

**Submission on the Independence of Judiciary and the right to due process in
Lebanon**

The Right to a Fair Trial (Article 14 of the International Covenant on Civil and Political Rights)

1. In the Preamble of its Constitution, Lebanon enshrines the Universal Declaration of Human Rights (UDHR) and covenants. Lebanon has also ratified the International Covenant on Civil and Political Rights (ICCPR).
2. Article 10 of the UDHR and Article 14 of the ICCPR guarantee the right to a fair trial before an independent and impartial tribunal.

I. The right to a fair and public hearing by a competent, independent and impartial tribunal established by law (Article 14.1 of the ICCPR)

3. An independent judiciary is one of the main guarantees for the right to a fair trial.
4. Despite the fact that the constitution consecrates both the principle of the separation of powers (§5 of the Preamble) and the independence of judges and the judiciary (Article 20), Lebanon's judicial system is still far from being independent.
5. Restrictions on the judiciary's independence can be seen in violations of its various aspects: the principle of the natural judge, the guarantees of institutional and individual independence, the impartiality of the Courts, as well as its corollary: the accountability of judges.

a. The principle of “the natural judge” and the exceptional courts

6. The principle of the “natural judge” is a fundamental guarantee for the right to a fair trial; however, exceptional courts still exist in Lebanon.
7. The Justice Council is one of these exceptional courts. The Council is competent to deal with cases threatening internal and external national security. It is a genuinely political tribunal, given that cases are referred to this tribunal on the basis of a discretionary Cabinet decree. This constitutes a clear violation of the principle of the separation of powers.

8. The Military Court¹ is another exceptional court that enjoys wide jurisdiction.² It is competent to try all cases where a member of the military is a defendant, as well as cases related to terrorism, etc. Civilians are often tried in this Court. The majority of the Court's judges are army officers and officers from other security agencies.

9. However, in October 2014, the Minister of Justice (MoJ) Ashraf Rifi declared his support for abolishing the Military Court or at least restricting its jurisdiction to military cases.

10. Religious courts are still competent to rule on litigation concerning personal status and family matters.

b. Institutional independence

11. Institutional independence refers to the judiciary's independence from any interference, influence, or pressure from other branches of power (the executive or legislative).

Judicial Courts

12. The executive still plays a key role in appointing and transferring judges in judicial courts.

13. The appointment or transfer of judges is decided by a Cabinet decree. First, the High Judicial Council (HJC) and the MoJ agree on a proposal to appoint or transfer a judge. This is generally done on the basis of political and sectarian quotas. Then, the Cabinet confirms the proposal. In case of a disagreement between the HJC and the MoJ, the HJC is entitled to impose its own proposal by a reinforced majority of seven members. However, this prerogative remains ineffective, given that the President of the Republic and all concerned Cabinet members must then approve the proposal by decree. This means that the HJC must get the consent of all signatory executive authorities in order to put forward its own proposal of judge appointments and transfers.

14. As the authority in charge of safeguarding the proper administration of justice and the independence of the judiciary, the HJC should be consulted for any proposal of law or regulation related to the Judiciary (Art 5 § 7 of the law on the organization of the Judicial courts). However, in 2013, the Government submitted a draft law shortening judicial leaves without first consulting the HJC.

15. Regarding the selection of HJC members, the Taef agreement adopted the principle of election, which provides that a number of HJC members must be elected by judges.³ However, to date, eight of its ten members are still appointed directly or indirectly by the Executive, which renders the HJC's independence highly questionable. The two remaining members are elected by judges from the Court of

¹ Regulated by law no. 24 of 1968

² It is competent to see criminal matters involving members of the army, of the Internal Security Forces (ISF), of the General security, or civilians occupying functions in the Ministry of Defense and the Military court, as well as felonies relevant to national security or to the interest of the army, the ISF or the General security.

³ The Taif Agreement, ratified by the Lebanese Parliament on 5/11/1989, is considered to have put an end to the Lebanese civil war, and was the basis for to the amendment of the Constitution in 1990.

Cassation, and only the presidents of the Chambers of this Court are eligible for election. Thus, both the right to vote for HJC members and the right to be eligible for the position are highly restricted.

16. Other judicial institutions such as the Inspection Commission and the Institute of Judicial Studies are still directly supervised by the MoJ rather than the HJC.

Administrative Courts

17. The State Council Bureau is the equivalent of the HJC for Administrative Courts (which are competent to hear litigation against public entities). Members of this Bureau are not elected; thus, judges have no role in the selection process. Judges of the Administrative Courts are appointed by Cabinet decree.⁴

c. Individual independence

18. A judge's individual independence has two aspects. The first is external independence, which refers to a judge's freedom from outside interference, or influence and pressure from outside the judicial institution. The second is internal independence, which denotes a judge's independence from influence and pressure within the judicial authorities, including the HJC and the higher judges.

External independence

19. The law provides judicial institutions with weak guarantees against external influences and pressures. Institutional independence is therefore limited.

20. The legal framework does not recognize the principle of judges' irremovability.

21. The Criminal Code does not sufficiently safeguard the independence of the judiciary. It defines interferences in judges' work as an act of solicitation and only incriminates it as a petty offence (Article 419). Only when this solicitation is accompanied by the use of influence (Article 357), abuse of power (Article 371) or threats (Article 382), does it qualify as a felony or misdemeanor.

22. On November 17th 2014, two members of parliament and their armed bodyguards accompanied a defendant to his murder case hearing, held by an investigative judge in Tripoli. They did this in spite of the fact that such hearings are secret and closed to the public. The relevant authorities did not take action against this flagrant judicial interference and intimidation.

Internal Independence

23. While article 20 of the Constitution explicitly recognizes the independence of each judge, it does not proclaim equality between judges. This gap encourages hierarchical organization inside the judiciary.

⁴ View articles 6-7-8 and 9 of the State Council's statutes.

24. In creating a Secretariat for the HJC, Decree no. 11360 (April 24, 2014) concretely expanded the HJC's functions, including the powers of its president, beyond the limits of the law. The decree lists the Secretariat's non-exhaustive functions that remain vague and unclear, such as "monitoring judges' social and private affairs, as per their request and as assigned by the council" or "following media outlets". Most notably, the Secretariat was given competence to draft periodic reports on the judiciary's work, and judges are not able to challenge this periodical assessment. A judicial recourse against this decree was submitted on July 1, 2014.

25. In Lebanon, there are six regional courts of appeal. The chair of each court is competent to take administrative measures regarding the court's affairs, whether separately or jointly with the HJC or the MoJ, The law does not provide for a general assembly composed of all the court's judges, nor does it provide for any mandatory consultation inside the court. In 2013, the HJC established consultative commissions composed of judges elected by their peers in each regional court. However, the power of these commissions is still unclear, since they are purely consultative and subject to the will of the court's chairmen, who may refrain from consulting them

Fundamental Freedoms of Judges

26. Judges are still denied fundamental freedoms of expression and association, even though these freedoms are integral to the judiciary's independence. They are denied these freedoms on the basis of the law on public servants (article 15), the law on the organization of judicial courts (article 44 and article 132), and the duties and ethics related to the judicial function.

27. The Lebanese Charter of Judicial Conduct (2003) maintains that judges owe an "obligation of restraint" and ignores a judge's right of association and expression.

28. The HJC is granted the right to declare a judge unfit to fulfill his/her duties, after it has held a hearing; this right is granted by Article 95 of the law on the organization of judicial courts. The HJC's decision can be taken at any time and outside any disciplinary process. Furthermore, it is not subject to appeal or review. Thus the article violates a judge's right to defense and, further, violates his/her independence since it does not provide sufficient guarantee against arbitrary punishment. In 2013, one judge resigned after the HJC summoned him to a hearing on the basis of Article 95.⁵

29. The Disciplinary Commission's disciplinary process is secret; the judge is not allowed to publicize any of its proceedings.

d. Impartiality of tribunals

30. A tribunal's impartiality is measured both subjectively (based on the pre-formed opinions of the judge and his/her private interest in a case) and objectively (i.e. according to its apparent impartiality; a tribunal should offer sufficient guarantees to exclude any legitimate doubt in this respect).

⁵ See the press article in *Annahar* on October 15, 2013, entitled "The resignation of a judge after the usage of article 95 for the first time in the judicial history".

31. On this issue, the Military Court is the most worrisome. It is composed of one civilian judge and a number of army officers appointed by the military. It is also competent to try civilians. Therefore, there is legitimate reason to fear a lack of impartiality on the Court's behalf.

32. Judges are appointed on the basis of political and sectarian quotas, which also raises legitimate concerns regarding impartiality. All high ranked judicial positions are subject to very strict quotas, and this phenomenon has recently affected low judicial positions.

e. Accountability of Judges

33. Judge accountability is not sufficiently maintained. In a documented case in June 2013, the High Disciplinary Commission annulled a first instance ruling that dismissed a judge after he received a bribe; instead, the Commission decided to retrograde him.

34. The principle of transparency is crucial to the accountability process. However, the Disciplinary Commission does not publish its judgments, nor does it issue reports on its activities, making it impossible for citizens to monitor its work.

35. Moreover, the Inspection Commission should be directly linked to the HJC and not to the Executive in order to guarantee that judges maintain their independence.

II. Violation to the right of a “due process”

a. Violation of the right to appear before a court of law and the right to access justice

36. Lebanon does not have a state legal aid system, hindering low-income individuals from pursuing their right to resort to court.

37. The general prosecution has been following a practice that prevents foreigners from appearing before a judge and benefitting from a fair trial: they have given the General Director of the General Security (GDGS) the ability to deport foreigners before bringing them before the Court. In 2013, around 92% of court decisions taken by the first instance courts of Beirut, Baabda and Jdeidet el Metn in migrant domestic worker cases were issued “in absentia” and hence violated the defendant's right to be heard in person.

b. Denial of justice

38. Arbitrary detention is still an on-going practice in Lebanon. It is mainly used against migrants and foreigners. The GDGS often refuses to implement court decisions that order the detainees' immediate release and, in the majority of cases, keeps migrants detained until they are deported.

c. The right to be tried “within a reasonable time”

39. Lebanese law sets specific delays in criminal and civil cases; however, Lebanese courts do not respect timely procedures. Labor courts, which are under legal obligation to speedily render their decisions, still take three years on average in Beirut and five years in Mount Lebanon. The same applies to criminal courts. Migrant domestic workers charged with minor offenses (such as failure to renew residence permits) face trials that take two years to be finalized, on average.

d. The right to “equality of arms” and the right not to be compelled to testify against oneself

40. According to Article 47 of the Lebanese Criminal Code, evidence obtained under torture should annul the interrogatory. So far, Lebanese courts have failed to annul interrogatories and cases built on evidence obtained from torture. Police officers are rarely indicted for committing acts of torture. The CAT’s latest report on Lebanon concluded that the police systematically resort to torture, especially against marginalized groups.

e. Presumption of innocence

41. In practice, the principle of presumption of innocence is negated by long pre-trial detentions, since these have become the rule. In drug-related cases, 90% of individuals arrested on consumption charges are kept in prolonged preventive detention.

42. A pattern has emerged in cases of migrant domestic workers prosecuted for theft. In a significant number of these cases, the court disregarded the domestic worker’s presumed innocence, charging her and indicting her with theft based only on the employer’s allegations.

f. The right to the execution of sentences

43. The notion of a fair trial entails the right to the execution of sentences,⁶ This right guarantees the effectiveness of the right to access to justice. However, immunity against execution, granted to the State and other public entities, poses an obstacle to this right.

44. There is no mechanism that enables the enforcement of court judgments against public entities.

45. In cases filed by refugees in 2010 and 2011, the Lebanese authorities persistently refused to implement court rulings that ordered compensation for unlawful detention.

g. The right to a second degree tribunal

⁶ See ECtHR, *Hornsby v/ Greece*, March 19, 1997, no. 107/1995/613/701.

46. Another core guarantee of the right to a fair trial is the right to have a sentence reviewed by a second-degree tribunal (Art 14-5 of the ICCPR).

47. However, a convicted person has no right to appeal the Justice Council rulings; the Council is competent in cases of particularly dangerous criminal offences against the State.

48. Law no 227/2000 created first instance administrative tribunals in Lebanon. These tribunals have not yet been established, thus depriving citizens of their right to a second hearing in their litigation against the State and public entities.

Recommendations

1. Abolish the Justice Council and restrict the Military Court's jurisdiction to exclusively military affairs.
2. Judges should elect at least the majority of the members of judicial bodies in charge of the administration of justice, such as the High Judicial Council and the State Council Bureau. Their members should also include non-judges in order to avoid corporatism.
3. Recognize the principle of judge irremovability, and grant the High Judicial Council competence to appoint, promote and remove judges without a Cabinet decree; these decisions should be based on objective criteria and follow transparent procedures.
4. The High Judicial Council rather than the Ministry of Justice should supervise judicial institutions, including the Inspection Commission and the Institute of Judicial Studies.
5. Incriminate interference in the judiciary as a misdemeanor.
6. Judicial institutions such as the High Judicial Council's Secretariat should be established by virtue of laws adopted by Parliament. This should be done with the aim of strengthening their independence from other powers and safeguarding judges' internal individual independence. Decree no. 11360 of April 24, 2014 should be annulled.
7. Create general assemblies at the level of each regional court to enable all judges to participate in the management and improvement of court affairs.
8. Reaffirm that judges have the right to fundamental freedoms of association and expression.
9. Abolish article 95 of the law on the organization of judicial courts to ensure a judge's right to defense and secure his/her right to be heard in any disciplinary pursuit or evaluation process.
10. Activate judge accountability and improve transparency in disciplinary matters. The Disciplinary Commission should publish periodical reports on its activities.

11. Respect and properly implement the right to due process. Individuals should be able to benefit from a state-provided legal aid system and should be brought promptly to court.
12. Ensure that Courts render their verdicts in a timely manner.
13. Ensure that courts declare evidence obtained under torture as inadmissible.
14. Ensure that courts respect the principle of the presumption of innocence and avoid prolonged pre-trial detention.
15. Implement law no. 227/2000 and establish first-instance administrative tribunals.
16. Ensure that court decisions taken against public entities can be enforced.