

THE CHALLENGING PATH OF  
REFORMS IN LEBANON

**THE PERSISTENT FIGHT FOR  
JUDICIAL INDEPENDENCE**



## I- INTRODUCTION

This report is part of a series of reports produced by Maharat Foundation to track the progress of reforms highlighted in the Lebanon Reform, Recovery and Reconstruction Framework (3RF) which is part of a comprehensive response to the massive explosion on the Port of Beirut on August 4, 2020, launched by the European Union (EU), the United Nations (UN) and the World Bank Group (WBG).

On April 2023, stakeholders involved in the Reform, Recovery and Reconstruction Framework (3RF), agreed that it should be continued as a platform for inclusive policy dialogue and to make progress on implementing reforms to unlock international support for investments in reconstruction, considering that structural reforms are key to overcome this unprecedented crisis and return to the path of sustainable development. Moreover, the 3RF will not extend its focus on recovery efforts, as there are other coordination structures in Lebanon that are more capable of addressing recovery and humanitarian needs.

Maharat is a member of the Independent Oversight Board (IOB) which is composed of civil society representatives providing broad oversight on 3RF implementation progress and use of financing.

## A- JUDICIAL INDEPENDENCE: A CONSTITUTIONAL PRINCIPLE

The Preamble of Lebanon's Constitution enshrines the Universal Declaration of Human Rights (UDHR) and the international covenants. Furthermore, Lebanon has also ratified the International Covenant on Civil and Political Rights (ICCPR). Both Article 10 of the UDHR and Article 14 of the ICCPR guarantee the right to a fair trial before an independent and impartial tribunal. An independent judiciary constitutes one of the main guarantees for the right to a fair trial<sup>1</sup>.

Lebanon's constitutional foundation has long established the principle of judicial independence, underscoring its significance since 1926. Indeed, Article 5 of the Preamble of the Lebanese Constitution guarantees the separation of powers, and Article 20 enshrines the independence of judges and the judiciary<sup>2</sup>.

Nevertheless, the independence of the judiciary has not yet been achieved. In fact, the aftermath of the devastating Port explosion exposed the frailty of Lebanon's judicial sector and the deep-rooted corruption within, perpetuating governmental dysfunction and human rights violations. To break the cycle of corruption and foster accountability, there is an imperative to address the independence, neutrality, and transparency of the judicial sector.

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1-Legal Agenda & Arab NGO Network for Development. (2020, July). Report on the Independence of the Judiciary and the Right to Fair Trial in Lebanon.

2-Constitution of Lebanon, 1926.

## B- A FOUNDATIONAL REFORM IMPEDED BY OBSTACLES

Reforming the judicial sector is an essential step towards upholding the rule of law, safeguarding human rights, and dismantling corruption. A transparent and neutral judiciary is pivotal in holding individuals accountable for their actions. As stated by the Parliament Administration and Justice Committee during a meeting of the 3RF Justice Working Group, “Without a functioning justice sector, we cannot revive other sectors.”<sup>3</sup> As previously mentioned, the Beirut explosion made it imperative to implement reforms that definitively eradicate institutionalized impunity in Lebanon and prevent political interference.

Meanwhile, proposals for laws ensuring the independence of the judicial and administrative judiciaries remain stalled in parliamentary committees. According to the Independence of the Judiciary Coalition, “The bill on the judicial judiciary aimed to free and reclaim the civil and criminal courts and Public Prosecution offices from the yoke of the ruling authority and its control over appointments and accountability mechanisms, thereby guaranteeing equality among people before the judiciary and law”<sup>4</sup>

As for the draft Law on the independence of administrative courts, “it aims to liberate and reclaim the administrative judiciary”<sup>5</sup>; ensuring that the public administrations are subject to the rule of law.

The director of programs and grants at Legal Agenda, Sandy Mteirek, emphasized the importance of the law on the independence of the judicial courts, explaining that the delay in promulgation of such law, which the Lebanese Parliament promised to enact since 2019, has had negative impacts on Lebanese citizens, given the urgency of this reform.

Regarding the reasons for the delay in passing the laws pertaining to the independence of the judicial and administrative judiciaries, Mteirek attributed it to the lack of transparency in the discussions within the Administration and Justice Committee and the sub-committee headed by MP George Okais, emphasizing that what matters most is the enactment of laws that align with international standards and safeguard the independence of the judiciary.

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3-3RF. (2023, June 21). Minutes of the Meeting of the Justice Working Group Meeting, June 21, 2023 [PDF]. Retrieved from <https://www.lebanon3rf.org/sites/default/files/2023-07/3RF-Justice-WG-MoM-and-Presentation-21062023.pdf>

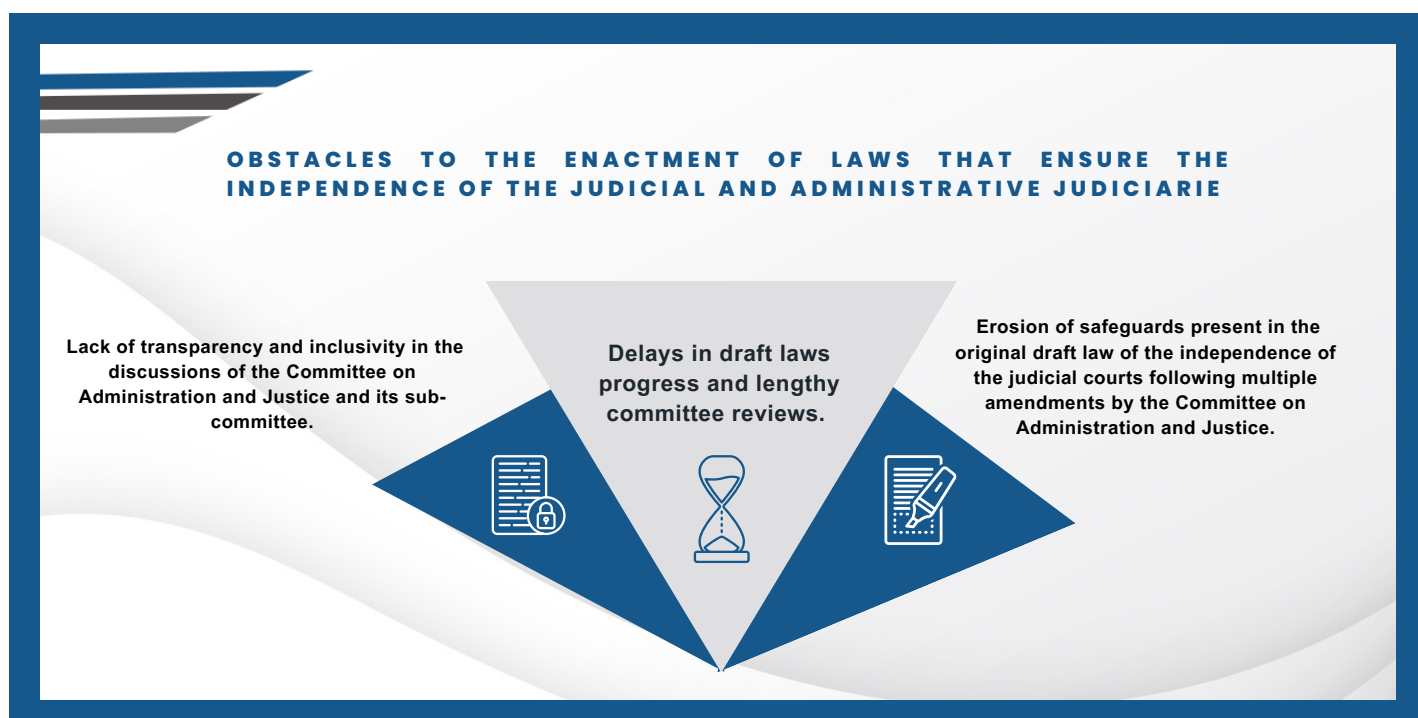
4-Independence of the Judiciary Coalition, An Independent Judiciary for the Sake of Lebanon, February 12, 2021, Retrieved from <https://legal-agenda.com/%d9%82%d8%b6%d8%a7%d8%a1-%d9%85%d8%b3%d8%aa%d9%82%d9%84%d%91->

5-Ibid

Indeed, the draft Law on the independence of judicial courts was initially submitted to the Committee on Administration and Justice in September 2018 but its progress has been notably slow. In mid-December 2021, the Administration and Justice Committee adopted an amended version of this draft law. However, the Independence of the Judiciary Coalition provided its comments on the Committee's 2021 proposal, considering it as insufficient for achieving judicial independence and weakening the safeguards present in the original proposal.

The Committee on Administration and Justice approved a new version of the draft Law on the independence of judicial courts on March 7, 2023, following two months of sessions dedicated to discussing the Minister of Justice's comments. However, according to the Independence of the Judiciary coalition, this draft law did not take into consideration the Venice Commission's opinion and does not comply with international standards.<sup>6</sup>

As for the draft Law on the independence of administrative courts, it is still under review by a sub-committee of the Justice and Administration Commission of Parliament, headed by MP George Okais.



6-3RF. (2023, June 21). Minutes of the Meeting of the Justice Working Group Meeting, April 26, 2023 [PDF]. Retrieved from <https://www.lebanon3rf.org/sites/default/files/2023-07/3RF-Justice-WG-Meeting-26-April-2023-Minutes.pdf>

## II- JUDICIAL INDEPENDENCE WITHIN THE 3RF: ROLE OF THE JUSTICE WORKING GROUP

Amidst these circumstances, a special working group focused on the justice sector within the 3RF framework (Reform, Recovery, and Reconstruction Framework) was formed.

The working group led by the United Nations Development Programme (UNDP) in partnership with the European Union acts as a platform for comprehensive policy discussions and dialogue, bringing together stakeholders from the Lebanese authorities, civil society organizations (such as the Legal Agenda and the Konrad Adenauer Foundation), international organizations, donors, and parliamentary committees.

THE 3RF HAS A DESIGNATED JUSTICE WORKING GROUP THAT, PROVIDES A PLATFORM FOR DISCUSSION AMONG STAKEHOLDERS, AND POLICY DISCUSSIONS MAY LEAD TO PRESSURE THE LEBANESE AUTHORITIES TOWARDS REFORMS AND THE ENACTMENT OF THE INDEPENDENCE OF THE JUDICIARY LAW.

**SANDY MTEIREK**

The director of programs and grants at Legal Agenda



## 2023 PRIORITIES OF THE JUSTICE WORKING GROUP

### INDEPENDENCE AND ACCOUNTABILITY OF THE JUDICIARY: ADOPT, THROUGH A TRANSPARENT PROCESS INCLUSIVE OF CIVIL SOCIETY, THE:

- Draft law on the independence of judicial courts
- Draft law on the independence of administrative courts
- Draft law on the independence of financial courts (IMF indicative benchmark 28)



### EFFICIENCY AND TRANSPARENCY OF THE JUSTICE SYSTEM STRENGTHEN BODIES OVERSEEING THE JUSTICE SYSTEM, INCLUDING THE:

- High Judicial Council
- Inspection Authority
- State Council



### ACCESS TO JUSTICE

- Institutionalization of legal aid
- Legal framework around judicial and non-judicial mediation

## MEMBERS OF THE JUSTICE WORKING GROUP



LEAD: UNDP

CO-LEAD: EU



MEMBER: OHCHR

SECRETARIAT: JUDIT DEMJEN



MEMBER: MINISTRY OF JUSTICE (MOJ)

MEMBER: SWITZERLAND



MEMBER: UNICEF

MEMBER: FRANCE



MEMBER: NETHERLANDS

MEMBER: USA



MEMBER: GIZ

MEMBER: AICS



MEMBER: MINISTRY OF INTERIOR AND MUNICIPALITIES (MOIM)

MEMBER: KONRAD ADENAUER STIFTUNG



MEMBER: UNODC

MEMBER: LEGAL AGENDA



MEMBER: UNWOMEN

MEMBER: PARLIAMENT ADMINISTRATION AND JUSTICE COMMITTEE



MEMBER: SPAIN



MEMBER: PARLIAMENTS HUMAN RIGHTS COMMITTEE


MEMBER: BEIRUT BAR ASSOCIATION



MEMBER: AICS

MEMBER: IOM





THE 3RF JUSTICE WORKING GROUP NOT ONLY RESPONDS TO THE NEED FOR A COORDINATED APPROACH AMONG SECTOR STAKEHOLDERS ON JUSTICE SECTOR REFORM BUT CAN ALSO MORE BROADLY SERVE AS A PLATFORM TO PROMOTE COORDINATION AND COMPLEMENTARITY OF ACTIONS BETWEEN NATIONAL AND INTERNATIONAL STAKEHOLDERS, WITH THE VIEW OF SUPPORTING AUTHORITIES IN THE DEVELOPMENT AND IMPLEMENTATION OF A UNIFORM APPROACH TO THE REFORM OF THE JUSTICE SECTOR.

**JUDIT DEMJEN**  
The 3RF secretariat



Indeed, the Justice Working Group held three meetings in the year 2022 with its broad composition, along with a fourth targeted meeting dedicated to exchanging information and observations with civil society organizations. The discussions predominantly centered on holistic reforms pertaining to judicial independence, with a specific emphasis on the presentation submitted by the Venice Commission of its opinion on the draft law on the independence of judicial courts, which received approval during its 131st session in June 2022.

Several meetings were also held in 2023, including one centering on the presentation of the conclusions and recommendations of the Functional Review from EU experts and another one focusing on the developments related to the justice sector, with an emphasis on a presentation on the draft Law on the independence of administrative courts.

THE JUSTICE WG THUS PROVIDED A FORUM FOR A TECHNICAL EXCHANGE BETWEEN DIFFERENT STAKEHOLDER GROUPS ON THIS DRAFT LAW. MOVING FORWARD, THE JUSTICE WG SEEKS TO BUILD SYNERGIES AND ENHANCE ITS FOCUS ON REFORM AND POLICY ACTIONS.

**JUDIT DEMJEN**  
The 3RF secretariat

### III- THE VENICE COMMISSION RECOMMENDATIONS

The Venice Commission's primary role is to offer legal advice to its member states, with a particular focus on assisting states that seek to align their legal and institutional structures with European standards and international expertise in the realms of democracy, human rights, and the rule of law.<sup>7</sup>

The Venice Commission issued its advisory opinion on June 20, 2022, on the draft law on the independence of judiciary courts, providing a set of crucial recommendations aimed at ensuring the standards of judicial independence. However, upon crafting the latest version of the proposed law, the Committee of Administration and Justice overlooked several of these standards, thereby yielding a draft law that falls short of achieving the intended objectives<sup>8</sup>. Some key recommendations are discussed below.

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7-Council of Europe. Presentation of the Venice Commission. Retrieved from [https://www.venice.coe.int/WebForms/pages/?p=01\\_Presentation#:~:text=The%20role%20of%20the%20Venice,the%20rule%20of%20law1.](https://www.venice.coe.int/WebForms/pages/?p=01_Presentation#:~:text=The%20role%20of%20the%20Venice,the%20rule%20of%20law1.)

8-Saghieh, N. (2022, July 11). ملاحظات حول رأي لجنة البندقية: كيف تسهم قوانين استقلالية القضاء في تحقيق الهدف الدستوري؟ [Observations on the Venice Commission's Opinion: How Independence of the Judiciary Laws Contribute to Achieving the Constitutional Goal?]. Legal Agenda. <https://legal-agenda.com/%D9%85%D9%84%D8%A7%D8%AD%D8%B8%D8%A7%D8%AA->





## **FAILURE TO FREE THE SUPREME JUDICIAL COUNCIL FROM POLITICAL INTERFERENCE**

In its advisory opinion, the Venice Commission extensively discussed, among other issues, the composition of the Supreme Judicial Council, the first safeguard of the judiciary's independence, raising the following reservations about this matter:

### **DISPARITY IN JUDICIAL REPRESENTATION**

One significant discrepancy was the unequal representation between senior judges and lower-ranking judges (youth categories). The Venice commission had previously emphasized the need for fair representation of various categories of judges, including young judges, women, and those from different regions, in judicial councils. Therefore, it stressed the importance of giving young judges greater representation in the Supreme Judicial Council in order to foster their sense of belonging and confidence in the judiciary.

### **RESERVATION REGARDING JUDICIAL APPOINTMENTS**

A notable reservation concerns the appointment process of the three ex officio members of the Supreme Judicial Council consisting of 10 judges. Initially, the draft law limited the government's authority to appoint these judges by requiring their selection from lists of three names provided by the Supreme Judicial Council. However, this provision swiftly expanded to allow the Minister of Justice the discretion to add further names to these lists. The Venice Commission, on the other hand, emphasized the necessity of restraining the Minister of Justice from adding new names even if the text stipulates that the approval of the Supreme Judicial Council is required. It also underscored the necessity for the proposed names to be chosen through transparent nomination procedures.

### **BROADER PARTICIPATION**

In addition to the above, the Venice Commission recommended that the Supreme Judicial Council incorporate non-judicial individuals, citing various comparative experiences, including the appointment of figures by the executive or legislative authority.

## **FAILURE TO ENSURE THE INDEPENDENCE OF THE JUDICIAL INSPECTION AUTHORITY AND THE JUDICIAL EVALUATION AUTHORITY**

The Independence of the Judiciary Coalition had previously criticized the Administration and Justice Committee for failing to ensure the independence of the Judicial Inspection Authority and the Judicial Evaluation Authority. It pointed out that members of these bodies were appointed by the executive authority, which solicits the opinion of the Supreme Judicial Council regarding the members of the latter, without this opinion having any binding effect. The Venice Commission acknowledged these concerns and recommended a more balanced role for the Supreme Judicial Council (formed in a manner ensuring the independence of its members) in appointing members to these bodies, suggesting depriving the Minister of Justice from the ability to add names to the proposed lists for the presidency of these bodies.

## **IV- PROGRESS TOWARD JUDICIAL INDEPENDENCE THROUGH REFORMS WITHIN THE OVERARCHING LEGAL FRAMEWORK**

Despite the challenges that hinder progress toward the enactment of a law that would achieve the independence of the judiciary, steps are undertaken to put in place necessary reforms within the overarching legal framework, which bear a direct influence on the independence of the judiciary.

Notably, the Independence of the Judiciary Coalition has developed two draft laws that were submitted to Parliament, with the aim of strengthening the independence of judicial investigations and prevent political interference with the judiciary. Those draft laws aim at preventing the misuse of certain provisions, namely Article 751 of the Lebanese Code of Civil Procedure and Article 52 of the Code of Criminal Procedure. These provisions allow any plaintiff to suspend judicial investigations against them simply by filing a lawsuit to disqualify or withdraw the judge overseeing their case or by suing the state for actions taken by the judge, regardless of the seriousness of this lawsuit. Consequently, prosecution remains suspended until a judgement is rendered in favour of the defendant or until the dispute against the state is resolved by the competent court. Regrettably, this provision has been employed to impede investigations in cases such as the Port explosion investigation and other investigations linked to allegations of fraud.<sup>9</sup>

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9-Human Rights Watch. (2023, April 3). The Path Toward Judicial Independence in Lebanon. <https://www.hrw.org/news/2023/04/03/path-toward-judicial-independence-lebanon>

The proposed laws, which were endorsed by 9 MPs, demonstrate a will to address the misuse of legal provisions and ensure a more transparent and accountable judicial system.

Nizar Saghieh, the executive director of Legal Agenda, expressed his hope that the MPs will actively engage in the battle to pass these laws due to their critical importance.

THIS BATTLE IS PART OF THE LARGER BATTLE THAT WE MUST UNDERTAKE, AND THUS IT REPRESENTS THE SOLUTION TO BREACH THE WALL OF IMPUNITY, WHICH HAS BEEN EXPLOITED TO UNDERMINE ALL OUR FUNDAMENTAL CASES, WHETHER RELATED TO CORRUPTION OR THE PORT EXPLOSION.

**NIZAR SAGHIEH**  
The executive director of Legal Agenda

In the same vein, the Member of Parliament in the Lebanese Parliament, Ibrahim Mneimneh, emphasized in a statement to "Maharat-news" the significance of those draft laws in addressing one of the many gaps and loopholes within the broader legal framework, in complement to the draft laws ensuring the independence of the judicial and administrative judiciaries, in the aim of enhancing judicial independence.

Hence, in the absence of political will to pass laws ensuring the independence of the judicial and administrative judiciaries, legislative attempts are being made to prevent political interference and pressure on the judiciary through reforms within the overarching legal framework.



#### **IV- CONCLUSION**

In conclusion, the unprecedented crisis in Lebanon has significantly intensified the already substantial difficulties that the country's judicial institutions were facing. This has resulted in a notable impact on their efficiency, transparency, and accessibility. Moreover, frequent obstructions of justice resulting from political interference such as in the Beirut port investigation have further underscored the urgency to enact laws safeguarding the independence and accountability of the Lebanese judiciary. Hence, the Justice and Administration Parliamentary Committee should no longer procrastinate in the examination of the draft laws on the independence of the judicial and administrative judiciaries. Furthermore, it should actively work to complete these draft laws in accordance with the Venice Commission's recommendations and international standards, closing all the loopholes undermining judicial independence.

Finally, the Lebanese Parliament should adopt, with no further delays, laws ensuring the independence of the judicial and administrative courts, in line with the Venice Commission's recommendations and international standards. It should also amend Article 751 of the Country's Code of Civil Procedure and Article 52 of the Code of Criminal Procedure to meet international standards and ensure that investigations are not indefinitely suspended when a defendant files a lawsuit against the investigative judge.

The reform process must extend beyond mere enactment and encompass diligent implementation to address the core challenges and instigate substantive changes.