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# Theme: Reform, Change Management

## Judicial System Restructuring and Modernization in Abu Dhabi

By Lawrence Groo, Abu Dhabi Government Restructuring Committee, Program Management Office<sup>1</sup>

### Abstract

The purpose of this article is to provide a practical overview of the recently initiated modernization of Abu Dhabi's judicial system. Beginning in 2007, Abu Dhabi's Government launched a comprehensive effort to transform the Emirate's judicial system. While the implementation of these reforms is ongoing, with the adoption of the law in May 2007 establishing the new judicial architecture the initial phase of the modernization program is already complete. The restructuring process encompasses court management and administration reform, a new judicial training regime, a redesigned organizational structure for the Emirate's Judicial Department and courts, and the establishment of a system-wide strategic planning and budgeting process. Many of these initiatives are supported by applying advanced IT-based applications. Given the early achievements and ambitious broader aims of the restructuring process, Abu Dhabi's example is relevant not only to the other Emirates within the Federal UAE system, but also within the context of the wider Middle East region.

### I. Introduction

In 2007 the Government of Abu Dhabi launched a comprehensive restructuring and modernization program with the objective of transforming the Emirate's judicial system. This program envisions the improvement of court operations and administration, judicial training, performance management and strategic planning, as well as overall judiciary organization and staffing. Advanced information technology applications were identified as integral tools to support improvements in all of these areas. Collectively, the program was designed to achieve a more effective judicial system and enhanced rule of law.

While the implementation of the associated reforms is ongoing, with the adoption of the law in May 2007 establishing the new judicial architecture the initial phase of the modernization program is already complete.<sup>2</sup> The purpose of this article is thus to (1) outline the aims of this restructuring and modernization effort (Section III); (2) to describe the achievements of the program to date (Section IV); and (3) to note reasons for the program's initial success, ongoing challenges, and to place Abu Dhabi's example within the wider context of the Middle East (Section V).

### II. Overview of Abu Dhabi's Judicial System

The Emirate of Abu Dhabi is the largest of the seven Emirates within the United Arab Emirates, and Abu Dhabi city is the capital of the UAE. Until the mid-20<sup>th</sup> century, the Emirate's population was largely dependent on date farming, camel herding and fishing and pearl diving in the Arabian Sea. In this earlier era, laws were primarily tribal-based and enforced in tribal courts. The economic development of the Emirate shifted dramatically following the discovery of oil in 1958. Today the Emirate has nearly nine percent of total known global oil reserves, and features one of the highest per capita incomes in the world. Bolstered by strong oil prices and significant domestic investment in infrastructure, urban development and cultural and educational sectors, Abu Dhabi has one of the world's fastest growing economies. As of late 2007 there is more than \$200 billion in planned urban developments (accounting for close to 30% of development in the wider region), including a new cultural district in the city of Abu Dhabi that will feature the world's largest Guggenheim museum, a branch of the Louvre museum, and several other world-class cultural destinations. The Emirate is also developing a number of strategic sectors, launching important initiatives with leading partners in the fields of alternative energy (Massachusetts Institute for Technology), medicine (Cleveland Clinic), education (Sorbonne University), and aerospace technology (Boeing). Notwithstanding this phenomenal growth and economic transformation, the local population maintains a strong connection with traditional local Arab culture and Islam. There are approximately 1.8 million inhabitants, a majority of which are expatriates; there are 400,000 citizens.

Within this remarkable economic and demographic context, Abu Dhabi's modern legal and judicial framework is predicated on the UAE's Federal Constitution, adopted in 1971. In common with other legal systems in the Middle East, the judiciary is largely based on the continental European civil law model. The system is divided between civil, criminal

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<sup>1</sup> Abu Dhabi Government Restructuring Committee, Program Management Office. The views expressed in this article are the author's alone.

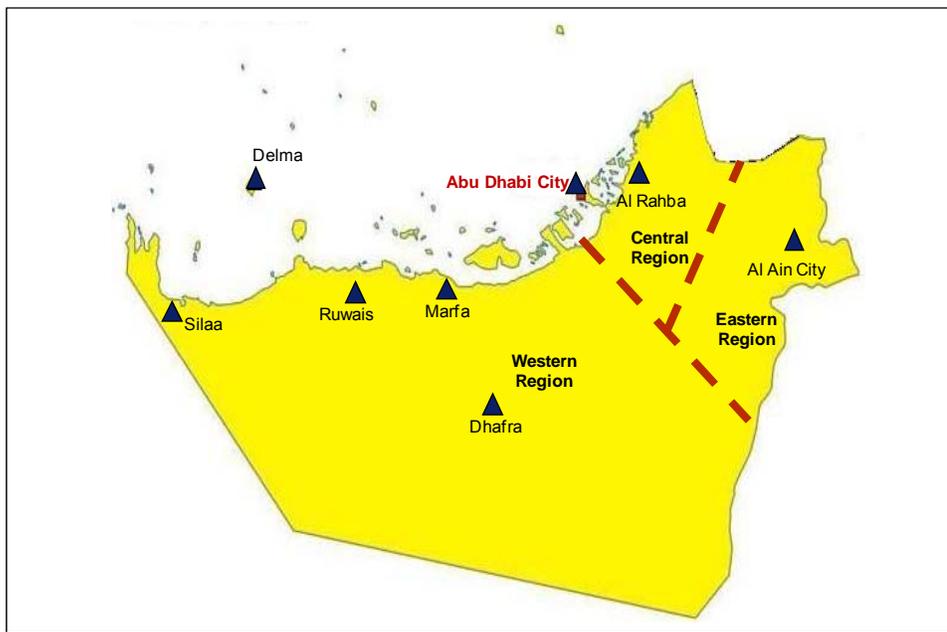
<sup>2</sup> Law No. 23, April 29, 2007.

and sharia jurisdiction, with the latter focused primarily on family, inheritance and personal status matters. As in other Federal states such as Canada and Malaysia, under the Constitution there are both Federal and local courts, although the former exist only in four of the seven Emirates. The Emirates of Dubai, Ras Al Khaima and, most recently, Abu Dhabi, have opted to maintain local court systems under the Federal Constitution, whereas the other four Emirates (Sharjah, Umm Al Qaiwain, Fujairah, and Ajman) feature Federal courts. The UAE's Federal Supreme Court tries cases pertaining to Constitutional issues that arise in any of the Emirates.

Under Abu Dhabi's recently enacted law on the judicial system, the Emirate maintains a three-tiered system of courts: First Instance Courts, Appeals Courts, and a Court of Cassation. Courts are located in eight different cities of the Emirate, with approximately 115 judges and over 500 support staff.<sup>3</sup> As with other government departments in the UAE and the Gulf region, a majority of staff are expatriates, with less than 15% of judges maintaining UAE citizenship. Most expatriate judges and staff are from other regional countries, including Egypt, Sudan and Morocco.

While employing expatriate judges may strike some foreign observers as highly unusual, the shared legal heritage of regional Arab countries – procedural and substantive laws in most Arab countries were heavily influenced by Egyptian models, and in most systems sharia plays an important role – make this practice more understandable, if still exceptional. The workload of Abu Dhabi's court system is increasing at approximately 2% annually, with 25,239 cases (whether criminal, civil or sharia) registered before the First Instance Courts in 2006. Of this total, over 60% of the cases were criminal in nature. The dynamic and record growth enjoyed by the Emirate over the last five years, averaging over 15% per annum, suggests that court dockets are likely to grow significantly in coming years, and is likely to include an increasingly higher percentage of complex commercial cases. With respect to dispute resolution, by law family related cases must first enter family advisory bodies before entering court, and all civil cases are required to first endeavor to solve any disputes via government sanctioned Settlement Committees.

#### Emirate of Abu Dhabi Map & Court Distribution



Unlike the judicial models adopted in Dubai, Qatar and Bahrain, Abu Dhabi has not established independent judicial mechanisms affiliated with economic “free-zones” that are outside of the authority of the existing national judicial framework. Instead, Abu Dhabi has maintained legal unity within the Emirate, while adopting more streamlined and advanced commercial law procedures to bolster the confidence of international companies and foreign investors.

<sup>3</sup> The Courts are located in Abu Dhabi, Al Ain, Delma, Dhafra, Marfa, Rahba, Ruwais and Sila. Other courts are expected to be established as the Emirate continues to grow.

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### III. Modernization Program

In 2005 the Government of Abu Dhabi established the Abu Dhabi Government Restructuring Committee (ADGRC), whose purpose is to help the Emirate attain more effective and efficient government organization and services. The ADGRC operates under the aegis of HH Crown Prince General Sheik Mohamed Bin Zayed Al Nahyan. In coordination with the leadership of the Judicial Department, led by HH Chairman Sheik Mansour Bin Zayed Al Nahyan, the Emirate's leadership committed to modernizing the judicial system. The primary impetus for doing so was to ensure higher standards of professionalism and service, and to improve legal certainty and law enforcement. An overhaul of the justice system was also cited as one of the critical elements in supporting the Emirate's continued economic growth and integration into the global economy.

The first step in the justice restructuring program was the establishment of a Steering Committee in late 2006. Comprised of representatives from the Federal Ministry of Presidential Affairs, the Abu Dhabi Judicial Department, the Executive Council's General Secretariat and the Executive Affairs Authority, the Steering Committee reports directly to the Chairman of the Judicial Department and is empowered to take action on any issues pertaining to the judicial system's modernization and restructuring.

The Steering Committee in turn authorized the creation of an implementation team comprised of local and international experts to lead the modernization program, with a detailed program scope, timeline and budget. Working in close conjunction with representatives of the Judicial Department, the implementation team was initially tasked with working across four thematic areas: (1) strategic planning, budgeting and performance management; (2) court management and administration; (3) information technology; and (4) communications. Initial preparatory work in these four areas has led to a detailed implementation plan involving 10 separate workstreams.

Working under the supervision of the Steering Committee via regular meetings and briefings, the implementation team launched a multi-phased program intended to achieve a more effective, independent and cost-effective system of justice that incorporates practices and processes utilized by the most advanced judiciaries in the world.

### IV. Progress and Expected Results

The most critical development to date in the modernization program was the adoption of the new law establishing Abu Dhabi's judicial system in May 2007. There are four particularly important aspects of this law. First, the law establishes an independent Judicial Council, composed of a majority of judges, which is responsible for governing judicial affairs. Specifically, the Council oversees the appointment and promotion of judges, reviews the quality of judicial decision-making via the Judicial Inspection Division, and approves and oversees court procedures and policies. In establishing the Council, the Emirate has adopted a model of judicial governance that is one of the most independent and self-regulating in the wider Middle East region.

The second particularly noteworthy component of this law is the strengthening of court management and authority under Court Presidents. For example, the law establishes the position of Head Clerk within each court, centralizing court management under a senior court administrator who reports directly to the Court President. More generally, Court Presidents are now directly responsible for all staff within their courts.

The third key attribute of this new system is a consequence of the centralization of court staff under Court Presidents – that is, those staff within the judicial system that do not work directly within courts. Specifically, support staff will be organized across five main offices: IT, Public Affairs, Administration, Performance Management and Judicial Support Services. Increasingly, the important support functions and services undertaken by staff in these offices (supervised by the Undersecretary, or lead executive officer of the Department) will operate under transparent and clear performance guidelines, focusing on higher-level policy development and management practices rather than lower-level administrative tasks (which can be outsourced or left to court clerks, as appropriate).

The fourth significant area impacted by the new law is training. By establishing a local independent legal and judicial system, the new law paves the way for a new judicial training regimen which will be guided and administered by a soon to be established Judicial Academy. This Academy is expected, in time, to not only train future judges and senior court staff from Abu Dhabi, but to act as a resource and training facility for other Emirates (and in time, other countries).

Following the adoption of the new law, the implementation effort has to date achieved a number of important milestones. Within 90 days, a comprehensive analysis of the system's operating and structural strengths and weaknesses was completed. This effort was immediately followed by the comprehensive detailed design of the judiciary's entire organization, including courts and supporting entities. In addition, an implementation plan was prepared that provides a detailed sequencing of reform initiatives planned for the next six months and beyond.

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An intensive three-month training program was also initiated to benefit assistant judges and newly appointed judges. A team of leading scholars and academics from across the region was gathered to prepare and deliver a course of instruction on civil, criminal, commercial and procedural laws. This course focused on both key principles of UAE law and higher court rulings and the comparative experience of Lebanon, Jordan, Egypt, Syria, Qatar and the UAE, and highlighted the notable legal unity across most Arab countries. As noted above, given that much of the UAE's civil and criminal legislation derives from Egyptian laws and procedural codes that have also been adopted in various regional systems, understanding the comparative case-law of other countries is of particular relevance for Abu Dhabi's judicial personnel.

During the initial six month implementation period a number of important IT-based initiatives were also initiated and completed, including (1) equipping all judges with lap-top computers and associated training; (2) installing local area networks in remote courts; (3) ensuring appropriate network security measures to protect sensitive data; (4) developing a digital catalog of all national laws and higher court cases; and (5) designing and developing a judiciary website. A comprehensive electronic archiving effort, recording some 500,000 cases, was also launched, and is expected to be completed within a five month period.

Less tangible, though of considerable importance, are three more general achievements. First, as a result of granting judges and associated staff a salary schedule that is independent from the national civil service system, the government has made a strong statement regarding the unique and valuable role of judges and personnel within Abu Dhabi's society.

Secondly, not unlike other GCC countries, Abu Dhabi's deficit of local judges has been targeted as a key area for improvement. The Judicial Council, for example, is comprised of 50% nationals, considerably higher than the ranks of the bench as a whole, and is expected to be almost entirely nationalized within five years. Similarly, the bench of the first instance courts, which constitutes approximately 75% of judges within the Emirate, is expected to be 75% local by 2012, up from less than 15% today. This goal will be achieved through the means of an intensified training regime for local assistant judges, in addition to the considerably higher judicial salaries and associated benefits.

Finally, it remains to note that the recent law enables women to assume the bench for the first time. Currently there are three female assistant judges and two prosecutors within the judiciary's ranks. This development substantially widens the potential pool of judicial applicants; the more so since a large percentage of local law graduates are women.

The next implementation phase, expected to be completed over the coming 12-18 months, includes the following:

- Realignment of the judiciary's staff to comply with the new detailed design of the judiciary;
- Establishment of a new system for training, selecting and promoting judges and developing judicial specializations;
- Design and adoption of new financial management and human resources management processes and procedures;
- Development and adoption of a comprehensive strategic and operational plan to guide the judiciary's continued development over the 2008-2010 period;
- Design and implementation of a modern public complaint monitoring system;
- Design and development of a comprehensive IT-based case management system;
- Design and development of a system-wide IT-based performance management system;
- Design and development of an internal portal resource for all staff as well as court users;
- Renovation and refurbishment of court facilities to improve access and level of service;
- Amendment of procedural laws enabling more streamlined and transparent trials; and
- Establishment of a Judicial Training Academy, with a state-of-the-art curriculum for new judge and select court staff.

Other initiatives and performance-based improvements are also planned. The primary results of these efforts are expected to be improved quality of judicial decision-making, reduced trial times, improved level of service for court users

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and the public at large, more transparent laws and court decisions, clarified career and training opportunities for court staff, and, overall, higher levels of public confidence in the courts and a greater degree of professionalism and capability by judges and court staff.

## V. Conclusion

Having described the framework, achievements and continuing efforts to modernize Abu Dhabi's judicial system, three additional issues are worthy of mention: (1) notable aspects of the restructuring process that have contributed to the program's success to date; (2) future challenges and complexities that the modernization effort is likely to face; and (3) the implications of Abu Dhabi's experience for the wider region.

There are at least four primary factors that have ensured the program's success to date:

*Unequivocal political support:* From the beginning of the modernization program, the senior political leadership of the Emirate, across the Judicial Department, the ADGRC, and the Ministry of Presidential Affairs, has shown unwavering and strong support for the reform effort. This has enabled a full mobilization of internal resources (including the adoption of a special budget supporting the modernization effort), and removing various internal bureaucratic hurdles that would accrue from less senior and undivided political support (for example, ensuring the Judicial Department was not bound by the traditional civil service requirements in recruiting and hiring new staff).

*Effective program oversight:* Whether on the part of the Steering Committee or the ADGRC, the primary government officials entrusted with oversight authority for the implementation have been closely involved at every stage of the modernization effort to date. For example, Steering Committee members receive weekly (and in some cases daily) updates on implementation issues, identifying any issues that need higher-level political support. This close involvement and supervision has also ensured a high degree of cohesion between the approach being implemented and the unique political, social and cultural aspects intrinsic to Abu Dhabi's government and society. The individuals involved were handpicked by the Emirate's senior political leadership, and are among the most able and impressive individuals within the Emirate's government (or, in my experience, any government).

*Dedicated and experienced implementation team:* The assembled implementation team was fully dedicated to the restructuring effort (whether internal or external team members), and has regularly worked six day weeks throughout the initial implementation phase. The overall implementation effort includes staff from the ADGRC PMO and a variety of external consultants – particularly key roles have been assumed by the management consultancy Booz Allen Hamilton, as well as the Amman-based Centre for Arbitration and Law (in addition to other consultants and organizations). The combined team includes a number of experts with previous experience with the Emirate's judicial system (at both the Federal and local levels), as well as with other advanced and developing judicial systems. This not only eliminated the usual "acclimatization" period for key staff, it also enabled the team to more effectively gauge priority implementation issues and establish closer connections with counterparts across the government.

*Clear timeline and program scope:* The modernization program has also benefited from the setting, and adhering to of a detailed time and project scope approved for six-month intervals. The timeline and scope are defined with a high degree of detail (specifying what the result will be of each initiative and who is in charge of ensuring successful implementation, etc). This timeline and scope are distributed to all relevant parties across the Judicial Department and related government entities.

None of these factors are revelatory given experience with government reform programs elsewhere in the Middle East, Europe, Asia and Latin America. However, the combination of these factors, together with the fact that the reform program has been entirely started, managed and supported by the local government, has led to an especially focused restructuring program that has, in the words of an expert from the United States Federal Judicial Center, led to completing "at least two year's worth of work in only a few months."

On the other hand, there are a number of challenges facing the implementation program. In my opinion the primary challenges are fourfold:

*Scale:* Government modernization programs typically focus on one or two discrete aspects of an institution (customer service, performance management, etc.). In traditional court reform programs, for example, the focus is often only one tier or section of the wider system. In contrast Abu Dhabi's leadership has committed to restructuring and modernizing the entire judicial system, at one time. While it is true that the Emirate's judicial system is of a comparatively small scale (total workload at the First instance level is equivalent to the workload of one large urban

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court in a country like Egypt), the significance of this ambitious scale is a particular challenge given the need to ensure the successful integration and sequencing of reforms in different parts of the judicial system. For example, that various IT-based applications such as the case management system, performance management system and electronic archiving, should be compatible, even though their development complexity, timeline for deployment and end-users are distinct.

*Meeting expectations:* The political leadership of the Emirate has repeatedly indicated the importance of completing the necessary reforms as quickly and comprehensively as possible. This is especially true in the justice sector – at the Federal level, for example, the UAE’s Prime Minister recently issued a rare public rebuke of a government organization, expressing his “utmost dissatisfaction” at the level of service of the Ministry of Justice and in the courts, and pledged that “[w]e will not allow this to continue”.<sup>4</sup> This commitment to judicial reform, mirrored at the Emirate level in Abu Dhabi, has been backed by allocating significant internal resources for the restructuring program. However one may push reforms from on high, engendering fundamental behavioral and organizational change requires years of steadfast work and a host of related reforms sequenced over a period of months and years. The complexity of a judicial system, whether measured as a function of associated human interactions or procedural components, is exceptional. Moreover, since – like most governments in the Gulf – there is comparatively limited institutional familiarity with internal reform programs residing within Abu Dhabi’s courts, key officials have difficulty accepting that attaining a fundamentally enhanced level of organizational performance is rarely, if ever, managed in less than a matter of several years.

*Creating a stronger judicial culture:* While “culture” is a much abused catch-all for the lack of organizational and behavioral capabilities, what is nevertheless undeniable is that in a country as new as the UAE (founded in 1971), the judicial profession can benefit by further developing a supporting culture of professionalism and respect common in states with older judicial institutions. While in Western Europe and North America the vocation of a judge is esteemed and respected across society, in Abu Dhabi – as elsewhere in the Middle East – the judicial profession has not been as well recognized or professionalized; a circumstance which requires significant investment in training, recruiting, and broader public education throughout society.

*Pairing reforms with actual organizational capabilities:* One of the most common mistakes of government reform programs is importing a group of external experts to design new systems, performance standards and internal processes without ensuring sufficient internal capability to actually achieve sustainable performance improvements across the wider organization. This risk exists in Abu Dhabi as well; while a number of additional and better qualified staff are being hired to help lead the new judicial system, and counterparts from the Judicial Department have been committed to working alongside the implementation team, the successful integration of the myriad procedural, staffing and technology-based reforms within the judiciary remains a delicate work in progress.

None of these challenges are unique given experience in other countries, as well as existing literature and research on organizational change and institutional development.<sup>5</sup> Nor is this article the venue for describing in detail the unique responses necessary to overcome each of these challenges. The central point is that given the existing positive factors above, achieving continued implementation success is likely, though not assured.

While this article does not address wider concepts of state and administrative development, Abu Dhabi’s example suggests a broader observation about the evolution of government in the wider Middle East. Whether one studies the achievements to date or the government’s ultimate stated goals, it is likely that within several years Abu Dhabi will have a judicial branch of government that is, in certain respects, as capable and technologically sophisticated as some of the most advanced and developed states in the world. Given that Abu Dhabi’s local and Federal government is only 35 years old, and that the older generation of UAE citizens today was raised in starkly under-developed surroundings amidst Arabia’s dauntingly arid geography, this achievement is highly significant.

Moreover, it is notable that Abu Dhabi’s leadership has initiated these far-reaching reforms highlighted not as a response to external pressure or donor demands, but rather to achieve ambitious internal public service reform goals. In contrast, many of the extant government modernization programs (and judicial reform programs in particular) in the Middle East and elsewhere are taking place as a result of external incentives or supra-national regulatory compliance issues. To the extent that a significant percentage of these externally-induced reform programs prove incapable of fundamental

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<sup>4</sup> *Gulf News*, April 18, 2007.

<sup>5</sup> For a general survey of judicial reform experience see, for example, Juan Carlos Botero et al, “Judicial Reform,” *18 World Bank Research Observer* 1 (2003).

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organizational and service improvements,<sup>6</sup> the Emirate's experience of launching an entirely homegrown self-financed and internally managed judicial modernization program of ambitious scope represents an instructive and hopeful model for implementing lasting government reform in other countries.

Bearing these points closely in mind, it is fair to draw a final and important conclusion about the nature of government and judicial reform in the Middle East. Specifically, Abu Dhabi's example not only demonstrates the commitment of the Emirate's political leadership to attaining a high standard of public service -- it also suggests that the commonly held notion in certain quarters that the cultures and political systems in the Middle East are somehow inherently unsuited to, or incapable of attaining, internationally recognized standards of the rule of law and effective government should be fundamentally reconsidered.



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<sup>6</sup> See, for example, *U.S. Rule of Law Assistance has had Limited Impact*, U.S. Government Accounting Office (GAO-01-740T), Statement of Jesse T. Stone, Director of International Affairs and Trade before the House Committee on Government Reform, Subcommittee on National Security, Veterans Affairs, and International Relations (May 17, 2001).