, the Public Prosecutor of the Republic, and the Head of the Judicial Inspection Department.

The composition of the Supreme Judicial Council in this form raises serious questions regarding the credibility of judicial independence and constitutes a violation of the principle of separation of powers. It is difficult to speak of an independent judiciary when four of the Council's members represent the executive branch while only three represent the judicial branch.

This imbalance is particularly significant when examining the Council's decision-making mechanisms. The executive branch would naturally have a decisive influence over the Council because it holds four of the Council's seats. This gives it effective control over the Council's decisions, particularly when the Council is headed by the Minister of Justice.

Placing the Minister of Justice at the head of the highest body within the judicial hierarchy represents a clear diminution of the standing and independence of the judiciary, regardless of the justifications offered for such an arrangement.

The presence of the Assistant Minister of Justice further reinforces this concern, as the Assistant Minister is likewise part of the executive branch and therefore participates in decisions taken by the Council. These decisions directly affect judges and may have a significant impact on their professional status, including disciplinary measures imposed during disciplinary proceedings falling within the Council's jurisdiction.

The Public Prosecutor is another member whose position raises concerns regarding judicial independence. Under the Judicial Authority Law, the Public Prosecutor is subject to the administrative

hierarchy of the Minister of Justice and is required to comply with instructions issued by the Minister.

This institutional relationship places the Public Prosecutor within the chain of command of the executive branch and consequently affects judicial independence.

Under Article 56 of the Judicial Authority Law, the Public Prosecutor is bound by decisions issued by the executive authority within the framework of the hierarchical relationship between a superior and a subordinate. This has a direct bearing on the independence of the judiciary.

The fourth member of the Supreme Judicial Council associated with the Minister of Justice is the Head of the Judicial Inspection Department. Under Article 12 of the Judicial Authority Law, the Head of the Department is institutionally linked to the Minister of Justice. This relationship creates, at least at the level of institutional and professional influence, an obligation to comply with the Minister's directions.

Such an arrangement constitutes an infringement on judicial independence and a breach of the principle of separation of powers, a principle affirmed by international instruments and treaties concerning judicial independence and human rights.

As for the three members representing the judiciary, they are judges comprising the President of the Court of Cassation and his two most senior deputies. Their role becomes secondary in comparison with that of the other members because the executive branch holds the majority.

Consequently, the judges representing the judicial branch cannot exercise decisive influence over matters submitted to the Council, particularly given that the Council's responsibilities directly affect judges, including their promotion, dismissal, and disciplinary accountability, as will be discussed below.

## **Branch 2: Reform of the Supreme Judicial Council**

### **First: Proposed Structure of the Supreme Judicial Council**

A genuine search for judicial independence in Syria unquestionably requires

reconsidering the composition of the Supreme Judicial Council, as it is the institution intended to safeguard that independence.

This independence can be achieved through an amendment to Article 65 of the

Judicial Authority Law. **First: Proposed Composition of the Supreme Judicial**

### **Council — Continued**

An amendment to the Judicial Authority Law would provide for the Supreme Judicial Council to be composed as follows:

- The President of the Court of Cassation, as Chair of the Council.
  - The two most senior Vice-Presidents of the Court of Cassation.
  - The Public Prosecutor of the Republic.
  - The most senior Vice-President of the Council of State, nominated by the Council of State.
  - One professor from a Faculty of Law with at least 20 years of service, nominated by the Ministry of Higher Education and Scientific Research.
  - Seven Presidents of Courts of Appeal, selected through election.
  - The Head of the Judicial Inspection Department, when necessary and without voting rights.
  - The President of the Judges' Club, when necessary in disciplinary proceedings.
- This method of constituting the Council would enhance the independence of its decision-making, as the judicial component would constitute the majority and the executive branch would therefore be unable to exercise decisive influence over the Council's decisions. The inclusion of members from outside the ordinary judiciary would also provide an element of external oversight over the Council's decisions without allowing such members to exercise decisive influence over those decisions.

The argument that placing the President of the Republic at the top of the Supreme Judicial Council constitutes a safeguard for judicial independence remains subject to debate among legal scholars. Some support this view, while others reject it. Those who support it argue that the President of the Republic contributes to safeguarding judicial independence without being a member of the Council itself, with the Council functioning as an independent body institutionally linked to the Presidency of the Republic.

### **Second: Financial and Administrative Independence of the Supreme Judicial Council**

The independence of any institution or body can be assessed by examining its ability to make decisions without being subject to financial or authoritative influence from another entity. Where an institution has adequate financial resources, it is better positioned to make decisions in an optimal and appropriate manner, and the converse is equally true.

The financial independence of the judiciary is essential and constitutes a cornerstone of successful judicial independence. Linking the judiciary's financial affairs to the Ministry of Justice inevitably exposes the judicial authority to pressure from the executive branch.

Accordingly, financial affairs should be placed under the authority of the Supreme Judicial Council, which should prepare an annual plan in coordination with the Ministry of Justice and the Ministry of Finance. The Supreme Judicial Council is best placed to assess the needs of judges and judicial institutions, including their financial and material requirements, with the aim of safeguarding the dignity of judges and improving the overall performance of judicial institutions.

Financial independence is no less important than functional independence. Existing legislation should therefore be amended so that the budget of the judicial authority is determined through coordination among the Supreme Judicial Council, the Ministry of Finance, and the Ministry of Justice through the proposed Coordination Council referred to in the following sections.

## **Branch 3: Powers of the Supreme Judicial Council**

Article 43 of the Constitutional Declaration provides that the judicial authority is independent and that judges are subject to no authority other than the law. Its second paragraph further provides that the Supreme Judicial Council shall safeguard the proper administration of justice and respect for its independence.

The Supreme Judicial Council constitutes the highest level of the judicial authority. In order to ensure genuine judicial independence, the Council must therefore be vested with the following core powers:

- Selecting and appointing judges, including overseeing the initial selection process, conducting competitive examinations, determining the procedures for judicial appointments, and subsequently submitting the appointment decree for issuance by the President of the Republic.
- Deciding on the promotion of judges in consultation with the Judicial Inspection Department and on the basis of its periodic reports.
- Conducting disciplinary proceedings against judges and issuing decisions resulting from such proceedings, including dismissal or any other penalty deemed appropriate.
- Receiving inspection reports issued by the Judicial Inspection Department and following up on their implementation.
- Supervising judicial independence and developing plans and measures necessary to achieve it. - Improving the professional and academic standards of judges and developing plans to achieve this objective.

- Improving the living conditions of judges and proposing appropriate remuneration. - Supervising and developing judicial institutes and preparing their curricula in coordination with institutions affiliated with and supporting the judiciary, with a view to addressing challenges that may arise in practice.
- Monitoring legislation relating to the judicial authority and proposing amendments thereto. - Seconding judges.

## **Subsection II: Reform of the Judicial Inspection Department**

### **Branch 1: Importance of the Judicial Inspection Department**

Sound institutional logic requires all public functions to be subject to review, oversight, and scrutiny. The work of the government is overseen by Parliament; Parliament is accountable to the people and subject to constitutional review; and the work of judges is subject to judicial inspection.

Judicial inspection is one of the key safeguards for both the judiciary and judges. It provides oversight, follow-up, review, and scrutiny of the work of personnel within the judicial system. At the same time, it constitutes a safeguard for judicial independence because the Judicial Inspection Department possesses the professional and judicial expertise required to perform this function.

Members of the judicial inspection system possess the technical capacity to distinguish between correct and incorrect judicial practice while taking into account the circumstances surrounding judges' work. As members of the same judicial profession, they share the same professional experience and understand the circumstances faced by judges, including the complexity, novelty, and particular circumstances of a case.

The Department is composed of judges with extensive judicial experience. They are therefore able to assess judges fairly and evaluate their performance appropriately.

Judicial inspection constitutes a safeguard for the independence of judges and, consequently, for the independence of the judiciary as a whole, because the body responsible for inspection is itself composed of judges with legal expertise and practical knowledge of the way courts operate. They are best placed to understand and examine the files referred to them and to ensure fair treatment of judges who are subject to complaints.

They are also best positioned to explain the factual circumstances and assess the merits of a case correctly. Accordingly, a judge who acts in accordance with the law and in a

manner consistent with the realities of the case should receive appropriate recognition from the judicial inspector when the inspection report is prepared and submitted to the Judicial Inspection Department.

This achieves two important benefits. First, it helps shield judges from pressure and external influence because those conducting the inspection are themselves members of the judicial authority. Second, it strengthens judges' confidence in themselves and in their own legal understanding and professional judgment. This is essential to the successful administration of justice and ultimately contributes to raising the overall standard of the judiciary and strengthening its independence.

Having a member of the judicial institution conduct inspections of judges also provides judges with a sense of reassurance, as the person conducting the inspection possesses legal knowledge and judicial experience. This is an important element in strengthening judicial independence.

At the same time, removing the executive branch from judicial inspection provides greater independence in the process of review and oversight. It also helps prevent abuses against judges by

individuals who are not members of the judiciary and who may exert pressure on judges in ways that interfere with their work, potentially causing many judges to comply with instructions issued by persons who lack sufficient knowledge of the judiciary and its many areas of specialization.

Judicial inspection in Syria relies on judicial personnel with substantial experience acquired through years of judicial service before being assigned to judicial inspection functions. Article 11(2) of the Judicial Authority Law provides that the Judicial Inspection Department shall consist of a head holding the rank of President of a Court of Appeal Chamber and six counsellors.

This represents a positive step towards the effective performance of judicial inspection, follow-up, and oversight functions and contributes to judicial independence for the reasons set out above.

## **Branch 2: Deficiencies in Texts Governing Syrian Judicial Inspection**

The subordination of the Judicial Inspection Department to the Ministry of Justice constitutes the most significant obstacle to achieving judicial independence. This is evident in several respects:

- The legislature has placed the Judicial Inspection Department under both the Minister of Justice and the President of the Supreme Judicial Council, as provided in Article 12

of the Judicial Authority Law. This legal arrangement represents an encroachment by the executive branch upon the judicial authority. Placing judicial inspection under the Minister of Justice means that oversight of judges is effectively placed in the hands of the Minister. This is a structural defect that cannot be justified even if the officials performing the inspection are judges of good reputation, because linking their functions to the Minister of Justice takes the inspection institution away from its proper institutional framework.

- Under Article 16 of the Judicial Authority Law, judicial inspectors must obtain permission from the Minister of Justice to travel or move in connection with their work.
- Article 18 of the same Law requires coordination between inspectors and officials of the executive branch in order to resolve obstacles affecting the work of judges. The proper institutional arrangement would instead be for inspectors to coordinate with the Supreme Judicial Council, which would itself coordinate with the executive authorities providing support to the judiciary.
- The legislature has granted the Minister of Justice the authority to second judicial inspectors, upon a proposal from the Supreme Judicial Council, pursuant to Article 11(3) of the Judicial Authority Law. - The rules governing judicial inspection are approved by the Minister of Justice pursuant to Article 11(3) of the Judicial Authority Law, which allows the Minister to issue regulations governing judicial inspection with the approval of the Supreme Judicial Council. This constitutes another significant institutional deficiency.
- Numerous other provisions establish the subordination of judicial inspection to the Minister of Justice. For example, Article 21(c) of the same Law requires the Judicial Inspection Department to conduct inspections at the request of the Minister of Justice.

Consequently, while establishing a Judicial Inspection Department composed of experienced judges is an important step towards achieving judicial independence, it is not sufficient on its own to guarantee the independence of the Department. The Department must also be insulated from the influence of the executive branch.

### **Third: Proposed Solutions for Reforming the Judicial Inspection Department**

Achieving the independence of the Judicial Inspection Department requires amending Articles 11(2) and 11(3), 12, 16, 18, 20, 21(c), and 22 of the Judicial Authority Law by removing its institutional link to the

Minister of Justice and placing it exclusively under the Supreme Judicial Council, as has been done in some countries, including Jordan.

Placing the Judicial Inspection Department under the Supreme Judicial Council would

provide a genuine safeguard for judges by removing the influence of the Ministry of Justice and the executive branch more generally from the work of judges.

This is particularly important because judicial inspection is a highly specialized technical function that should not be subject to intervention by persons lacking the relevant professional expertise. Those with specialized knowledge and professional experience are best placed to understand the details and complexities of such work; otherwise, intervention would constitute an infringement upon judicial independence.

As an additional safeguard for independence, judges should be given the opportunity to challenge inspection reports issued by the Judicial Inspection Department before another judicial body. This would be consistent with the principle of a two-tier system of adjudication.

The reviewing body should itself be a judicial authority, either the General Assembly of the Court of Cassation or the Supreme Judicial Council. Some countries favour the Supreme Judicial Council on the grounds that it is the body responsible for disciplinary proceedings against judges.

## **Branch 3: Proposed Solutions for Reforming the Judicial Inspection Department**

The way to achieve the independence of the Inspection Department requires amending Articles 11 (paragraphs 2 and 3), 12, 16, 18, 20, 21 (paragraph c), and 22 of the Judicial Authority Law by abolishing subordination to the Minister of Justice and restricting it exclusively to the Supreme Judicial Council, as done by some countries, including Jordan.

Linking the Judicial Inspection Department to the Supreme Judicial Council constitutes the true guarantee for judges by removing the influence of the Ministry of Justice and the executive authority in general from the work of judges—especially since it involves purely technical work in which non specialists should not interfere, as experts of the trade are most knowledgeable about its details; otherwise, it is considered an infringement on the independence of the judiciary.

To further guarantee independence, an opportunity must be granted to appeal inspection reports issued by the Inspection Department before another judicial body. This aligns with the principle of two tiered litigation, and the higher body must be a judicial entity—either the General Bench of the Court of Cassation or the Supreme Judicial Council, with some countries preferring the Supreme Judicial Council because it oversees judicial disciplinary trials.

## **Subsection III: Role of the Legislation Department in Judicial Independence**

### **Branch 1: Importance of the Legislation Department**

The legislative function falls within the mandate of the legislative authority, which examines proposals, drafts legislation, and enacts laws in accordance with established legal procedures. Legislation is expected to comply with constitutional provisions and to address the practical problems for which it was enacted.

At the same time, the role that judges can play in proposing legislation arising from practical challenges encountered in the application of the law cannot be overlooked. Judges can identify shortcomings in outdated legislation through the practical experience they acquire in the course of their judicial work.

The role of the Legislation Department is no less important than the judicial function itself. The tasks assigned to the Department under Article 8 of the Judicial Authority Law are highly significant. They include preparing draft laws and regulations, compiling legal texts and court judgments, examining international agreements and treaties, and publishing legal periodicals, journals, and legal and judicial compilations.

These functions should not be understood as exhaustive. The wording of the relevant provision indicates that they are illustrative rather than exclusive, and the Legislation Department can undertake other activities that contribute to improving legislation, correcting deficiencies, and proposing amendments.

Allowing judges to review existing legislation, identify its shortcomings, and propose more appropriate legislative solutions strengthens their professional confidence and encourages legal research as a means of professional development and demonstrating their capabilities. This constitutes an important foundation for developing an independent professional character and, consequently, for strengthening judicial independence.

### **Branch 2: Reform of the Legislation Department**

Developing the Legislation Department by selecting judges with strong judicial and academic backgrounds, providing them with adequate time and professional dedication, and ensuring the resources necessary for legal research and comparative studies would contribute to the development of legislation grounded in the Syrian context and capable of being implemented effectively and appropriately.

Judges are better placed than others to identify legislative problems and shortcomings through practical application. This is evident in legislation enacted from time to time, including amendments to the Code of Civil Procedure and other laws that have contained numerous shortcomings and have failed to adequately take practical procedures into account.

The current reality of the Legislation Department in Syria is substantially different from what it should be. The Department does not perform its intended role effectively, and judges seconded to work there may regard their assignment as a period of leave or respite. As a result, the Department has been largely absent from the function for which it was established and has not performed the role assigned to it.

Ensuring the effectiveness of the Legislation Department requires the careful selection of judges seconded to it, based on an assessment of their personal qualities, academic, research, and scholarly capabilities, their judicial experience, and their ability to contribute to the development and improvement of legislation.

In addition, the Supreme Judicial Council, as the institution responsible for safeguarding judicial independence, should provide judges working in the Legislation Department with all the resources necessary to perform their functions.

This should include monitoring existing legislation, proposing new legislation, reviewing domestic, Arab, and international judicial jurisprudence, identifying strengths and weaknesses, and seeking to address existing deficiencies.

In addition to proposing draft legislation, the Legislation Department can play an important role in improving the academic and professional standards of judges by ensuring the publication of legal periodicals and journals containing research authored by judges. Such publications would contribute to professional development and the refinement of judges' professional character, while also providing practical benefits.

This should be complemented by books and periodicals containing judicial precedents and jurisprudence issued by the chambers and General Assembly of the Court of Cassation, while allowing for scholarly legal commentary on such jurisprudence.

## **Subsection IV: Reform of the Constitutional Court**

While ordinary courts provide the direct avenue to justice through the application of the laws in force, the Constitutional Court plays a central role in ensuring the constitutionality and legitimacy of those laws and their compliance with the rights of individuals and society.

The Constitutional Court safeguards the implementation of constitutional provisions and serves as the highest authority for reviewing the compatibility of laws, decrees, and

regulations issued by the legislative authority, the President of the Republic, and the executive branch with the Constitution.

In addition to reviewing the constitutionality of the legislative framework, the Constitutional Court may be entrusted with the trial of senior state officials, including the President of the Republic and ministers, as well as certain other officials holding specified administrative positions.

The powers assigned to the Constitutional Court undoubtedly contribute to strengthening the role of the judiciary in upholding the rule of law and therefore contribute to judicial independence.

This is achieved through reviewing legislation affecting the judiciary, beginning with the Judicial Authority Law and extending to legislation governing the work of courts, councils, and bodies responsible for disciplinary proceedings against judges.

Accordingly, the effective performance of the Constitutional Court's functions ultimately contributes to judicial independence, which is founded upon respect for individual rights.

## **Branch 1: History of the Constitutional Court in Syria**

The composition and jurisdiction of the Constitutional Court have varied across Syria's successive constitutions, from 1920 through the Constitutional Declaration.

- The 1920 Constitution: The Constitutional Court consisted of 16 members, half of whom were selected from the Senate and the other half from among the Presidents of Courts of Cassation. No term of office was specified for the Court.
- The 1930 Constitution: The number of members was reduced to 15. Eight were elected by the Chamber of Deputies, while seven judges were selected from among the highest-ranking judges of the General Assembly of the Court of Cassation. No term of office was specified for the Court.
- The 1950 Constitution: The number of members of the Constitutional Court was set at seven. They were elected by the Chamber of Deputies from among 14 candidates nominated by the President of the Republic. The Court's term was set at five years, renewable. In addition to reviewing legislation of all types, the Court was also competent to try the President of the Republic and ministers in accordance with procedures established by the Court Law.

The same arrangement was maintained under the 1953 Constitution, while the Court's jurisdiction was subsequently curtailed under the 1962 Constitution.

- The 1973 Constitution: The term "Constitutional Court" was adopted in place of "Supreme Court." The right of individuals to bring direct constitutional challenges before the Court was abolished, its jurisdiction to try the President of the Republic

was restricted, its term of office was set at four years, and the President of the Republic was given the authority to appoint the Court's judges and President. This arrangement was reaffirmed by the 2012 Constitution.

A review of the history of the Constitutional Court in Syria shows that the role it has played has varied considerably. Its role reached its peak under the 1950 Constitution, while it declined under the 1973 Constitution and thereafter, eventually becoming, according to the paper, a largely formal institution stripped of substantive content and meaningful jurisdiction. The Court was effectively directed by the President of the Republic through a system under which he appointed and dismissed its judges and determined their areas of jurisdiction in practice.

This was particularly significant because numerous decrees, laws, and regulations issued during that period were inconsistent with the principle of constitutional legality, shielded the authorities from accountability, and restricted the judiciary's ability to perform its role in providing redress to those subjected to injustice.

The Constitutional Court under the Constitutional Declaration:

Article 47 of the Constitutional Declaration provides for the establishment of a Supreme Constitutional Court consisting of seven members appointed by the President of the Republic from among persons of integrity, competence, and experience. The Court's procedures and jurisdiction are to be regulated by law.

## **Branch 2: Reform of the Constitutional Court**

### **First: Composition of the Constitutional Court**

The paper considers that the composition of the Court provided for in the Constitutional Declaration does not meet expectations, whether in terms of the number of members or the method of appointment.

In terms of membership, it would be preferable for the Court to consist of nine members, selected as follows:

- Three judges holding at least the rank of Counsellor, selected by the President of the Republic from among seven judges nominated by the Supreme Judicial Council.
- Two judges from the Council of State, selected by the President of the Republic from among four candidates nominated by the Council of State.
- Two members of the teaching staff of law faculties at Syrian public universities, with at least ten years of experience, selected by the President of the Republic from among four candidates nominated by the Council of Higher Education within the Ministry of Higher Education.
- One lawyer with at least 20 years of professional practice, selected by the President of the Republic from among three candidates nominated by the Bar Association.

This composition would ensure the participation of individuals possessing legal competence, expertise, and specialization. The Court would include university professors with academic experience, as well as judges and lawyers with practical experience in both ordinary and administrative judicial work. The inclusion of judges from the Council of State would provide additional expertise in administrative matters and matters relating to the executive authority.

With regard to the method of appointment, the proposed approach would ensure consultation among a broad range of societal and professional institutions in the selection of candidates.

The judges nominated by the Supreme Judicial Council would represent the judicial authority. The judges representing the Council of State would be nominated by that Council, which possesses expertise in public affairs and administrative matters. The university professors would be nominated through the Ministry of Higher Education, thereby strengthening the Court's academic and legislative dimension. Representation of civil society would also be provided through the Bar Association.

The Court would therefore reflect a broad range of professional and societal constituencies.

Most importantly, the final selection from among the nominated candidates would remain with the President of the Republic. This would prevent the President from exercising unilateral discretion in selecting members. In other words, the President's authority would be limited to choosing from among candidates already nominated on the basis of expertise and competence.

According to the paper, this arrangement would establish a strong form of cooperation among the three branches of government and the Presidency of the Republic, while providing safeguards for members of the Court by ensuring that they are nominated by institutions representing broad segments of society. This, in turn, would strengthen their sense of independence in carrying out their functions.

## **Second: Term of Membership**

The term of membership can be seven non-renewable years, such that the term exceeds the presidential term of office, while granting them genuine powers and immunity from dismissal except based on investigations conducted by an independent judicial body consisting of the President of the Court of Cassation, the President of the State Council, the two most senior counselors to the President of the Court of Cassation not participating in the court's composition, and the two most senior counselors to the President of the State Council not participating in the court's composition, in addition to the non-transferability of Constitutional Court members.

## **Third: Competencies of the Court**

Contrary to the approach adopted under the 1973 and 2012 Constitutions, which, according to the paper, substantially weakened the role of the Constitutional Court, its jurisdiction should be expanded to include the following:

- Reviewing the constitutionality of laws, legislative and regulatory decrees, regulations, and decisions.
  - Reviewing constitutional amendments and providing an opinion on proposed amendments. ■ Resolving disputes between the three branches of government: the legislative, judicial, and executive branches.
  - Reviewing decisions of the General Assembly of the Court of Cassation suspending the application of certain legal provisions or interpreting them within the framework of constitutional legality. ■ Reviewing acts of state sovereignty and declarations of states of emergency. ■ Reviewing the constitutionality of international treaties and agreements.
  - Providing opinions on the constitutionality of draft laws and legislative decrees. ■ Interpreting constitutional provisions at the request of the President of the Republic or the Speaker of the People's Assembly.
  - Providing constitutional legal advice to the President of the Republic and the Speaker of the People's Assembly.
- 
- Reviewing challenges to elections to the People's Assembly and the election of the President of the Republic.
  - Reviewing the validity of candidacies for the Presidency of the Republic.
  - Considering applications submitted by individuals and trade unions challenging the constitutionality of a law, legislative decree, or executive regulation.
  - Reviewing the constitutionality of laws, legislative decrees, and regulations enacted prior to the establishment of the Court.
  - Trying the President of the Republic for all offences attributed to him.
  - Trying ministers for offences related to the performance of their official functions. ■ Reviewing referendum laws and their resulting outcomes.
  - Considering the suspension of the application of a legal provision, law, or decree pending its redrafting and re-enactment within one year.

The proposed composition, term of office, and jurisdiction of the Constitutional Court would, according to the paper, contribute to safeguarding individual rights and freedoms and to reviewing the constitutionality of laws, regulations, and other legislation. Such oversight would also contribute to protecting and strengthening judicial independence, given that the work of the judicial authority and the legislation governing its functioning require constitutional review and oversight.

[1] Barakat Mouloud, Barabeh Assaid, 'The Extent of Judicial Independence in the 2020 Constitutional Amendment', *El-Iliyya Journal for Research and Studies*, Vol. 6, No. 2, 2021, p. 502.

[2] Aref Shaghal, 'The Supreme Judicial Council and the Modern Trend in Its Composition', *Arab Center for Contemporary Studies*, January 17, 2022.

[3] Ahmed Mguid, 'Independence of the Judicial Power in Morocco: Constitutional Guarantees and Practical Reality', *Hakama Journal*, No. 6, Vol. 3, 2023, p. 49.

[4] Ibrahim Daraji, 'The Syrian Constitutional Court: Its Problems and How It Can Be a Guarantor of the Principles of Legality and Citizenship', *Legality and Citizenship Program in the Arab World*, p. 15.

## LEGAL REFORM AND JUDICIAL INDEPENDENCE

*Comprehensive Proposal for Institutional & Procedural Judicial Reform*

# SECTION II: REFORM OF THE JUDICIAL INSTITUTION

Judges constitute the core of the judicial institution, while judicial assistants support them in performing their functions. Reforming both groups would contribute to judicial independence and strengthen the judiciary's ability to administer justice and safeguard rights and freedoms.

## SUB-SECTION I: JUDICIAL REFORM AS A GUARANTEE FOR JUDICIAL INDEPENDENCE

Judges constitute the backbone of the judicial authority. A judge can preserve his or her professional standing and uphold the dignity of the judiciary only when protected against all forms of interference.

Judicial independence is not a privilege granted to judges; rather, it is a right of citizens and an obligation imposed upon judges. Judicial independence is the safeguard that enables litigants to obtain their rights through the freedom of judges to apply the law without pressure from any party.

Judicial independence means the ability of a judge to adjudicate the dispute before the court with integrity and impartiality, on the basis solely of the law, the facts, and the evidence presented by the parties, and free from the influence or intervention of any authority, superior, or person in a position of power, given the role played by the

judiciary in achieving justice.

Achieving judicial independence requires safeguards capable of protecting judges and ensuring their independence through appropriate constitutional and legislative provisions vis-à-vis all other branches and authorities.

**Judicial independence therefore requires both institutional independence and functional independence.**

## **Branch 1: Institutional (Organic) Independence of Judges**

Institutional independence means ensuring that no authority interferes in judicial work or in the affairs of judges, including matters relating to appointment, transfer, dismissal, promotion, or placement on inactive status.

These safeguards protect judges' institutional independence and prevent interference or influence by any authority or institution in the performance of their judicial functions.

The safeguards for institutional judicial independence can be

divided as follows: **First: Institutional Guarantees Prior**

### **to Assuming Judicial Office**

This safeguard concerns the selection of judges. International principles have established general rules concerning the methods of judicial appointment and have encouraged States to adopt these rules as standards for selecting judges on the basis of competence, integrity, and diligence, without discrimination.

Paragraph 10 of the Basic Principles on the Independence of the Judiciary, adopted at the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, provides that persons selected for judicial office should be individuals of integrity and ability, with appropriate training or qualifications in law.

The selection process should include safeguards against appointments to judicial positions for improper motives. Candidates for judicial office should not be discriminated against on grounds such as age, colour, sex, religion, political or other opinion, national or social origin, property, birth, or status.

The Universal Charter of the Judge (1998) likewise emphasizes these principles, stressing the importance of competence and professional ability and providing that selection should be undertaken by an independent body in which judges constitute the majority.

States differ in the methods they use to select judges. Some rely on competitive examinations and recruitment processes; others rely on appointment; some use

election by designated bodies or councils or by the public; while others combine appointment with competitive selection.

In addition to the personal qualifications required of candidates, the responsibility for selecting judges should be entrusted to an independent body that is not subordinate to the executive authority. This is necessary to prevent executive interference in the selection of judges and to ensure that judges perform their functions properly, independently, and free from external influence.

Where the executive authority is given responsibility for judicial selection, the risk of such interference increases.

Entrusting the selection of judges to the Supreme Judicial Council, in accordance with the composition proposed above, would constitute a genuine safeguard against executive interference in the selection of judges who would otherwise, directly or indirectly, be subject to its views and influence.

## **Second: Institutional Guarantees During Judicial Service**

Constitutions frequently establish the concept of judicial immunity. In practice, however, such immunity may remain merely declaratory if judges continue to be removed or transferred without proper legal procedures and without a decision issued by an independent judicial body.

In practice, political considerations and the institutional connection between bodies responsible for disciplinary proceedings against judges and the executive authority may undermine these safeguards and render judicial immunity ineffective.

To ensure these safeguards, protection against dismissal or transfer should be achieved through the composition of the Supreme Judicial Council proposed above. Under this structure, decisions concerning dismissal and transfer would be issued by a genuinely judicial supreme authority.

The President of the Judges' Club should participate in such proceedings solely as an advocate for judges. This would strengthen judicial independence and reinforce judges' confidence when responding to allegations made against them.

Judges should be given the freedom to respond and provide explanations transparently and independently, without pressure or coercion, and decisions should be issued following proper legal procedures.

Judicial immunity constitutes a fundamental basis for ensuring judges' confidence in their own independence and preventing any authority from encroaching upon the judicial authority.

Alongside safeguards against dismissal and transfer except through lawful procedures, safeguards concerning judicial promotion must also be established. Promotion should

be based on the judge's effort and performance rather than becoming a matter of passive seniority.

To ensure fairness among judges, promotion criteria should include participation in regular and continuing training programmes and the submission of periodic semi-annual reports by the Judicial Inspection Department, based on clear criteria and a defined points system.

Promotion should be granted or withheld on the basis of these criteria, including the judge's performance of his or her duties and efforts to improve professional and academic standards. These factors should form part of the periodic reports prepared by the Judicial Inspection Department.

## **Branch 2: Functional Independence of Judges**

A judge's integrity constitutes one of the most important personal safeguards of judicial independence. It requires the judge to distance himself or herself from all personal and emotional considerations, including family relationships, friendships, and personal or family disputes, when adjudicating judicial disputes.

The legislature has recognized this principle by allowing a judge to recuse himself or herself from cases in which continued participation could cause embarrassment or compromise impartiality, while also granting litigants the right to seek the judge's recusal.

International instruments have likewise emphasized judicial integrity as a fundamental means of safeguarding judicial independence. Independence does not concern judges alone; it also concerns the parties to litigation and their confidence in the judiciary and its integrity.

In addition to integrity, judges must maintain impartiality by avoiding discrimination between litigants and by seeking the truth without regard to the identity or status of the parties. Judges should rely on evidence admissible under the law and refrain from deciding cases on the basis of personal knowledge.

This requires judges to receive regular training on methods of handling litigation and disputes. Such training should be among the responsibilities of the Supreme Judicial Council, which should work to develop the professional character and capabilities of judges.

### **Objective Guarantees of Judicial Independence**

Substantive safeguards concern both the material and professional dimensions of judges' working conditions, with the aim of achieving genuine independence in the exercise of judicial functions.

Material safeguards should correspond to the demands placed upon judges. Judges should receive remuneration commensurate with the effort they devote to their work, often under difficult and insecure conditions, while being required to maintain professional distance and refrain from many aspects of ordinary social life.

Providing judges with a genuine and adequate income is therefore an important means of safeguarding judicial independence.

Other material safeguards should include appropriate housing and access to a dedicated vehicle, which the paper considers an increasingly necessary requirement in order to protect judges from situations that may compromise their dignity or expose them to undue pressure.

Substantive safeguards also concern the nature of judicial work and the improvement of judges' academic and technical capabilities. This can be achieved through the following measures:

#### 1. Specialization in Judicial Work

Many judges and lawyers consider that allowing judges to remain within a particular area of specialization, such as civil, criminal, or religious courts, enables them to develop greater capacity for legal reasoning and interpretation while also providing greater professional stability.

Frequent transfers between civil and criminal courts place an additional burden on judges because they must repeatedly rebuild their specialized knowledge and capabilities. The time and effort required for such adaptation could instead be devoted to strengthening their expertise in the field in which they work.

Specialization in judicial work therefore contributes to independence, which in turn has a positive effect on the quality and consistency of judicial performance.

By contrast, repeated transfers can create gaps in judicial performance. This is particularly evident in practice when a judge is transferred from criminal jurisdiction to civil jurisdiction, requiring substantial adaptation to a different body of law and judicial practice.

#### 2. Improving Judges' Academic and Professional Standards

Judges have a professional duty to maintain their legal knowledge and remain familiar with judicial interpretations and precedents issued by higher courts.

This requires a coordinated and structured effort by judges themselves, the Supreme Judicial Council, the Legislation Department, the Technical Office, and the Judicial Institute.

A recurring training plan should be established under which judges attend training programmes at the Judicial Institute for 15 days each year, focusing on major legislative developments and judicial precedents, discussing them, and developing solutions to

challenges arising from practical application.

Judges should also be required to prepare a scholarly research paper related to their area of specialization every two years, with the research published in a legal or professional journal.

## **SUB-SECTION II: PUBLIC PROSECUTION JUDGES**

The Public Prosecution is one of the principal pillars of the judicial authority because of its active role in initiating and pursuing public criminal proceedings, as well as its role in overseeing criminal investigations, investigative divisions, criminal courts of all types, police departments, and matters affecting the daily lives of citizens and the security of society as a whole.

A review of international approaches to the institutional nature of the Public Prosecution shows that some legal systems explicitly recognize it as an integral part of the judicial authority and establish the corresponding legal consequences. Other systems, by contrast, tend to treat members of the Public Prosecution as officials subordinate to the executive branch, particularly to the Minister of Justice. This raises the question of whether they can properly be regarded as judges in the full legal sense of the term.

The distinction between these two models is significant, as each entails different legal consequences and has a direct impact on judicial independence.

### **Reform of the Public Prosecution in Syria**

Article 56 of the Judicial Authority Law expressly recognizes members of the Public Prosecution as judges exercising their functions in that capacity. Accordingly, members of the Public Prosecution should enjoy independence in the performance of their duties.

Nevertheless, the second paragraph of Article 56 of the Judicial Authority Law establishes an institutional link between members of the Public Prosecution and the Minister of Justice. The following paragraph reinforces this relationship by requiring Public Prosecutors to comply with written instructions in the performance of their duties and in the claims they bring.

Recognizing members of the Public Prosecution as judges contributes to judicial independence because their role and responsibilities are no less important than those of trial judges. Pursuing public criminal proceedings and conducting criminal investigations require the person responsible for these functions to enjoy independence.

More importantly, the work of the Public Prosecution is directly connected to human rights through investigative procedures, detention, and questioning. All of these functions require institutional independence.

Independence ultimately serves citizens before it serves judges. Consequently, placing the Public Prosecution under the authority of the Minister of Justice and subjecting it to a hierarchical chain of command creates a risk that the executive authority may exercise undue influence over judicial work.

Coordination between the Public Prosecution and the Minister of Justice can constitute a positive mechanism for ensuring the effective conduct of criminal proceedings, particularly with regard to the enforcement of judicial decisions and oversight of detention facilities. However, such coordination does not justify institutional subordination.

Written instructions issued to the Public Prosecution by the Ministry of Justice are treated as binding, and failure to comply with them may result in accountability on the basis that they originate from the superior authority.

Separating the Public Prosecution entirely from the Ministry of Justice may be difficult and could, in practice, produce unintended consequences. At the same time, near-total subordination to the Ministry of Justice is problematic because it undermines independence, makes the description of members of

the Public Prosecution as judges less accurate, and effectively turns them into quasi-administrative employees.

This becomes particularly apparent when judges move between the Public Prosecution and trial courts. A judge may effectively operate under two different institutional models: enjoying full independence when sitting as a trial judge, but being subject to executive authority when serving as a Public Prosecutor.

This situation is undesirable because it creates instability both in judicial work and in the professional character of the judge. A judge moving from the Public Prosecution to a trial court may continue to carry an internal perception of institutional subordination, which could affect his or her professional approach and decision-making.

### **Key Steps for Public Prosecution Reform:**

The proposed approach to reforming the Public Prosecution includes the following:

- Granting the Public Prosecution functional independence and entrusting the Supreme Judicial Council with the appointment of the Public Prosecutor of the Republic, while establishing channels of communication and coordination between the Ministry of Justice and the Public Prosecution through a Coordination Council comprising the President of the Supreme Judicial Council and the Public Prosecutor. This model is reportedly used successfully in a number of countries, including Morocco.

- Reforming the legislation governing the Public Prosecution, particularly provisions concerning detention and its role in investigations involving flagrante delicto. There is currently inconsistency in determining which authority is responsible for conducting investigations in cases of flagrante delicto: some interpretations assign this responsibility to the Public Prosecutor, while others assign it to the investigating judge. The legislation should therefore be clarified and reformed in this regard.
- Reforming the legislative framework governing the relationship between the Judicial Police and the Public Prosecutor, ensuring that the relationship and respective responsibilities of the two sides are clearly defined so that neither exceeds the proper limits of its authority.

## **SUB-SECTION III: JUDICIAL ASSISTANTS**

The judicial institution includes, alongside judges, a category of judicial assistants who play an important role in the effective administration of justice. Their responsibilities extend from registry and administrative functions to recording court proceedings during trials and ultimately to enforcement departments. This category includes court clerks, enforcement officers, and process servers.

The judicial institution generally suffers from a lack of professional expertise among judicial assistants, in addition to corruption among some members of this group. This problem is visible in the daily reality of court premises and undoubtedly affects the proper conduct of judicial proceedings.

### **Correcting Deficiencies Among Judicial Assistants:**

Reforming the judicial assistant workforce should be regarded as a priority no less important than reforming the judiciary itself. Such reform requires measures aimed at improving the academic and technical qualifications of judicial assistants, improving their living conditions, and activating effective accountability mechanisms for those involved in corruption.

### **Enhancing Educational and Technical Qualifications:**

Improving the educational and professional qualifications of judicial assistants is a priority for States, particularly in light of continuing technological developments. The world is experiencing an unprecedented scientific and technological transformation, and personnel working within the justice system must keep pace with these developments; otherwise, they may become an obstacle to the effective administration of justice.

The academic and technical qualifications of judicial assistants can be improved through

a number of measures, including:

1. Establishing a specialized department within public faculties of law to offer a degree in judicial sciences for persons wishing to work as judicial assistants. Admission would be incorporated into the general competitive selection process administered by the Ministry of Higher Education. The programme would last two years and would cover legal subjects as well as computer and networking skills.
2. Establishing a specialized institute for judicial assistants, headquartered in Damascus. Graduates holding a degree in judicial sciences would be admitted through a legally regulated competitive examination. The programme would last six months, consisting of two months of theoretical study and four months of practical training in courts. At the end of the six-month programme, participants would sit final examinations and would then be subject to a three-year probationary period, with the six-month institute period counted towards that period.
3. Providing serving judicial assistants with recurring training at the proposed institute every three years for a period of one month, with the aim of improving their professional and academic qualifications.
4. Requiring judicial assistants to complete performance-improvement training in computer and networking skills, with termination of employment in the event that the required examination is failed twice consecutively.
5. Linking statutory wage increments to actual performance, based on semi-annual inspection reports, and terminating the employment of a judicial assistant who receives two consecutive negative reports.
6. Conducting regular reviews of the salaries and wages of judicial assistants, on an ongoing basis, so that remuneration remains consistent with the minimum cost of living determined by the Ministry of Social Affairs and Labour.
7. Providing dedicated housing for judicial assistants through housing cooperatives established for this professional category, in coordination between the Ministry of Justice and the Ministry of Housing.
8. Strengthening written inspection within judicial institutions, ensuring that periodic semi-annual reports are prepared for all judicial assistants.

## **SECTION III: REFORM OF AUXILIARY JUDICIAL INSTITUTIONS**

The judiciary plays a central role in every State and is relied upon to uphold the rule of law. However, the judiciary cannot effectively and robustly perform its assigned

functions without supporting institutions that provide the documents and investigations necessary to establish the truth, as well as institutions capable of enforcing judicial decisions.

Judicial decisions remain merely statements on paper if they are not enforced. A judicial ruling has no practical value unless it is translated into reality.

Improving the functioning of institutions supporting the judiciary therefore undoubtedly contributes to the effective functioning of the judicial system as a whole. An effective judiciary, in turn, strengthens citizens' confidence in its judgments and in the administration of justice.

Reforming and improving these institutions is not straightforward because they are not institutionally subordinate to the judicial authority but to other bodies. Their role is limited to supporting and assisting the judiciary in certain aspects of its work.

The dual institutional subordination of these bodies can create difficulties when they receive instructions from two different authorities, particularly where those authorities are not aligned or coordinated.

Accordingly, improving and reforming these institutions so that they become genuine support mechanisms for the judiciary requires clearly defining the nature and limits of the relationship between them and the judicial authority, as well as the consequences of exceeding those limits.

The institutions supporting the judiciary are numerous. They include the various forms of Judicial Police, the forensic medicine service, the Land Registry, and the Civil Status Department. Their reform can be addressed as follows.

## **SUB-SECTION I: REFORM OF THE JUDICIAL POLICE TO ENHANCE JUDICIAL INDEPENDENCE**

### **First: Role of the Judicial Police in Judicial Operations**

The Judicial Police constitutes the executive arm supporting the judicial authority. Its personnel interact with members of society on a daily basis, observe their circumstances, and monitor conduct within the framework of the law.

Police officers, customs and supply-control officers, public-sector inspection personnel, social security employees, tax officials, and others to whom the law assigns judicial-police functions have direct contact with people's circumstances and are able to monitor activities within their respective areas of competence.

They can also contribute to establishing the truth through documents and evidence obtained in the course of their daily work.

For example, inspectors working within the Social Security Institution can play an important role in identifying violations committed by employers, while tax officials can contribute significantly to uncovering financial irregularities and corruption within public and private institutions.

Police officers have an even more prominent role because of their presence in local sectors and police stations and their direct interaction with citizens. Their work is therefore important in identifying crimes at an early stage and assisting the judiciary in establishing the truth.

They also carry out functions assigned to them as assistants to the Public Prosecutor under Article 8 of the Code of Criminal Procedure. Police officers constitute the principal component of the personnel assisting the Public Prosecutor and are frequently entrusted with conducting inspections and certain preliminary investigations upon which courts may rely in reaching their judgments.

The role of police officers does not end with establishing the truth. They also play a central role in enforcing judicial decisions. Judicial decisions become ineffective when corrupt police officers conceal judicial documents or obstruct the enforcement of judgments in pursuit of personal interests.

In addition, shortcomings exist in the work of the Judicial Police, particularly in relation to police practices affecting human rights. One example is the use of police wanted notices, which can become a means of extorting citizens and obtaining money from them, while simultaneously undermining the judiciary by preventing the effective implementation of its judgments and decisions.

## **Second: Necessary Measures for Judicial Police Reform**

The Judicial Police can be reformed through a number of measures, including:

- Improving the professional capacity and performance of the Judicial Police by placing it under the judicial authority. Personnel should be linked directly to the judicial authority from the stages of appointment and training through to professional specialization. Judicial Police officers should remain directly accountable to the judicial authority, implement its instructions, and be familiar with the laws governing their work, particularly those affecting human rights and involving direct interaction with citizens.

This requires eliminating the current dual institutional affiliation and frequent transfers between ministries. Maintaining a stable relationship with the judicial authority would generate substantial technical and professional benefits and improve performance through permanent institutional alignment.

Dual affiliation can lead to conflicting instructions and creates difficulties when Judicial

Police personnel are transferred to bodies outside the judicial authority. Even within their ordinary work, personnel may find themselves performing a dual role—serving the judicial authority at one time and the ministries to which they administratively belong at another. This can constitute a significant obstacle to the effective performance of their assigned functions.

- Improving the academic and technical qualifications of police personnel by establishing specialized institutes designed to enhance their professional, scientific, and technical capabilities.
- Applying the principle of specialization from the beginning of police service. Specialized areas could include immigration and passports, narcotics, cybercrime, financial and banking crimes, and other areas of specialization. A specialized institute could provide both theoretical and practical training under the supervision of experienced professionals. The programme should last at least two years and focus on police sciences, legal sciences, and information technology, including computer related skills.
- Increasing staffing levels within the Ministry of Interior so that they correspond to the responsibilities assigned to it, particularly with regard to Judicial Police functions.
- Reforming police legislation, particularly provisions relating to human rights and the execution of judicial warrants. Procedures should ensure respect for human rights and prevent unauthorized intrusion into protected premises and places where entry is prohibited except in coordination with the Public Prosecution.
- Addressing practices that may violate human rights, particularly the prolonged use of police wanted notices, which can remain in effect for many years. This should be regulated in coordination with the Public Prosecution, replacing police wanted notices with judicial warrants issued by the courts. Police authorities would then execute judicial warrants, such as arrest or appearance warrants, rather than exposing citizens to police notices that can become a means of extortion.
- Developing appropriate infrastructure, including specialized police departments equipped with technologies and equipment designed to safeguard human rights and dignity, whether in monitoring, investigation, or temporary detention.
- Reforming detention facilities and transforming them into rehabilitation-oriented institutions rather than environments conducive to crime and recidivism. Facilities should be established for the enforcement of custodial sentences in a manner proportionate to the circumstances of each individual and the sentence imposed. Work programmes should also be activated within prisons in accordance with the professional skills of convicted persons and detainees, with individuals receiving an appropriate share of the value generated by their work.
- Improving the educational and ethical standards of prisoners by encouraging continued education and amending penal legislation to provide persons who obtain

educational qualifications with incentives, including mitigating circumstances, leave, family visits, or alternative methods of sentence enforcement. Improving prisoners' educational and ethical standards would contribute to preventing crime in the long term.

- Amending legislation to permit alternatives to continuous detention and imprisonment, depending on the circumstances and rehabilitation prospects of the convicted person. This could include release after a specified period subject to supervised release, potentially supported by technological monitoring to track the individual's movements and location. At a later stage, the person could be required to work for designated entities, receiving part of the remuneration while another portion is allocated to the State. The objective would be rehabilitation and eventual full release once the person has properly complied with the obligations imposed. Such measures would reduce the burden on detention facilities while contributing to the rehabilitation and reintegration of individuals.
- Establishing direct cooperation between the Public Prosecution and police departments and developing corresponding areas of specialization between Public Prosecutors and police units. Each police station should have a Public Prosecutor assigned to supervise its Judicial Police functions, including monitoring detention facilities and police officers, with the aim of preventing violations of human rights.
- Providing a role for lawyers by permitting them to visit police stations within the limits established by law and pursuant to legislation clearly defining their powers and responsibilities.

## SUB-SECTION II: THE FORENSIC MEDICINE AUTHORITY

The Forensic Medicine Institution is one of the institutions that support the judiciary. Its work is both essential and complex, as it addresses more than one area of expertise, combining the medical and legal fields simultaneously. It also deals with technical matters that cannot be undertaken by any other institution. Therefore, this institution cannot be dispensed with, and its existence is essential for uncovering the truth in many cases, particularly murder cases and cases involving sexual and physical assaults, which constitute a significant proportion of cases before the courts.

### First: Operational Challenges in Forensic Medicine

It appears that one of the most significant challenges facing this institution is the shortage of personnel specialized in forensic medicine. This is largely due to the reluctance of many individuals to pursue this field of specialization, partly because of the limited opportunities to practice conventional medical work alongside forensic medicine. This results in limited financial incentives, encouraging medical graduates to choose other specializations instead. Consequently, the Forensic Medicine Institution

suffers from a shortage of physicians, which forces it to rely on doctors from outside the institution. This affects the scientific credibility and professional value of forensic medical reports and may also create opportunities for exploitation and, in some cases, contribute to forms of corruption that have recently emerged within the institution.

A related challenge concerns the shortage of female forensic medicine specialists who are willing to work in this field. This may discourage many survivors of sexual assault, particularly women, from reporting such incidents because they fear being examined by male physicians. Such circumstances conflict with prevailing social and religious norms in our society and may contribute to perpetrators escaping accountability and punishment.

### **Second: Reforming the Forensic Medicine Authority**

Reforming the Forensic Medicine Institution requires encouraging physicians to specialize in forensic medicine by employing forensic doctors as state employees and providing them with salaries commensurate with those of their peers practicing other branches of medicine. They should also be granted special incentives and benefits as part of efforts to encourage physicians to pursue and remain in this specialization

## **SUB-SECTION III: REFORM OF THE BAR ASSOCIATION AS PART OF JUDICIAL REFORM**

The establishment of the Bar Association as an impenetrable shield defending human rights, free from influences and pressures, requires that it enjoy independence and not be subordinate to any authority other than the authority of the law and ethics.

Lawyers are considered the supporting arm of the judicial institution in the performance of its duties. The work of a lawyer is not limited merely to attending court and following up on clients' cases. Rather, the role of a lawyer is greater, higher, and more noble than that. A lawyer is a defender of rights and freedoms and a guardian of the dignity of their client and others.

Lawyers bear the responsibility of identifying legislative shortcomings and deficiencies, in addition to shortcomings in the work of the courts and following up on judicial precedents. Direct interaction between lawyers and judges, and their work within the same framework and in the same judicial circles, can contribute to uncovering many facts, whether those that are correct or erroneous, as well as identifying aspects of deficiencies and shortcomings within this institution. However, lawyers cannot perform this role unless they possess the required level of professional and academic competence, ethical standards, and awareness of their role as lawyers, as well as an understanding of the meaning of this term, which encompasses extensive knowledge of the law, society, and the rule of law in the state.

In light of the situation to which the Bar Association has reached, and specifically the conduct of certain lawyers who have become a means of corruption and the spread of corrupt practices within judicial institutions instead of serving as a genuine pillar of justice, as occurred during the past years, including the manipulation and falsification of records by some lawyers who were expected to assume responsibility for defending citizens' rights, it is therefore necessary to work on reforming this Bar Association so that it can effectively support the judicial institution. This institution, or this organization, which is considered part of civil society organizations, can be reformed through the following measures:

1- Establishing a Bar Institute:

An institute should be established in which subjects related to legal ethics, litigation procedures, judicial precedents, methods of commenting on and analyzing judicial precedents, and methods of studying legal texts are taught. In addition, certain subjects that lawyers may not have studied during their time at the Faculty of Law should be included, such as those relating to the land registry, notarial services, forensic medicine, criminal investigation, and other courses that may benefit lawyers in their

professional work. No person should be permitted to enter the legal profession until they have successfully completed this institute.

2- Encouraging lawyers to conduct academic and legal research:

Lawyers should be encouraged to conduct legal research, which has become almost nonexistent in recent years, in contrast to previous periods when lawyers' articles and research papers were comparable to those produced by university professors. This requires building confidence in lawyers and encouraging them to conduct academic and legal research, write and publish research papers, and linking advancement within the lawyers' professional classification system to the completion of a specified number of research papers.

3- Reforming the law regulating the legal profession:

The law regulating the legal profession should be reformed so that there is a defined classification system for lawyers, beginning with trainee lawyers, progressing to the rank of lawyer, then to the rank of legal counsel, and subsequently to higher ranks. Each of these categories should be permitted to plead before a specific judicial authority or at a specific level of litigation. Advancement from one rank to another should only be permitted after passing examinations conducted by the Bar Association, in addition to completing a specified period of professional experience.

4- Involving lawyers in certain judicial bodies:

Lawyers should be involved in certain judicial bodies, including by allocating a seat for them on the Higher Judicial Council and a seat for them on the Constitutional Court.

5- Continuous cooperation between the two wings of justice:

Continuous cooperation should be established between the two wings of justice by activating a genuine relationship between lawyers and judges and removing the remnants of past tensions through practical workshops that bring lawyers and judges together around the same table to discuss issues related to judicial precedents and existing legislation. This would contribute to reforming legislation and addressing its shortcomings, while at the same time helping to consolidate a genuine relationship between two wings that operate within the same field, so that they complement one another.

Taking these steps would raise the professional and institutional standards of the Bar Association and restore its genuine role in defending human rights, safeguarding human dignity, and strengthening the rule of law in the state. Otherwise, corruption within the Bar Association will undoubtedly lead to the spread of corruption within the judiciary.

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## Footnotes & References

[1] Al-Absi, p. 272.

[2] International Standards for the Judiciary.

[3] Oweida, p. 385.

[4] Mogahed, Ahmed, 'Independence of the Judicial Authority in Morocco: Constitutional Guarantees and Practical Reality', Governance Journal, Vol. 3, Issue 6, 2023, p. 60.

## SUB-SECTION IV: The Judges' Club

The idea of establishing judges' clubs began in the late 1930s. The first Judges' Club was established in Egypt in 1935. In Morocco, the Judges' Club was established in 2011, while in Tunisia, the Tunisian Association of Judges was established in 1990.

In Syria, the Syrian Judges' Club was established informally on 4 July 2012. It defined its objectives as achieving the independence of the judiciary based on the principle of separation of powers; consolidating the immunity and impartiality of judges; working to establish, strengthen, and document bonds of solidarity and fraternity among judges; and creating an intellectual and academic forum for judges to develop judicial and legal practice.

The founders of this club drew most of its provisions from those of the Judges' Club in Egypt, with the aim of contributing to achieving judicial independence, enhancing

transparency, promoting judicial ethics, and defending judges' rights.

The work of the Judges' Club has received increasing attention as a result of its efforts to defend judges' rights. This constitutes an important safeguard for the judiciary, as the existence of a body that supports judges, defends them, and stands alongside them—and which is composed of members of their own profession—strengthens the prospect of judicial independence in relation to other authorities. The presence of a civil society organization representative who stands alongside judges, defends their rights, and assists them in resisting interference by the executive and legislative authorities gives judges greater confidence in themselves and greater independence in issuing judgments.

The functions of the Club are as follows:

- Contributing to achieving the independence of the judiciary, working to strengthen and defend the dignity of the judiciary, and intervening to defend judges in cases brought against them or cases affecting the honor of the judiciary; contributing to achieving the independence of the judiciary, working to strengthen and defend the dignity of the judiciary, and intervening to defend judges in cases brought against them or cases affecting the honor of the judiciary.
- Defending the rights of judges, communicating their living and professional difficulties to the relevant authorities, and following up on their implementation, acting as a channel of communication between judges and official institutions, including the Ministry of Justice, the State Council, and the Bar Association.
- Playing a role in selecting the President of the Judges' Club to serve on the Higher Judicial Council as an attending, non-voting member representing judges. This is similar to the practice of other councils that include among their members a representative of those affiliated with them, referred to as a representative of the relevant professional association. The presence of a voice speaking on behalf of judges constitutes a genuine safeguard for their independence in carrying out their duties with complete impartiality and away from political divisions and rivalries.
- Working to organize workshops and training courses to strengthen judges' awareness and culture in the field of human rights.
- The Club can also assist judges with certain financial matters in cases of exceptional and emergency circumstances affecting some judges, by strengthening social ties among judges and establishing a joint fund to meet needs faced by judges.
- Organizing social, cultural, and sporting activities to develop judges' personal skills and strengthen communication and ties between judges and the institutions concerned with their affairs.

# Section Four: Reform of the Legislative Framework

## Subsection I: Amendment of the Judicial Power Law

Legislative reform constitutes the first step on the path toward achieving judicial independence. None of the measures discussed can be implemented without the enactment of appropriate legislation by the legislative authority. Therefore, it is not possible to speak of reforming the Higher Judicial Council, the Judicial Inspection Department, the Legislation Department, or the Constitutional Court without addressing amendments to the Law on the Judicial Authority, which contains the legal provisions governing the formation and functioning of each of these bodies, in accordance with the proposals referred to above.

Reforming the Law on the Judicial Authority as a first step should be followed by parallel steps addressing amendments to the most important related legislation, including the Code of Civil Procedure, the Code of Criminal Procedure, the Penal Code, and civil legislation relating to real estate status, in addition to abolishing exceptional courts, or what is known as exceptional jurisdiction, and reintegrating it into the ordinary judiciary.

## Subsection II: Amendment of the Code of Criminal Procedure

It is not possible, within the scope of this paper, to review all the provisions of the Code of Criminal Procedure that require amendment. However, as a contribution to judicial reform aimed at achieving the independence of the judiciary, it is possible to highlight certain provisions whose reform would contribute to achieving justice through the fastest and least time-consuming means.

### 1- Abolishing trial in absentia:

The procedures for trials in absentia stipulated in Articles 188 and 324 of the Code of Criminal Procedure should be abolished, and the provisions contained in the Code of Civil Procedure concerning the conduct of trials either in the presence of the parties or deemed to be in their presence should be applied. So-called judgments in absentia should be abolished, as they contribute to prolonging litigation and allowing perpetrators to escape punishment.

### 2- Reviewing the provisions concerning supervision of investigations in cases of flagrante delicto:

The provisions concerning supervision of investigations in cases of flagrante delicto,

particularly Article 29 and the subsequent provisions of the Code of Criminal Procedure, should be reconsidered, so that there is a clear delineation of the powers of the Public Prosecution and those of the investigating judge.

#### 3- Reviewing the provisions governing the work of the Public Prosecution:

The provisions governing the work of the Public Prosecution should be reconsidered, particularly Article 231 of the Code of Criminal Procedure concerning detention and the powers granted to the Public Prosecution, because the provisions addressing these matters are contradictory and do not allow for reliance on a clear interpretation.

#### 4- Amending the provisions governing the role of the Public Prosecution:

The provisions should be amended so that the direct supervision of police departments becomes part of the work of the Public Prosecution, through the establishment of an appropriate mechanism

preventing duplication in dealing with the judicial police.

#### 5- Establishing clear provisions concerning wanted-person notices:

Clear provisions should be established to prevent wanted-person notices from remaining in force after the period of flagrante delicto has elapsed, while emphasizing the issuance of judicial orders by the courts so that the effects of such notices do not continue.

## **Subsection III: Amendment of the Code of Procedure (Civil Procedure)**

What is meant by the Code of Procedure here is the Code of Civil Procedure, as it constitutes the principal law governing procedural matters.

Although the most recent amendment to the Code of Civil Procedure took place in 2016, it introduced numerous challenges, beginning with the failure to regulate electronic notification in sufficient detail and extending to the problems it created within the enforcement system through contradictory provisions. We will focus on two fundamental issues: electronic notification and electronic litigation.

### **First: Electronic Service of Process**

Judicial notification is considered one of the most important procedures in litigation, as it is the means of connecting the parties to the dispute and summoning them to attend court hearings.

The legislator has paid particular attention to the manner and procedures of judicial notification and has established clear provisions and rules, violation of which may result

in the invalidation of procedures and the annulment of judgments. These provisions and rules are contained in the Code of Civil Procedure. However, these rules have become outdated and are no longer compatible with the realities of the twenty-first century, as most legal systems around the world have resorted to using modern technologies for electronic notification in order to preserve the time of litigants and accelerate the completion of judicial procedures.

Adopting electronic notification in Syria would strengthen the integration of the Syrian judicial system into the regional digital justice environment and increase the confidence of investors and international organizations in the effectiveness of the Syrian judiciary. It would also bring the country closer to the global trend toward “e-justice” and reduce procedural appeals arising from defective notification.

The Syrian legislator’s initial attempt to adopt electronic notification was cautious, through the provision contained in the second paragraph of Article 34 of the Code of Civil Procedure, which referred to the possibility of relying on electronic notification on an exceptional and limited basis. However, this provision did not keep pace with modern international legislation in this area.

There are several methods of electronic notification adopted by certain legal systems. Some rely on notification by email, as email is considered one of the best means of communication, particularly for institutions and companies that make extensive use of this means. The second method involves electronic notification through text messages sent via smartphones (SMS). This is an effective means of notification because a smartphone is continuously carried by its owner and is regularly used by them. This method requires the individual, when obtaining the smartphone, to declare that the phone will be used by them and that they are prepared to bear the legal consequences of messages received through it. The third method is electronic notification through the lawyer’s computer.

Relying primarily on electronic notification in the courts requires the establishment of an appropriate legislative environment, alongside the necessary infrastructure to ensure that notification is properly effected and that personal data is protected.

## **Second: Electronic Litigation (E-Litigation)**

In light of the electronic environment that has spread throughout the world and, at the same time, contributed to resolving many of its challenges, numerous countries have benefited from it in judicial proceedings, beginning with electronic arbitration and extending to court proceedings.

Remote hearings have begun to take place through technological means specifically designated for this purpose. Courts, judicial offices, and courtrooms have been designed around remote communication, and there is no longer a need to physically

attend courthouses to file cases. Nor is there any longer a need to physically question witnesses or the parties to a dispute. Instead, all of this can be carried out through reliable communication devices that have replaced physical presence.

All that electronic litigation requires is the establishment of infrastructure guaranteeing a sufficient number of computers connected to the Internet, together with the availability of experts and technicians capable of using this technology. Most importantly, appropriate legislation must be enacted in order to initiate these procedures, which have become necessary to address overcrowding in courthouses, the burden placed on individuals by having to attend courts, and the considerable amount of time wasted in court corridors. Accordingly, these constitute necessary amendments that should be made to the Code of Civil Procedure, as well as to the other procedural laws.

## **Subsection IV: Real Estate Legislative Reform**

The real estate problem in Syria is considered one of the largest problems facing the authorities following the success of the revolution. Among the most important of these problems are the following:

### **1- Loss of ownership documentation:**

Many people who were displaced or whose homes were destroyed lost their documentary evidence establishing their ownership rights. In many cases, the original official records were lost, forged, or altered. It is therefore necessary to establish means of obtaining substitute documents or completing missing documentation in order to preserve property rights. Ownership is considered one of the most important rights protected by domestic constitutions and international treaties. In the same context, subsidiary challenges arise in the legal provisions, including the following:

### **Required Legislative Amendments:**

- 📄 Ambiguity concerning the criteria for accepting alternative evidence in documenting transactions conducted through informal contracts, local records, and certificates of possession.
- 📄 The absence of a clear mechanism to prevent multiple transactions during reconstitution procedures, such as temporary protection and a prohibition on disposing of the property subject to the application.
- 📄 Insufficient safeguards to protect bona fide third parties who have entered into transactions relying on local records.
- 📄 The absence of a rapid and binding mechanism for linking local records to the official land register following reconstitution.
- 📄 The absence of funding or support for vulnerable groups to submit recovery

applications or obtain replacement documents.

### Proposed Reforms:

- Clarifying the evidentiary value of alternative evidence:

■ A provision should be added recognizing the admissibility of specified alternative evidence—written informal contracts, municipal records, service-payment receipts, and verified neighbor testimonies —provided that clear criteria established by judicial instructions are met.

- Temporary protection during land-register reconstitution procedures:

■ A legal provision should be added granting applications for reconstitution a suspensive effect immediately upon their submission, namely a temporary prohibition on any transaction involving the property subject to the application until a final decision is issued, together with the imposition of penalties on violators.

- A mechanism for resolving disputes involving multiple transactions and allocating rights:

■ A provision should be added establishing the priority of registration or transaction according to specified principles, such as the chronological priority of possession or the date established in the contract, together with a balanced compensation mechanism for anyone proven to have suffered harm as a result of administrative error or forgery.

D- Linking the reconstitution process to a mandatory digitization phase:

■ Final decisions should be mandatorily registered in an initial national digital database and linked to technical verification procedures that reduce future inconsistencies between records. E- A support fund and facilitation measures for vulnerable groups:

■ A funding mechanism, exemptions, or reduced fees should be established to assist displaced persons, heirs, and women in submitting recovery applications and obtaining replacement documents.

F- Punishing forgery and accelerating the criminal process:

■ Penalties for forgers and accomplices should be strengthened, with rapid investigation and referral procedures carried out through coordination between administrative units and the Public Prosecution.

G- Public notification mechanisms and procedural transparency:

■ The publication of local and electronic notices should be made mandatory when applications for reconstitution of land-register records are submitted, and such notices should be made available to concerned parties for a specified objection period allowing for early challenges.

## **2. The problem of outright unlawful seizure of property:**

Another problem concerns cases of the overt usurpation of many properties whose owners abandoned them during the revolution and which were subsequently found to have been sold to other persons without the owners' knowledge. This has caused a real estate catastrophe that requires careful consideration and the enactment of appropriate legislation compatible with the emergency situation and exceptional circumstances through which the country is passing.

Such legislation should preserve rights without causing harm to the previous owners, while taking into account the circumstances of new purchasers after their situations have been properly assessed from a legal perspective. This requires subjecting such claims to legislation operating under exceptional circumstances, on the basis that they constitute cases of extreme urgency to which special legal rules should apply, both in terms of court procedures, which should be expedited, and in terms of methods for verifying ownership.

## **3. The real estate problem relating to rental cases:**

This includes cases involving commercial or other forms of tenancy. The current situation requires the introduction of clear legal provisions abolishing the exceptional rental regime that has existed in the country for approximately 70 years. These provisions should take into account the circumstances of both parties by granting them appropriate legal periods for vacating the premises and addressing cases involving the transfer of tenancy rights by establishing compensation rates proportionate to the elapsed period and the period granted for eviction, while leaving each party the option of proposing alternative solutions.

## **4. The problem of buildings constructed in violation of planning and construction regulations:**

Some owners of such buildings have obtained judicial judgments confirming sales, but on the basis of shares rather than subdivision. This has created problems because ownership cannot be registered in the land registry, as such a situation is incompatible with land-registry laws.

This requires the enactment of appropriate legislation providing for the proper subdivision of such properties in accordance with land-survey and demarcation procedures. It also requires moving rapidly toward establishing specialized real estate courts to resolve this problem and register sales in the land registry on a subdivided basis. Courts should be prevented from confirming sales except in cases involving genuine disputes, with such confirmation limited to transactions recognized under the Land Registry Law. Work should also be undertaken to automate land-register records.

# Section VI: Judicial Infrastructure Reform

Infrastructure in any institution constitutes a fundamental foundation supporting the development and advancement of that institution. This undoubtedly also applies to the judicial institution. The availability of appropriate infrastructure, including suitable premises, adequate furniture, and appropriate technical and technological equipment, undoubtedly affects judicial work and the speed with which it is completed.

The former regime deliberately marginalized courthouses and judicial institutions in general, while giving greater attention to the security branches, which it regarded as the institutions most important to it and which assisted it in eliminating its opponents and critics. As a result, courthouses became empty both in form and substance. There were no longer private offices for judges, nor adequate furniture that could be relied upon to perform judicial duties and work. It consequently became commonplace for judges to gather in a single room, without regard to the dignity and prestige of the judiciary or to the impression that such a scene creates in the eyes of litigants.

It is not even possible to speak of computer equipment and networks, because even the most basic equipment is unavailable. There are no necessary paper supplies, nor the essential tools required to complete administrative work. Therefore, improving infrastructure has become a fundamental necessity no less important than reforming the individuals and bodies overseeing the judicial institution. These individuals and bodies cannot perform their work without the material tools on which they depend.

The infrastructure of judicial institutions can be improved through the following measures:

- Rehabilitating courthouses and courts that were damaged or destroyed during the war in a manner that facilitates rapid access to courts, both in terms of architectural design and the location of the buildings.
- Providing suitable courtroom facilities, together with appropriate premises for judges and their assistants, out of respect for the judiciary represented by the judge.
- Upgrading courthouses so that they are suitable for the use of modern technologies, in preparation for implementing electronic litigation procedures, which require judges and judicial offices to have computers connected to Internet networks.
- Providing facilities that make it easy for visitors and litigants to reach courtrooms conveniently and efficiently.
- Adopting measures that reduce overcrowding in courts by reducing paperwork and transitioning to electronic procedures, as well as reconsidering the procedures for

registering cases and collecting the applicable fees, and establishing appropriate channels to expedite these processes without creating congestion in courthouses.

- Establishing alternatives to the use of stamps and financial receipts by calculating and paying fees electronically through electronic payment methods that should be available everywhere in order to facilitate matters for visitors and litigants and reduce instances of administrative and financial corruption. This requires a legislative amendment that takes these possibilities and necessities into account.

## Conclusion

The judiciary holds a distinguished position as one of the most important public institutions of the state, as it represents the rule of law, protects rights and freedoms, and carries a mission of paramount importance in the continuous establishment of justice, the removal of injustice, the redress of grievances, and standing against anyone who undermines the rule of law. Accordingly, continuous efforts must be made to safeguard this institution and ensure the continuity and high quality of its work in order to build confidence in it and in its performance.

Practical reality confirms that the judicial institution remains far from the desired level of independence due to the challenges faced by judges, including interference in their affairs, which undermines confidence in their impartiality and independence. The principle of separation of powers remains difficult to achieve. To attain judicial independence, extensive reforms must be undertaken, beginning at the top of the institutional hierarchy and extending to the infrastructure, while encompassing all personnel working within the institution and the bodies and institutions associated with it.

Reforming the judicial institution is a necessary process that must precede any other necessity and is more important than any other task. It includes reforming the bodies overseeing the judiciary in order to guarantee its independence, particularly the Higher Judicial Council, followed by the Judicial Inspection Department and the Constitutional Court, which safeguards constitutional review. This must ultimately extend to the most important component of the institution: the judges, who are responsible for adjudicating disputes on the basis of constitutional and legal rules, free from fear of dismissal or transfer and from arbitrary measures being taken against them by any authority, under any designation, as a guarantee of fairness to litigants without discrimination among them.

Reform of the judiciary cannot stop there without also considering judicial assistants, who possess confidential information relating to cases and are responsible for following up on them administratively with the parties in court offices and enforcement departments, both within and outside judicial institutions. This requires improving their

academic and technical qualifications and ensuring them a dignified standard of living.

Delays in accessing justice may amount to injustice. Therefore, implementing automation and relying on electronic litigation represents an appropriate means of reducing the burden on citizens of attending court centers in person, alongside applying electronic notification rules in an acceptable manner consistent with practices adopted in many countries.

Reforming certain laws relating to real estate disputes is also a necessary step toward guaranteeing citizens' rights and constitutes part of the justice sought.

Reforming the institutions supporting the judiciary is unavoidable; otherwise, reforms within the judicial institution would remain merely words on paper. Judicial reform has no value in the absence of the judicial police from the legal framework that guarantees human rights, whether in the manner in which official reports are prepared or in the execution of judicial orders, which must be consistent with the established principles contained in international human rights instruments and conventions. The same approach must be applied to the Forensic Medicine Institution, civil status departments, and the land registry.

Undertaking these reforms is not an intellectual luxury. Rather, it is a necessity imposed by the process of state-building in general, and by post-revolutionary states in particular, in order to establish sound foundations for ensuring the rule of law, which protects freedoms and safeguards rights.

## Recommendations

### Establishing a Judicial Coordination Council:

The fundamental step that should be taken is to establish a Judicial Coordination Council between the judicial authority, headed by the Higher Judicial Council, and the Ministry of Justice, which represents the executive authority. This Council should consist of the President of the Higher Judicial Council, its two most senior deputies, the Prosecutor General, and the Presidents of the Courts of Appeal in the governorates.

The Council's task would be to coordinate and consult on certain administrative and financial matters concerning judges, without granting the executive authority the right to influence the judiciary, whether with regard to appointments, promotions, or disciplinary proceedings. The Council's role would be limited to preparing plans concerning the financial and administrative conditions of judges and coordinating with the Ministry of Justice on administrative matters and with the Ministry of Finance on financial and material matters relating to judges' rights.

The establishment of this Council is necessary for achieving judicial independence, ensuring that judges remain institutionally affiliated with the judicial authority, represented at its highest level by the Higher Judicial Council, which guarantees judicial independence, safeguards judges' rights, and defends them.

■ A special law on judicial independence should be developed:

Work should be undertaken to prepare a specific law concerning the independence of the judiciary, defining the foundations upon which such independence is to be established, beginning with the appointment of judges and the procedures for their selection, through to their promotion, as well as the circumstances under which they may be dismissed or transferred. Such legislation should contain clear and explicit provisions guaranteeing their right to challenge such decisions before another competent authority. It should also define the types of courts operating in Syria, including the abolition of exceptional jurisdiction, which has infringed upon rights and freedoms for a prolonged period.

■ Amending procedural and real estate legislation:

Legislation governing criminal procedure, civil procedure, and real estate matters should be amended, particularly legislation relating to ownership and seizure, tenancy, and the Land Registry Law. These laws have become a burden on the judiciary, and the existing legislative framework must therefore be reconsidered and alternatives developed that are capable of protecting the right to property, which is considered a fundamental human right.

■ Establishing infrastructure that enables the judiciary to function properly:

Work should be undertaken to establish infrastructure that enables the judicial institution to perform its functions properly and deliver rights to their holders as quickly as possible. This should include amending legislation concerning notification and introducing provisions that enable electronic notification, alongside amending legislation to allow hearings and trials to be conducted remotely through electronic litigation.

■ Reviewing contradictory circulars issued by the Ministry of Justice:

The circulars issued by the Ministry of Justice that are conflicting or contradictory on the same subject should be reviewed, with those that violate the law excluded, and such circulars should instead be issued through the Higher Judicial Council.

■ Properly activating the Judicial Inspection Department:

The Judicial Inspection Department should be properly activated so that it performs its assigned role independently and free from the influence of the executive authority. It should also be required to submit periodic semi-annual reports that can be relied upon in the promotion of judges and other personnel.

#### 🏢 Improving the qualifications of judicial assistants:

The professional level of judicial assistants should be improved by subjecting them to continuous training courses at specialized institutes and at regular intervals. Their technical and technological skills in using computers and networks should also be enhanced, as these tools are indispensable for advancing judicial processes, particularly in the field of electronic litigation.

#### 🏢 Repealing laws restricting the prosecution of security personnel:

The laws that prevent the prosecution of security personnel without the approval of the administrative head, as provided for in Decrees No. 14 and No. 549 of 1969, should be repealed.

### Footnotes / References:

[1] Article 34(2) of the Code of Civil Procedure: 'Service may be confirmed via text messages and electronic communications, and the Minister of Justice shall issue the necessary executive instructions.'

[2] Recommendations from the Judicial Reform Workshop organized by 'The Day After' (TDA) organization in Aleppo.

[3] See published research in Aleppo University Journal (Liberated Areas) titled: 'The Feasibility of Terminating Statutory Extension of Tenancy Contracts in Syria.'