



Draft National Action Plan to Promote the Independence of the Judiciary in Lebanon

November 2022

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1. Introduction

For States to guarantee the rights and freedoms of those subject to their jurisdictions, they must respect the principle of separation of powers and ensure the independence of the judiciary. Since its independence, Lebanon has not yet witnessed a functioning independent judiciary. Although there have been some few judges who have acted independently, their individual efforts have not replaced the need to institutionalize the independence of the judiciary.

As organizations active in the field of defending fundamental rights and freedoms, we have documented a downward trend in the independence of the judiciary, with a sharp increase in the frequency of intervention by politicians, clerics and other special interests in the work of the judiciary.

To protect against such interference and guarantee the independence of the judiciary, structural reforms and amendments to the laws and the Constitution are needed. Accountability must be ensured for those who interfere in the work of the judiciary and or allow such interference.

Through this Action Plan, and the proposed roadmap for a national campaign for the independence of the judiciary, we want to support and push forward existing efforts that aim to reform and strengthen the independence of the judiciary.

1.1. Members of the Core Group

Who are the members of the core group?

1.1.1. The Lebanese Center for Human Rights (CLDH):

The Lebanese Center for Human Rights (CLDH) is a local Lebanese non-profit, non-political organization founded in Beirut in 2006. It is a subsidiary of the Franco-Lebanese Movement SOLIDA (Support for Lebanese Detained Arbitrarily), which has been active since 1996 in the fight against arbitrary detention, enforced disappearances, impunity and serious human rights violations. CLDH is a founding member of the Euro-Mediterranean Federation against Enforced Disappearance (FEMED), a member of the Euro-Mediterranean Network of Human Rights (EMHRN) and a member of the SOS Torture Network of the World Organization against Torture (OMCT) and the International Federation for Human Rights (FIDH).

1.1.2. Alef - Act for Human Rights:

A non-profit association that seeks to promote respect for human rights and fulfilment thereof as a cornerstone of social, economic and political development. Through its comprehensive approach to human rights monitoring, defence and education, ALEF aims to complement and direct all efforts towards achieving an influential human rights circle and lasting peace.

1.1.3. Restart Center for Rehabilitation of Victims of Torture and Violence:

Restart is a non-governmental organization active in the field of rehabilitation of victims of organized violence and torture. It is a member of the International Rehabilitation Council for Torture Victims (IRCT) in Copenhagen since 2003.

Restart's vision is based on a human rights approach and the concept of safeguarding the dignity and safety of individuals who are victims of violence, torture, and armed conflicts. The main objective of the Center is to reduce and prevent torture. It has expanded its human rights efforts and strengthened its awareness-raising, capacity-building, promotion, and advocacy to end impunity.

The Center provides services for the rehabilitation of prisoners, former prisoners, refugees, and war and armed conflicts trauma survivors, in a comprehensive and integrated manner, through its multidisciplinary team that provides psychological, social, health, and legal services, and documents torture.

1.1.4. International Commission of Jurists (ICJ):

Since 1952 the ICJ has performed a unique and prominent role as a nongovernmental organization (NGO) defending human rights and the rule of law worldwide. The ICJ's peerless reputation rests on these pillars:

- 60 eminent judges and lawyers – from all parts of the world and all legal systems – with unparalleled knowledge of the law and human rights
- Cooperating with governments committed to improving their human rights performance
- Effective balance of diplomacy, constructive criticism, capacity building, and if necessary, 'naming and shaming'
- Unmatched direct access to national judiciaries implementing international standards and improved legislation impacting millions
- Guiding, training, and protecting judges and lawyers worldwide to uphold and implement these standards
- Working for access to justice for victims, survivors, and human rights defenders, in particular from marginalized communities

1.1.5. Proud Lebanon:

Proud Lebanon is a non-profit, non-religious, non-political and non-partisan organization that aims to promote sustainable social and economic development in Lebanon and the region and works to achieve protection and equality of marginalized groups through community service activities.

Proud Lebanon is dedicated to building a healthy and empowered community in Lebanon and the region, where people are effectively empowered and participate in democratic processes that affect their lives and communities.

1.1.6. Tripoli Bar Association:

The Tripoli Bar Association is the syndicate representing lawyers who are compulsorily registered on its list and who are exclusively granted by law the right of representation and pleading before the courts, and the duty to achieve justice by providing legal opinion and defending rights in accordance with the provisions of Law No. 8/70 governing the legal profession, as well as amendments thereof, the provisions of the statute of the syndicate and the code of conduct for counsel.

The Tripoli Bar Association was established by the decision of the Administrator- General of 1921, which regulated the practice of the legal profession among its current members and individuals seeking to join the independent judiciary and established an administrative committee of the Bar Association at the Court of Cassation composed of a president and four members.

2. Background to the National Plan for the Independence of the Lebanese Judiciary

A. Context and Objectives

The Action Plan aims to provide a detailed analysis of the Lebanese judicial system, while also tackling the main challenges affecting its independence and impartiality. To this end, the Plan analyses the composition, competencies, and role of the Higher Judicial Council, as well as the interference of the executive in managing the career of judges. For example, judges are left vulnerable to arbitrary transfers as judicial transfers are not based on clear and transparent criteria or on unified procedures.

Additionally, there are challenges related to the shortage in the number of judges, the inequality in distribution among judicial categories and ranks, the lack of financial resources, capabilities and logistical means, notably electronic and digital means, the shortage in the number of legal clerks and assistants, and the need for continuous training for both tenured

and trainee judges. It is worth noting that many judges have remained in their respective positions, including in the Public Prosecution and investigation departments, as there is no mechanism available to evaluate these judges and assess the quality of their performance and skills. Finally, there are no provisions in Lebanese laws regulating the establishment and the functioning of the professional associations for judges, the judicial inspection service, as well as the relationship between judges and the Higher Judicial Council.

The plan aims to promote the independence of the judiciary in Lebanon by proposing several reforms to address the above-mentioned challenges. It should also serve as a means of technical support for Lebanon to help it fulfil its obligations under International Human Rights Law.

B. Methodology

In addition to the experience and expertise of the core group members, the plan is based on the discussions that have taken place during targeted workshops held on June 29 and 30, and on July 5 and 6, 2022, in which judges, lawyers and civil society organizations participated. The plan is also based on extensive consultation sessions with experts and specialists, including former heads of the Higher Judicial Council, ministers of justice, presidents of bar associations, members of the Parliament (MPs) and other stakeholders.

C. Action Plan

The plan is divided into five sections. The first section analyses the framework and organization of the judiciary in Lebanon; the second section addresses the obstacles that impede the independence and impartiality of the judiciary in Lebanon; the third section tackles the political, religious and media interference and influence in the Judiciary and sheds light on judicial corruption; and the fourth section summarizes the opinions of experts and specialists consulted in this process and their views on promoting the independence of the Judiciary in Lebanon.

The plan concludes with the formulation of reform priorities that support the promotion of the independence of the Judiciary. It also presents detailed recommendations addressed to the Lebanese authorities, the United Nations, the European Union and other relevant stakeholders, including judges, MPs and civil society actors.

3. Section I: Organization of the Judiciary in Lebanon

The independence of the judiciary is a prerequisite and a key guarantee for the establishment of the rule of law and the protection of human rights. Without an independent judiciary, rights and freedoms can be subject to violation and abuse, whether by the executive, the legislature, or even individuals. Given the importance of an independent judiciary in curbing the abuse of rights and protecting them, many international treaties and charters have recognised and protected the right to an independent judiciary.

International Standards

A. International Instruments

1. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights stipulates in Articles 7 to 11 the principles of equality before the law and the presumption of innocence. Article 10 provides that: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of their rights and obligations and of any criminal charge against them." In addition to the Universal Declaration of Human Rights, Lebanon has acceded to six of the seven UN conventions on human rights, including the International Covenant on Civil and Political Rights.

2. The International Covenant on Civil and Political Rights

Lebanon acceded to the International Covenant on Civil and Political Rights in 1972. Article 14 of the Covenant states, "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

3. Other Human Rights Treaties Ratified by Lebanon

- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW);
- The United Nations Convention Against Torture (UNCAT);
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT);

- The United Nations Convention on the Rights of the Child (UNCRC) (Lebanon has ratified only one of the two Optional Protocols).

Table of Treaties Ratified by Lebanon:

Treaties	Status	Date of Signing	Date of Ratification/ Accession	Date of Entry into Force	Reservations
The International Covenant on Civil and Political Rights	Acceded		3/11/1972	23/3/1976	--
The International Covenant on Economic, Social and Cultural Rights (ICESCR)	Acceded		3/11/1972	3/1/1976	--
The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)	Acceded		12/11/1971	12/12/1971	Article 22
The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)	Acceded		21/4/1997	16/4/1997	Article 9 (Para. 2) and article 6 (Para. 1) (c-e-f) and article 29 (para.1)
The United Nations Convention	Acceded		5/10/2000	4/11/2000	--

Against Torture (UNCAT)					
The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)	Ratified		26/8/2008	22/12/2008	--
The United Nations Convention on the Rights of the Child (UNCRC)	Ratified	26/1/1990	14/5/1991	13/6/1991	--
The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPAC)	Signed	11/2/2002			
The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	Ratified	10/10/2001	8/11/2004	8/12/2004	

4. Treaties Ratified by Lebanon and National Law

In accordance with the provisions of the preamble to the Lebanese Constitution and Article 2 of the Code of Civil Procedure, which gives precedence in the application of the provisions of international treaties over the provisions of ordinary law, treaties ratified by Lebanon shall enter into force in domestic law immediately following their publication in the Official Gazette.

The courts must therefore apply the human rights treaties ratified by Lebanon every time domestic legislation runs counter to these treaties.

Non-binding International Instruments

1. United Nations' Principles

- The Basic Principles on the Independence of the Judiciary were developed to help states ensure and promote the independence of the judiciary and are universally recognized. Furthermore, they have become a useful tool for relevant international bodies and non-government organizations to evaluate judicial bodies. The basic principles address the following topics: independence of the judiciary, freedom of expression and association, qualifications, selection and training, conditions of service and duration of office, professional confidentiality and immunity, disciplinary proceedings, as well as suspension and dismissal.

2. Other Principles and Guidelines

A number of international associations and organizations participated in the drafting and adoption of principles that should foster the effective application of the concepts of independence and impartiality, specifically, including the Bangalore Principles of Judicial Conduct, adopted by the Judicial Group to support and strengthen the Judiciary.

Internal Standards on the Independence of the Judiciary

The Lebanese Constitution and the 1983 Law Decree on the judiciary hold legislative value in regulating the independence, integrity, and impartiality of the Judiciary.

A. The Lebanese Constitution

Article 20 of the Lebanese Constitution of 23 May 1926 provides: "The Judicial Power is vested in the Courts at various levels and jurisdictions, within a system prescribed by the law which provides the necessary guarantees to the Judges and litigants. Conditions of judicial guarantee and its limits are prescribed by the law. Judges are independent in exercising their functions. Decisions and judgements are issued by all the courts and are executed in the name of the Lebanese People."

This constitutional text, approved almost one hundred years ago, highlights how the Lebanese legislature granted independence to individual judges in the exercise of their functions, rather than institutional independence to the entire judicial system. In practice, however, the individual independence of judges was undermined by the lack of institutional independence and by the executive interference in managing the career of judges.

Such interference of the executive in almost all stages of a judge's career, including the appointment, promotion, transfer and the disciplining of judges has eroded public trust in the integrity and the independence of the judiciary to bolster the belief that that in order to secure protection of rights, individuals must depend on political affiliation rather than judiciary.

B. Texts of Legislative Value

Some laws clearly recognize the independence of the judiciary, including:

- Code of Civil Procedure

Article 1 of the Code of Civil Procedure enshrined the principle of the **independence of the judiciary**, stating: "The Judiciary is an independent authority vis-à-vis other authorities in investigating and adjudicating cases. Its independence is not limited by any restriction not provided for in the Constitution."

- Law on the Judiciary (Legislative Decree No. 150 of September 16, 1983)

Article 4 of Legislative Decree No. 150 of 16 September 1983 stipulates that the Higher Judicial Council "ensures... the proper functioning of the Judiciary, preserving its dignity and independence...". Article 44 of the same law states: "Judges are independent in the exercise of their functions and can only be transferred or dismissed from the Judiciary in accordance with the provisions of this law."

However, there are other provisions of this law that call into question the principle of the independence of the Judiciary because they allow for the interference of the executive in the judiciary. According to the Law on the Judiciary, eight of the ten members of the Higher Judicial Council (Article 2), including the First President of the Court of Cassation (Article 26), the General Prosecutor of the Court of Cassation (Article 31), and the President of the Judicial Inspection service (Articles 100 and 101) are appointed pursuant to a decree issued by the Council of Ministers upon the proposal of the Minister of Justice. Moreover, Article 45 of the same Law enshrines the subordination of public prosecution judges to the authority of the Minister of Justice. Furthermore, Article 132 stipulates that the civil employees' statute shall apply to judges.

4. Section II: Obstacles to upholding the Independence of the Judiciary

The independence of the judiciary is currently the subject of intense debate in Lebanon as it is being threatened externally and internally, directly or indirectly, by several political parties, groups, institutions and governmental bodies. According to a United Nations' survey on corruption, six out of ten respondents believe that the Lebanese Judiciary is not independent when it comes to decision-making. Some cases that have been widely covered in the media have further contributed to undermining the public's trust in the judiciary.

First: Obstacles related to the Higher Judicial Council

A. Composition of the Higher Judicial Council

The current composition of the Higher Judicial Council is the result of the amendment of the Law on the Judiciary in 2001 which approved the principle agreed upon in the 1989 Taif Agreement, regarding the direct election of a "number" of members of the Council from judges. Since the Taif Agreement did not originally specify the number of elected judges, the executive has deliberately limited the scope of these reforms and set the number of judges that are elected to only two out of ten. This amendment has been criticized for the limited number of elected members of the Council, as well as for only allowing the heads of chambers at the Court of Cassation to run for these two seats, and for only allowing the members at the Court of Cassation to elect these two members. Hence, the 2001 amendments to the law of the Judiciary were not enough to secure the fundamental reforms that are needed to uphold the independence of the judiciary.

B. Competence of the Higher Judicial Council

The Higher Judicial Council ensures the independence of the judiciary, and the law grants it broad competencies in the administration of judicial affairs. The Minister of Justice also enjoys few competencies that allows him to interfere in the administration of judicial affairs in specific instances.

In addition to the decisions made by the Higher Judicial Council and the opinions it expresses in the cases provided for by law and regulations, it is entrusted with other powers, including participating in the composition of the Disciplinary Council for judges.

However, the most important competence of the Higher Judicial Council is managing individual or collective judicial transfers, promotions, and assignments; and submitting them to the Minister of Justice for approval. Judicial rotation, which refers to the transfer of judges or

their assignment to new jurisdictions come into effect only after the approval of the Minister of Justice. When the Minister of Justice and the Higher Judicial Council have different opinions, they hold a joint session to review the points of disagreement. If the discord persists, the Higher Judicial Council reviews the matter again to decide on it and makes the decision by a majority of seven members; decisions in this regard are final and binding. In principle, this decision must be issued by decree upon the proposal of the Minister of Justice.

The pressures resulting from political interference continued to obstruct the implementation of decisions made by the Higher Judicial Council regarding the judicial rotation. The situation worsened in 2019 when judicial rotations were frozen, and are still to this day, awaiting the signature of the President of the Republic for them to be valid.

C. Lack of Financial Independence for the Higher Judicial Council

The budget allocated to the Lebanese Ministry of Justice to ensure the functioning of the judiciary is between 7% and 8% of the general budget of the state, and the budget of the Judiciary is part of the overall budget of the Ministry of Justice. As such, the Ministry of Justice has the power to manage financial matters relating to the judiciary. The executive authority is responsible for the administrative matters of the courts, and the Higher Judicial Council does not have the power to set the judiciary's budget nor to administer courts. Thus, the judiciary does not enjoy any financial or administrative independence.

D. Assessment of the Higher Judicial Council

The Higher Judicial Council has faced criticism over the years, especially with respect to its lack of independence and its role in preparing and managing judicial rotations, including lack of transparency and clear and objective criteria for such rotations.

Given the confessional nature of the Lebanese political system, the composition of the Higher Judicial Council based on equality between Muslims and Christians renders its membership vulnerable to external pressures, including the pressure to appoint judges that are close to or affiliated with certain religious groups, to important positions, without necessarily examining their qualifications and competences.

Furthermore, judicial rotations are not based on a review of the individual file of each judge, but rather on the opinion of the First President to whom the relevant judge reports. It seems

that the individual files of judges are not organized according to specific criteria. Some judges confirmed that their file only includes the decree of their appointment, even though they participated in training courses in Lebanon and abroad at the request of the Ministry of Justice and obtained certificates. This means, that at the time of their promotion or transfer, the Higher Judicial Council will not have access to the information which showcases the abilities of each judge.

Experience has also shown that the promotion of judges by the Higher Judicial Council is not only based on criteria of seniority or merit, but also based on cronyism and political considerations. The absence of a clearly defined legal text and regulations, which sets objective criteria and transparent procedures that governs the career of judges has drawn criticism from many different judges.

Second: Career of Judges

A. Selection of Judges

Judges are selected through an entrance exam to the Institute of Judicial Studies. The Minister of Justice, whenever necessary, and after consulting with the Higher Judicial Council, determines the number of trainee judges to be appointed in accordance with the provisions of Article 59 of Legislative Decree No. 150/83.

Article 68 of the same decree allows for the appointment of trainee judges without entry exams from among holders of a state doctorate in law, by a decree issued upon the proposal of the Minister of justice, and after approval of the Higher Judicial Council.

The Higher Judicial Council organizes the entrance exam to the Institute and determines the subjects and the average entry scores. It also appoints the examining committee, which is exclusively made up of judges. The Higher Judicial Council examines the applications and selects the candidates admitted to sit the exam.

The admission tests include oral and written exams assessing intellectual and legal qualifications and knowledge. The candidates' personality, ability to perform their judicial duties, and integrity are also assessed through individual interviews. Successful candidates are appointed by a decree issued by the Minister of Justice and after the approval of the Higher Judicial Council. In this context, it is necessary to mention the need to support vocational specialization by promoting the Institute of Judicial Studies so to improve the judges' selection criteria.

B. Training and Appointment of the Judges

Trainee judges are educated at the Institute of Judicial Studies for a period of three years, which includes theoretical and practical lessons, including in legal sciences, that introduce trainee judges to the existing judicial culture and prepares them to assume their position in the Judiciary. The trainee judges participate in trial and deliberation sessions and while respecting the confidentiality of the cases, study the files, and prepare draft judgments that they submit to the President of the Court for evaluation. The curriculum is divided into semesters, each ending with an examination covering the subjects that were taught throughout. The examination mark is completed with a mark evaluating the training and general behaviour of the trainee judge.

After three years of training, the Board of Directors of the Institute of Judicial Studies compiles the graduation list and submits it with proposals to the Higher Judicial Council. The latter declares the competence of the trainee judges as tenured judges or declares their incompetence (Article 70 of the Law on the Judiciary). Appointments are then made by virtue of a decree issued upon the proposal of the Minister of Justice (Article 71 of the Code of the Judiciary).

The Institute of Judicial Studies is not independent and does not enjoy sufficient freedom from political interference and influence. It also suffers from a lack of material, logistical, financial, and human resources, as well as preparation programs with little efficacy. Trainee judges should be thoroughly prepared for the professional career of being a judge, achieve high qualifications and always be impartial and competent. They should therefore benefit from permanent and continuous training throughout their employment, enabling them to keep pace with new developments.

Several judges consulted in the process of developing the action plan have called for the modification of some aspects of the basic training of judges, both in form and content, and to establish a continuous legal education system. This requires improving the method of selecting candidates and updating the curriculum, in a way that makes the work of the Institute of Judicial Studies more effective.

The two main objectives of the reform of the Institute of Judicial Studies are to improve the process of selecting judges, by making it independent and free from political influence, and to ensure continuous training and qualification for tenured Lebanese judges.

C. Ranks, Retirement and Salaries

Judges are subject to a system of ranks. After completing their studies at the Judicial Studies Institute, trainee judges declared competent are appointed as tenured judges of the lowest rank. They are then automatically promoted to a higher rank every two years.

Judges are appointed to various courts according to their rank, with no other distinction between judges, regardless of their duties, specialization, or experience. The law does not determine any objective criteria for evaluating judges, or rules that should be followed for the judicial rotation. The way the Higher Judicial Council handles appointments and promotions, especially in the absence of objective criteria, has drawn a lot of criticism because judges have no guarantees.

- Retirement

A judge must retire at the age of 68.

- Salaries

Lebanese judges receive a monthly salary, in addition to a quarterly bonus paid by the Judges Mutual Fund every three months. At the time of writing, judges' salaries and bonuses are extremely low because of the collapse of the national currency and the overall deteriorating economic situation.

Financial stability is needed to protect judges from bribery attempts, but salaries in general are very low. As a result, a high percentage of judges have abstained from working for a long time now, and no serious initiative has been taken by the executive authority to address this situation.

D. Independence and integrity of the Judges

The independence of the judiciary cannot be achieved without judges who embodies the values of impartiality, integrity, and competence. They must be able to pass judgments in accordance with the law, and without any internal or external influence, exercised by any authority or individual, regardless of the purpose behind this influence, whether political, social, partisan, functional, economic, or otherwise.

Third: Disciplinary Action

The Judicial Inspection Service, in accordance with the provisions of Article 98 of the Law of the Judiciary, ensures the proper functioning of the Judiciary, the work of judges, and the disciplinary competencies provided for in the law.

A. Judicial Inspection

The Judicial Inspection service is composed of a President, four inspectors general and six inspectors, all of whom are appointed by a decree issued by the Council of Ministers upon the proposal of the Minister of justice. The committee operates under the supervision of the Ministry of justice.

The President and the inspectors general make up the service's Council, which meets at the invitation of the President. It is up to the Council to refer files to the Disciplinary Council whenever necessary, and it may suggest to the Minister of Justice to dismiss the judge referred to the Disciplinary Council.

The appointment of the President of the Judicial Inspection service and its members by, and their subordination to, the executive allows for political interference in a way that negatively affects its decisions. In practice, the service's Council is barely operating.

B. Disciplinary Council

In accordance with the provisions of Article 83 of the Law on the Judiciary, judges are referred to the Disciplinary Council for "every violation of duties and any act that affects honour, dignity or ethics." In particular, violation of duties includes failure to attend hearings, delay in deciding on a case, failure to set a specific date for the rendering of a judgment after deliberation, favouritism between the litigants, and the disclosure of confidential deliberations. The law does not set a specific list of errors determining their gravity or the appropriate penalties for each, which leaves room for arbitrary decisions.

1. Appointment and Composition of the Disciplinary Council

The Disciplinary Council is composed exclusively of judges. The chair is a President of Chamber at the Court of Cassation. The members also include two Presidents of Chamber at the Court of Cassation, appointed by the President of the Higher Judicial Council at the beginning of each judicial year. The President of the Judicial Inspection service, or his deputy among the members of the service, acts as the Government Commissioner to the Council.

In this context, no authority should be given to the Minister of Justice to suspend a judge. Provided the power to immediately suspend judges remains, it must be vested with the Higher Judicial Council or the Disciplinary Council upon the request of the Judicial Inspection service and until a judgment is issued.

2. Procedures Followed by the Disciplinary Council

The disciplinary procedure provides for some safeguards for judges facing disciplinary action. The President and members of the Disciplinary Council are subject to grounds for recusal and disqualification in accordance with the conditions applicable to judges. The right to a defence is guaranteed by law, and procedures before the Disciplinary Council are adversarial. Furthermore, the judge facing disciplinary action has the right to seek the assistance of one lawyer or one fellow judge. The trial is conducted in secret, and decisions must be reasoned.

Additionally, the decision of the Disciplinary Council is subject to appeal by the concerned judge or by the President of the Judicial Inspection service before the Supreme Judicial Discipline Commission, which is composed of the President of the Higher Judicial Council or his deputy, as president, and four members appointed by the Higher Judicial Council at the beginning of each judicial year.

3. Disciplinary sanctions

Disciplinary sanctions can include warning, censure, delay in promotion for a period not exceeding two years, demotion, suspension from work without pay for a period not exceeding one year, dismissal from service, and removal without compensation or retirement pension.

Aside from disciplinary procedure, the President of the Higher Judicial Council may, when necessary, reveal their observations to any judge. The Public Prosecutor at the Court of Cassation and the First President at the Court of Cassation may also address remarks to the judges under their oversight.

Finally, according to the recent amendment to the Code of the Judiciary, the Higher Judicial Council can decide at any time that the tenured judges are not qualified to carry out their judicial duties, as long as eight out of its ten members agree.

5. Section III: Political, Religious and Media Interference and Influence at the Institutional Level

First: Political Interference in the Work of the Higher Judicial Council and the Courts

The interference of political actors in the functioning of Lebanese courts has not stopped. According to a statement by a former president of the Higher Judicial Council during one of the consultation meetings: "The independence of the Judiciary in Lebanon is an illusion; the Judiciary is just a tool in the hands of politicians who interfere in it."

A. In the Work of the Higher Judicial Council

The interference of the executive authority in the work of the Higher Judicial Council is significant, given the important role that the Council plays in the Lebanese judicial system. The crisis resulting from the failure to issue a decree on judicial rotation in 2019, and before that in 2006, shows the extent to which political pressure and interference undermines the work of the Judiciary, especially the Higher Judicial Council. Since 2019, The President of the Republic has refrained from signing the decree on judicial rotation as prepared and approved unanimously by the Higher Judicial Council and signed by the Prime Minister and the Minister of Justice.

B. In the Work of the Courts

The executive interferes not only with the normal operation of the courts, but also in the appointment of judges in these courts.

Second: Religious and Media Influence

A. The Influence of Confessional and Religious Authorities

The principle of confessional representation applies to the Judiciary, although the Constitution stipulates that confessional representation in the Judiciary must be abolished (Article 95 of the Lebanese Constitution).

The distribution of senior judicial positions is done on a confessional basis. Indeed, the President of the Court of Cassation, who also chairs the Higher Judicial Council, is a Maronite Christian and the Public Prosecutor at the Court of Cassation, who is also the Vice-President of the Higher Judicial Council, is a Sunni Muslim. As for the first presidents of the Courts of Cassation and the public prosecutors, they are distributed on a confessional basis. This

situation leads to interference, as political and confessional officials try to impose the appointment of judges from a similar religious group, in certain positions. This results in interference in the work of the judiciary and in the violation of the principle of separation of powers.

Confessional and religious affiliations form a basis for influencing judges, especially through the way they are appointed, as the leader of each confession will use confessional balance as a reason to interfere in the appointment of judges. The situation is exacerbated by the fact that confessional considerations are closely linked to political considerations. Although confessional affiliation does not necessarily mean that judges are biased towards litigants, this situation is negatively affecting the judiciary.

B. The Influence of the Media

The judiciary, including individual judges, have been subjected to criticism in relation to specific rulings and decisions they made. Prosecution authorities have taken legal actions against those who made such criticism, whether individuals or media organisations, so often on charges related to undermining the prestige of the judiciary.

It has become clear that the Lebanese media has taken it upon itself to hold the judiciary accountable for all its failings. However, on many occasions, the principle of confidentiality of investigations was violated, especially in penal cases that received great media coverage. Such violations are often unpunished.

Third: Judicial Corruption

As the exploitation of a public office for private interest, corruption undermines justice, as it deprives victims and defendants of the right to a fair trial. Judicial corruption, which may relate to financial, material, or immaterial interests (such as political or professional ambitions, etc.), includes any undue influence on the impartiality of the judicial process by any actor in the judicial system.

Judicial corruption can occur at all stages of judicial proceedings, from pre-trial procedures (inquiries, preliminary investigations...etc.) to rulings.

Types of Judicial Corruption

Among the many types of corruption that affect the judiciary in Lebanon are political interference in judicial proceedings and bribery.

1. Political Interference in Judicial Proceedings

A lenient judiciary allows those in positions of power to resort to deceptive and illegal means, including embezzlement, favouritism, nepotism, and clientelism, or to make political decisions that run counter to the law and evidence. Corruption refers to tempting a judge or manipulating judicial appointments, salaries, and working conditions. In order to avoid this type of corruption, it is necessary to adopt constitutional and judicial mechanisms that protect judges from arbitrary decisions which affect their careers, including dismissal or sudden transfer. This protection, as mentioned above, is not available in Lebanon.

Political corruption forces the judiciary to relinquish its competences and responsibilities in major cases, such as illegal enrichment, ministers' accountability, protection of the environment, expired foodstuffs and medicine, or toxic waste. The latest example of this is the case of the Beirut port explosion. In many similar cases, prosecutions did not take place, and major crimes and scandals that shook the Lebanese public opinion remained untried.

Political, religious, and confessional interference have also paralyzed the work of the Judicial Inspection Service in corruption cases involving judges. In cases of flagrant corruption and bribery that cannot be concealed, the Higher Judicial Council usually asks the concerned judges to submit their resignation without initiating any criminal prosecution, and pays them legal compensation, contrary to what is required by law. Even if disciplinary action is taken against some judges, decisions are sometimes not implemented. Moreover, outside the framework of disciplinary proceedings, there has not been any investigation or criminal prosecution against a judge in Lebanon since the country gained its independence, despite many instances of bribery, forgery and other unlawful activities.

2. Bribery

Bribery can occur at any stage of the judicial process and include all judicial personnel. Judges can accept bribes in order to delay or expedite the resolution of a particular case, to resolve a case in a particular way, to validate or overturn a decision, or to influence other judges. Litigants who doubt the integrity of the judges and the fairness of the trial end up resorting to bribery to reach their own goals.

Restoring the public's trust in the judicial system goes beyond the role and work of NGOs, which monitors and analyses the quality of judicial procedures, assessing the extent of corruption, and putting pressure on the concerned authorities. It is up to the Lebanese government to prove that it can enact reforms and implement them to eradicate corruption. To this end, an effective anti-corruption policy requires ensuring greater independence for judges and safeguarding it with effective mechanisms that stop undue influence and pressure on one hand and enhancing the accountability of judges on the other hand, which in turn also requires effective mechanisms.

6. Section IV: Experts' views on upholding the Independence of the Judiciary in Lebanon

On the Subject of: The composition and competence of the Higher Judicial Council, career of judges, judicial inspection, discipline, the Institute of Judicial Studies, judges' freedom of expression and association, the relationship with the Ministry of Justice, and the Code of Ethics.

Based on the extensive consultative sessions with the former presidents of the Higher Judicial Council, former ministers of justice, MPs, and presidents of the Bar; and in light of workshops conducted with judges, lawyers, civil society actors, and organizations on promoting judicial independence in Lebanon, the following views were expressed:

First: Relating to the Higher Judicial Council's Composition and Competencies:

Opinions on this topic are divided:

First opinion: emphasizes that judicial independence starts with the total exclusion of the executive from contributing by any means to the composition of the Higher Judicial Council or its competencies, therefore the Higher Judicial Council must be composed of judges only. The Council shall be composed of a President and judges that are elected according to a specific criteria and young judges shall be represented in the election process.

This opinion also confirms that the Judicial Council should prepare the judicial rotation, and the distribution of judicial work according to specific, clear and fair criteria, based on an objective assessment of performance. The rotation should be submitted to the Minister of Justice to be established by decree based. In the event of a divergence in opinion between the Minister of Justice and the Higher Judicial Council, a joint meeting shall be organized to consider different points of view. In case the discord persists, the Judicial Council shall consider the matter again to decide on it. The Higher Judicial Council shall then make its decision by the approval of the majority: seven of its members, and it shall be referred again to the Minister of Justice. The Council's decision in this regard shall be final and binding.

Second opinion: emphasizes that judicial independence is guaranteed when the appointment of members of the Higher Judicial Council is carried out without any involvement of the Minister of Justice. One or two members shall not be judges and shall be appointed for a period of six years, not renewable; while elected members shall be appointed for three years. As for judicial rotations, the first opinion is endorsed.

Third opinion: highlights that in the current situation amending legislative Decree No. 150 of September 16, 1983 is enough, as the amendments shall expand the selection process of

members of the Higher Judicial Council through elections and reform the judicial rotation process, as per the first and second opinions.

Second: Relating to financial independence

According to the consultations held, there are two opinions on this matter. First, that the Higher Judicial Council he must prepare its budget, and the second opinion proposes that the Minister of Justice prepares the budget, and the Higher Judicial Council may simply express their opinion on it.

Third: Relating to the transfer of Judges

There are two opinions on this matter:

One opinion is that judges shall not be transferred without their consent, while another opinion does not require the judge's consent in any instance, before transferring them.

Fourth: Relating to the Suspension of the Judges

One opinion emphasizes that suspending judges from their work is a decision that should be taken by the Higher Judicial Council upon the proposal of the Judicial Inspection service in urgent cases, and that the decision should be subject to appeal before an appellate body. The second opinion holds that suspending a judge remains a decision that falls under the purview of the Minister of Justice. Finally, the third states that suspending a judge is a decision that shall be taken by the Disciplinary Council to which the file is referred and based on the request of the Judicial Inspection service.

Fifth: Relating to the Assessment the Work of Judges

Both opinions on this matter emphasize the necessity of establishing independent, first instance and appellate committees, to be supervised by the Higher Judicial Council, to assess the work of judges. Their mission shall be defined, and their work should be carried out according to objective criteria and transparent procedures.

Sixth: Relating to Judicial Inspection

One opinion emphasizes that the Judicial Inspection service should be entirely independent from the Minister of Justice and the Higher Judicial Council. However, another opinion emphasizes that the Judicial Inspection can still operate under the oversight of the Ministry of Justice, noting, however, that subsidiary bodies shall be established in the governorates.

Seventh: Relating to Freedom of Expression, Assembly and Association of Judges

There are three opinions on this matter:

The first opinion emphasizes that judges, like other individuals, shall enjoy the right to freedom of expression, assembly, and associations, without any limits other than those necessary in a democratic society.

The second opinion finds it inappropriate to grant judges the ability to establish associations, rather, only one general body shall be established for judges, if it does not interfere with the competencies of the Higher Judicial Council.

The third opinion supports the right of expression, assembly, and association of judges, provided that their role is limited to cultural and scientific matters and that it does not interfere with the duties and competencies of the Higher Judicial Council.

Eighth: Relating to the Institute of Judicial Studies

There is more than one opinion on this matter:

The first opinion emphasizes that the Institute should be run by one director and one president. Moreover, the Higher Judicial Council shall appoint its president as the president of the Institute and the role of the president and the director should be defined clearly, and neither the president nor the director may issue any decision without the consent of the other.

The second opinion emphasizes that the Institute is one of the Ministry of Justice's entities, that it shall not be separated from the Ministry, and that the director of the Institute must be appointed by decree. This opinion states that this does not affect judicial independence. It also asserts that there should be only one director.

Third opinion emphasizes that it is impossible to achieve an independent judiciary without the establishment of an independent institute run independently and according to advanced plans to reach the goal of having qualified and competent judges.

Ninth: Relating to the Minister of justice's relationship with the Judiciary

Opinions varied about the role and competencies of the Minister of Justice related to the Judiciary.

The first opinion emphasizes that:

1. The judiciary's budget proposal shall be developed by the Higher Judicial Council;
2. Suspending the work of judges and transferring them shall fall under the purview of the Higher Judicial Council and not under the purview of the Minister of Justice;
3. Decisions related to judicial rotations should fall under the purview of the Higher Judicial Council without interference from the Minister of Justice or another member of the executive;
4. Appointing the director of the Institute of Judicial Studies does not fall under the purview of the Minister of Justice, but rather under that of the Higher Judicial Council;
5. Granting judges approvals for media interviews, travel, participation in conferences and seminars, and for any opportunity that may strengthen scientific capabilities falls under the purview of the President of the Higher Judicial Council and not under the purview of the Minister of Justice;

6. The Judicial Inspection should be an independent body not connected to the Ministry of justice nor the Higher Judicial Council;
7. The Minister of Justice shall not have the right to suggest judges, or to appoint government officials as members of the Higher Judicial Council.

The second opinion emphasizes that:

1. The judiciary's budget proposal shall be developed jointly by the Ministry of Justice and the Higher Judicial Council. Some believe that the Ministry of Justice should draft the budget once the Higher Judicial Council had expressed its opinion about it;
2. Suspending the judges' work shall fall under the purview of the Minister of Justice;
3. Judicial rotations must fall within the purview of the Higher Judicial Council in accordance with clear, transparent, and fair criteria and procedures, without the interference of the Minister of Justice or other members of the executive.
4. The director of the Institute of Judicial Studies shall be appointed by decree, and this does not affect judicial independence, as the Institute is one of the entities of the Ministry of Justice;
5. The Judicial Inspection Service must operate under on the oversight of the Minister of Justice.

Tenth: Relating to the Code of Ethics

The current Code of Ethics was drafted in 2005 and includes some elements of the Bangalore Principles.

The following remarks about the Code of Ethics were made during the workshops and consultation sessions:

1. It is necessary to re-draft the 2005 Code of Ethics by the Higher Judicial Council based on recommendations from the Institute of Judicial Studies and the Judicial Inspection and the Evaluation Commission. All judges must be involved in the development of this Code, through a specific mechanism or procedure.
2. The Code shall be based on the Bangalore Principles and shall include clear and precise definitions of violations and appropriate, related sanctions. It should also recognise clearly and explicitly the right of judges to the freedom of expression, assembly, and association, and regulate the judges' relationship with the media.
3. The Higher Judicial Council should refer the Code of Ethics to the Minister of justice or the Cabinet to prepare a draft law and refer it to Parliament for approval.

Section V: Recommendations to Promote the Independence of the Judiciary

The independence of the judiciary can only be achieved through constitutional and legislative reforms, together with the political will to ensure and respect this independence in practice. Judges must enjoy the following guarantees:

1. Upholding the principle of equal access to the Institute based on merit and competence;
2. Providing for adequate mechanisms for selecting and electing the members of the Higher Judicial Council;
3. Ensuring that the Higher Judicial Council is exclusively competent on issues related to the proper functioning and independence of the judiciary, as well as the management of the career of judges;
4. Securing decent living conditions for judges, including appropriate salaries and remunerations;
5. Ensuring the right of judges to establish and join professional associations and bodies; and
6. Providing continuous, professional, and specialized training for judges.

In view of the abovementioned general recommendations, and further to the four sections outlined in this plan, the following recommendations are aimed at promoting the independence of the Lebanese judiciary.

A. Recommendations to Lebanese authorities

International Conventions

Lebanon has ratified the core UN human rights conventions, which is positive. Lebanese authorities are encouraged to pursue their efforts in this field, in particular by:

1. Ratifying all other international human rights conventions, specifically the optional protocols to the International Covenant on Civil and Political Rights, to Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child.
2. Withdraw Lebanon's reservations regarding some human rights conventions, especially reservations made to the Convention on the Elimination of All Forms of Discrimination Against Women.
3. Ensuring compliance of Lebanese laws with international human rights conventions ratified by Lebanon.
4. Ensuring the effective implementation of these conventions and their enforcement in the domestic legal frameworks and practices.

Constitutional Reform

Lebanese authorities should amend the Lebanese Constitution in line with international standards related to judicial independence, through the following:

1. The Constitution shall recognise the judiciary as an independent, equal branch of the state
2. The Constitution shall explicitly provide for the establishment of a Higher Judicial Council composed of most judges elected by their peers. It shall also provide for such a Council to be independent from the legislative and executive branches of the state, to be in charge of developing and implementing the budget of the judiciary, and to be exclusively competent in managing the career of judges, including by appointing, transferring, promoting and disciplining them.
3. Amending article 95, paragraph B of the Constitution in order to abolish confessional representation in all judicial bodies and provide for such representation to be based on merit, experience and competence.

In light of the constitutional amendments, a law that is compatible with these constitutional provisions must be promulgated.

B. Legislative Reforms

In order to uphold judicial independence, laws related to the organization and functioning of the Lebanese judiciary must be reformed with a view to guarantying the individual independence of judges and of the judicial system as an institution.

Relating to the Establishment of the Higher Judicial Council

- The Higher Judicial Council shall be recognised as an independent institution.
- Maintaining the appointment of three *ex officio* members: the head of the Higher Judicial Council, the Public Prosecutor of the Court of Cassation, and the President of the Judicial Inspection Committee, without any role for the Minister of Justice or the Council of Ministers in proposing names other than the names suggested by the judiciary. Two members who are not judges are appointed, one of whom is a former president of the Bar Association and the other is a law professor at the Lebanese University.
- Other members are chosen by election and represent all levels of courts, based on objective criteria and transparent procedures.
- Establishing detailed and objective criteria for all elected and appointed members, including integrity, independence, impartiality, and competence.
- Establishing transparent selection and appointment procedures for senior judicial positions, especially the President and Public Prosecutor of the Court of Cassation, and

the President of the Judicial Inspection Service. While the appointment must reflect the diversity of the entire Lebanese society, including all various religious groups, the appointment must be based on objective criteria, including skills, knowledge, experience, and integrity.

- Establishing requirements that guarantee that the Higher Judicial Council is representative of the whole society, including effective measures and guarantees to ensure women's fair and adequate representation in the Council.

Relating to Judicial rotation

- The Higher Judicial Council manages these rotations based on objective criteria and transparent procedures, including performance assessment.
- Providing for the Judicial Council to refer these rotations to the Minister of Justice to approve them by decree. In case of a divergence of views between the Minister of Justice and the Judicial Council, the decision of the Council in this regard shall be final and binding. The rotations are issued through a decision of the Council to be published in the Official Gazette.
- Setting clear and objective criteria for the selection and appointment process, in line with international standards. These criteria shall include qualifications and training in law, experience, skills, and integrity.
- Ensuring that the selection and appointment of judges, including those in senior positions, is not based solely and exclusively on religious considerations, but rather on the above- mentioned objective criteria.

Relating to Budgetary issues

- Ensure that the Higher Judicial Council is competent to contribute to the development of the judiciary's budget and to make the necessary amendments to the proposals initiated by the Ministry of Justice.

Relating to the Transfer and Suspension of Judges

- Ensuring that judges may not be dismissed except for reasons of inability or conduct which makes them unfit to perform their duties; after a transparent and fair procedure that protects the concerned judge against arbitrary dismissal and guarantee their right to a fair trial.
- Judges cannot be transferred without their consent.
- Judges may not be suspended except based on a decision from the Disciplinary Council

Relating to Assessing the Work of the Judges

- The Establishment of two independent, first instance and appellate committees to evaluate the work of judges under the oversight of the High Judicial Council. Such evaluation shall be the basis for judicial rotations.
- The evaluation procedures must be standardized, transparent, and include consultation with the concerned judges, with their right to appeal guaranteed.

Relating to the Judicial Inspection service

- The Judicial Inspection service must be independent from the Minister of Justice, with complaints addressed directly to the Judicial Inspection Service.
- Establishing objective standards and transparent procedures for inspecting the work of judges. These standards shall include, among others, integrity, independence, professional competence, experience and proper performance of judicial functions.
- Clearly and precisely define judicial misconduct that may give rise to disciplinary responsibility, and, in this regard:
 - a. Ensure that disciplinary violations are clearly and accurately defined in the law so that judges can be aware of the acts and/or omissions that may engage their disciplinary responsibility;
 - b. Ensure that the basis of disciplinary action is not so vague that it could lead to abuse or interference with the independence of judges for unlawful purposes;
 - c. Ensure that disciplinary sanctions are stated clearly and are proportionate to the violations themselves.

Relating to the Institute of Judicial Studies

- The Institute shall be run by a director appointed by a decision of the Higher Judicial Council. The president of the Institute shall be the head of the Higher Judicial Council. The roles of the president and director should be clarified in the law.
- Upholding the independence of the Institute of Judicial Studies, including by:
 - a. Placing it under the supervision of the Higher Judicial Council instead of the Ministry of Justice;
 - b. Appointing and selecting judges as members of the Institute's Board of Directors based on objective criteria and transparent procedures that protect against any undue influence and ensure the institutional and functional independence of the Institute of Judicial Studies;
 - c. Granting the Institute full financial and administrative independence, including the authority to determine and manage its own budget, within the draft budget of the Higher Judicial Council;

- d. Enhancing the Institute's competence in preparing and implementing introductory and ongoing judicial training programs, including human rights programs, in accordance with the requirements of openness, integrity and impartiality.

Relating to the Right of Judges to Establish and Join Professional Associations

- Explicitly recognize the right of the judges to form professional associations and their right to join them to defend their interests and protect judicial independence in accordance with the basic principles of judicial independence.

Relating to Granting Approvals to Judges for Media Interviews, Travel and Participation in Conferences and Seminars Locally and Overseas

- Granting approvals to judges to take part in media interviews, travel, and participate in conferences and seminars locally and overseas, falls under the purview of the Higher Judicial Council alone.

Relating to the Judges' Training

- Ensuring that training programs focus on standards on independence and impartiality of judges.
- Organizing continuous training programs to complement the basic, preliminary ones.
- Including international human rights conventions, especially those ratified by Lebanon, and their enforcement in the national legal system in the training programs.
- Ensuring that participation in continuing training programs is mandatory and taken into consideration in the evaluation of each judge.

Relating to the Code of Ethics

- The 2005 Code of Ethics should be redrafted by the Higher Judicial Council based on recommendations by the Institute of Judicial Studies and the Judicial Inspection Service, and after involving all judges and their professional associations through a specific consultation mechanism. This Code shall be based on the Bangalore Principles and shall clearly and explicitly recognise the right to freedom of expression, assembly and association of judges, and regulate the judges' relationship with the media and social media. The Code shall be referred from the Higher Judicial Council to the Minister of Justice or the Council of Ministers to prepare a draft law and refer it to the Parliament for approval.

Relating to the Judges' Bank Secrecy

- Promoting the principle of transparency requires lifting the bank secrecy for all judges, their spouses and minor children, including trainee judges. Within this framework, judges shall also present a statement of assets.

Relating to the Public Prosecution:

- Defining clear and objective criteria for the selection and appointment of members of the Public Prosecution. These criteria must particularly be based on integrity, competence and training;
- Ensuring that any instructions issued to the Public Prosecution shall be transparent, in writing, consistent with the general standards of the Public Prosecution, and with human rights, and aimed at promoting justice when prosecuting cases;
- Defining, in the law, the nature and scope of any powers of the Minister of Justice or other authorities in relation to issuing instructions to prosecutors. More specifically, ensuring that:
 - a. Such instructions shall be in writing, included in the case file if related to a specific lawsuit and made available to all other parties;
 - b. Such instructions shall respect the principles of transparency and justice, and shall take into account the guiding principles of prosecution and the interests of victims and other parties involved in the proceedings;
 - c. The executive authority is prohibited from issuing instructions requesting to initiate prosecution or not to prosecute in a specific case.
 - d. The Lebanese Code of Criminal Procedure is amended accordingly

C. Recommendations to International Organisations

- Insist on the need for the Lebanese authorities to fully incorporate the treaties and agreements ratified by Lebanon into national laws, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT);
- Encourage Lebanon to ratify additional human rights conventions, including the Optional Protocols to the ICCPR and the CEDAW;
- Encourage Lebanon to amend its Constitution and domestic legislation in order to uphold the independence of judiciary in accordance with international standards.

In the context of supporting the Lebanese Civil Society, recommendations include:

1. Conducting regular consultations and dialogues with Lebanese human rights non-governmental organizations (NGOs), especially those working on issues related to judicial reform.
2. Funding justice-related projects submitted by NGOs with a view to increasing their professional, networking and advocacy capacities.

D. Recommendations to Civil Society

1. Facilitating consultations among Lebanese civil society organizations and coordinating their efforts through this Action Plan's long-term and short-term phases.
2. Engaging in sustained dialogue with the MPs and government representatives to achieve the Action Plan's objectives.
3. Developing and implementing joint programmes and actions aimed at raising awareness among the general public on the issue of the independence and impartiality of the judiciary.
4. Engaging with the media to raise awareness about attacks against the independence of the judiciary

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