

Independent Oversight Board of the Lebanon Reform, Recovery, and Reconstruction Framework

Position Paper on the Independence of the Judiciary

June 2023

1. Current Landscape & Roots of the Problématique

Decades of crimes that threatened the peace and stability of Lebanon have been condoned by the Lebanese judiciary and compelled by the authorities' tightening grip on the body. Intimidation and telephone justice have been one of the various means used by authorities to disrupt the road to justice.

The result of the judiciary's politicization is a reflection of the status quo; an environment that incubates a culture of amnesty and untouchability to offenders of all crimes, normalizes the non-adherence to the rule of law, promotes selective justice, muzzles the freedom of expression when the truth threatens the sustainability of the rule of those who believe are above the law, and most importantly, remits judicial accountability and the role of the judiciary that ought to administer justice to the people.

Building on the courage and integrity of judges and legislators who are an intrinsic part of the overhaul, the paper expounds on the legislative and constitutional changes that can shield the rule of law from being infringed and protect human rights from abuse by the executive, legislative, or any stakeholder.

While the Lebanese Constitution grants individual independence to judges, it does not broach institutional independence, which seriatim continues to be a main cause of judicial corruption including political interference, bribery, and use of public office for personal interest, inter alia.

The judiciary's symptoms of politicization and lack of independence surfaced after the civil war. In fact, the lack of an independent judiciary engendered a thriving

environment for impunity as the judiciary body rendered itself quiescent to political and religious interference and has thus eroded public trust in public institutions and the course of justice.

The contortions in the Lebanese judiciary are primarily attributed to the exorbitant interference of the executive in managing, appointing, transferring, rotating, promoting, and disciplining the judiciary. The executive uses these powers to interfere in the process of decision making of the judges, jeopardizing every citizen's just cause. Moreover, the judiciary's financial dependence on the Ministry of Justice will continue to pose a significant threat to its sovereignty, if it is subsumed under the executive's ordinance.

The principle of power separation currently does not hold in Lebanon for a plethora of reasons, the most important of which are the direct encroachment on the composition of the Higher Judicial Council by the executive, the lack of financial independence of the Council from the budget of the Ministry of Justice including the Institute of Judicial Studies and its composition, and political and religious interference that have subjected judges to pressure against pre-trial proceedings, and enacting decisions and rulings.

2. The Necessity for Change

In this context, the independence of the judiciary entails a holistic revamp of the existing framework that governs its affairs; legislative and constitutional amendments are compulsory, and what should be inevitable and inescapable is the political will to overhaul the system.

The lack of an independent judiciary in Lebanon has negatively impacted the work of organizations and the development of society since structural reforms have not found their course to enforcement and thus remain fragmented. When an impartial judicial authority exists, judges will be able to enforce the law and the international treaties Lebanon is a signatory of, thus not only improving the standards of human rights, but also exercising the check on powers, and resisting democratic backsliding.

When the political will was put to test under tremendous local pressure following the Beirut blast, authorities have overtly perverted the road to justice and continue to do so, almost three years after the explosion. The use of article [751](#) of the civil proceedings code, which adjourns a legal proceeding if a court case is filed against the sitting judge, has been a standard tool of the policy of impunity implemented by officials, ergo, corrective policies must be applied to indefinitely put an end to the culture of impunity that's deeply ingrained in the Lebanese political system.

3. Blocking the Independence of Judiciary Reform

The draft law for the independence of the judiciary has been underway since 2018, marked by an overall delay and dilution of key principles that safeguard the judiciary's independence. We call on the Justice and Administration Parliamentary Committee to carefully review the comments of the Venice Commission and ensure that all loopholes that empower the interference of the executive, are effectively closed. Today, blatant violations of the principles of separation of powers should be quelled, starting from legislating texts that deliberately keep enough of a margin for the executive to interfere in the affairs of the judiciary.

While the Government of Lebanon has been informed multiple times that its judiciary is politicized, no concrete corrective measures have made headway.

A briefing paper published in 2017 by the International Commission of Jurists (ICJ) affirmed that Decree-Law No. [150/83](#), which stipulates the composition of the judiciary including the functions of the HJC, fails to meet international standards, and has been reinforced by a report by the UN Special Rapporteur on the independence of judges and lawyers expressing that the composition of the HJC significantly affects the independence of the judiciary. Ms. Satterthwaite, UN Special Rapporteur on the independence of judges and lawyers voiced her concerns last month in flagging the interference of officials in the Blast investigation, in recusing the investigating judge, whose life has been threatened and is currently under military protection.

The parliament should relentlessly work on passing a law that meets international standards and should outrightly abstain from enacting a law that meets the consensus of political parties at the expense of the public's best interests.

4. What are the needed reforms?

The IOB advocates, endorses, and recommends the following actions, which have been touted by judges, the Bar Associations, the ICJ, civil society, and other key stakeholders to pivot the judiciary away from political interference that has tarnished its independence and credibility.

- Judges must be given financial and moral guarantees, and the right to equal access to the Judicial Institute based on merit and competence. The HJC should ensure fair and adequate representation of women and young judges, and lastly ensure the appointments in the HJC of 3 ex-officio members are steered clear from interventions emanating from the Minister of Justice.
- The HJC's member selection and election must have clear guidelines and frameworks that warrant competence and independence from the executive/ external parties and offer continuous and specialized training for judges inter alia. The Constitution should institutionalize the independence of the judiciary, internally through guarantees that shield individual judges from undue pressure from within the judiciary, and externally from the executive and legislative powers. Legislation of the aforesaid could serve as an alternative.
- In assessing the work of judges, independent committees should be established to oversee and evaluate the work of judges, which elicit the basis of judges' rotations.