



The Urgent need for Judicial Independence in Lebanon

The Lebanese Constitution, along with the Law of the judiciary and the Judicial Organization issued by virtue of the legislative decree number 150/83 dated 16/09/1983, and [its amendments](#), was designed to uphold the independence, integrity, and impartiality of the judiciary. Article 20 of the Lebanese Constitution explicitly states that judicial authority is vested in the courts, which operate independently to ensure the protection of rights. While this framework appears to guarantee judicial independence, it focuses on the independence of individual judges rather than the institution.

In practice, however, although the laws recognize judicial independence, provisions within the same laws allow for substantial control from the Minister of Justice and the government, particularly through the appointment of key judicial figures by the government. For instance, members of the Higher Judicial Council, the First President and General Prosecutor of the Court of Cassation, are appointed by the Council of Ministers upon recommendation from the Minister of Justice, compromising the judiciary's autonomy.

As a result, the judiciary in Lebanon remains vulnerable to political interference, both from the government and other political actors. High-profile cases have only further reinforced the perception that political affiliations often outweigh judicial processes in securing justice. One of the most recent and most apparent examples is the Beirut Blast investigations which will be detailed further below.

Due to the critical importance of judicial independence, and recognizing that accountability, the fight against impunity, and the enforcement of any law or international convention cannot be upheld without an independent judiciary, numerous initiatives and measures have been taken over the years to improve it. Some of the most recent efforts include:

On March 7, 2018, through an initiative by [The Legal Agenda](#), a civil coalition composed of 30 civil organizations approved a draft law on the independence and transparency of the judiciary. The draft law went through a series of revisions by the committee of justice and administration in the parliament which, according to the information gathered through CLDH's consultations with policy makers, changed the content of the draft law rendering it not aligned with international standards, after the closure of these revisions the draft law was presented to the parliament at the end of 2023, to vote on it and was put for discussion till the date of the drafting of this paper. It is worth noting that the final version has not been approved by the Higher judicial council or the ministry of justice.



The original draft law included an extensive presentation of its justifications, with key points including:

- Strengthening the independence of judicial regulatory institutions (the Higher Judicial Council, the Judicial Inspection Authority, and the Institute of Judicial Studies) and ensuring both internal and external transparency.
- Enhancing guarantees of judges' independence, particularly by surrounding the mechanisms for judge appointments with guarantees that appointments are based on merit without discrimination, establishing the principle that a judge cannot be transferred without their consent, ensuring equality among judges without discrimination, recognizing freedoms of expression and assembly, allowing collective petitions, and enabling judges to appeal any individual decision related to their career paths.
- Promoting participation, independence, and both internal and external transparency in court administration.
- Establishing mechanisms to address the shortage of judges, preserving judicial talent, and ensuring their fair distribution in line with the requirements of balanced development.
- Ensuring the rights of litigants to the proper functioning of public services, including the ability to file complaints and hold judicial misconduct accountable. This includes enhancing mechanisms for court and judge evaluations that respect judicial independence and strengthening the role of the Judicial Supervisory Authority in receiving and handling complaints, particularly by creating a citizens' office to assist the public and establishing a charter of litigants' rights.
- Balancing the hierarchical organization of the public prosecution with the independence of the judges working within it.

On March 28, 2023, the Lebanese Coalition for the Independence of the Judiciary announced that nine members of Lebanon's parliament had introduced two draft laws aimed at strengthening the independence of judicial investigations and preventing political interference in the judiciary. If enacted, the draft laws would amend [Article 751](#) of Lebanon's Code of Civil Procedure and [Article 52](#) of the Code of Criminal Procedure, both of which have been used to [obstruct the investigation](#) into the August 4, 2020, Beirut port explosion, as well as [other investigations](#).

A Clear Example of Judicial Interference: The Beirut Blast Investigation:

On the 4th of August 2020, a massive explosion hit Beirut port at 6:07 PM destroying a massive radius of the capital, Beirut. The explosion left Beirut with massive destruction, and resulting in



the death of 217 individuals, injuries to 7000, and the displacement of 300,000 individual¹. The explosion impacted 163 public and private schools, and rendered half of Beirut's healthcare centers nonfunctional, and impacted 56% of private businesses in Beirut. Damages to infrastructure totaled USD\$390-475 million in losses. Moreover, according to the World Bank, the explosion caused an estimated \$3.8-4.6 billion in material damage².

Given the massive death toll and humanitarian disaster, a state of emergency was declared, and an investigation was launched in promise of an outcome within five days. However, almost four years later, no one has been held accountable.

Building on prior research conducted by the Lebanese Center for Human Rights (CLDH) titled [Beirut Blast: state action and violations](#), and incorporating recent developments, the prolonged investigations are caused by the absence of accountability, responsibility, and judicial deadlocking, highlighting the compromised nature of judicial independence in Lebanon as outlined below:

Immunity for Officials: On July 2, 2021, investigative judge Tarek Bitar requested the parliament to lift the parliamentary immunity of former minister Zeaiter, a sitting parliamentarian. He also petitioned the Beirut and Tripoli Bar Associations to grant permission to prosecute Zeaiter and Fenianos, both of whom are lawyers. On July 28 and 29, the Beirut and Tripoli Bar Associations respectively approved the prosecution of Zeaiter and Fenianos. However, the parliament refused to lift the immunity of the parliamentarians.

Removal of Judges: In February 2021, the Court of Cassation removed Judge Fadi Sawan from the case following a request from former ministers Ali Hassan Khalil and Ghazi Zeaiter, both of whom he had charged. Later that year, Judge Bitar succeeded him and, by 2023, had faced 24 lawsuits seeking his removal from the case.

Due Process Violations: The Minister of Finance refused to sign the list of nominees for the Court of Cassation Plenary Assembly, which is necessary to decide on recusal requests against Judge Bitar. This delay has stalled the Beirut port investigation, as decisions in the recusal cases,

¹ Amnesty International. (2021, August 3). Lebanon: One year on from Beirut explosion, authorities shamelessly obstruct justice. Amnesty International.

<https://www.amnesty.org/en/latest/news/2021/08/lebanon-one-year-on-from-beirut-explosion-authorities-shamelessly-obstruct-justice/>

² World Bank. (2020). Beirut Explosion: Rapid Damage and Needs Assessment. Retrieved from World Bank United Nations Office for the Coordination of Humanitarian Affairs (OCHA). (2020). Lebanon: Beirut Port Explosions Situation Report No. 11. Retrieved from ReliefWeb



presented by Youssef Fenianos and Ali Hassan Khalil against judges Bitar and Najji Eid, cannot be made until the court is properly constituted.

On September 5, 2022, Minister of Justice Henry Khoury requested the Higher Judicial Council to appoint an alternate judge to issue rulings related to the release of suspects in the Beirut Blast case. He later proposed Judge Samaranda Nassar for this role, despite the fact that such an appointment lacks legal grounds, as jurisdiction in the Beirut Blast case rests solely with Judge Bitar. Additionally, Higher Judicial Council President Judge Abboud has expressed opposition to Judge Nassar's appointment, citing concerns over her alleged political affiliations and lack of neutrality.

Public Prosecutor Actions: On January 25, 2023, public prosecutor Ghassan Oueidat, who had previously recused himself due to familial ties to an accused, released all detainees in the Beirut port case, invoking Article 9, paragraphs 1 and 3 of the International Covenant on Civil and Political Rights. Oueidat also filed a lawsuit against Judge Bitar before the Court of Cassation's Plenary Assembly, accusing him of overstepping his authority. Judge Bitar contested this, arguing that Oueidat lacked legal grounds to retract his recusal and to act in a case where he was implicated. After the release, former Lebanese customs chief Badri Daher fled the country. On January 26, 2023, Oueidat referred Bitar for judicial inspection, accusing him of "usurpation of power" and prohibited the public prosecution office from implementing any further decisions by Bitar, resulting in the ongoing suspension of the investigation.

In summary, the investigation into the Beirut bombing has seen multiple judges involved. Initially, Judge Fadi Sawan was appointed but was removed in February 2021 due to political pressure. Judge Tarek Bitar took over in February 2021, but his investigation faced legal challenges and was suspended several times before resuming in January 2023, when he charged several high-profile figures. Among those charged are Lebanon's court of cassation prosecutor, Ghassan Oweidat, for obstructing the investigation, former Prime Minister Hassan Diab, and heads of General Security and State Security. Several senior officials, including security chiefs and former ministers, have been indicted, but the investigation is still ongoing, with few details on the charges. Seventeen suspects were initially held in pre-trial detention, but by January 2023, all were ordered to be released. Media outlets reported that former Lebanese customs chief Badri Daher fled the country with no additional information on other individuals.

Parliamentary and other political and governmental officials refusing cooperation have not been the tip of the iceberg in impeding effectiveness in the investigation and constitutes a violation of national and international law.



According to international standards, such as those outlined by the International Law Commission (ILC), functional immunity does not apply to serious international crimes like corruption and human rights violations. In addition, removal and recusal of judges is against the [United Nations Basic Principles on the Independence of the Judiciary](#). These principles state that judges should not be removed or reassigned arbitrarily and must be able to perform their duties without undue influence. Lastly, the refusal to sign the list of nominees for the Court of Cassation Plenary Assembly, thereby stalling the investigation, violates the right to a fair trial and due process, international standards, such as those found in the International [Covenant on Civil and Political Rights \(ICCPR\)](#), emphasize the necessity of timely and impartial judicial proceedings³.

The Lebanese Center for Human Rights urgently calls on international stakeholders and policymakers to heed the calls from Lebanese society and understand the necessity for judicial reform within the judiciary to safeguard it from political impediments. CLDH believes in combatting impunity and cultivating a legal and political culture centered on holding accountability for human rights violations, and to fight against the persistent clientelism placed at the core of the Lebanese political system.

To effectively reform and implement equitable solutions, CLDH suggests the following short-term and long-term actionable recommendations towards international and national stakeholders:

Long term Recommendations:

To the Lebanese parliament:

- Ratify the optional protocols to the International Covenant on Civil and Political Rights.
- Amend the current judiciary law to align with international standards to reinforce judicial independence by stipulating the following:
 - o The appointment of all members of the Higher judicial council through election,
 - o The Higher Judicial Council shall manage judicial rotations, and any disputes with the Minister of Justice on these rotations shall be resolved in favor of the Council's decision,

³ International Covenant on Civil and Political Rights (ICCPR). (1966). Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

United Nations Basic Principles on the Independence of the Judiciary. (1985). Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>
Guidelines on the Role of Prosecutors. (1990). Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>

International Law Commission (ILC). (2001). Draft Articles on Responsibility of States for Internationally Wrongful Acts. Retrieved from https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf



- The Higher Judicial Council shall be involved in the development of the judiciary's annual budget,
 - The Higher Judicial Council shall have the sole authority to approve judges' participation in media interviews, travel, and conferences,
 - The transfer of Judges shall not be conducted without their approval,
 - The suspension of Judges shall only be based on decisions from the Disciplinary Council after a transparent investigation,
 - The right of judges to form and join professional associations shall be explicitly recognized,
 - The Evaluation of the judge's performance shall be done by an independent committee, with judges given the right to appeal,
 - The Judicial Inspection Service shall operate independently from the Ministry of Justice, applying objective standards to evaluate judicial integrity and competence.
 - The Institute of Judicial Studies shall be placed under the Higher Judicial Council's supervision, granting it financial and administrative independence to manage its budget and training programs.
- Redraft the 2005 Code of Ethics based on the [Bangalore Principles](#) and after consultation with judges and professional associations, explicitly recognizing judges' freedom of expression and association.

Short-Term Recommendations (Non-Legislative)

To the Ministry of justice:

- Expand and enhance judicial training programs on international human rights standards and judicial independence, with mandatory participation for judges.
- Facilitate dialogue between judges and civil society organizations to ensure that reforms are informed by practical insights and public concerns.