



Mid-term Review of
ILAC's Program on
Training of Tunisian Judges

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EXECUTIVE SUMMARY

This mid-term review assesses ILAC's program on Training of Tunisian Judges. It provides an assessment of relevance, effectiveness and cost-efficiency in relation to the program. The mid-term review does not include an assessment of sustainability and impact of the program.¹ It is too early into the implementation of the program to include these evaluation criteria in this mid-term review.

The mid-term review was carried out after the program completed its first milestone of training approximately 780 Tunisian judges from various governorates across Tunisia, beginning in late March 2012. The trainings have been implemented by ILAC's partners, the CEELI Institute and the International Bar Association (IBA). ILAC is the contract holder, coordinator and administrator of the program. The Swedish international development cooperation agency (Sida) is the only financier of the program.

The Review of ILAC's program on training of Tunisian judges follow the principles of *OECD/DAC Quality Standards for Development Evaluation and Evaluating Peacebuilding Activities in Settings of Conflict and Fragility (OECD/DAC 2012)*, but it is limited to focus on *relevance, efficiency and effectiveness*. The Review was undertaken after ILAC completed the first half of the training program to take stock of the past 18 months. The purpose of the Review is for ILAC to draw lessons from the implementation and management of the trainings held to date, and to adjust the program prospectively to these lessons. The Review is primarily undertaken to serve as a management input for ILAC and its partners in the Tunisian training program, but it also provides ILAC with lessons that can be internalized and institutionalized beyond the Tunisian training program. The Review also serves to demonstrate for donors, and especially Sida, ILAC's ability to manage and implement programs of this volume and scope.

The objective of the evaluation was to ascertain results and assess the effectiveness, efficiency and relevance of ILAC's intervention, as well as to provide findings, conclusions and recommendations with respect to ILAC's intervention that can be used to draw lessons for future design and implementation.

The Review covers the first implementation phase, March 2012 – October 2013. However, the implementation period needs to be understood in the light of the period January 2011 – March 2012 when the program was conceived. Although, the implementation of the intervention has included a very broad target group from all provinces in Tunisia, this Review draws from experiences among judges in Tunis and Nabeul who have participated in the training program.

¹ This mid-term report constitutes also a final report of the contract with Sida for the first half of the implementation of the training program. The program continues under another contract with Sida. The program is included as a component in ILAC's broader Middle East and North Africa Program 2014-2016.

This Review draws a number of lessons learnt from the first implementation phase. ILAC has acted with speed and flexibility, as well as with analysis and knowledge. However, risk assessment and analyses have not been as central to the planning process as speed and flexibility with the cooperation partner. ILAC acted very pragmatically, and as soon as the MoJ approved the training program, ILAC launched the training within a few months. ILAC has invested resources to align its results framework with factors that were considered to drive or affect implementation to effectively and efficiently achieve the objectives.

The lessons learnt and key challenges include the need to develop and implement a proactive and coherent strategy that enables coordination and communication with key stakeholders in the judicial sector in Tunisia. This approach goes beyond the actual training and requires ILAC to invest in stronger coordination with other actors.

The interviews with the focus courts reflected an overall generally positive tone about the ILAC course, but also raised a number of specific concerns. Many of the specific critiques of the course were familiar, including over-generality (or the need to focus trainings to specific judicial specializations) as well as the lack of follow-up or facilitation of subsequent contact among participants. One new critique targeted the failure to adequately explain the nature of the course in advance in the invitation materials, preventing judges from being able to prepare themselves adequately. There were lively debates among the judges as well on the merits of working group methods and whether the training covered too many or too few topics.

The issue of specialization was also debated, in the context of a broader discussion of regional and gender representativeness. For some judges, the unaccustomed mixture of different specializations and regional jurisdictions enlivened and enriched the conversations, both inside and outside of the actual sessions. Gender representativeness was welcomed without compunction, with the judges noting proudly that 35% of their number were currently women and that this would inevitably rise to 50% if current trends continued.

The critiques included the following:

- Participants “communicate more information than they receive”, hearing about issues faced by the judges without providing guidance based on universal standards in every case;
- The course should be more practical, with field visits for the international experts to see the judges at work;
- There should be a more comparative approach, with explanation of how specific problems are approached across various North American and European national legal systems;
- Study trips should also be provided, allowing Tunisian judges to familiarize themselves with how judges approach issues in other countries;

- Significant potential multiplier effects are lost because of lack of systematic follow-up, including both the lack of a database allowing all participants access to each others' email addresses and lack of further action on the individual action plans participants identify in the CEELI course.

This Review has on the basis of presented observations, analysis and conclusions been able to tease out a number of recommendations, of which some have already been incorporated by ILAC in the second phase of the implementation of the training program, while others can be furthered integrated into ILAC's future work in Tunisia and elsewhere in the MENA region.

Course preparation

The preparation of the actual courses should include enhanced clarification of the purpose and objectives of the training program, and not only of the individual courses. An introductory note and hand-outs in Arabic about the training program would contribute to inform participants about the general rationale, and would also hopefully enable them to more easily understand the linkage between the overall project goal and the specific course approach.²

A brief and clear information package distributed to the judges and prosecutors can contribute to better understanding and more realistic expectations, facilitating insightful conversations during the training. ILAC should continue to liaison with the MoJ with regard to the invitation package for the training program sent in advance to participating judges and prosecutors.

Likewise, it is important that the international trainers are equally prepared regarding the purpose and objectives of the overall training program, in order to enable them to align their work with these objectives. Furthermore, in order to enhance the capacity among the international trainers to engage with the participants it would be very useful for ILAC to prepare a brief summary text about the legal system in Tunisia that describes key actors, processes, mechanisms and challenges.

Local coordination

ILAC's local coordination should focus on a more proactive approach to identifying linkages between specific needs and priorities among individual participants and their courts, and the issues emphasised in the training sessions. This would require a more consistent and ongoing review of participants, and hence communication with the implementing partner. For the second phase of the implementation ILAC should consider means by which both ILAC and participating judges can better follow up on the trainings in order to address concrete problems in the Tunisian judicial system. The following possibilities should be considered:

- Institutionalization and use of the knowledge generated by the course by the judges themselves in order to identify and address challenges. Here, the judges pointed out that ILAC would still have an important role to play by using the contact information

² As of January 2014 ILAC and partners have shared introductory notes and hand-outs in Arabic.

given by participants to facilitate the development of an online network of course alumni. Such a network could both help disseminate best practices, promoting harmonized practice in emerging areas of law, and provide the basis for mobilization and advocacy by the judges themselves.

- Continuing efforts by ILAC and the course conveners to plow the information generated during the trainings back into the curriculum, both in terms of the lectures and the case studies.
- Discussion of this information with other national and international actors with mandates to participate directly in the Tunisian judicial reform process. An important component of this approach would involve ensuring that judges were made aware of the various actors and their roles in order to be able to turn to them directly for guidance or advocacy.

I. Introduction

This mid-term review assesses ILAC's program on Training of Tunisian Judges. It provides an assessment of relevance, effectiveness and cost-efficiency in relation to this program. The mid-term review does not include an assessment of sustainability and impact of the program.³ It is too early into the implementation of the program to include these evaluation criteria in this mid-term review.

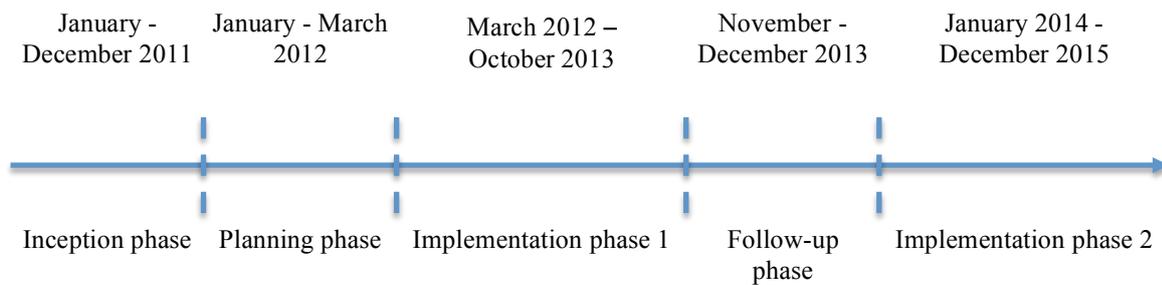
The mid-term review was carried out after the program completed its first milestone, the training of approximately 900 Tunisian judges from different governorates across Tunisia. The first trainings were offered in late March 2012. The trainings have been implemented by ILAC's partners the CEELI Institute and the International Bar Association (IBA). ILAC is the contract holder, coordinator and administrator of the program. Swedish international development cooperation agency (Sida) is the only financier of the program.

The program was initiated in the spring of 2012. In order not to lose valuable time, and in order to honor its commitments to the Tunisian authorities, ILAC financed the initial training sessions in the spring with its own money. In July, Sida approved ILAC's request for funding of the intervention and the spring sessions were then funded retroactively by Sida. The original idea behind the intervention was to train approximately 30 judges during a four-day training session every second week for three years. ILAC decided to initially set up a training program for 18 months and by then approximately 900 judges were expected to have completed the training program. Implementation was planned in two stages, in order to

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provide ILAC an opportunity to take stock and make necessary adjustments for the second phase of the training program. The last phase of the implementation would also aim to train approximately 900 judges. The total number of judges who have been enrolled in the program would then be approximately 1 800, e.g. the entire sitting judiciary in Tunisia. The last training session for the first implementation phase was completed by the end of October 2013.

The program cycle for the training program is illustrated by the following time line:



The inception phase was characterized by efforts of ILAC to establish a relationship with the Tunisian Ministry of Justice (MoJ). ILAC was invited to Tunisia in January 2011, after the collapse of Ben Ali regime, by the Tunisian Bar Association, which numbered Tunisia’s transitional president, prime minister and minister of justice among its previous chairs. The invitation was a result of the long-standing relations between the Tunisian Bar and the Union Internationale des Avocats (UIA), one of the founding members of ILAC.

Two subsequent meetings were held in Tunis during 2011 between ILAC, the MoJ, organizations representing the judiciary and the bar association. The local stakeholders highlighted during the meetings the insufficient capacity of the judiciary to manage the transition from an authoritarian regime to democratic governance in Tunisia. They saw collaboration with ILAC as an opportunity to gain expert support in addressing some of the needs and challenges within the legal sector in Tunisia. ILAC had capacity and preparedness through its member organizations, IBA and the CEELI Institute, which had previously implemented programs in contexts that were comparable to Tunisia, including both training judges in “fair trial” issues and “due process” (carried out by IBA for Iraqi judges) and “judging in modern society” (carried out by the CEELI Institute for judges from former Soviet republics). The programs were presented to the Tunisian counterparts by the two organizations during a visit in May 2011. The MoJ, the judicial organizations and the High Judicial Institute in Tunisia responded positively to the content of the training program. During the last visit in late 2011, ILAC met with new representatives from the MoJ appointed after the general elections in October. The new members remained positive to ILAC’s proposed intervention and agreed to launch the training program by March 2012.

This agreement gave ILAC about three months to plan for the training program, establish a training center, contract with a liaison person in Tunis, make arrangements with the CEELI Institute and IBA to secure trainers, contract interpreters, prepare course material, organize the logistics for Tunisian judges to attend the training, and have the four-day training sessions

up and running by late March 2012 with the ability to provide them every second week for 18 months. In the meantime, ILAC drafted a program proposal to Sida for request for funding of the intervention. Sida granted ILAC funding for the first phase of the implementation of the program.

The program started in late March 2012 in the midst of a crucial juncture for the Tunisian legal system. Tunisia still stood out as an exception in the Arab world, where many other countries in the region had stalled or descended into conflict. Still, 15 months after the fall of the former leader, President Zine al-Abidine Ben Ali, the entire Tunisian political system was in flux. Hamadi Redissi, a professor of political science at the University of Tunis and president of the Tunisian Observatory for a Democratic Transition, wrote in *New York Times* in July 2011 that “*the justice system is still barely functioning*”. Tom Ginsburg wrote in his report: *The Tunisian Judicial Sector: Analysis and Recommendations*, which was presented in September 2012 for an International IDEA conference to provide an informed discussion on judicial reform in Tunisia, that Tunisia’s legal system stood at a crucial juncture in 2012. In the same report Professor Ginsburg at the University of Chicago Law School shares Ahmed Querfelli’s view that Tunisia needs a strong and competent judiciary.⁴ Ginsburg reckons that it will be very difficult to deliver an empowered, independent, and competent judiciary.⁵

It was in this socio-political and legal context with which ILAC initiated judicial training in the spring and summer of 2012. The risks surrounding an international legal intervention in Tunisia were many. One major risk was associated with the consequences of the political transition that began with the ouster of President Ben Ali in January 2011 and continued through the election by the constituent assembly of President Moncef Marzouki in December 2011. Such processes are often pervaded by distrust of the old governmental bodies, including the judiciary, which served under the previous regime. There is a risk that uncoordinated or careless purges of the judiciary can undermine it just at the moment that it needs to play a stronger role in society.

The political turmoil in Tunisia was closely interwoven with the judicial transformation. In August 2012, thousands protested in Tunis against moves by Islamist-led government to reduce women’s rights. A Draft constitution referred to women as “complementary to men”, whereas the 1956 constitution granted women full equality with men. In February 2013, Ennahda Prime Minister Hamadi Jebali resigned after his ruling Islamist Ennahda party rejected his proposals to form a government of technocrats after the assassination of an opposition anti-Islamist leader. In October 2013, the Ennahda party agreed to hand over power to caretaker government of independent figures tasked with organising fresh elections in 2014. In December in 2013, after months of wrangling, Ennahda and the mainly secular

⁴ Judge Ahmed Querfelli authored *Judicial Reform in Tunisia: Constitutional Principles Relevant to the Judiciary*.

⁵ Tom Ginsburg, *Consolidating the Arab Spring: Constitutional Transition in Egypt and Tunisia*. No.5, June 2013, International IDEA and The Center for Constitutional Transitions at NYU Law.

opposition agreed on appointment of Mehdi Jomaa as the Prime Minister of an interim government.

There are many different scenarios that could have played out in Tunisia and which would have had significant impact on the feasibility of implementing the intervention to train 1800 Tunisian judges during a 36 months period. The political dynamic and context clearly shaped the surrounding of the implementation of the intervention. Behind the most salient political debates there were other critical debates with great potential to affect the judiciary itself as well as ILAC's intervention. The two organizations representing judges, the Union of Tunisian Judges and the Tunisian Association of Judges (TJA) have had their own internal political strife about the legitimacy of the Tunisian judiciary, and more specifically the Supreme Judicial Council (SJC, or Conseil Supreme de la Magistrature, CSM). The controversy relates to the practice of the Ben-Ali regime of using the SJC to control judges through appointments, promotions and demotions of judges based on their loyalty to the regime.

The Judges' Association was formed in the 1980s and represents all different kinds of judges, while the Union was formed after the revolution and represents judges who deal only with criminal cases. After the 2011 revolution, the Association pressed for faster action to remove judges who were pliant to the wishes of the Ben Ali-regime, or who were outright corrupt. The TJA even demanded that the Supreme Judicial Council itself be formally dissolved to end all ambiguity about how judicial appointments would be made after the revolution. The Association viewed the Union as overly protective of judges allegedly close to the Ben-Ali regime. The Union has opposed any attempt to create an atmosphere of extra-judicial lustration of judges. The TJA was until very recently suspicious of the Union of Tunisian Judges, and argued that the Union is at best small and unrepresentative, and at worst an attempt to resist reform. However, both the Union and TJA share the goal, according to neutral observers, of reforming the Supreme Judicial Council to ensure that all members are elected by the judiciary. Both organizations called for the new constitution to stipulate clearly that the judiciary is separate from the executive power. However, internal debates within the judiciary regarding independence touched in many ways the core of ILAC's intervention that aimed to boost judges against outside pressure.

It may seem odd that a government that is accused by both Union of Tunisian Judges and the Tunisian Association of Judges for interference in judicial affairs would be the cooperation partner for ILAC in seeking to support independence among judges against outside pressure. There can be many underlying reasons for this ostensible engagement, but the fact is that the Ministry of Justice, independently of who is in power, throughout the past two years has supported the training program. ILAC's presence in Tunisia and its permission to hold trainings for Tunisian judges has from its start been tacitly dependent on the willingness and commitment of the Ministry of Justice to cooperate with ILAC. At any time during the implementation of the training program, the Tunisian government might have responded to political tensions and infighting by deciding that the training program was not a priority for the Tunisian judiciary. This never happened.

Already in early 2012, as the training started, Justice Minister and prominent Ennahda member Noureddine Bhiri moved to present a bill to the assembly to create a provisional body to replace the discredited Supreme Judicial Council in overseeing judicial appointments. However, Mr Bhiri was mired by controversy regarding the dismissal of 82 judges in May 2012, based on the ostensible need to curb pervasive corruption (he later reinstated nine of them). Human Rights Watch (HRW) wrote that the dismissal was unfair and arbitrary. The firings set a disturbing precedent and increased the subordination of the judiciary to the executive branch. HRW urged the National Constituent Assembly (NCA) to urgently pass a law to create an independent body to govern the discipline and dismissal of judges in an impartial and transparent manner.

The dismissal of judges illustrates the complexity surrounding a political transition. HRW issued a press release based on interviews with ten of the dismissed judges, none of whom were reinstated. All described unfair disciplinary proceedings that violated international standards on the independence of the judiciary. The justice minister acted in the absence of the Supreme Judicial Council, which was suspended after elections to the NCA. The ten dismissed judges said that their superiors informed them that their names were on a list of dismissed judges. They had not previously been contacted by the MoJ and did not know the grounds for their dismissal. All the judges characterized the review process as summary and noted that they had no access to their files, nor were they given an adequate hearing. The procedures also lacked clear criteria for dismissal. The judges said that even after their hearings they did not know the exact grounds for their dismissal or what evidence the minister had for dismissing them.⁶

The Union of Tunisian Judges and the Tunisian Association of Judges (TJA) do now seem to increasingly cooperate to undertake joint actions. Prior to the adoption of a new constitution, in late 2013 and early 2014, they worked together on to advocate for “unquestionable” judicial authority and the independence of the judiciary. A few weeks prior to the adoption, the organizations staged a strike to seek the introduction in the draft Constitution of amendments proposed by professional structures. Al Bawsala, Amnesty International, Human Rights Watch and the Carter Centre called on the NCA deputies to improve guarantees for judicial independence and break with the past, characterized by political interference of the executive power, and grant the judiciary the authority and independence needed for human rights protection. The revolution has meanwhile thrown up a new political landscape that will offer new kinds of challenges to judges learning how to operate without an authoritarian guide.

II. Note on Methodology and Limitations

Methodology

This mid-term review of ILAC’s program on training of Tunisian judges follow the principles of *OECD/DAC Quality Standards for Development Evaluation and Evaluating Peacebuilding*

⁶ Human Rights Watch, Tunisia: Mass Firings a Blow to Judicial Independence, October 29, 2012.

Activities in Settings of Conflict and Fragility (OECD/DAC 2012). These two documents constitute the principal references for which this mid-term review is undertaken. The mid-term review (hereinafter referred to as the Review) focuses explicitly on *relevance, efficiency and effectiveness*. The other two DAC-criteria *impact and sustainability* are not included due to the insufficient time length after the initiation of the project to assess any positive and negative long-term effects produced by the development intervention.

This Review was undertaken after ILAC completed the first half of the training program to take stock on the past 18 months. The purpose of the Review is for ILAC to draw lessons from the implementation and management of numerous trainings, and to adjust the program to these lessons. The Review is primarily undertaken to serve as a management input for ILAC and its partners in implementing the Tunisian training program, but also to provide ILAC with lessons that can be internalized and institutionalized beyond the Tunisian training program. The Review also serves to demonstrate for donors, and especially Sida, ILAC's ability to manage and implement programs of this volume and scope.

The objective of the evaluation was to ascertain results and assess the effectiveness, efficiency, relevance of ILAC's intervention, as well as to provide findings, conclusions and recommendations with respect to ILAC's intervention in order to draw lessons for future design and implementation.

The Review covers the first implementation phase, March 2012 – November 2013. However, the implementation period needs to be understood in the light of the period during which the program was conceived, January 2011 – March 2012. Although, the implementation of the intervention has included a very broad target group from all provinces in Tunisia, this Review draws from experiences among judges in Tunis and Nabeul who have participated in the training program. Approximately 780 judges participated in the four-days training during the first implementation. The consultant and an ILAC staff member travelled jointly in November and December 2013 to Tunisia for in-depth interviews with judges in selected 'focus courts'. The consultant had also participated in designing the baseline for the training program, during which he visited the courts in Tunis and Nabeul in October 2012 and January 2013.

The selected courts for the Review were in Tunis and Nabeul, which are two large cities along the Mediterranean Sea. Both are capitals in their governorates, and Tunis is the capital of Tunisia. The courts were selected to represent one large court and a smaller court. Although the courts are short of basic infrastructure, both courts are situated in urban and more cosmopolitan areas. Interviewed judges represented a range of chambers within the courts.

The interviews with Tunisian judges focused on contextual factors that contributed to learn about their working environment, challenges in their role as judges, experiences from the political and legal climate framing their profession, and experiences from participating in the training program. The conversations with the judges helped the team to understand the broader legal context as well as their experiences of collegial spirit and daily frustration about large case loads and insufficient resources.

This Review draws not only from the experiences of participants in the program, but also from the actual implementing organizations, CEELI Institute and IBA, and their trainers, as well as ILAC's own staff in both Stockholm and Tunis. The interviews with representatives from CEELI, IBA and ILAC focused on the administration and management of the training program to better understand how the implementing organization can be optimized to run training programs. These conversations allowed us understand the organizational structure to implement the training programs, and the different roles and responsibilities of each organization. The conversation lent itself to a critical discussion about strategic approach, results framework, and optimizing the organization.

The Review did not identify any discrepancy between planned and actual implementation of the training program. However, changes have been made to the results framework. During the design of the baseline study, ILAC recognized an issue with the feasibility of assessing and evaluating the indicators for the objectives. The baseline study reckoned that ILAC's intervention was well-defined but suffered from its indicators' lack of being sufficiently verifiable.

The Review builds on ILAC's results framework attached to final proposal (*Training of Tunisian Judges: The Independence of the judiciary; Due process and fait trial*) to Sida on 22 April 2012. Below is ILAC results matrix:

Objectives	Measurable indicators	Means of verification	Important assumptions
<p>OVERALL PROJECT GOAL: The Judiciary as a whole will be infused with improved knowledge of the law and thus with more self confidence in order to maintain independence against outside pressure</p>	<p>Number of verdicts that reflect the judiciary's new insights</p>	<p>Assessing the verdicts in relation to the defined baseline</p>	<p>Sufficient political or organisational stability enabling local stakeholders to assume ownership.</p>
<p>INTERMEDIATE PROJECT GOAL: Every Tunisian judge has a better understanding of the meaning of an independent judiciary, and a better understanding of the meaning of "due process" and "fair trial"</p>	<p>Level of improved understanding of the meaning of an independent judiciary, and a better understanding of the meaning of "due process" and "fair trial", compared to baseline</p>	<p>Surveys and interviews conducted in same manner as when determining the baseline</p>	<p>Participants are allowed to attend the courses in the planned amount reaching critical mass</p>

The baseline study concluded that the 'measurable indicator' – *number of verdicts that reflect the judiciary's new insights* – for 'overall project goal' was not feasible to assess. It was not

possible to use suggested ‘means of verification’ – *assessing the verdicts in relation to the baseline*. Likewise, the ‘measurable indicator’ for ‘intermediate project goal’ was not feasible to assess, and it would be difficult to verify any results, more than anecdotally. The baseline study apparently helped to test and validate whether the original indicators were SMART (Specific, Measurable, Attainable, Realistic and Timely). The new results framework for the implementation phase 2 is therefore adjusted on the basis of the findings and conclusions of the baseline study, and it was presented in ILAC’s proposal to Sida in October 2013, and will be used for future assessments and evaluation.

The evaluation objectives are translated into two major questions: first, *Is ILAC doing the right things?* This question guides us to explore the theory of change and program design of ILAC’s intervention in Tunisia. We explore and test whether objectives and indicators of the training program is relevant to the context in which ILAC operates in Tunisia, as well as whether inputs and activities are aligned with the results chain. We are interested in understanding whether identified issues, which are expected to be addressed by achieving the objectives are matched with adequate and proper strategies and resources.

The second question, *Is ILAC doing things right?* guides us to explore whether objectives actually are achieved and what enabled or hindered their fulfillment. Exploring the effectiveness of the intervention lends insights regarding efficiency. Here we are interested in understanding what the organization of the implementation looks like, and how it operates in relation to set objectives. This analysis also helps us to analyze how ILAC can optimize its organization in relation to its Tunisian training. We acknowledge the challenges and weaknesses of any methodology to confirm or verify attribution and causality between on one hand strategy, organization and operations, and on the other hand results. We carefully try to critically analyze the strength and weaknesses of assumptions underlying change processes as well as the actual outcome of these change processes.

We seek the answers to these evaluation questions by exploring *relevance, efficiency, and effectiveness* of the training program of the Tunisian judges. Our methodology to address these questions consists of two approaches. One approach concentrates on understanding the context and the role of the training for the two courts in Tunis and Nabeul. We call them *focus courts*. The Review team visited and interviewed judges and prosecutors in these courts three times, of which two visits were conducted during the baseline study. Semi-structured interviews were conducted that built on questions translated from the indicators in the original results framework. Interviews captured the experiences among judges and prosecutors from participating in the training. Findings and conclusions are summarized and presented in short case studies on the focus courts, which reflect their context, as well as results drawn from ILAC’s training program. The case studies aim to provide an answer to *Is ILAC doing things right?*

In order to evaluate the extent to which the trainings during the first phase of the program had succeeded in achieving the outcomes, the consultant participated in three focus group discussions with Tunisian judges together with representatives of ILAC and its member

organizations. The meetings were arranged via the ILAC Representative in Tunisia, who approached the Ministry of Justice and requested its assistance in contacting the Presidents of the relevant courts.

The first two meetings were held in November 2013 and involved visits to the same two courts that had earlier been interviewed for the Baseline/Interim Report, namely the Tunis Court of First Instance and the Nabeul Court of First Instance. The third discussion took place at the facility ordinarily used for the ILAC training in Tunis in December 2013, and involved a mixed group of judges.

In all three cases, the methodology for conducting the interviews involved seeking to identify of the most significant changes – or failures to change – perceived by the judges in the course of their work during the period in which the trainings have been conducted. This line of inquiry was further refined in order to seek to identify change at three levels, namely as perceived by individuals; as reflected in the work of specific courts; and at the level affecting the entire judiciary.

The second approach concentrates on understanding the administration and implementation of training. The Review team held conversations through interviews and focus group meetings with CEELI Institute, IBA and ILAC. The approach aims to understand *whether ILAC is doing the right things?* The question links with how well ILAC and the organization around the training program is optimized to deliver on the results framework.

Limitations

One major limitation of this Review is that the Review team has not been able to carefully seek data about the training program from the rural areas. We have therefore not either been able to analyze or draw any conclusions about the role of the training program for Tunisian judges and prosecutors in the rural areas. For the future, it is suggested to include a focus court from the interior and rural part of Tunisia to broaden the perspectives on the impact of the program to include the Tunisian judiciary from various parts of Tunisia. However, the training program does involve judges and prosecutors from the interior and rural Tunisia. The training program has so far not yet realized the original intention to conduct some of the training sessions in more remote areas of the country. It was for instance suggested by the Judges Training Institute to use an agricultural school in the far south, near the border with Libya, as one of the training centers.

III. Is ILAC doing the Right Things?

Theory of Change and Program Design

The Tunisian Bar and the Union Internationale des Avocats, one of the founding members of ILAC, invited ILAC to Tunisia in 2011 immediately after the Ben Ali regime had been ousted. At that point, ILAC had more than ten years experience being actively engaged in conflict and post-conflict countries and building capacity to deliver on promises and

expectations by both members and partners. ILAC had, for instance, conducted assessments of the judiciaries and rule of law sectors in fragile states, as well as engaged in capacity building activities in Afghanistan, Haiti, Iraq, and Liberia.

Although new to Tunisia, ILAC was familiar to the issues surrounding the judiciary there. ILAC had previously worked with the CEELI Institute and IBA in other countries that underwent political transition. The invitation to engage in Tunisia seemed highly relevant for ILAC, which pursued it with both speed and flexibility in accordance with the relevant policy guidance at the time, Sweden's Policy for Peace and Development in Swedish Development Cooperation 2010-2014. The Policy states as follows:

To enable Swedish development cooperation to meet the specific objectives and needs that exist in conflict and post-conflict situations, its implementation shall be guided by the following approaches:

- Conflict sensitivity and conflict prevention
- Speed and flexibility
- Adaptation to time and context
- Risk assessment, analyses and knowledge support

The first twelve months involved diplomatic maneuvering that allowed ILAC to gain needed credibility and legitimacy, as well as to develop and maintain a consistent working relationship with MoJ. The political and judicial debate in Tunisia was fluid and ambiguous. Political actors had distinct and often clashing views on the judiciary and the development of the constitution. The independence of the judiciary stood at the center of center of the political and judicial debate from the very earliest days after the revolution..

The role of MoJ seemed ambiguous. On one hand, it was the counterpart to ILAC and enabled ILAC to run the program, coordinated with courts in Tunisia to ensure their judges and prosecutors attended the trainings, and followed up with participants about their experiences. On the other hand during the first 18 months it often seemed to have ended up in controversy about the independence of the judiciary, with the Union of Tunisian Judges and the Tunisian Association of Judges accusing the MoJ for not fully engaging in the process of strengthening the independence of the judiciary.

The political and judicial debate about the independence of the judiciary was largely focused on separation of powers, (executive, legislature and judiciary) with the aim of constituting a system of mutual checks and balances to prevent abuses of power to the detriment of a free society. The debate focused on the Judiciary as an institution. In the meantime, the training program focused largely on the individual judges, their process of deciding particular cases, and the importance that they exercise their professional responsibilities without being subject to any inappropriate influence, including from the Executive. ILAC's approach seemed aimed at avoiding interfering with the on-going debate in Tunisia. The institutional debate

surrounding the judiciary took place outside ILAC's territory, and the MoJ seemed confident in being able to distinguish the role of the training program from the institutional debate and consistently supported ILAC's training program. The MoJ stressed the need to address the knowledge and awareness gaps among Tunisian judges about the 1966 International Covenant of Civil and Political Rights (ICCPR), which would be fundamentally important in a new constitutional and judicial system. ILAC's discussions with the MoJ throughout 2011 seemed very handy to address the needs during the political transitional period.

While it was important for ILAC to act with speed and flexibility it was also a convenient opportunity to draw on ILAC's partners the CEELI Institute and IBA, which already had the experience to implement relevant trainings. In retrospect, it is quite an achievement of ILAC to have established and maintained a working relationship with the MoJ during the tumultuous circumstances leading up to the launch of the program. The planning process of the training program was short and intensive. It did not include an inclusive stakeholder consultation with the target groups or other stakeholders than MoJ and the Tunisian Bar Association. It meant that the target groups were not participating in articulating their needs and challenges as professional judges and prosecutors. It most likely missed out on some issues that would have come up in a stakeholder consultation.

Instead, the training program was framed, designed and planned on the basis of available context analyses, MoJ's priorities and guidance, and an already existing training module. In essence, the program rested on a shared recognition that independence was a key issue for the judiciary. In order to understand and address the independence issues, ILAC needed access to the judiciary. Because the MoJ controls access, ILAC was reliant on the MoJ, and initially needed to take the MoJ's perception of the judiciary's problems at face value in order to be able to initiate the program. Once the trainings began, feedback from the judges served as an important complementary source of information that ILAC has actively sought to understand and incorporate in a process culminating in this evaluation.

Thus, the model for theory of change and program design seemed to have started off to address a very urgent problem in the judicial sector, which was of great relevance to ILAC's overall strategy to *"work with local and international partners on a long-term basis to meet the needs of a society in the process of rebuilding; (as well as to) to identify needs in consultation with local authorities, and continues to work with local."* The theory of change underlying the program design aims to address the need within the judiciary for judges and prosecutors to exercise their professional responsibilities in true independence, and to resist pressures of various kinds aimed at compromising their ability to do so.

The model for the theory of change and program design seemed in some way to be backward engineered because of a number of factors were already fixed such as available context analyses, MoJ's priorities and guidance, and an already existing training module. Thus, the results framework was drawn up to match available resources and to manage the expectations of the MoJ. It allowed ILAC to formulate an *overall project goal, the Judiciary as a whole will be infused with improved knowledge of the law and thus with more self-confidence in*

order to maintain independence against outside pressure that would both aim to address an urgent and very relevant issue, while also drawing on available resources within ILAC. The key assumption underlying this goal was embedded in the opportunity to train 1800 judges and prosecutors during three years. ILAC argued that the large volume of participants would create a critical mass or “safety in numbers” to trigger a sense of collectivism about moral values and ethics among judges at the courts to strengthen their ability to resist pressure from external actors. Furthermore, adoption of a mindset and culture of moral values and ethics among judges would spill over to influence the attitude and behavior of the external actors such as politicians. The latter actors would simply relinquish any attempts to affect the judiciary because of the collective power of the judges. ILAC argued, therefore, that the volume of judges that were enrolled in the program would be critical for the program success.

The overall project goal was intended to be achieved by fulfilling two intermediate goals (1) *Every Tunisian judge has a better understanding of the meaning of an independent judiciary;* and (2) *Every Tunisian judge has a better understanding of the meaning of “due process” and “fair trial”*. These two intermediate goals rested on the following outputs and activities:

Objectives	Measurable indicators	Means of verification	Important assumptions
<p>OUTPUTS: - Plan for training courses is developed, with milestones; - Curriculum is developed; - Experts and staff are recruited; - Baseline is developed; - Training courses are held; and - Monitoring and Evaluation is carried through.</p>	<p>- Plan for training courses is developed by March 2012; - Curriculum is developed by the end of March 2012; - First checkpoint monitoring the courses is held three months after project start, and then each six months; - Baseline finished maximum two months after start; and - Evaluation of the project is held at the latest six months after the last course.</p>	<p>Outputs are monitored against planned milestones.</p>	<p>The cooperation with the Tunisian Judges Training Institute is allowed to continue through the whole project period.</p>

Objectives	Measurable indicators	Means of verification	Important assumptions
ACTIVITIES: - Develop plan and timetable for the courses; - Develop curricula; - Recruit experts and staff; - Hold the courses; and - Monitoring and Evaluation.	- Summary of the project budget; - Cost for project administration; - Cost for ILAC local representative; - Cost for IBA courses; - Cost for CEELI courses; - Costs for participants attending the courses; and - Cost for Monitoring and Evaluation.	- Financial report as agreed in grant agreement.	Sufficient funding for the project is provided through the whole project time.

The training program was designed on the basis of two existing courses, *“Judging in a Democratic Society”* organized by the CEELI Institute, and *“Human Rights in the Administration of Justice”* organized by IBA. Both courses were four days training. The CEELI Institute’s seminar addressed issues common to judges in countries progressing from an autocratic system of government to democracy. The CEELI Institute’s experience from countries in transition notably those formerly under Communist rule; and the lessons learned from that experience were considered to be valuable to Tunisian judges. The seminar thus discussed judicial independence, relations with other branches of government, relations with the public and the media, judicial ethics, judges’ organizations, and court administration, with particular emphasis on human rights law, both domestic and international.

IBA’s training was based on the manual developed by the IBA and the UN Office of the High Commissioner for Human Rights. The training was based on a number of international and regional conventions, most notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Arab Charter of Human Rights, the Bangalore Principles on the Independence of the Judiciary, and the Recommendation R94 of the Committee of Ministers of the Council of Europe. The handbook emphasized human rights as a fundamental aspect of due process and fair trial. IBA revised the program agenda commencing April 2013 to allow for the final day of the training to be dedicated solely to discussion on the independence and impartiality of the judiciary and general discussion on how the Tunisian judiciary can assert its independence both through legal reform and by taking practical steps.

The management and administration of the training program during the first 18 months focused predominantly on making the training courses to run as smooth as possible by ensuring a good working relationship with MoJ, filling up the classes with judges and

prosecutors, assisting the CEELI Institute and IBA with the actual training sessions, and providing logistical support for ILAC. The training program focused solely on the courses and did not comprise any other arrangements to support and strengthen the immediate results or lessons learned from the implementation of the courses. ILAC employed a local administrator in Tunis to assist the CEELI Institute and IBA with the practical arrangements around the courses, and also to coordinate with the MoJ about any logistical issues to assure maximum enrolment of participants in the courses.

Analysis

The training program is a fundamental component to ILAC's theory of change model, and it constitutes the only mode of change for ILAC to achieve its overall project goal. The issue of relevance of the training program is a slight concern. It is not so much whether or not there is a need for a training program, but whether the training is sufficient to achieve the intermediate and overall project goals.

The undertaking of this training program and expected results built during the first implementation phase largely on the activities and outputs associated with IBA and CEELI Institute's courses. A comprehensive analysis including a multi-stakeholder consultation would initially have revealed the broad range of issues associated with the independence of judiciary. The analysis would not only have mapped the range of perspectives and the priorities of needs, but also elucidated the salient linkages between the different perspectives and needs surrounding the judiciary. These linkages between issues could have strengthened the analysis of the underlying theory of change and program design.

A concern is how a training program can accommodate the interests and needs for such a broad target group with diverse backgrounds from local Tunisian courts in both urban and rural areas. It raised the question of what constitutes the optimal approach of the training program to meet these diverse needs and interests of the enrolled judges and prosecutors in the training program. The Review team reasoned during the interviews that the training program itself would not be sufficient to meet expectations and achieve objectives set out in the original structure. While the discussions with members of the focus courts were broad-ranging and varied, they helped to clarify both challenges and progress made in addressing the two issues most central to the outcomes targeted by ILAC in the development of the course, namely improved application of human rights norms and enhanced judicial independence. One of the indirect benefits of this process was the potential it revealed for such discussions to not only assist directly with targeted evaluation of programming but also shed a clearer light on the underlying dynamics such programming seeks to affect.

One of the broad patterns revealed by the interviews involved a steady convergence in expectations between the organizers of the trainings and the participants, both of whom appear to have steadily adapted to the realization that some of their outset expectations related to the course may have been inaccurate.

On the side of participants, there appears to have been a misperception that the role of international trainers was to provide direct answers to the concrete problems they faced, rather than a set of conceptual tools to assist them in resolving these issues themselves. This misperception may itself in part reflect Tunisia's tradition of control over the judiciary, with some judges still conditioned to seek authoritative answers from others rather than guidance in arriving at them themselves. It was manifested in various ways ranging from requests clearly exceeding the scope of the program (study visits for Tunisian judges to foreign countries) to requests for more systematic follow-up that could and arguably should be accommodated to the extent resources allow.

On the side of the organizers of the course, misperceptions largely involved the nature of the problems the course is meant to address. It is important to begin by noting that the basic categories of problems themselves were correctly identified – nothing in the interviews raised any inference that independence and human rights application were not the appropriate core concerns of the course.

However, the organizers of the course appear to have assumed fundamental problems in both of these areas, perhaps as a matter of prudence. In other words, early iterations of the course may have assumed both a basic lack of awareness of human rights and pervasive patterns of executive interference in individual cases. In fact, Tunisian judges are generally quite aware of human rights, but are unfamiliar with their application and have not been encouraged or supported in applying them in the past. Similarly, independence issues are largely subtle and structural, ranging from an antiquated framework for management of the judiciary to a failure to ensure adequate working conditions for judges.

While such mismatched expectations are unfortunate, they did not prevent the interviewees from expressing a high level of appreciation for the course and, in most cases, appreciation of the pedagogical approach adopted by the organizers and the opportunities it fostered for judges to discuss among themselves the issues they faced and how they might best be addressed.

However, ILAC, as it already has suggested in its new MENA-proposal for 2014-2016, would benefit from developing a more coherent and strategic approach to supplement the courses. This would include developing and strengthening its capacity to both coordinate and communicate with local stakeholders, and following up on linkages that can have a positive effect on the objectives. For instance, judges often had a catalogue of different issues that they considered to be important to address. These issues often related to '*hardware*' issues about actual infrastructure of the courts to enhance the efficiency of court administration and reduce the case loads through access to computers, ICT-platforms and staffing. The need for management and administration skills among judges of the courts and chambers was very present. The case load for judges in the courts of Tunis and Nabeul raises concerns about quality and morale among judges, and its impact on due process and fair trial. Thus, ILAC's approach to these needs could be to support and strengthen coherence and coordination of different activities which are implemented by local and international stakeholders. ILAC intends to participate in all sector meetings and donor coordination for judiciary reforms

efforts, e.g. rule of law assistance. This could complement the training and potentially contribute to enhance the efficiency and quality of court cases.

At the same time judges acknowledged that the training program offered them personal development on international human rights standards within areas that are generally important and politically sensitive in Tunisia. The regular rotation of judges between different chambers exposed them to a wide range of legal cases, for which the training will prove to be an important experience. In the conversations with the judges and prosecutors it often appeared that the courses on the *independence and impartiality of judges, prosecutors and lawyers; human rights and arrest, pre-trial detention and administrative detention; the right to a fair trial: from investigation to trial –from trial to final judgment;* as well as *courts' leadership role in society, the role of a judge in a democratic society, tools required to make courts fair and efficient, and court administration,* had been useful at an individual level and strengthened their professional practice.

There is consensus among the participants that training programs for judges and members of the judiciary are greatly needed. The needs in the judicial sector are significant and they span a broad spectrum of issues. There is of course no '*silver bullet*' to solve all the needs in this sector. Instead it is critical that both foreign and local actors in the judicial sector in Tunisia find ways of sharing information, collaborating and partnering where they find commonalities and synergies to meet and address challenges and needs. It is also equally important to manage expectations among target groups and stakeholders in areas of intervention. Otherwise misunderstanding, frustration and in the worst case resentment towards the implementing agency may follow. Such expectations sometimes arise because of target groups or affected stakeholders do not simply know why an intervention takes place, and what the purpose and objective is. Thus, instead they frame their own perceptions of the purpose of an intervention.

In the fall of 2012 and winter of 2013 a baseline study was conducted involving interviews of judges and prosecutors in both Tunis and Nabeul. The baseline study team designed in close collaboration with ILAC questions associated with the 'measureable indicators' for both the 'overall project goal' and the 'intermediate project goals'. The purpose of the questions was to set a baseline for future follow-up and evaluation of the training program allowing results to be measured against the baseline. The suggested and planned methodology was (i) to use a survey/questionnaire in Arabic including questions to participants whom not yet had enrolled in the training program; and (ii) in-depth interviews with judges in courts in Tunis (the capital) and Nabeul (provincial capital).

In the process of carrying out the baseline study it became clear to the baseline study team and ILAC that the 'measureable indicator' for the 'overall project goal of the results framework, "*Number of verdicts that reflect the judiciary's new insights*" would be a difficult indicator to use to measure long-term progress. It was planned to encompass desk research to analyze verdicts and verify to what degree judges made reference to or used international human rights standards in their decisions. Also, an arrangement between ILAC and a local

judicial institute never materialized to allow ILAC to use verdicts as a source for assessing progress. This arrangement was a necessity for successfully assessing verdicts to evaluate the overall project goal. The baseline study team concluded that appropriate proxy indicators and questions to elucidate any change or progress attributed to ILAC's intervention would be too difficult. Thus, ILAC decided as a result to change the indicators for the new MENA-proposal.

ILAC tried however to identify another option for a means of verification. It considered whether the improved knowledge of law and procedures amongst judges could be measured and verified by the reduced number of appeals to the second court of appeal or court of cassation; or increased number of rejected cases at higher courts of appeal attributed to solid reasoned decisions in verdicts and sentences.

However, after discussing this hypothesis with experienced international judges it was stated that the '*reversal rate*' issue – how many cases are recommitted to lower instances due to mistakes in the procedures – does not fully reflect a perfect and complete judgment of the courts. Unfortunately, courts of appeal can often be conservative and their decisions be biased towards the decisions at first and second instances. There was no practical scope for ILAC to assess whether any appeal was reasonable from an impartial point of view with which other outcomes of appeals would be compared. As a result, the baseline study team suggested, thus, that the indicator for the '*overall project goal*' should be reformulated but still capture "*the judiciary's new insights*" and also trace attribution to ILAC's intervention.

ILAC showed flexibility and commitment along the first implementation phase to make the training program as relevant and useful as possible for the target groups, while managing a very strong cooperation partner that could possibly change and affect the program design at any time due to external political circumstances. The key assumption underlying the program design is too early to assess and test, but there are positive signs emerging from mobilizing a whole corps to enroll in a training program. Although many judges felt already before the training a sense of comradeship among colleagues there is a sense of strengthened collectivism that also includes new perspectives on current judicial status in Tunisia. It is obviously not possible at this stage to measure or verify whether the collectivism about moral values and ethics among judges is strengthened to resist pressure from external actors, but there are emerging positive signs.

The training would benefit from incorporating continuous context analyses into the planning and preparation of the training sessions. For instance, brief quarterly reports can help ILAC to adapt the format of the courses to the current context and inform the international experts; and it can also be vital inputs in the dialogue with stakeholders such as the MoJ and international stakeholders to strengthen ILAC's own analyses and knowledge support, as well as to manage risks and conflict sensitivity.

Partners

It is notable how rapidly and flexibly ILAC managed to establish a contact and relationship with the new Tunisian government after the fall of the Ben Ali regime, and how successfully ILAC managed to navigate for the past three years through a political climate embroiled in recurrent political crises. The training program has been up and running since April 2012 and without any noticeable interruptions. On the contrary, ILAC and partners, the CEELI Institute and IBA, have successfully trained approximately 780 Tunisian judges. There is a general appreciation for ILAC's efforts and contribution among participants in the training program as well as by the Ministry of Justice in Tunisia. Course evaluations often testify appreciation for the training content and the international trainers.

The management and administration of the training program included several layers. Both the CEELI Institute and IBA had designated course administrators who were responsible for the actual content of the course, as well as to recruit lecturers to hold different sessions during the course. The regularity and frequency of the courses implied a delivery of one course per month for each organization. The course administrators were often the only permanent resource person at the courses. They constituted the continuity between courses, and coached the other lecturers on their topics for the session to inform them about previous feedback from participants and also general lessons learned. For each session there were between two and three new lecturers from the CEELI Institute, IBA and/or ILAC's international network of lawyers and prosecutors. Some of the lecturers returned several times to lecture at the courses, but the large majority of the lecturers came only once to lecture. All international experts, i.e. lecturers, participated pro bono.

The cost-efficiency of the program is built around economies of scale of training approximately 30 judges at each occasion for four days, and being able to draw on the pro bono work of highly experienced judges associated with the member organizations. The actual costs of the training program are constituted largely of the costs accrued from accommodation for participants and trainers, travel for participants and trainers, course material for participants. ILAC employed a local project coordinator who worked part time to administer the program and coordinate with both the MoJ, participants and the local facility.

Given the availability and presence of lecturers could not be granted, and the continuous need for new lecturers, it added subsequently, significant amount of work to the course administrators' already busy schedule to organize and ensure that there were proper and appropriate lecturers at the courses. It required significant efforts by the course administrators to secure lecturers and prepare them for their sessions at the courses.

Thus, there seemed to have been resource constraints to elaborate on and develop the management and administration of the program. The constraints seemed to have curbed ILAC's local coordinator and the course administrators' flexibility to continuously adapt the courses to feedback and lessons learned, or to identify linkages between the courses and other drivers of strengthening the independence of the judiciary. To keep up with the regularity and

frequency of trainings, it is understandable to practically offer a standardized training program with minor variances in content.

For the preparation of the second round of the training program that was included in ILAC's greater MENA-application to Sida in October 2013, these resource constraints were recognized and therefore the management and administration surrounding the program was revised and adjusted to the lessons learned from the baseline study that was undertaken in 2012 and 2013. ILAC decided for instance to establish a permanent office in Tunis to enhance and strengthen the coordination and liaison with important local stakeholders in Tunisia. ILAC has also recruited in 2013 a program manager for MENA with office in Stockholm to support the local office in Tunisia. The resource mobilization is expected to enable ILAC to work more coherently, strategically and systematically with judicial issues that drive the strengthening of the independence of judiciary. It will enhance the coordination with other ongoing judicial processes in Tunisia that are either managed locally or by international actors, e.g. the United Nations and civil society organizations.

Course implementers

The CEELI Institute is an independent, not-for-profit, international provider of post-graduate, professional legal education headquartered in Prague, Czech Republic. Its mission is to develop an international, professional community of reformers committed to the rule of law. Through innovative training programs and other activities, they work with judges and reformers in countries in transition to support fair, transparent, and effective judicial systems, strengthen democratic institutions, build respect for human rights, and promote the continuing development of market economies. Now in its second decade, the CEELI Institute has trained over 1,500 lawyers and judges from over 35 countries in subjects ranging from court efficiency to intellectual property law to human rights. Among its many projects, it has organized an annual conference of chief justices, conducted regional courses on anti-corruption, and notably trained members of the Afghan Supreme Court and over 140 judges from Iraq on human rights and judicial integrity. The CEELI Institute draws upon its vast network of volunteer judges and legal experts from Eastern Europe and elsewhere to lead its trainings.

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law reform and shapes the future of the legal profession throughout the world. Its membership includes more than 50,000 lawyers and 200 bar associations and law societies spanning every continent. The IBA's Human Rights Institute (IBA) works across the association to promote and protect human rights for lawyers worldwide and to support the independence of the judiciary and the right of lawyers to practise their profession without interference. As part of its core activities, the IBA has extensive experience in the organisation and delivery of human rights training worldwide. The IBA has designed and implemented a number of training programs for lawyers, judges and prosecutors in international human rights law and humanitarian law.

ILAC's Added Value in Tunisia

The unique added value of ILAC in Tunisia is the high quality of the professional international experts who are available and accessible through ILAC's membership network. Senior and highly experienced professionals from all over the world have been engaged to lecture under ILAC, the CEELI Institute and IBA's umbrella, proving ILAC's ability to coordinate with the leading legal organisations in the world to engage in international assistance to rebuild justice systems. The participants stated their appreciation in the course evaluation the importance to listen and learn from other judges and about their experiences from applying international human rights standards.

Furthermore, it was through this membership network ILAC could swiftly and flexibly establish a contact and develop a cooperation with the MoJ in Tunisia. ILAC has the capacity to manage and run a training program of this scope, and it can do that through its close partners, the CEELI Institute and IBA.

ILAC has a capacity to bridge representatives of the state (duty bearers) and the beneficiaries of a state (rights holders). ILAC's work in Tunisia depends on the cooperation and partnership with the MoJ that is accountable to the Tunisian people to ensure their access to fair and equitable justice. By working through MoJ and with the judges and prosecutors, ILAC contributes to enabling the access for citizens of Tunisia to exercise their right to fair trial by a competent, independent and impartial court. It enhances the public confidence in the judiciary, and enables the society at large to be tolerant to due process without resorting to violent means for dispute resolution.

IV. Is ILAC doing Things Right?

This Review describes below whether and how ILAC does things right. It is important to recognize that there are basically two areas that need to be addressed in order to do things right. First, the organization needs to engage in the underlying structures and processes that influence the intended areas of impact. ILAC acted with speed and flexibility, as with adaptation to time and context that enabled it to balance the role of the MoJ with its own intervention logic. Secondly, in the actual delivery of services, ILAC fared very well according to surveys of participants after completed courses. More interestingly, the attendance at and learning from the courses had several positive effects which are outlined below.

Political context at the time of the interviews

As mentioned in the background chapter it is important to recall that the evaluation took place during a time of some turbulence for the Tunisian judiciary and the country's body politic more generally. At the time the interviews were carried out, the work of the interim National Assembly, elected in October 2011 to draft a permanent constitution, was virtually paralyzed

by an opposition walkout following the assassinations of opposition politicians Chokri Belaid (February 2013) and Mohamed Brahmi (July 2013).

Although there was agreement in principle as of September 2013 that the Ennahda government would step down in favor of a technocratic interim government that would pave the way to fresh elections, the negotiations over the composition of the interim government continued throughout the fall.⁷ Although a caretaker Prime Minister was agreed in mid-December, giving a new impetus to the constitutional negotiations, his government was not agreed and sworn in until January 29, 2014, a full four days after the country's new Constitution had been ratified in a sudden political breakthrough.

During the period of political deadlock, the judiciary was both divided and destabilized by the lack of constitutional guidance and protection for their work. The division was between the longstanding Association of Judges and the more upstart, post-Revolution Union of Judges. Although the two organizations had cooperated in the process of setting up the interim Supreme Judicial Council, and both had similar concerns regarding their independence in a future constitutional order, they remained fundamentally at odds, denying the judiciary a unified voice during a period of legal uncertainty and fundamental change.

Discussion with the First Instance Court of Tunis, 12 November 2013

In the Tunisian judicial hierarchy, the Courts of First Instance play the role of a second instance in some categories of cases.⁸ While they have original jurisdiction over most commercial and civil matters, as well as many common crimes, they also act as an appeals instance for small civil claims and misdemeanor prosecutions decided at the more numerous District Courts throughout the country. Recourse can in turn be had from the Courts of First Instance to the Courts of Appeal, which also have original jurisdiction over felony crimes. The final court of appeals is the Supreme Court, sitting in Tunis.

In keeping with its placement in the country's capital, the Court of First Instance in Tunis is one of the largest in the country. In addition to the usual complement of chambers for such courts (including civil, criminal, commercial, administrative and family law chambers), the Tunis Court of First Instance enjoys exclusive nationwide jurisdiction over crimes of terrorism and the registration and dissolution of political parties. Most of the judges had sat the ILAC course.

The discussion with the Tunis court took place on 12 November 2013. It was convened by the President of the Court and attended by four of her colleagues, all of whom were female, who sat respectively in civil, family law and commercial chambers, as well as the registry of enterprises. The President began by introducing the jurisdiction of the Court and describing a large and growing backlog of 20,000 cases at the time. On average every month, the Court receives about 5,000 applications and disposes of approximately 4,500.

⁷ <http://english.ahram.org.eg/NewsContent/2/8/84594/World/Region/Three-months-of-political-crisis-in-Tunisia-A-time.aspx>

⁸ <http://www.nyulawglobal.org/globalex/tunisia1.htm>

The conversation moved from here to an in-depth discussion of issues related to the independence and effectiveness of Tunisian courts. A number of practical issues were discussed at first, including the impending failure of two recent proposals to increase judicial efficiency. The first involved an effort at computerization that had been unsuccessful due to the fact that it had not been embraced by clerks and court administrators (described as “tired” and preferring paper over software). The second involved an alternative dispute resolution initiative that had not been embraced by litigants (who were described as having a litigious, zero-sum mentality). In both cases, it was not clear whether sufficient attempts had been made to educate court clerks and the general public, respectively, on the potential benefits of such reforms.

From here, the discussion moved to core independence issues as the President of the Court described a recent incident in which she had been appointed to a position that would have given her a place on the Interim Supreme Judicial Council (ISJC) but was forced to decline it. The ISJC is the body responsible for administering the judiciary. In accordance with its organic law, the judiciary elects half of its members, while half enjoy membership by virtue of their holding one of five positions – President and Chief Prosecutor of the Court of Cassation, the Inspector General of the Judiciary, the President of the Real Estate Court and the Manager for Criminal Services. The holders of these positions are meant to be appointed by a special process in which they are recommended by the Minister of Justice and approved by a decree issued by the Prime Minister (for the pre-Revolution SJC, this decree would be issued by the President).

The President of the Tunis First Instance Court described how she was recently recommended by the Minister of Justice to serve as Head of the Real Estate Court, an essentially lateral move that would nevertheless not only have allowed her to sit on the ISJC but also would have made her the first woman since Tunisia’s independence to serve in one of the five judicial positions appointed by Government decree. However, the person currently occupying the position objected to being replaced and was supported by the ISJC, which criticized a decision taken without their involvement as a violation of judicial independence. In order to avoid causing a controversy, the President refused the MoJ appointment and remained with the Tunis Court.

According to the judges, this incident highlights a number of problematic issues related to independence of the judiciary in contemporary Tunisia. Inevitably, the incident highlights unclear roles during a transitional period, with the ISJC an interim body serving after the dissolution of the pre-2011 SJC and until a new permanent SJC can be set up under the new Constitution. However, the Minister of Justice had acted in accordance with an established 1967 law set out the procedure for the appointment. Thus, the assertion by the ISJC of a right to be consulted (as part of a broader jurisdiction claimed over all matters touching on the judiciary) thus placed its vision of independence in tension with the principle of legality.

On the other hand, the Minister was not legally prevented from consulting with the ISJC and could have avoided a conflict by doing so. Moreover, the judges complained that the interim government had taken almost no steps to amend the antiquated legal framework regulating the

judiciary. The failure to amend these laws was seen by the judges as rooted in a desire to retain executive control over the work of the judiciary. Specifically, these laws perpetuate the primary perceived mechanism of control, namely the ability of the executive branch to indirectly and implicitly reward and punish judges through appointments, promotions and transfers.

Interestingly, the judges all seemed to agree that the common need for basic reforms in favor of independence had had a calming effect on the split between the Judges' Union and Association. They noted that both had joined the November 7 strike and that differences were of a formal and institutional nature, rather than as between individual judges. Past participants in the ILAC course felt that early tensions manifested in early iterations of the training had dissipated.

A further urgent need for reform was identified with regard to the office of the prosecutor. Prosecutors are still formally under the hierarchical supervision of the Ministry of Justice, placing them under direct control. Although the judges noted that the integrity of the MoJ must be presumed in its management of the prosecutors, the fact remained that many prosecutors remained quite traditional in their approach by, for instance, ignoring new ADR procedures and referring all cases on routinely to investigative judges. The judges asserted that up to 90% of the public mistrust of the judiciary can be blamed on the prosecutors.

However, the judges also described problematic relations with other political branches as well as the media, which was accused of "thinking judges exist to serve in media shows." However, there was also some realization that judges have traditionally communicated solely via their formal judgments in Tunisia and that there was a "need to reach out and communicate affirmatively in the spirit of the democratic transition."

Toward the end, the conversation turned back toward the ILAC course and the extent to which its core outcomes related to independence and human rights awareness had been met. The judges returned to the complaint that ILAC did too much listening and provided too little "practical explanations" of how to address specific problems. Here a number of conclusions were jointly arrived at:

- First, that a number of other international and national actors in Tunisia had important roles in the judicial reform process, and that ILAC should give more emphasis to discussion of the role of these actors in its training programs and share information on issues discussed in the trainings, where appropriate, with these actors; and
- Second, that ILAC should use its insights in working toward developing a more comprehensive report on the needs of the Tunisian judiciary that could be the basis for a dedicated discussion at the end of the course.

Regarding the question of awareness and application of human rights, the judges noted somewhat defensively that discussions at the level of principles only should take place at the High Judicial Institute, that they as sitting judges were "quite aware" of such principles and

that they expected more on how to put them in to practice in specific situations. Similarly, on independence, the judges claimed that professionalism was the rule, with their colleagues ruling independently and with high integrity in all but for exceptional cases. They noted that they were “struggling in silence” and could not succeed without the support of the other branches.

The judges ended on a note of praise for the ILAC course, noting that it was well-organized, facilitated with excellent simultaneous interpretation, and that the opportunity to regularly gather large numbers of judges in a single place for both structured and unstructured discussions was unusual and highly valuable. The conclusions, as summarized by the consultant, were as follows:

- Further work needed to be done to fill the gap in expectations between judges participating in the trainings and ILAC and its member organizations;
- More targeted selection of participants and specialized, tailored discussion would be appreciated in future;
- ILAC should engage in more conscious and systematic continuous learning and feed the results back into the course, as well as broader judicial reform efforts, where appropriate.

Discussion with the First Instance Court of Nabeul, 13 November 2013

The town of Nabeul is the capital of the Nabeul governorate, which is Tunisia’s third largest after Tunis and Sfax with a population of over 700,000. Nabeul lies on the Tunisian coast about 70 kilometres south-east of Tunis. The Court of First Instance in Nabeul is a large one with the full range of jurisdiction of a court of its nature. The interview was conducted on 13 November 2013 with the President of the Court, a woman, and five of her colleagues (three women and two men), almost all of whom had sat the ILAC course.

As was the case in the Tunis Court, the meeting began with a general assessment that the course had been a very positive experience and a number of specific critiques from the various judges. These included several that were familiar from the Tunis interview, and particularly (a) failure to attune the course directly to resolution of the immediate concrete concerns of the judges, (b) lack of follow-up after the end of the course. In Nabeul, unlike Tunis, both resource constraints and lack of enforcement capacity for final judgments also came up as serious issues affecting the ability of the judges to fulfill their societal role.

The discussion in Nabeul also extensively explored the relationship between the judiciary and other related actors, particularly in the area of prosecution and corrections. Initially, the judges asserted that while they themselves were well-versed in human rights standards, they could do little to affect a culture of abuse not only prevalent among the police, the judicial police (who administer detention facilities) and prosecutors but also internalized by suspects themselves. However, in assessing the effectiveness of the ILAC course, many of the judges came to the realization that they had themselves begun exercising a far more independent and

skeptical approach to these problems, reflecting what come to be seen as a fundamental evolution in Tunisian criminal justice.

The judges began this discussion by noting the gap between exemplary recent legislation, such as the Code of Child Protection and the 2000 Law Against Torture, and the ability they have to enforce them. With regard to the former, for instance, they noted judicial officials frequently lack access to cars to be able to go and check the status of affected children. Obstacles to the implementation of the Law against Torture were numerous, including lack of control over what happens at detention centers (“a mystery”) to insufficient evidentiary means of proving abuses and unclear procedures for claiming compensation even after issuance of rulings in favor of victims.

However, the most serious obstacle cited by the judges was a culture of abuse, in which torture was so widespread prior to the revolution that both the security forces and defendants had come to view such abuse as normal. The judges implied that the security forces still routinely use torture, and stated that cases rarely came up under the Law because victims are often simply unaware that what was done to them was a crime or that they are entitled to redress.

However, the judges also conceded that there had been significant change since the Revolution. On one hand a few high-profile torture cases in the immediate post-Revolution period had begun to raise public awareness. The judges also credited the course with raising their own awareness and providing them with the tools to more closely scrutinize detention conditions. They noted that their central task was to seek to rule out coerced confessions and allow presentation of evidence of abuses. One judge noted that the course had “sensitized” him, and that “something like a slap in the face is now understood in relation to the right to physical integrity where it would have been taken for granted before.”

While the judges insisted that they were doing their best, some asserted that they “couldn’t do anything without the reform of other institutions” that the judiciary directly or indirectly depended on to do their job. Foremost among these are the prosecutors, particularly in their role as the authority mandated to oversee the work of the Judicial Police. While the judges recognized their own deterrence role, they viewed the Prosecutors as more directly responsible for preventing abuses and recommended that the following steps be considered:

- Either direct inclusion of representatives of key non-judicial institutions in the course, e.g. the Judicial Police, the Directorate for Children, and the Directorate for Family Law,
- Or offering a specialized course for prosecutors that focused on greater oversight of and interaction with the Judicial Police.

The judges also expressed concern over the role of the media and trade unions, both of which they accused of effectively holding themselves to be above the law. They referred to a recent case in which a lawyer in Tunis had been arraigned for an alleged crime and the entire Bar

Association had responded with a general strike. In their view, this case exemplified the abuse of the ‘independence’ of such association to justify impunity. Interestingly, however, the issue of the split between the two official judges’ organizations barely registered as an issue at all during the discussion.

In assessing their own independence, the judges generally felt that they were free to rule in individual cases according to the law but constrained by both “professional issues” (a huge backload; “a Tunisian judge does in 10 years what an EU judge does in 25”) and “material issues” (insufficient office space, lack of basic resources like official cars and computers). On the other hand, the judges understood the need to both continue to improve their own effectiveness and to engage with other actors in society in order to seek necessary improvements to their own situation. For instance, one judge suggested the possibility of raising the awareness of civil society organizations regarding the problem of non-enforcement of judgments.

The discussion concluded with general praise for the ILAC course. The judges agreed that it had had a significant outcome for them at the individual level, which appeared from their comments to also have resulted in institutional change (for instance, with greater scrutiny of abuse allegations, as described above). The trainers were also praised for being approachable and facilitating sincere discussions. The basic aims of the course were also affirmed, with the one judge stating that “introducing human rights to our jurisprudence has an irreversible and organic relationship with our independence.”

Workshop on the Evaluation of the Training of Tunisian Judges, 16 Dec. 2013

For the third and final focus-group discussion of the evaluation process, ILAC worked with the Tunisian Ministry of Justice to bring together a group of six judges based on the following criteria:

- Attended ILAC course
- Seniority
- Regional representation
- Specialization (eg. criminal, civil, commercial, prosecutor, family law)
- Representative number of women

The Ministry of Justice put together a group of four male and two female judges including the President of the First Instance Court of Beja, Judges from the Commercial and Real Estate Courts in Tunis and the President of the Criminal and Juvenile Courts in Sousse. The meeting was attended by the Consultant as well as three people from the ILAC Secretariat and representatives of both the International Bar Association (IBA) and the CEELI Institute, both of whom have longstanding experience administering the two respective courses.

All participants were provided in advance with a memorandum (annexed) setting out the purpose of the Workshop and the proposed agenda for the conversation, which lasted from 09h00 to 16h30 on 16 December 2013. Despite the attempt to focus on a sequence of issues

relevant to the evaluation, the discussion took a less structured form, eventually covering most of the points on the agenda but not in the order foreseen. However, it was a very open and constructive conversation that revealed a great deal both about the effectiveness of the ILAC course and that state of the Tunisian judiciary more broadly during a time of transition.

At the outset, ILAC was praised for introducing a style of training inconceivable prior to the Revolution. The judges described a pedagogical tradition defined by “a lecturer with a piece of paper haranguing 150 people who ignore him.” ILAC was praised for encouraging a self-critical approach that had allegedly left some more traditional colleagues “not happy with the disclosure of our own laundry.” However, ongoing threats to independence were also immediately raised at both the level of practice and the level of politics.

At the level of practice, the question of “better knowledge of law and safeguards” quickly raised the issue of amendments proposed to the Law on Preventive Custody meant to curtail abuses. These included a limitation of such detention to 24 hours and the possibility for lawyers to be in attendance. In addition to a debate over how rapidly the proposal would move from its then-advanced state of legislative consideration to legal force, the judges raised issues familiar from the discussion in Nabeul, including the question of how the Law could properly be implemented in a situation in which judges faced difficult working conditions and impossible case backlogs. However, as in Nabeul, discussion of these obstacles also raised the extent to which judges had begun to rise above them through a willingness to test the limits of their independence with greater scrutiny of allegations of abuse.

For instance, one judge described the practical benefit of the course as a new understanding of the human rights dimension of arrest and treatment in detention. After the training, the judge initiated discussions with her colleagues on the issue and began applying greater scrutiny to these issues. She described visiting places of detention and being shaken by the bad and overcrowded conditions. She claimed that she now routinely granted requests for medical attention by people in detention, frequently consulted international standards and norms using her own private Internet connection and drew the attention of her colleagues to these issues.

Another judge downplayed the trainings, stating that abuses had taken place prior to 2011 and that the subsequent “wind of freedom gave judges more latitude and audacity.” However, a third judge affirmed the salutary effect of prison visits by judges in his district, noting that he had begun to apply heightened scrutiny to detention cases after the training, including more emphasis on the presumption of innocence and demands for sufficient evidence, accurate laying of charges and due process. He stated that he was much more likely now to call a mistrial for failures to live up to these standards.

The conversation concluded with recognition that the pending round of reforms represented the culmination of a long process of gradual improvement in detention standards. As in Nabeul, however, the role of non-judicial institutions arose, with recommendations that the Judicial Police be shifted from the Ministry of Interior to Justice. Despite the fact that Prosecutors have a role on overseeing the Judicial Police, some of the judges felt that leaving

pre-trial investigation fundamentally within the preserve of the Interior Ministry “opens the door to abuse.” Others noted that in order to fully eradicate torture, control of the prison management department should also be controlled by the Justice Ministry. The participants also agreed that training of Judicial Police and prison officials was crucial.

At the level of politics, much of the debate returned to the role of the Supreme Judicial Council, the administrative body in control of the judiciary since before the revolution that had been reformed during the interim period (the interim SJC or “ISJC”) pending a final definition in the permanent Constitution then still under negotiation. During the Workshop, the discussion of the ISJC centered on the same issue discussed in the earlier Tunis Court interview, namely the role of the five “eminent” members of the ISJC automatically appointed to the Council by virtue of their occupation of five specified high judicial positions.

Here the judges entered into a long and complicated description of the circumstances surrounding the recent judges’ strike joined by both the Association and the Union. As in the case of the President of the First Instance Court of Tunis, the controversy had revolved around whether the five “eminent” positions could be appointed by sole decision of the Ministry of Justice, or required the consultation or consent of the rest of the ISJC. While this formal debate alone raises significant independence issues, the controversy was heightened by the fact that the position in controversy was that of the General Inspector, the judicial official most directly responsible for the system of promotions and transfers of judges alleged to have been used in the past to reward compliance and punish independence.

In the transitional context, one of the goals of the ISCJ has been to take on a greater role in overseeing and deciding such sensitive personnel issues. However, under the current framework based on 1960s-era laws, the General Inspector currently sits within the Ministry of Justice, holds all personnel files there, and is under no obligation to allow the ISCJ access to such files. In this sense, the issue at stake in the strikes was seen not only the narrow question of the Council’s right to participate in the appointment of its “eminent” members but also the broader question of whether – without the ability to participate in the appointment process of the Inspector General – it would have any meaningful ability to participate in the management of the judiciary.

Core issues of independence were thus seen as playing themselves out along a spectrum ranging from the personal level, as judges, to the institutional level, as a judiciary. This was confirmed in broad-ranging discussion of other issues touching on independence and human rights application. These included new criminal issues such as terrorism and “crowd crimes” like the September 2013 attack on the US Embassy in Tunis. Here, the role of judges as independent guarantors of human rights and due process were seen as placing them in conflict with multiple actors ranging from prosecutors to the media.

Discussion of media relations also raised further questions of independence, with judges alluding to the Ministry of Justice’s issuance of a list 10 days prior to the Workshop that had appointed one person from the Prosecution Department of each court nationwide as media

spokesperson for that court. This decision was criticized from numerous perspectives ranging from the failure of the Ministry to consult the judiciary beforehand to the fact that such decisions should be delegated to the Presidents of each Court. In addition, the role of prosecutors as media spokespersons was questioned given the particular confidentiality meant to accompany pre-trial investigations.

There was considerable discussion regarding the division of the judicial profession between two organizations, the Union and the Association. Overall, the judges seemed to agree that the two organizations were pursuing the same fundamental goals, and some judges even asserted that having more than one organization strengthened and enriched the profession. However, the ultimate impression was that neither organization was doing a good job being representative of its membership, but rather risked themselves presenting obstacles to judicial independence and effectiveness.

This perception came to the fore during a discussion of judicial input into the process of drafting the constitution. While both the Union and the Association leaderships have been included in the process, the judges agreed that neither had made any effort to disseminate drafts to the judiciary, provide feedback on the debates or involve ordinary judges in any other way. Moreover, both organizations include General Assemblies that should be convened to arrive at positions on important issues but neither had been convened with regard to the constitutional process. As a result, all the judges' information about the actual nature and outcome of constitutional debates affecting the judiciary was unofficial and second-hand.

This lack of any link between the judicial base and its two leaderships was seen as a broader problem, and one that led to apathy on the part of judges with regard to both. With regard to the Constitution, "most judges have no opinion because they were never asked or presented with information." But more broadly, both organizations were seen as "unaware of the fundamental material issues of judges" and fundamentally unconcerned with them. One judge said that while "both proudly make incompatible claims to represent all judges, neither actually intervene where help is needed."

The role of the judge frequently came up in abstract as well, with much recognition of the traditional role of independence, in the form of the need to provide a safeguard against the "snap judgment of the crowd", to "transcend sensationalism and guarantee due process" and to "distance oneself from the euphoria of the people." This was contrasted with ongoing awareness that political interference remained a risk in certain high profile cases, and particularly those related to terrorism or charges against high-ranking political figures. However, human rights awareness was created with giving greater discretion to judges to identify and overcome vacuums in domestic law, as well as a vocabulary to discuss the "humanitarian" aspect of cases and weigh the public interest in cases.

There was considerable praise for the ILAC course for supporting positive developments in the profession such as prison visits that were "unthinkable" previously, as well as methodological aspects such as use of working groups and focus on "exchange of expertise in

a framework of partnership”, including recognition of the space this created for allowing the adaptation of international norms to the Tunisian context by the participants themselves.

Interestingly, there was a discussion of “a small cadre of judges privileged under the old regime” that would be immune to the approaches promoted in the training. However, it was felt that this group would be held to account, and that the training was particularly important for shaping the mindset of younger judges at the beginning of their careers.

V. How can the Program be improved

Lessons Learnt and Key Challenges

This Review draws a number of lessons learnt from the first implementation phase. In a context of political transition and fragility it is important to act with speed and flexibility to engage with stakeholders and potential partners since their agenda might constantly change, and latecomers or previous cooperation partners might suddenly be sidelined because of new emerging priorities. Speed and flexibility are worth little without continuous assessment of both context and actors. On-going assessments helps organizations navigate through tumultuous times. In this case, ILAC acted with speed and flexibility, as well as use of analysis and knowledge. However, risk assessment and analyses have not been as central to the planning process as speed and flexibility with the cooperation partner.

Comprehensive analysis helps to get proper planning, monitoring and evaluation in place from the beginning. ILAC acted very pragmatically, and as soon as the MoJ approved the training program, ILAC launched the training within a few months. There is of course a risk for not getting a robust results framework fully right. ILAC was however very flexible to adjust the model for theory of change and the program design to new learning generated through the baseline study. The baseline study became a semi-structured stakeholder analysis with a focus on the inclusion of the target group. In this way, ILAC could also test and validate underlying assumptions of the program design, as well as test, validate and revise indicators for the objectives in the results framework. It is important for both donors and cooperation partners to Sida to note that a robust results framework with SMART indicators imply that the baseline study must start with validating the feasibility of indicators as well as to assess whether the means of verification can be considered sufficiently reliable to continuously learn and flexibly adapt the program design to achieve desirable effects. ILAC invested resources to align its results framework with factors that were considered to drive or affect implementation to effectively and efficiently achieve the objectives.

The baseline study was very critical to the monitoring and continued development of the program to make it as effective as possible. The conclusions from the baseline study fed into the on-going adaptation of the program, which was finalized with the submission of the MENA-proposal in the autumn of 2013.

The lessons learnt and key challenges are to develop and implement a proactive and coherent strategy that enables coordination and communication with key stakeholders in the judicial

sector in Tunisia. This approach goes beyond the actual training and requires ILAC to invest in stronger coordination with other actors.

The interviews with the focus courts reflected an overall general positive tone about the ILAC course, but also raised a number of specific concerns. Many of the specific critiques of the course were familiar, including over-generality (or the need to focus trainings to specific judicial specializations) as well as the lack of follow-up or facilitation of subsequent contact among participants. One new critique targeted the failure to adequately explain the nature of the course in advance in the invitation materials, preventing judges from being able to prepare themselves adequately. There were lively debates among the judges as well on the merits of working group methods and whether the training covered too many or too few topics.

The issue of specialization was also debated, in the context of a broader discussion of regional and gender representativeness. For some judges, the unaccustomed mixture of different specializations and regional jurisdictions enlivened and enriched the conversations, both inside and outside of the actual sessions. Gender representativeness was welcomed without compunction, with the judges noting proudly that 35% of their number were currently women and that this would inevitably rise to 50% if current trends continued.

In addition, the question of resources came up repeatedly, with judges noting that a holistic approach to independence issues must take into account facts such as bad working conditions, lack of legal staff, incomplete availability of legal texts such as the Official Gazettes of laws, lack of computerization, and inability to access the internet at work. Independence was also seen as constrained by the ongoing insufficiency of safeguards against executive interference as well as security concerns.

The lack of resources causes central inefficiencies for many courts and judges that consequently have negative effects on the quality of fair trial and due process. The administration of justice is a central subject of ILAC's courses, which indirectly bring attention to the role of judges in identifying and advocating for sufficient resources from the government in order to carry out their mandate and duties. ILAC can inform judges about their rights and duties in a manner intended to support appropriate efforts to mobilize themselves in order to engage with the government in seeking sufficient resources to uphold the effectiveness and independence of the judiciary.

One of the most memorable critiques raised the idea that the trainings were an essentially "touristic" experience, with judges brought together in a pleasant setting to rehash standards and problems they were long familiar with. However, other judges were quick to rebut that the trainings did provide important information that at the very least allowed approaches to judging that had been neglected or marginalized until the present to be developed. In the end, the judge who had used the tourism metaphor appeared to have changed his mind, concluding the meeting with fulsome praise for the training as a thoroughly enriching exchange with outside experts that had come to replace an older tradition of organizing regular legal study seminars with judges from around the country that had been discontinued some time ago.

The more specific critiques included the following:

- Participants “communicate more information than they receive”, hearing about issues faced by the judges without providing guidance based on universal standards in every case;
- The course should be more practical, with field visits for the international experts to see the judges at work;
- There should be a more comparative approach, with explanation of how specific problems are approached across various North American and European national legal systems;
- Study trips should also be provided, allowing Tunisian judges to familiarize themselves with how judges approach issues in other countries;
- Significant potential multiplier effects are lost because of lack of systematic follow-up, including both the lack of a database allowing all participants access to each others’ email addresses and lack of further action on the individual action plans participants identify in the CEELI course.

Recommendations

This Review has on the basis of presented observations, analysis and conclusions been able to tease out a number of recommendations, of which some are already incorporated by ILAC in the second phase of the implementation of the training program, while others can be furthered integrated into ILAC’s future work in Tunisian and elsewhere in the MENA-region.

Course preparation

The preparation of the actual courses should include enhanced clarification of the purpose and objectives of the training program, and not only of the individual courses. ILAC is responsible for the training program and needs therefore to communicate clearly about the expected results to the target groups both in advance to the actual courses, and also during the introduction of the course. This is complementary to the introductions by the CEELI Institute and IBA. The target groups should have a clear understanding of both the training program at large as well as the specific training course. This communication will aim to avoid false expectation and misunderstandings.

ILAC should continue to liaison with the MoJ regarding the invitation package for the training program that is sent to the judges and prosecutors chosen to participate. A brief and clear information package distributed to the judges and prosecutors can contribute to better understanding and realistic expectations, enabling insightful conversations during the training.

An introductory note and hand-outs in Arabic about the training program would contribute to inform participants about the general rationale, and would also hopefully enable them to more

easily understand the linkage between the overall project goal and the specific course approach.⁹

Likewise, it is important that the international trainers are equally prepared about the purpose and objectives of the overall training program to enable them to align their work with these objectives. Furthermore, in order to enhance the capacity among the international trainers to engage with the participants it would be very useful for ILAC to prepare a brief summary text about the legal system in Tunisia that describes key actors, processes, mechanisms and challenges. The text can be shared with the new international trainers and will hopefully enable them to participate more actively in conversations and relate in-depth to recurrent legal issues in Tunisia. A systemic and consistent routine to document insights from discussions during the sessions would allow ILAC to institutionalize learning and feed it back to the international trainers.

Local coordination

Both the structure and the content of the training program should be considered to resonate with needs of the target group and the capacity of the implementers. In order to enhance the flexibility to adjust the training sessions to specific groups it would require further coordination between ILAC's local focal point and the MoJ, as well as with the course implementers, the CEELI Institute and IBA. It could contribute to further strengthening the relevance, as well as the factors that drive effectiveness, impact and sustainability.

ILAC's local coordination could imply a more proactive approach to identify linkages between specific needs and priorities among individual participants and their courts, and the emphasis of the training session. It would require a more consistent and ongoing review of participants and hence communication with the implementing partner. It is suggested to be considered during the second phase of the implementation that both ILAC and participating judges better follow up on the trainings in order to address concrete problems in the Tunisian judicial system. The following possibilities should be considered:

- Institutionalization and use of the knowledge generated by the course by the judges themselves in order to identify and address challenges. Here, the judges pointed out that ILAC would still have an important role to play by using the contact information given by participants to facilitate the development of an online network of course alumni. Such a network could both help disseminate best practices, promoting harmonized practice in emerging areas of law, and provide the basis for mobilization and advocacy by the judges themselves.
- Continuing efforts by ILAC and the course convenors to plow the information generated during the trainings back into the curriculum, both in terms of the lectures and the case studies.

⁹ As of January 2014 ILAC and partners have shared introductory notes and hand-outs in Arabic.

- Discussion of this information with other national and international actors with mandates to participate directly in the Tunisian judicial reform process. An important component of this approach would involve ensuring that judges were made aware of the various actors and their roles in order to be able to turn to them directly for guidance or advocacy.

Appendix I – IBA substantive report, March-October 2013

International Bar Association’s Human rights Institute – Training for Tunisian judges Report for the period March 2013 to October 2013

The International Bar Association’s Human Rights Institute (IBA) has successfully delivered the final six training sessions taking place from March 2013 until October 2013, excluding the months of July and August.

A. Content of the training

The training was based on the manual developed by the IBA and the UN Office of the High Commissioner for Human Rights, entitled “Human Rights in the Administration of Justice”. The following topics were covered over the course of the four-day training, in order of delivery:

Day 1

- Chapter 1: International Human Rights Law And The Role Of The Legal Professions: A General Introduction
- Chapter 2: The Major Universal Human Rights Instruments And The Mechanisms For Their Implementation
- Chapter 3: The Major Regional Human Rights Instruments And The Mechanisms For Their Implementation
- Chapter 12: Freedom of thought, conscience, religion, opinion, expression, association and assembly

Day 2

- Chapter 5: Human Rights And Arrest, Pre-Trial Detention And Administrative Detention
- Chapter 6: The Right To A Fair Trial: Part I – From Investigation To Trial
- Chapter 7: The Right To A Fair Trial: Part II – From Trial To Final Judgement

Day 3

- Chapter 8: International Legal Standards For The Protection Of Persons Deprived Of Their Liberty
- Chapter 11: Women’s Rights In The Administration Of Justice

Day 4

- Chapter 4: Independence And Impartiality Of Judges, Prosecutors And Lawyers

The IBA revised the programme agenda commencing April 2013 to allow for the final day of the training to be dedicated solely to discussion on the independence and impartiality of the judiciary and general discussion on how the Tunisian judiciary can assert its independence both through legal reform and by taking practical steps.

B. Faculty

The IBA recruits teams of international experts to deliver the training. The faculty therefore changes with each session and includes judges, barristers, academics, and international human rights experts.

11 - 14 March 2013

- Lynn, Michael, Barrister, Republic of Ireland
- Laughrey, Nanette, Judge, U.S. District Court, Missouri, United States of America
- Henning, Evelyn, Judge, District Court, Germany

15 to 18 April 2013

- Stanage, Nick, Barrister, Doughty Street Chambers, London, United Kingdom
- Burrell, Gary, Judge, Circuit Court, United Kingdom
- Duncan, Allyson, Judge, Fourth Circuit Court of Appeals, North Carolina
- Breitenmoser, Stephan, Judge, Swiss Tribunal Administrative Law and Law Professor

20-23 May 2013

- Stanage, Nick, Barrister, Doughty Street Chambers, London, United Kingdom
- Lynn, Michael, Barrister, Republic of Ireland
- Neal, Brian, Judge, Provincial Court of British Columbia, Canada
- Bednarek, Anna, Judge, Warsaw District Court, Poland

17-20 June 2013

- Stanage, Nick, Barrister, Doughty Street Chambers, London, United Kingdom
- Sundhu, Bill, Lawyer, Former Judge Provincial Court of British Columbia, Canada
- Alaoui, Bouchra, Judge and President of the Court, Casablanca, Morocco

16-19 September 2013

- Stanage, Nick, Barrister, Doughty Street Chambers, London, United Kingdom
- Rouleau, Paul, Judge, Court of Appeal of Ontario, Canada
- De Rooij, Marianne, Judge, vice-President Court of Amsterdam
- Kjaerulff, Pernille, Judge, Court of Copenhagen, Denmark

21-24 October 2013

- Stanage, Nick, Barrister, Doughty Street Chambers, London, United Kingdom
- Lauritsen, Linda Judge, Court of Roskilde, Denmark
- Rothe, Henrik, Chief Justice, Maritime and Commercial Court, Denmark

C. Evaluations

In evaluations completed after the training, participants have expressed a high level of satisfaction in the programme.

1. On a scale of 1-5 please identify to what extent the training met your expectations (1 being “it didn’t meet my expectations at all” and 5 being “exceeded my expectations”)

The programme met all of my expectations	1	2	3	4	5
March 2013		8%	46%	46%	
April 2013	6%	6%	19%	38%	31%
May 2013			21%	32%	47%
June 2013	5%	8%	18%	39%	30%
September 2013				26%	74%
October 2013			9%	43%	48%

2. On a scale from 1 to 5, how relevant do you think this programme will be for your work? (1 meaning “not relevant all” and 5 meaning “extremely relevant”)

Relevance	1	2	3	4	5
March 2013			13%	29%	58%
April 2013		13%	27%	33%	27%
May 2013	5%	5%	5%	37%	48%
June 2013		9%	13%	52%	26%
September 2013	4%			13%	83%
October 2013			14%	38%	48%

D. Participants

151 judges and prosecutors in total attended the six sessions. The gender aggregation as follows:

	Male	Female
TOTALS	97	54
March	18	12
April	14	9
May	14	8
June	18	6
September	17	8
October	16	11

There was a slight increase in the female presence for the final sessions, with female judges/prosecutors accounting for 36% of total attendance.

E. Comments and suggestions (a sample)

MARCH 2013

- The most useful topic was the discussion on the important role played by the European Court of human rights and the discussion on the British example for protecting prisoners' rights
- All elements covered were useful in our work – thank you
- We would have liked more use of technology in the sessions

APRIL 2013

- More time wanted to get through all the questions and theoretical aspects proposed
- Material which was handed out was interesting and helpful for my line of work
- Enriching and useful part of the experience as they were insightful and allowed for the exchange of different ideas and experiences
- Presentation relating to the role of the European Court of Human Rights in protecting human rights was very helpful
- I would have liked to have a copy of international and European instruments which deals with human rights law, namely the Geneva Conventions and the Rome statutes
- Topics which the judges would have liked to address were: right to information, fight against terrorism, the treatment of prisoners of wars, refugees and illegal immigrants and international criminal law

- Suggestion: judges should undertake a form of exchange programmes, where Tunisian judges who have the academic capacity, would go to another country and work as a judge for a while

MAY 2013

- The training was really coherent and important – thank you to all, it was really enjoyable
- The group exercises and group discussions were very useful
- I would have liked discussion on more relevant jurisprudence
- It would be helpful to have more suggestions for further reading
- Please dedicate more time to the small group discussions
- Thanks to this training, we have realised that one needs to refer more and more to the principles of human rights and have regard to the instruments which guarantee the independence of the judiciary
- Consider including minority rights, human Rights responsibilities and obligations of the Police, rights of refugees, rights of children

JUNE 2013

- The trainers were really very competent as concerns their knowledge, way of presenting and information
- The workshops were enriching both theoretically and practical both their needs to be more emphasis on resolving challenges to independence of the judiciary
- Most useful sessions: Freedom of expression, Freedom of association, Independence of the judiciary, Universal instruments, Fair trial rights
- The exercises were useful because they allowed us to discuss different points of view and hear experiences of other judges
- Small group discussions were informative
- All topics covered were useful
- Women's rights was not useful as women's are well protected in Tunisian law
- You need to include Tunisian lawyers in trainings

SEPTEMBER 2013

- You should dedicate more time to group exercises and case studies
- It was very encouraging to be presented with a certificate at the end

- Please organise other regular trainings to improve the knowledge of judges
- Topics to include: human rights protection in a more regional, African-based context, Rights of victims, Terrorism, and the rights of those accused of terrorism

OCTOBER 2013

- The facilitators discussing their experiences was very interesting
- Is there a way to maintain more regular contact with the participants after the training has taken place?
- Importance of transitional justice should be included in the training
- I found the first chapter considering human rights and the role of the judiciary very important and useful
- I propose a twinning between different courts and judges in the world
- Equal rights for women is not an issue in Tunisia
- The knowledge of the trainers greatly impressed us; it was a good opportunity to see the experiences of other countries in the area of human rights

Appendix II – CEELI substantive report, March-October 2013

CEELI Institute – Training for Tunisian judges Report for the period March 2013 to October 2013

Between March and December 2013, the CEELI Institute has delivered a total of 6 trainings.

A. Content of the training

The training curriculum has been developed by Mr. Joel Martin, CEELI Institute lead trainer. The overall title of the 4 days training is “Judging in a democratic society”. The seminar addresses issues common to judges in countries progressing from an autocratic system of government to democracy. Many countries have been through this transition, notably those formerly under Communist rule; and the lessons learned from that experience can be valuable to Tunisian judges. The seminar thus discusses judicial independence, relations with other branches of government, relations with the public and the media, judicial ethics, judges’ organizations, and court administration, with particular emphasis on human rights law, both domestic and international.

Training program:

Note – since the training is designed as interactive and discussion-oriented, the timeline might change in some cases, this is the backbone structure.

DAY	TOPIC	GROUPING
1	Introductions; sources of law; personal action plans; first hypothetical	Plenary
1	Purpose of courts	Plenary, then seminar groups
1	Reports from seminar groups Independence of government branches Threats to judicial independence Separation of powers Working conditions	Plenary Seminar groups
1	Independence of judges, of judiciary Independence from what/whom? for what/whom?	Plenary

2	Sources of law: Universal Declaration of Human Rights ICCPR Arab Charter ICCPR Article 4 hypotheticals (public emergency)	Plenary
2	Ethical Norms Bangalore Principles Recommendation 2010, Council of Europe Ministers UN Basic Principles (1985) Ethics hypotheticals	Plenary
2	Seminar discussions: Conflicts of interest Ex parte communication Public comment and criticism	Plenary, then seminar groups
2	Reports from seminar groups Advantages, disadvantages of written code of ethics	Plenary

3	Public respect and confidence in the judiciary: Pre-revolution and post revolution Reasons for confidence, respect, and their lack	Plenary
3	Strategies for improvement in respect, confidence Reports from seminar groups	Seminar groups Plenary
3	Transparency, access, media relations Discussion of status quo Strategies for change	Plenary
3	Personal action plans	Plenary

4	Court administration Case management Early court control Case assignments	Plenary
4	Seminar groups: hypotheticals on court administration Reports from seminar groups	Seminar groups Plenary
4	Personal action plan reports	Plenary
4	Summary, commentary, closing Evaluations	Plenary

B. Faculty

Note: Mr. Joel Martin performed the role of the lead trainer in all of the 2013 trainings, In addition to him, the following faculty participated.

March 4-7, 2013

Christina Reiss, Judge, U.S. District Court
Margaret McKeown, Judge, U.S. Court of Appeals

April 1-4, 2013

Ivana Hrdličková, Judge, Czech Republic; Hague
Mary Davis, retired Judge, New York State trial

May 6-9, 2013

Rosemary Barkett, Judge, U.S. Court of Appeals
Luboš Dorfl, Judge, High Court of Prague, Czech Republic

June 3-6, 2013

Domagoj Frntić, Judge, Croatia
Mary Ellen Williams, Judge, U.S. Court of Claims

July 1-4, 2013

Barbara Lynn, U.S. District Court Dallas
Ladislav Derka, High Court of Prague, Czech Republic

October 7-10, 2013

Ivana Hrdličková, Judge, Czech Republic; Hague
Mark Horton, Judge, ME Superior Court, U.S.

C. Participants and evaluations

Session	No. of judges
Mar 4-7, 2013	17
Apr 1-4, 2013	20
May 6-9, 2013	18
Jun 3-6, 2013	23
Jul 1-4, 2013	26
Oct 7-10, 2013	23
TOTAL	127

How useful did you find the course?

	Not useful at all	Not very useful	Partly useful	Very useful	Extremely useful
Mar 4-7, 2013	0	0	1	13	3
Apr 1-4, 2013			2	16	2
May 6-9, 2013	0	0	3	12	3
Jun 3-6, 2013	0	0	2	15	6
Jul 1-4, 2013			1	21	4
Oct 7-10, 2013	0	0	2	15	6

Will the course help in your work?

	Probably not	Possibly	Definitely
Mar 4-7, 2013	0	3	14
Apr 1-4, 2013		3	17
May 6-9, 2013	0	2	16
Jun 3-6, 2013	0	3	20
Jul 1-4, 2013		5	21
Oct 7-10, 2013	0	6	17

Will the course help your work in the next 12 months?

	Probably not	Possibly	Definitely
Mar 4-7, 2013	0	3	14
Apr 1-4, 2013	2	2	16
May 6-9, 2013	1	3	14
Jun 3-6, 2013	1	1	21
Jul 1-4, 2013	1	7	19
Oct 7-10, 2013	0	6	17

How do you rate the quality of the materials you received?

	Poor	Adequate	Excellent
Mar 4-7, 2013		12	5
Apr 1-4, 2013		11	9
May 6-9, 2013		10	8
Jun 3-6, 2013		10	13
Jul 1-4, 2013		13	13
Oct 7-10, 2013	0	9	14

How do you rate the length of the course?

	Too short	Just right	Too long
Mar 4-7, 2013	4	13	0
Apr 1-4, 2013	2	18	
May 6-9, 2013	4	14	0
Jun 3-6, 2013	6	17	0
Jul 1-4, 2013	5	21	0
Oct 7-10, 2013	7	16	0

Would you recommend the course to your colleagues?

	No	Probably not	Possibly	Yes	Definitely
Mar 4-7, 2013	0	0	0	3	14
Apr 1-4, 2013				4	16
May 6-9, 2013	0	0	0	3	15
Jun 3-6, 2013	0	0	0	8	15
Jul 1-4, 2013	0	0	0	6	20
Oct 7-10, 2013	0	0	0	6	17

BACKGROUND PAPER

Workshop on the Evaluation of the Training of Tunisian Judges Program

Hotel Ramada Plaza, Tunis, 16 December 2013

Background

In the Spring of 2012, the Tunisian Ministry of Justice agreed to support a Judicial Training Program offered by the International Legal Assistance Consortium (ILAC), a non-profit organization headquartered in Stockholm, Sweden and registered under Swedish Law. ILAC is an umbrella organization for fifty member organizations, including global and regional associations of legal and human rights experts, judges, prosecutors, lawyers and academics.

The trainings of judges began in March 2012. Two trainings were conducted every month by two of ILAC's member organizations with extensive training experience, the CEELI Institute based in Prague and the International Bar Association (IBA) based in London. The two organizations alternated in providing the trainings and used different materials and curricula. However, both focused on reviewing international human rights standards relevant to the judiciary, along with the broader role of an independent judiciary in societies undergoing democratic transitions. The program continued for 18 months and reached 900 judges, or approximately half of the Tunisian judiciary, by the time of the final training in November 2013. A continuation of the program is planned to start in January of 2014.

The training program was funded by the Swedish International Development Cooperation Agency, Sida. The reason that ILAC has initiated this Workshop is in order to undertake an evaluation of the *Training of Tunisian Judges Program* and establish the extent to which it directly and indirectly fulfilled the goals it set out to achieve. Your comments and responses will be crucial to us in reporting back to Sida on the program, as we are required to do in accordance with our contract with Sida.

Goals of the Project

The goals of the *Training of Tunisian Judges Program* are set out in the application for funding that ILAC submitted to Sida on 22 April 2012. The aim of this Workshop is to seek input on the extent to which these goals have been met. We are interested in discussing both your personal experiences having attended the course – or discussed it with colleagues who did – and your sense of how the chambers and courts you work in – as well as the judiciary as a whole – have changed as a result of the trainings.

1. The overall goal of the project is the following: “The Judiciary as a whole will be infused with improved knowledge of the law and thus with more self confidence in order to maintain independence against outside pressure.”
2. Achievement of this overall goal is meant to be brought about through two intermediate goals. These are (a) “giving the Tunisian judiciary better knowledge of applicable laws and legal safeguards concerning due process and fair trial” and (b) “giving the Tunisian judiciary a stronger sense and improved knowledge of the meaning and consequences of the concept of the independence of the judiciary”.

One of the assumptions that led to the definition of these goals – and the decision to try to train as many judges as possible – was the idea of “safety in numbers”. In other words, the idea was that *if* a sufficient number of Tunisian judges became confident in their knowledge and application of international human rights rules and secure in the idea that they should not be subjected to inappropriate pressures, *then* they would help each other to address such pressures, resulting in a more independent judiciary.

A fourth and less direct goal of the project was to address the socio-economic differences between the city and the countryside in Tunisia. Specifically, by ensuring judges from all parts of Tunisia were represented in the trainings, ILAC and its partners hoped to ensure that the benefits of the course were felt in all parts of the country and would help to improve access to justice in economically marginalized areas. A related objective was to ensure that the selection of participants in the course was also representative in terms of age, experience and gender.

Tentative Program, Workshop on the Evaluation of the Training of Tunisian Judges

16 December

- 09.00 Opening of meeting
- 09.30 Discussion 1: Intermediate Goal 1 – better knowledge of laws and safeguards
- 10.30 Coffee
- 11.00 Discussion 2: Intermediate Goal 2 – stronger sense of independence
- 12.00 Lunch
- 13.00 Discussion 3: Overall Goal – self-confidence and safety in numbers
- 14.30 Coffee
- 15.00 Discussion 4: Geographic and gender representativeness
- 16.00 Concluding discussion
- 16.30 End of the workshop