

The Lack of Independence of the Judiciary in Lebanon: Vulnerability of the System and Political Readiness to Interfere

Major Research Paper

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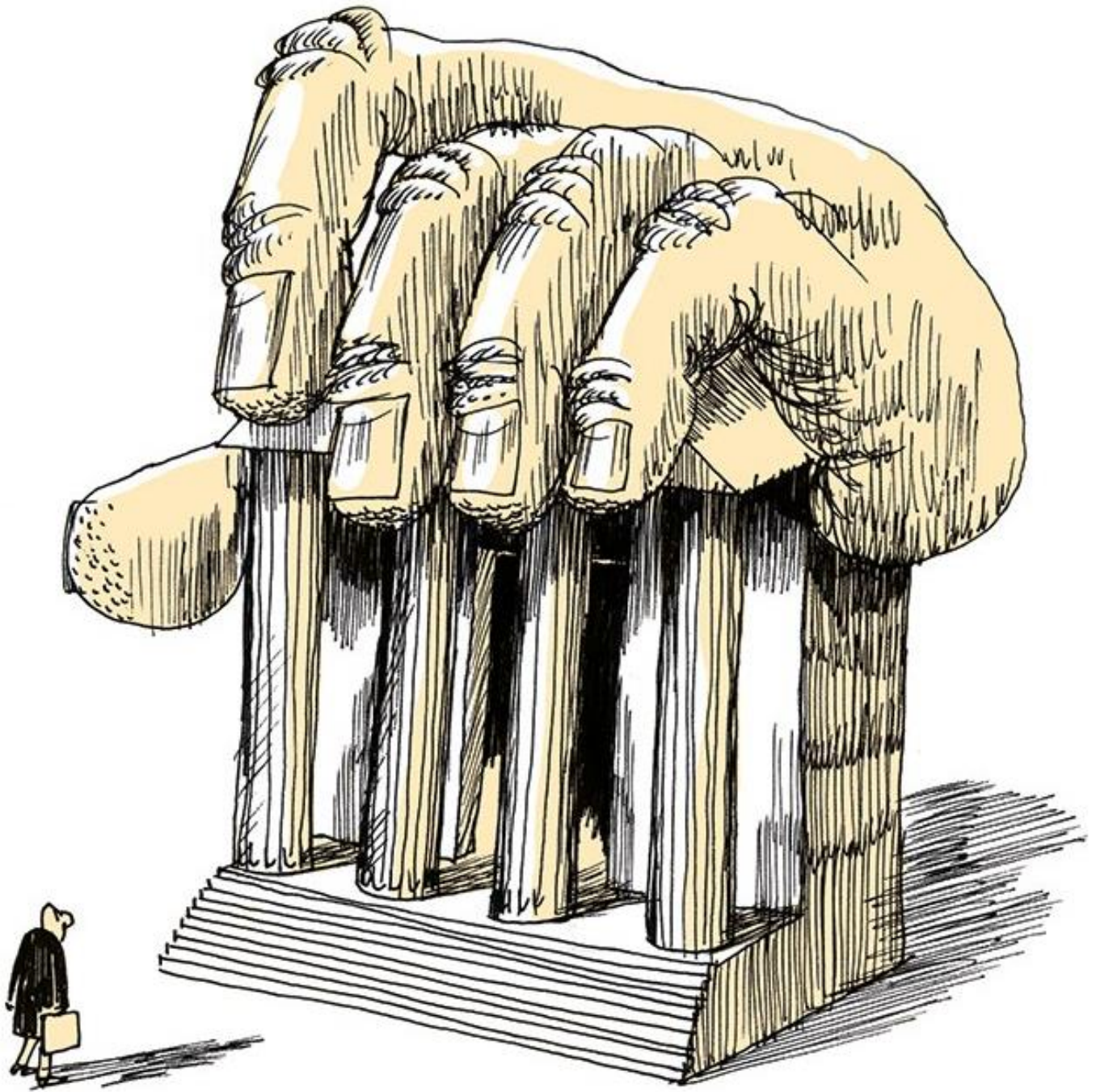


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List of Acronyms

AO	Administrative Office
CCA	Central Control Agency
DC	Disciplinary Council
HRC	United Nations Human Rights Committee
ICJ	International Commission of Jurists
IJS	Institute of Judicial Studies
JIC	Judicial Inspectorate Council
MOJ	Ministry of Justice
SJC	Supreme Judicial Council
	The ICJ reports and some other resources use the term Higher Judicial Council (HJC) for this body. I use the term SJC because it is the literal translation of the name of the council in Arabic, and because it is the term used by the Lebanese government and by Legal Agenda.
	Note that the SJC MOJ also refers to SJC as supreme council of justice.
UN	United Nations
UNCHR	United Nations Commission on Human Rights

Introduction

Research Topic and Key Terms

On the eve of October 17, 2019, Lebanese protestors took to the streets of cities in Lebanon in anti-government demonstrations, starting Lebanon's October Revolution (Chehayeb & Sewell 2019). This revolution was motivated by the government's failure to protect and promote the social and economic rights of citizens who called for a number of demands including socioeconomic reforms, ending government corruption, abolishing sectarianism, and investigating into stolen public funds (Amnesty n.d.). Looted public funds are estimated to amount to one trillion USD stolen by politicians over the past 30 years (Nasser Dine 2019).

As a result of the protests, the country's former Prime Minister Saad Al-Hariri announced a number of reforms his government promised to bring. This included establishing an anti-corruption committee and drafting a law seeking to return stolen public funds (Aljazeera 2019). In addition, Lebanese President Michel Aoun expressed his intent to establish a special court with the jurisdiction of applying laws targeting crimes related to public funds (Nasser Dine 2019). Skeptical Lebanese protestors, who do not trust the country's politicians, did not welcome the promised reforms; instead, they called for the formation of a new government and the election of a new parliament.

One issue the former government failed to address in its promised reforms was the lack of judicial independence, which is one of the most pressing matters in Lebanon. It is a well-known public secret that the judiciary in Lebanon is not independent (Matar 2016). This has been raised by individuals, politicians, civil society, and the international community (Nazzal 2019; Matar

2016; Daoud and Mansour 2010, 22). An independent judicial body is crucial to the reforms the government promised. It is the starting point to achieve the demands of Lebanese protestors and citizens (Al-Ahdab 2019).

The definition of judicial independence is not consistent in the literature since the meaning of this concept varies depending on the context in which it is used (Tiede 2006, 130). In this paper, judicial independence—an aspect of what is known as “separation of powers”—refers to the independence of judges, courts, and the judiciary from the executive (defined as the upper tier of the national government, such as the president and/or prime minister, and the cabinet/council of ministers, that is responsible for the governance of a state and the enforcement of its laws; Tiede 2006, 130-131) and from the influence of political party members and leaders (Ramseyer 1994, 722). Judges are considered independent when the laws and the system provide them with safeguards that protect them from external, including executive and political party, influence (Papayannis 2016, 36) and when politicians “do not manipulate their careers” (Ramseyer 1994, 722).

Politicians and political elites in this paper refers to leaders and representatives of dominant political parties whether they officially take part in the government or not. Keeping in mind that most high-post-officials including ministers (the executive branch), MPs (the legislative branch) and directors represent these dominant political parties and their leaders in the government and look out for their interests. Political parties control most of the government and therefore: political parties and the executive and legislative branches are relatively synonymous in Lebanese politics.

As mentioned above, judicial independence is a pillar of the principle of separation of powers. Separation of powers refers to distinct mandates for the executive, legislative (parliament and/or senate), and judicial branches of governance. Separation of powers is fundamental to the Lebanese constitution which states that the law should provide necessary guarantees to judges and litigants, and that judges should be independent in exercising their functions (Lebanese Constitution 1926, Art 20). The principle of independence of the judiciary is also established in several Lebanese laws such as the Code of Civil Procedure and other regulations (ACRLI 2004, 12). On the international level, the UN Basic Principles on the Independence of the Judiciary state that “the independence of the judiciary must be guaranteed by states, enshrined in their laws, and respected by their governments and institutions” (UN 1985, 1; please see Appendix 1 for the full list of UN Basic Principles).

Research Objective and Question

The purpose of this paper is to build a framework for understanding the dynamics of the lack of judicial independence in Lebanon. The lack of judicial independence in Lebanon is already locally and internationally widely acknowledged. Appendix 2 includes a document from 2017 written by the International Commission of Jurists, the world body responsible for promoting judicial independence in pursuit of promoting human rights and the rule of law, assessing the situation in Lebanon as lacking judicial independence, and suggesting several recommendations for action. These recommendations have yet to be fulfilled, and instead Lebanon is facing mass revolt for the government’s perceived lack of accountability. In this context, more understanding

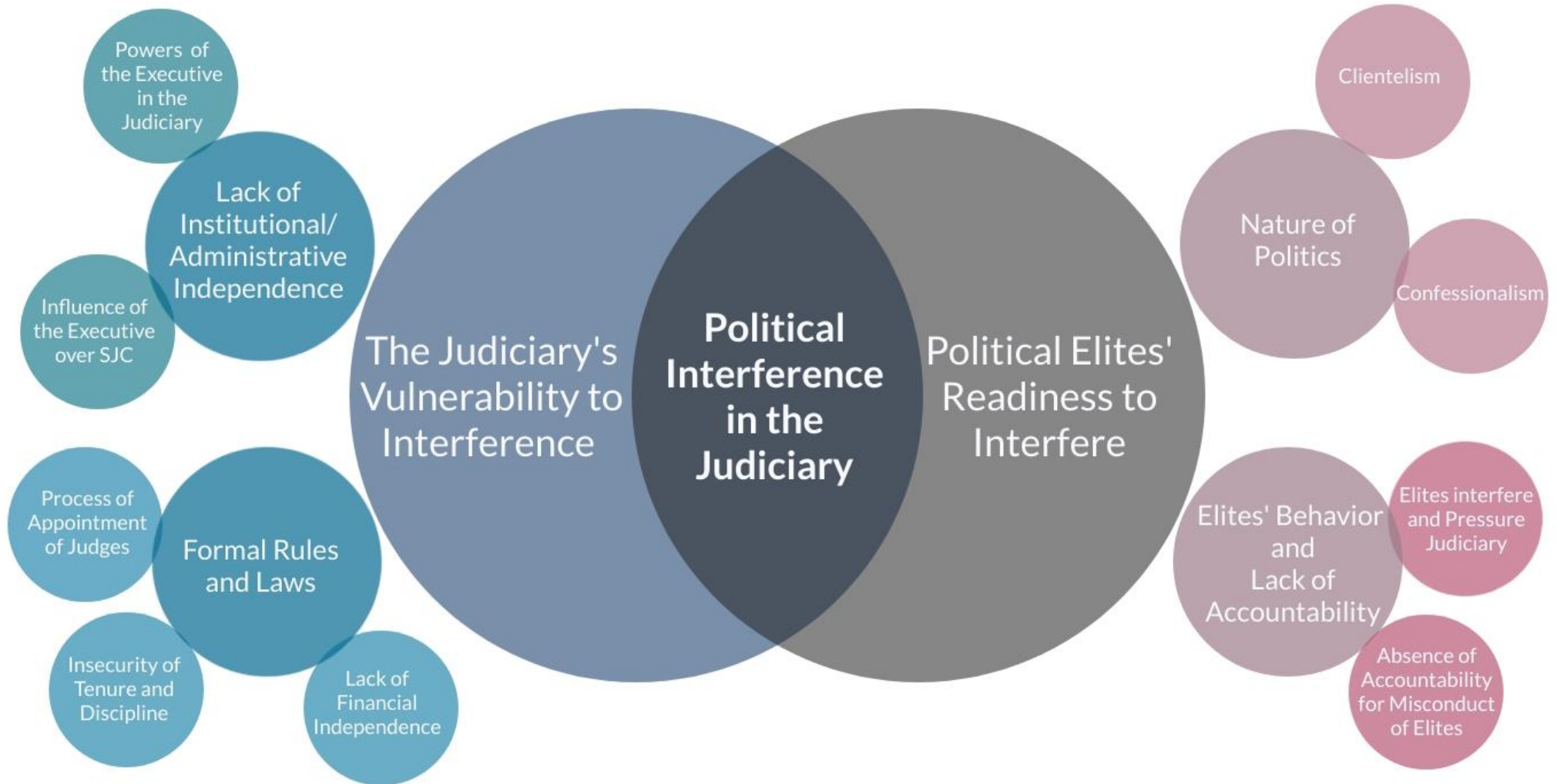
is needed of the larger picture: **what are the dynamics of the lack of judicial independence in Lebanon?**

Methods and Resulting Framework

To answer this question, I analyze legal provisions and political processes, to identify gaps (like “loopholes”) and obstacles that limit judicial independence in Lebanon. I look at institutional variables to which the literature (mostly international, secondary sources) attributes judicial independence, in addition to factors specific to Lebanon (from mostly primary sources such as news articles from multiple language sources, civil society reports, and other “grey” literature), to come up with an analysis tailored to the Lebanese context.

Based on this multi-faceted review of various literatures, I find that the lack of independence of the Lebanese judiciary is a result of the combination of (1) the vulnerability of the Lebanese judicial system to external interference, and (2) the readiness of political elites -- that control the government -- to interfere in judicial matters. In the framework presented below in Figure 1, I highlight these two factors, and break them down into various components.

Figure 1: Factors Contributing to the Lack of Judicial Independence in Lebanon



As I outline in the overview below, I will use this research paper to explain this proposed framework to understand the dynamics of the lack of judicial independence in Lebanon.

To conduct this research, I use a variety of sources. I look at international secondary sources (including books, academic research, and journal articles) to understand the factors and foundations of judicial independence and to understand the political context in Lebanon. The academic research on the topic of independence of the judiciary in Lebanon is scarce. Therefore, I use a collection of primary sources (such as news articles, civil society reports, statistics) to examine the current situation of the judiciary. I use local Lebanese resources whenever possible. I reference Legal Agenda and Nizar Saghie, its co-founder, a lot due to the relevance of their work to this paper. Legal Agenda is a non-governmental not-for-profit organization that publishes articles focused on issues of law and society in Lebanon including the independence and transparency of the judiciary. Legal Agenda has also published a series of research papers on several judicial topics, including judicial independence, in an initiative to reform the Lebanese judiciary. I also include legal references (such as the constitution, Lebanese regulations, international principles) to understand the legal context in Lebanon and how it measures up to international standards.

Overview of the Research Paper

Part 1 of this paper analyses the structure of the Lebanese judiciary and the laws that regulate its administration. It examines the system's gaps and loopholes, in light of the literature and international laws and standards. First, I show that the executive branch has undue influence over judicial administration, which is a dangerous dynamic, because judicial administration in

turn heavily impacts the judicial system. The judicial administration is the very structure that is meant to avert judicial partiality and vulnerability to undue influence. Following this examination of judicial administration, I then explain the lack of safeguards to protect judges from undue influence, affecting their independence of mind in their decision-making. Lastly, I look at the judiciary's financial dependency on the ministry of justice, indicating the judiciary's lack of autonomy.

Part 2 examines the behaviour of political elites in Lebanon to show that they do not support the independence of the judiciary and that they have the will to interfere in judicial matters. I begin by briefly explaining the relevant political context highlighting the confessional and clientelist aspects of the system. Then I examine past behaviour of political elites with governmental agencies that indicated their lack of support to the independence of those agencies. I find that the same behavioral patterns exist in the relationship of political elites with the judiciary, that is in addition to other indications of political will to interfere in the judiciary. After that I look at the lack of accountability mechanisms and absence of deterrents against political misconduct including interference in the judiciary.

Part A:

The Vulnerability of the Lebanese Judicial to System to Interference

The literature attributes judicial independence to a variety of factors. Anglo-Canadian tradition focuses on security of tenure, financial security, and administrative independence (Greene 1988, 194-195). American literature speaks of five mechanisms to protect judicial independence: (1) constitutional protections for judges, (2) the independent administration of the judiciary, (3) a judicial disciplinary authority, (4) judges' duty to recuse in case of bias, and (5) effective enforcement of judges' decisions (Breyer 1996, 989). The institutional approach attributes judicial independence to several factors that concern the careers of judges like their appointment, elections, and security of tenure as well as independence of judicial administration, powers granted to judges, and discipline of judges in (Tiede 2006). In this part of the paper, I look at the status of Lebanese judiciary in light of the factors frequently referenced in the literature.

Chapter 1: Structure and Administration of the Judiciary

To ensure judicial independence, some countries have resorted to “removing power over judicial appointments from the executive” and giving it to bodies responsible for guaranteeing the independence of the judiciary and for career management within the judiciary (Hammergren 2002, 2; FIDH 2009, 6). These bodies act as administrations of judicial systems and they are often referred to as councils. Their functions and powers vary from one system to another. In Europe, judicial councils are responsible for institutional policymaking and supervising judicial careers, while in Latin America they exercise more thorough administrative responsibilities and focus on budgetary control, selection, and training of judges (Hammergren 2002, 2,7-12). In the US, there

is no judicial council. Instead, the administration of the judiciary is assigned to three bodies, the Judicial Conference responsible for policy-making for the judiciary and for the supervision of the Administrative Office of the US Courts (AO), the AO responsible for the federal court budget, personnel management, and procurement, and the Federal Judicial Center which conducts research on judicial administration and the administration of justice (Breyer 1996, 990-992). Such judicial administrations are established as a mean to ensure judicial independence.

The independence of these judicial administrations is a *crucial* component of judicial independence (ICJ 2017a; ICJ 2018, 2; Breyer 1996, 990-992). The mere presence of the administrations on its own does not necessarily guarantee judicial independence. In fact, they can form an obstacle to it, “particularly in countries where corruption is systemic, or the judiciary is controlled by the executive” (IFES 2004). As Breyer puts it, it is important to examine the entity “who controls the *context* in which judges decide cases” (Breyer 1996, 990). The involvement of the executive and legislative branches in judicial administration or the context of the work of judges can threaten judicial independence. Ideally, for a judicial administration to act as a factor of judicial independence, it must function independently from undue influence.

1.1 Supreme Judicial Council

In Lebanon, the highest judicial authority is the Supreme Judicial Council (SJC). It is responsible for overseeing “the good functioning of the judiciary, its dignity and its independence, and the good performance of courts” (RLMOJ 2019a; Decree-Law No. 150/83, 4). Practically, it is responsible for ensuring the independence of judges through the management of judicial affairs and careers (Daoud and Mansour 2010, 22). The SJC powers include preparing

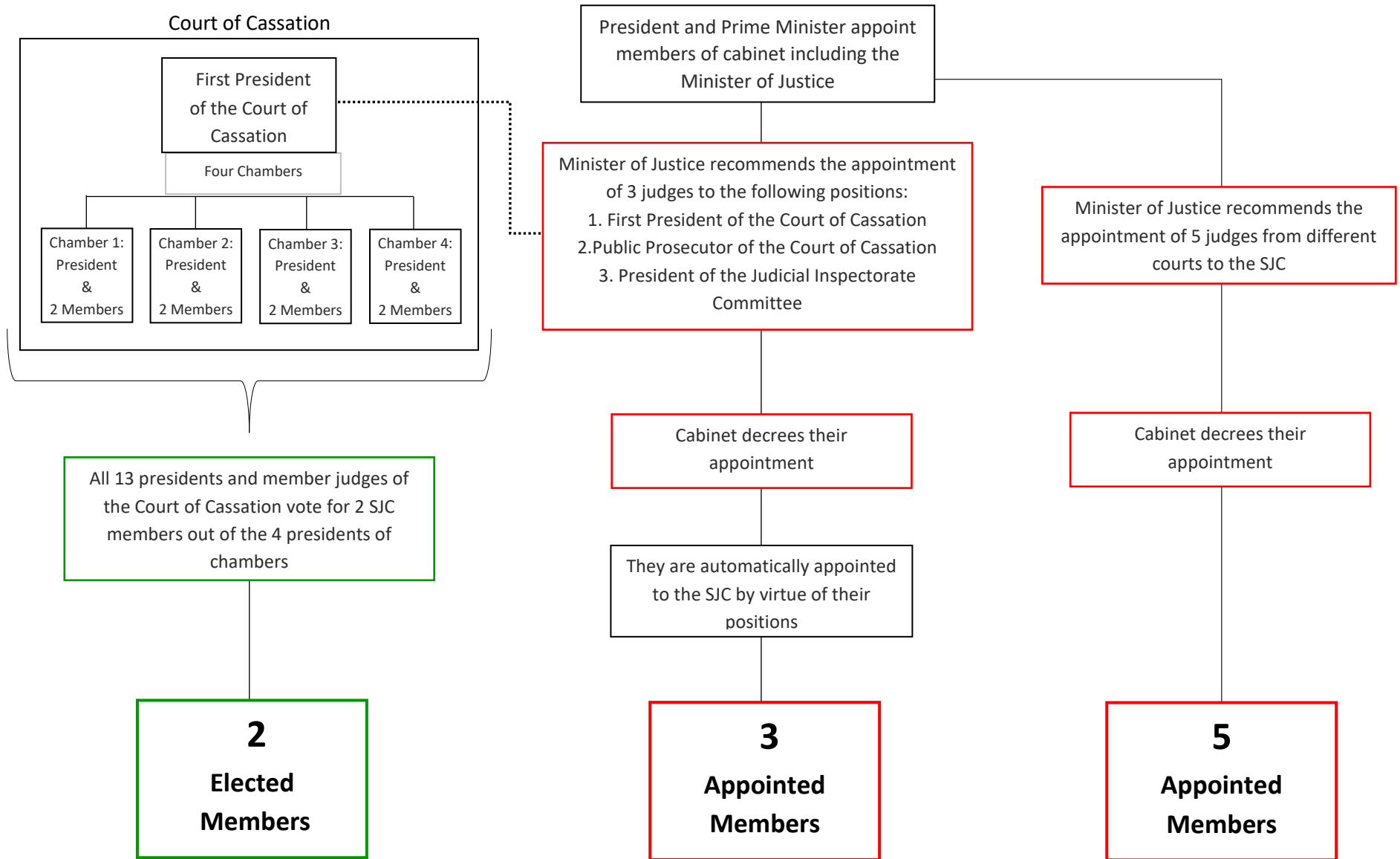
judicial formations that assign judges to courts and chambers, deciding the composition of the Disciplinary Council for judges (DC), preparing judicial appointments, permutations and delegations, assessing files of judges, and when necessary transferring them to the Judicial Inspection Committee to conduct investigations and take appropriate measures (Daoud and Mansour 2010, 22-23; Decree-Law No. 150/83, 5). Clearly, the SJC has vast powers in the administration of the Lebanese judiciary.

However, the composition of the SJC is a source of concern. The SJC is composed of 10 members as follows:

- three of which are appointed by virtue of their position by a cabinet decree (a decree passed by the executive authority: the cabinet) upon the proposal of the Minister of Justice (ICJ 2017a, 4),
- five of which are appointed by a cabinet decree based on the recommendation of Minister of Justice, and
- two of which are elected by the Court of Cassation's president and associate judges; the Court of Cassation is the highest court in the ordinary courts system in the Lebanese judiciary, it is the equivalent of a supreme court in Lebanon (Decree-Law No. 150/83, 2).

Figure 2 illustrates the process of appointment of the SJC members and shows the public officials who influence their appointment. The colours in the figure indicate the level compliance of different parts of the process with the international standards, as per the ICJ recommendations and the UN Basic Principles on the independence of the judiciary mentioned in Appendix 1, where green indicates compliant and red indicates non-compliant.

Figure 2: Appointment of Members of the Supreme Judicial Council



Based on Lebanese Decree-Law No. 150/83, 2

The red boxes show that the executive has the power to appoint eight members of SJC, meaning that the dynamics of the relationship between the executive and the judiciary allows the former to potentially influence the latter's work. In addition, the SJC has no legal personality and is neither administratively nor financially independent (ICJ 2017b, 5). The absence of administrative -or institutional- independence jeopardizes the independence of the judiciary as it allows for external interference of other branches of the government in judicial affairs (Cachalia 2011, 24). To protect administrative independence, the judiciary must have (1) "adequate resources" to function independently (which I will address later), and (2) a relationship with other governmental branches that does not hinder judicial independence (Cachalia 2011, 24). Because the SJC plays a significant role in the management of the judiciary as I showed earlier, its relationship with the executive is very likely to compromise the independence of the judiciary and to contribute to its politicization. The influence of the SJC on the judiciary will be highlighted throughout this paper as I bring many issues that hinder judicial independence back to the influence of the executive over the SJC.

The lack of independence of the SJC is a source of concern for the international community as well (ICJ 2017b, 6). That is, the composition of the SJC does not meet international standards raised in the UN Special Rapporteur on the Independence of Judges and Lawyers which focuses on the importance of a judicial authority independent from the executive (ICJ 2017b, 6). To add to that, SJC members are generally appointed on the basis of "sharing among sectarian political powers", meaning that their appointment is not only based on the will of the executive, but also on the will of sectarian political leaders, as is the case for most high positions in the state as I will explain later (Legal Agenda 2018a, 4). Therefore, the process of formation of the SJC

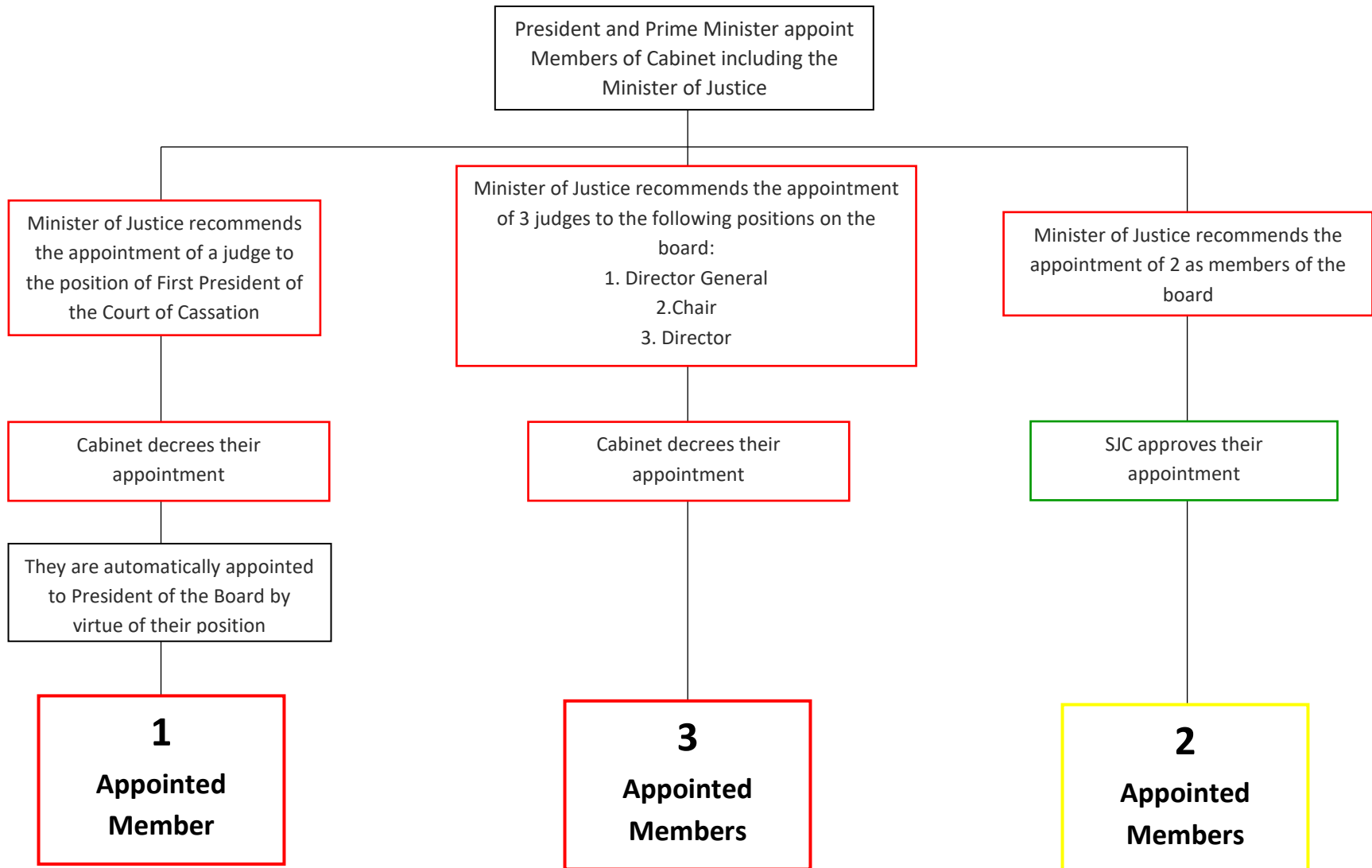
clearly allows for external influence to affect the composition of the SJC and compromises its independence, failing to comply with international standards.

1.2 Institute of Judicial Studies

On the other hand, the Institute of Judicial Studies (IJS) is the body responsible for providing training to trainee judges and other legal personnel (Decree-Law No. 150/83, 54). It also assists the SJC in the management of the judicial exam competition and the process of selection and appointment of trainee judges (Decree-Law No. 150/83, 54). The composition of the Board of directors of the IJS, illustrated in figure 3, is as follows:

- The President of the SJC as president of the board
- The Director General of the ministry of justice (MOJ), as vice-president of the board, appointed by a cabinet decree upon the recommendation of the Minister of Justice (RLMOJ 2019b)
- The chair of the IJS, a judge appointed by a cabinet decree upon the recommendation of the Minister of Justice and the approval of the SJC with the role of overseeing the work of the IJS
- The director of the IJS, also a judge appointed by a cabinet decree upon the recommendation of the Minister of Justice and the approval of the SJC with the role of administering judicial studies
- Two judges appointed by the Minister of Justice with the approval of the SJC (Decree-Law No. 150/83, 55; Legal Agenda 2018b, 7-8).

Figure 3: Appointment of Members of the Board of the Institute of Judicial Studies



Based on Lebanese Decree-Law No. 150/83

In figure 3, I used similar colour coding as in figure 2. Red indicates non-compliant with international standards, green indicates compliant, and yellow indicates somewhat compliant. Clearly, the executive also influences the appointment of all the members of the board of the IJS. Indeed, the IJS is a unit of the MOJ which means that it does not enjoy financial nor administrative independence (IJS n.d. a; ICJ 2007b, 10). Similar to the SJC, the executive's power to influence the decisions of IJS is critical due to the role the IJS plays in the selection and training of judges. Recommendations from legal experts propose detaching the IJS from the MOJ and granting it the status of a legal entity allowing it to be financially and administratively independent, in addition to appointing the chair of the IJS, rather than the president of the SJC, as president of the board of the IJS (Legal Agenda 2018b, 15).

Chapter 2: Careers of Judges

The United Nations Human Rights Committee (HRC) provides that state laws must “establish clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of the members of the judiciary and disciplinary sanctions taken against them” (HRC 2007, 19). This view, widely studied in the literature, is known as the “institutional approach” (Tiede 2006, 136-147). It essentially sees that the rules related to careers of judges play an important role in avoiding judicial capitulation (Hilbink 2007, 33-34) and achieving judicial independence (Tiede 2006, 136). According to this view, *protections* must be given to judges to guarantee the executive and legislative branches cannot influence judicial proceedings (Breyer 1996, 989). This is important because career manipulation has been used as a strategy to punish judges who rule against ideologies of leaders in power (Ramseyer &

Rasmusen 2001). In sum, elements that influence the commencement, progress, or regression of careers of judges can have a big influence on the behaviour of judges and on their willingness and ability to take certain stands.

2.1 Selection and Appointment of Judges

"We used to be proud to pass the judicial examination with our competence and qualification without *wasta*¹. After the 2014 and 2016 sessions, judges can no longer say the same thing."

Judge, interview with Legal Agenda, 2016
[Retrieved from Legal Agenda 2018a, 7]

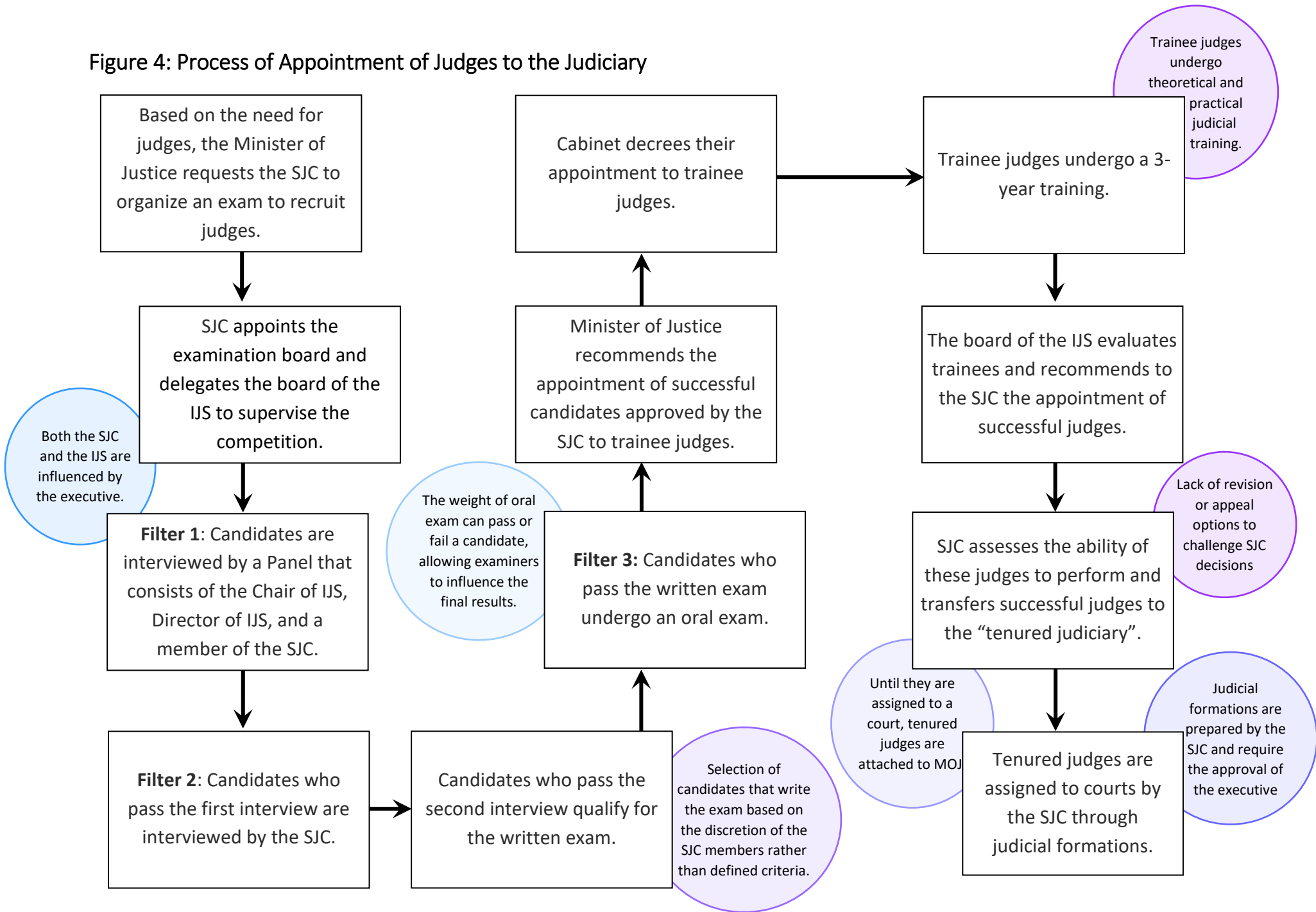
In this section, I will examine the process of appointment of judges to the Judiciary. I will begin by going over the steps of this process; i.e. how candidates get assigned to the judiciary, then I will analyze the underlying factors that allow for political interference in the process. Figure 4 on the next page will illustrate the steps of the process. While the diagram makes it look smooth, the bubbles help understand how some factors allow for the process to be subjective and how conditions are not held constant, allowing for variables other than qualification (such as connections) to impact the selection of candidates to become judges, which means that the steps of the process (filters) do not provide all candidates with the same experience or opportunities, allowing for manipulation in appointment.

¹ *Wasta* is an Arabic word that means the use of connections (in the sense of nepotism) to get something such as a job, a promotion, admission to a university, or another benefit. The word *wasta* is widely used in the Lebanese society since it affects many aspects of citizens rights such as hiring, escaping legal prosecution, escape taxes and more. *Wasta* is further reinforced by the clientelism present in the Lebanese society that will be highlighted in section 4.2.

In Lebanon, the SJC is responsible for administering examinations to recruit new judges upon the request of the Minister of Justice. The SJC appoints an examination board at the beginning of every round of appointment (Decree-Law No. 150/83, 68). The SJC also delegates the board of the IJS to sort and accept applications and to manage the competition process until the announcement of the results (IJS 2019 b). Preliminary candidates who can write the exam are selected based on oral interviews. These candidates must pass a primary interview with a panel that consists of the IJS board chair and director, and a member of the SJC (IJS 2019 b). This interview, or *filter 1* as I will refer to it later, is intended to assess candidates' backgrounds, knowledge, and language skills (IJS 2019b). Upon passing, candidates undergo another interview, *filter 2*, with SJC to discuss legal and judicial issues (IJS 2019b). Based on the oral interviews, the SJC selects candidates that qualify to write the exam. Upon passing the written exam, candidates are called for an oral exam, or *filter 3*. With the approval of the SJC, successful candidates are appointed to trainee judges by a cabinet decree based on the recommendation of the Minister of Justice (Decree-Law No. 150/83, 64). In addition, holders of a PhD in law can be appointed to the position of trainee judge by a cabinet decree based on the recommendation of the minister (Decree-Law No. 150/83, 68).

Trainee judges undergo a three-year training at the IJS (Decree-Law No. 150/83, 64). At the end of the training, the IJS Board evaluates the trainees and recommends the appointment of successful judges to the SJC which decides on the ability of these judges to perform and transfers successful judges to the "tenured judiciary" (Decree-Law No. 150/83, 70; ICJ 2017b, 5). This SJC decision is not subject to any form of revision or appeal (ICJ 2017b, 7). In addition, lawyers, employees of the judicial administration and public servants with a law a degree and 6

Figure 4: Process of Appointment of Judges to the Judiciary



Based on Lebanese Decree-Law No. 150/83; ICJ 2017b

years of experience or more can be directly appointed to the position of a tenured judge by a cabinet decree without the need for the three-year training (ICJ 2017b, 4). Tenured judges are “attached” to the MOJ until they are assigned to a court by the SJC through judicial formations (ICJ 2017b, 5).

This process allows for manipulation and arbitrariness in the appointment of judges. Filters 1, 2, and 3 are stages where the SJC and the IJS can directly influence the appointment of judges which allows them pass or eliminate any judge arbitrarily. Even before the written exam which is relatively objective, candidates must go through 2 layers of arbitrary filters. This allows the SJC and IJS to (dis)qualify any candidate they (do not) approve of regardless of their qualification and competence. This is especially true since the criteria for the selection of candidates that qualify to write the exam and to be appointed to the judiciary are not clearly defined in the law. Instead, the results of the interviews are essentially based on the discretion of the SJC members who take into consideration the files of the candidates and their “security reports” (Legal agenda, 2018a, 6-7).

In 2014 and in 2016, the weight of oral exams (filter 3) was increased in 2014 and 2016 to a point where oral exam results can now pass or fail a candidate, allowing examiners to influence the final results based on their own criteria rather than candidates’ qualifications (Legal agenda, 2018a, 6-7). The arbitrariness in the selection process can be seen in its outcomes that have been unreasonable at times. For instance, in the 1993/1994 round, the SJC decided to only allow male candidates to write the test and thereby disqualified all female candidates in the interview process (Legal agenda, 2018a, 6-7). In sum, the selection process rests largely on non-objective criteria and discretion, allowing external factors to influence the selection process.

The subjectivity in the process of appointment of judges is further reinforced by statistics which show that one ninth of judges are children of judges (Legal Agenda 2018a, 7). This issue was highlighted further in 2016 when six out of 17 appointed trainee judges were children of judges and three of them were children of SJC members (Legal Agenda 2018a, 7). A limitation of this argument, however, is that parents influence their children's career aspirations and there is a tendency for children to pursue careers similar to their parents (Gil-Flores, Padilla-Carmona & Suárez-Ortega 2011, 348). Nevertheless, this still raises question marks and is worth noting especially considering the lack of transparency and objectivity in the process of appointment (Daoud and Mansour 2010, 24).

It is worth noting, regarding inclusivity, that although women's participation in the Lebanese judiciary has constantly been increasing in the past few years, women still lack fair representation. In 2017, women assumed 47.5% of judge positions in the judiciary and this number is expected to exceed 50% by the end of 2019 (Legal agenda, 2018a, 12). However, women representation in higher judicial positions such as positions within the SJC or the Court of Cassation remains very low (Legal agenda, 2018a, 12). Also, veiled women are discriminated against and not accepted into the judiciary as part of customs -and not the law- (Ayoub 2019), although Muslims constitute around 57% of the Lebanese population (CIA 2019). In addition, women judges do not assume positions in family law courts due to religious considerations since these courts are religious (Daoud and Mansour 2010, 26). While, quantitatively, the numbers show impressive women participation in the Lebanese judiciary, qualitatively, women still face systemic discrimination resulting from discretion in the appointment of senior judges and traditions that restrict women participation in the judiciary.

Children of Judges in Lebanon in Light of the *Universal Charter of the Judge*

1/9

One in every nine judges in Lebanon are children of judges

In 2016

- 17 judges were appointed, out of which 6 were children of judges
- 3 of those 6 were children of members of the SJC

Based on Legal Agenda 2018a, 7

VS

"The selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification."

Based on IAJ 1999, 5.1

Figure 5: Children of Judges in Light of International Standards

The consequence of undefined criteria and discretion of judges is that the selection of judges appears based on the opinion of senior judges rather than on files of applicants (Daoud and Mansour 2010, 24). This lack of transparency combined with the susceptibility of the SJC and the IJS to pressure from the executive and from political parties, means that the process of selection and appointment of judges can be highly politicized and subject to undue influence. These concerns have been raised by the International community which criticizes the interview process due its lack of transparency, its subjectivity, its lack of review or appeal options, and its lack of safeguards to protect it from external influence violating the UN Special Rapporteur on the independence of judges and lawyers (ICJ 2017b, 7). In addition, the Universal Charter of the judge states that “[t]he selection and appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification” (IAJ 1999, 5.1).

2.2 Removal, Discipline and Promotion

Under the institutional approach, control over discipline and removal of judges is a factor that affects judicial independence. Although this factor is not widely discussed in the literature, it plays a vital role in influencing the behaviour of judges (Tiede 2016, 146). Protection for judges from arbitrary discipline and removal is crucial for judicial independence as it guarantees that the “executive cannot influence judges and judicial proceedings by threats to judges’ job security” (Breyer 1996, 989-990). In other words, it is important to protect careers of judges from undue influence that can affect their decision-making. This is usually done by implementing legal safeguards that protect judges from threats that can affect their job security in order to ensure judges are free and independent in their decisions. In this section I will address security of tenure

and the principle of irremovability, promotion, and discipline to show that protection for judges is lacking in Lebanese laws and that judges are not “immune to arbitrary decisions that may be imposed to punish their independence” (Daoud and Mansour 2010, 24). In other words, Lebanese laws do not protect judges from external influence.

2.2.1 Security of Tenure and Irremovability

Although Lebanese laws grant judges ‘security of tenure’, they undermine it in several provisions, deeming it unrealistic (Decree-Law No. 150/83, 44; ICJ 2017b, 16). The SJC has the power to dismiss a judge from his duties at any time as long as it provides a justified decision based on the recommendation of the Judicial Inspection (explained in 2.2.3) and after listening to the concerned judge (Decree-Law No. 150/83, 95). The SJC can also dismiss a trainee judge upon the recommendation of the board of the IJS on the basis of his inability to perform at the end of each year during the training without the need for any other administrative measures (Decree-Law No. 150/83, 70). There is a lack of clear criteria for the removal of judges and for the evaluation of their performance, which allows these decisions to be made based on discretion of the SJC, which we have already established is susceptible to external and political influence. (ICJ 2017b). On top of that, these decisions are not subject to any sort of appeal. In sum, judges do not realistically enjoy security of tenure.

The principle of irremovability, a pillar of judicial independence, states that judges “shall not be transferred from one jurisdiction or function to another without their consent” (Singhvi 1987). However, the Lebanese Judicial formations that assign judges to their courts and transfers judges within the judiciary, disregard the consent of judges when transferring them. In addition,

this decision is highly politicized as I will demonstrate later. It should be noted that the transfers, assignments and secondments of judges, similar to removals, rely heavily on the political considerations and the discretion of the SJC and the Minister of Justice, and their criteria are not clearly specified in the law (ICJ 2017b; Daoud and Mansour 2010, 24; Decree-Law No. 150/83).

2.2.2 Promotion

The system of promotion of judges also reflects a lack of protection for judges. Judges are promoted one level up every 24 months and trainee judges are promoted one level up annually (Decree-Law No. 150/83, 66; Decree-Law No. 112/59, 32; ICJ 2017b, 12). They are promoted by a cabinet decree upon the recommendation of the Minister of Justice and the approval of the SJC. There are no clear criteria for promotions based on performance or ability in the law; they are largely based on discretion. They rely heavily on personal relationships and connections (Daoud and Mansour 2010, 24). This constitutes a threat to the independence of judges in their judicial work since the literature shows that judges are willing to change their behaviour to increase their chances at getting promoted (Black; Owens 2016, 41).

2.2.3 Discipline

In this section, I will describe the process of disciplining judicial misconduct. I will begin by introducing and explaining the roles of the two main judicial disciplinary bodies and how the disciplinary process takes place. Then I will analyze this process highlighting the trigger for investigation, the independence of judicial bodies, and the disciplinary trial, to show the gaps that allow for arbitrariness in discipline and therefore allow for political influence.

The first body, the Judicial Inspectorate, is composed of a president and 10 inspectors from different judicial rankings, all appointed by a cabinet decree upon the recommendation of the Minister of Justice (Decree-Law No. 150/83, 98-101). The Judicial Inspectorate Council (JIC) is composed of the president and four of the inspectors. The JIC president is responsible for the implementation of an annual inspection programme within the judiciary that is prepared by the JIC (ICJ 2017c, 11-12). The president also receives complaints and may, themselves or through a delegate, investigate into these complaints or decide “not to pursue them” (Decree-Law No. 150/83, 108; ICJ 2017c, 11-12). Based on investigations, the JIC has the authority to (1) refer a judge to the Disciplinary Council (explained below) and (2) recommend to the Minister of Justice the suspension of that judge (Decree-Law No. 150/83, 106).

The second disciplinary body is the Disciplinary Council (DC) which is composed of 3 judges appointed by the president of the SJC every year (Decree-Law No. 150/83, 85). The DC is responsible for trying and deciding cases referred to it by the JIC. During the first stage of trial, the DC president, or a delegated member, conducts an investigation, questions the referred judge and hears witnesses (Decree-Law No. 150/83, 86). The judge conducting the investigation presents their findings in a report to the council. After that, the DC president presents the report to the judge in question and invites them to a hearing that is to be conducted confidentially (ICJ 2017c, 12). The judge is given the chance to defend themselves and is allowed to hire a lawyer - or a judge- to represent them (Decree-Law No. 150/83, 87). If the defendant judge does not attend the hearing, they are tried in absentia, which means the hearing takes place in their absence and based on investigations and documents (Decree-Law No. 150/83, 87). The decisions of the DC can be appealed and heard by the “High Body for Judicial Discipline” which is composed

of the president of the SJC, or his deputy, and four members appointed by the SJC (Decree-Law No. 150/83, 87), and whose decisions are final (ICJ 2017c, 13).

“The Minister of Justice controls the judicial inspectorate. He can dismiss/
discharge it whenever he wishes to do so.”

Former President of the SJC, interview with Legal Agenda, 2017
[Retrieved from Legal Agenda 2017b, 38]

“I personally heard the president of the SJC discourage the president of the
JIC from pursuing disciplinary action against judges several times, adding
that they (president of SJC) will stop the prosecution in case the president
of the JIC insisted”

Witness, interview with Legal Agenda, 2017
[Retrieved from Legal Agenda 2017b, 44]

The criteria for triggering disciplinary measures against a judge, or refraining from doing that, are not clearly defined in the law. The Lebanese law states that “any breach of professional duty, honour or dignity or courtesy that constitutes misconduct is to be sanctioned with disciplinary measures” (ICJ 2017c, 5). The law lists some of the breaches to be sanctioned, however, it is too “vague” in explaining what kind of behavior constitute judicial misconduct, thereby leaving room for discretion (ICJ 2017c, 6). In addition, sanctions are not prescribed for specific judicial misconduct, also leaving room for the discretion of the DC to decide what disciplinary measures to impose (ICJ 2017c, 5). This amount of discretion combined with the

influence of the executive and the SJC over disciplinary bodies puts judges at risk of arbitrary discipline, thus subjecting them to undue pressure.

Several issues undermine the independence of the disciplinary bodies in the Lebanese judiciary. The Judicial Inspectorate is appointed by the executive, and although it is considered to be an “independent entity”, it still operates under the supervision of the Minister of Justice (Legal Agenda 2017b, 38-47). The appointment of the DC, on the other hand, is dependent on the SJC - and therefore the executive -. This means the SJC and the executive have the power to influence members of the Judicial Inspectorate and the DC. In addition, the Judicial Inspectorate does not have its own budget or funds contrary to what the law states (Legal Agenda 2017b, 16). Another important obstacle is that the law allows the cabinet to refer members of the Judicial Inspectorate to the DC by a decree, allowing the executive to pressure the Judicial Inspectorate (ICJ 2017c, 14). This lack of independence is manifested by the fact that both the executive and the SJC have interfered and pressured the Judicial Inspectorate (Legal Agenda 2017b, 43-45). The lack of independence of disciplinary bodies undermines their roles and prevents accountability within the judiciary.

The disciplinary process, including the hearing, poses a number of problems as well. First, the Judicial Inspectorate is the only avenue of initiating investigation into a judge and referring them to the DC (Legal Agenda 2017c, 31). Although this might contribute to protecting judges from arbitrary discipline, limiting this power to one body -that lacks independence- allows for interference in the initiation of disciplinary action (Legal Agenda 2017c, 31). The legal guarantees provided to a judge tried by the DC are lacking: their hearing is confidential and not made public, they are not guaranteed “adequate time and facilities to prepare their defence”, and they may

be tried in absentia (ICJ 2017c, 15; Legal Agenda 2017c). Moreover, the SJC president is the president of the body that hears the appeals of the DC decisions. Considering that the SJC appoints and influences members of the DC, the SJC and the DC are essentially two sides of the same coin which weakens the function of the appeal. These aspects of the trial violate a defendant's right to a fair trial.

Clearly, the judicial system in Lebanon allows the executive to interfere in the careers of judges. The law grants the SJC, the Minister of Justice, and the executive powers to influence the career paths of judges. These powers can be used to subject judges to undue influence, therefore undermining the independence of mind of judges and therefore the independence of the judiciary as a whole. International standards stress that judges should be able to perform without restrictions that can affect the independence of their decisions. The United Nations Commission of Human Rights (UNCHR) urges all governments to "respect and uphold the independence of judges and ... to take effective legislative, law enforcement and other appropriate measures that will enable them to carry out their professional duties without harassment or intimidation of any kind" (UNCHR 2004, 2). Moreover, International standards in the International Covenant on Civil and Political Rights (ICCPR) and in the UN basic principles of the Independence of the Judiciary shed light on the principle of irremovability and stress on the importance of ensuring "that judges are only dismissed on grounds of misconduct or incompetence and that their removal should be subject to independent review" (ICJ 2017b, 14).

Chapter 3: Financial Autonomy and Sufficiency

International standards stress the importance of the independence of judicial councils in “managing their own budget and having adequate human and financial resources for their functions” (ICJ 2018). There is a general agreement in the literature that judiciaries that have control over their budgets are more likely to be independent (Tiede 2006, 136). The control of political bodies external to the judiciary over the budget allows for undue influence over judicial proceedings and decisions and for financial pressure on judges and the judiciary. Restricting the finances of an institution is one of the most effective ways of controlling it, and so the lack of the judiciary’s participation in its budget undermines its independence (ICJ 2007, 33). In fact, budget cuts have been used as a tactic to attack judiciaries in the past (Rosenberg 1992, 377).

Another financial factor affecting the autonomy of a judiciary is the sufficiency of its budget. The literature finds that judiciaries with small budgets are susceptible to undue influence (Tiede 2006, 136). Adequate funding of the courts is an important factor of independence of individual judges and the judiciary (Gee, 2015). It requires politicians to communicate with experts in the judiciary and the legal profession to understand the financial needs of the judiciary and how much funding it requires (Gee, 2015). The Office of the United Nations High Commissioner for Human Rights (OHCHR) states that “Inadequate remuneration may constitute a threat to the independence of judges in that it may make them more amenable to corruption” (OHCHR 2003, 116-117).

In Lebanon, the budget of the judiciary allows for external interference. The national budget is prepared by the cabinet and passed by the parliament and it regulates the budget of the MOJ. The budget of the administrative and the ordinary courts system, *’lqaḍā’ ’l’adli*, which is composed of civil and criminal courts, is included in the budget of the MOJ (Legal Agenda

2017e, 10). This includes the SJC and the IJS who we have already established receive funds from the budget of the MOJ (ICJ 2017b, 5). It is worth noting that from 2006 until late 2017, there was no national budget due to political tensions, which naturally limited oversight and regulation of public funds. In sum, the budget of the judiciary is controlled by external actors which threatens its independence.

The budget of the Lebanese judiciary is also inadequate for the independent functioning of the judiciary. In 2017, 0.34% of the budget was allocated specifically for ordinary and administrative courts and 0.47% of the national budget was allocated for the expenses of the whole judiciary (Legal Agenda 2017e, 5). The fact that this is the same percentage that was allocated to the judiciary in the 2012 budget draft (that was not passed), indicates a lack of progress (Legal Agenda 2018e). 0.47% is relatively low compared to the average of 2.2% in European countries in 2012 (Legal Agenda 2017e, 5). Tunisia, a country more similar to Lebanon, allocated 1.42% to the judiciary in 2014 and 1.68% in 2016 (Legal Agenda 2018e).

Political powers have continuously attempted to “undermine” the social and financial rights of judges since 2014 (in 2014, March 2017, August 2017, March 2018, and most recently in 2019; Legal Agenda 2019). These attempts have threatened salaries, vacations, and the Judges’ Cooperation Fund, which is a fund established to protect judges’ health benefits and education grants for their children (Legal Agenda 2014). The government has consistently tried to compromise the Judges’ Cooperation Fund (Saghieh 2018). In 2014, Member of Parliament Fouad Sanyoura, who held the position of Prime Minister from 2005 to 2008, described the state’s contributions to the Judges’ Cooperation Fund as a “waste of funds” (Legal Agenda 2019). Most recently, in 2019, the General Budget Law proposals drastically reduced the resources of the

Judge Cooperation Fund without consulting the SJC which violates not only Decree-Law No. 150/83, but also the constitution (Salama 2019). These attempts to marginalize judges, whether purposely or not, reflect the executive's lack of will to support judges and the independence of the judiciary, which I examine more thoroughly later in Part B.

On the other hand, judges have continuously criticized and condemned attempts to weaken their independence. They held several strikes in the past couple of years to protest violations of their rights. In March 2017, as a result to governmental proposals that would allow the government to compromise the Judge's Cooperation Fund, judges took collective action and formed Whatsapp groups to communicate and share meeting information and updates (Legal Agenda 2017a). This led to a petition signed by 352 judges demanding stronger safeguards to guarantee their independence as judges, including amending the process of selection of members of the SJC (Saghieh 2018a). The 2019 General Budget Law proposals mentioned above also led judges to strike independently from the SJC due to its susceptibility for political pressure (Legal Agenda 2019). The SJC's support of strikes held by judges is inconsistent; it has been supportive of these strikes at times and unsupportive at other times, due to political reasons (Saghieh 2018a). This makes them unreliable. In sum, judges acknowledge and oppose governmental attempts to undermine their financial rights and therefore their independence.

Part B: The Readiness of Political Elites to Interfere

As established, there is a lack of protection for judges in the law. The regulations do not clearly define the criteria regarding selection, removal, and discipline of judges and this allows for discretion in the decisions of higher position judges and members of the SJC which are, as I demonstrated, influenced by political interests. The loopholes in the laws allow for its exploitation by the SJC, the Minister of Justice, and the executive. Moreover, the absence of safeguards for judges indicates the lack of political will to grant judges the protection they need in order to function independently. In other words, the structure of the system indicates a lack of will for judicial independence.

Institutional designs, laws and regulations do not guarantee judicial independence in the absence of political support. While these variables contribute to judicial independence, they do not necessarily prevent undue influence from third parties (Papayannis 2016, 38; Hilbink 2012, 587-588). Historical analysis has shown that even when some administrations were legally guaranteed a high degree of immunity and independence..., politicians have been able to “circumvent these guarantees and assert their dominant role” (Iskandar 1996, Ch 1). This means that even when laws are enacted to protect administrations and grant them immunity, the absence of political support (or the political will to undermine administrations and their independence) can constitute an obstacle to the independence and proper functioning of agencies.

Some literature finds that the support of actors external to the judiciary in the administration of the judicial matters does not harm judicial independence as long as there is a

will to support this independence. In fact, some view that the government branches must assist the judiciary in the administration of courts (Russell 2001, 19-20). Along these lines, the ICJ recommends that when the executive has certain powers in the judiciary, its “prerogatives must not be politicised and must not undermine the independence of the judiciary”. In accordance with this, part of the literature defines independent judiciaries as “courts where politicians do not manipulate the careers of sitting judges” (Ramseyer 1994, 722) but instead are willing to interact with judicial and legal actors “in ways necessary to secure independence for individual judges and the judiciary as a branch of government” (Gee, 2015). This highlights the importance of political will to achieve judicial independence.

The case of Norway demonstrates that the involvement of the executive does not necessarily hinder judicial independence as long as there is a political will to support judicial independence. In Norway, the National Courts Administration (NCA) is an independent administrative body with the mandate of “safeguarding the independence of the courts in relation to the other branches of government” (SCN, Undated). The Norwegian executive is involved in the administration of the judiciary. It has powers including overruling administrative decisions of the NCA and making final decisions regarding the appointment of judges (based on the recommendations of the NCA) (SCN, Undated). Despite this power, the executive rarely goes against the recommendations of the NCA and rarely interferes in their decisions. Nevertheless, Norway remains one of the countries with the most independent judiciaries in the world. Its judiciary ranked 3rd most independent in the world in 2017-2018 while the Lebanese judiciary ranked 105 (Schwab & Sala i Martin 2017, 179-227). This shows that when there is a political will to maintain the independence of the judiciary, regardless of the reasons behind it, the executive

will not undermine the independence of the judiciary even when the law allows them to interfere.

In this part of the paper, I will argue that there is an absence of political will and support for the independence of the judiciary in Lebanon and that this contributes to the lack of independence of the justice system. To do that, I will look at the relevant aspects of the political context of Lebanon highlighting the confessionalism and clientelism. Then I will examine patterns of behaviour of political elites with governmental agencies that reflect lack of support for independence. I will show that these behaviour patterns are also present in the judiciary. Finally, I will show there is no deterrent to political interference because political elites are not held accountable for their misconduct.

Chapter 4: Political Context

The dominant political actors in Lebanon are sectarian political parties and their leaders. Ministers, MPs, and other public officials represent these parties and their leaders in the government and look out for their interests. This allows political elites to control ministries, the parliament, and most governmental bodies and services. The system has provided political elites with extensive powers making it elite-centric (Younes 2018). In fact, the literature considers that Lebanese state institutions serve as a “forum for the sectarian political elites to settle disputes and negotiate arrangements” (Najem 2012, 50).

4.1 Confessionalism: Sectarian Power-Sharing

The political system in Lebanon is known to be a “model of consociational democracy arranged along confessional lines” (Najem 2012, 50). Lijphart’s consociationalism, or power-sharing democracy, is a political model of governance in states with internal divisions - heterogenous or plural societies- where power is shared among different groups to achieve balanced representation and to maintain stability (Lijphart 1969; Younes 2018, 5). This model is applied in a number of states and is not very common. In fact, Lebanon is a prominent case in research and literature around consociationalism (Bogaards 2019, 28). The Lebanese society is divided along confessional lines and its model of consociationalism distributes power among 18 legally recognized sects represented by political parties (Younes 2018, 20). This form of consociationalism, based on religious and sectarian lines, is known as confessionalism. In other words, power is shared among sectarian parties that aim to represent their groups and advance their interests.

Lebanon’s confessional societal structure has been reflected in its political system since the 1920’s (El-Khazen 2000, 31). The Lebanese constitution adopted in 1926 was the earliest formal legislation to address confessional divisions and introduce some “elements” of consociationalism in Lebanon (Bogaards 2019, 31-32). However, the form of power-sharing we see in Lebanon today was introduced by the National Pact of 1943 which allocated top executive and legislative positions in the state to designated sects and fixed the ratio of Christian-to-Muslim seats in the parliament and throughout the government at a ratio of 6:5 (Bogaards 2019, 31-32). These innovations were not legally codified. In 1989, the Taif Agreement brought more

Lebanon 2018: The parliament

The Lebanese parliament has proportional representation, according to the Taif Accord.

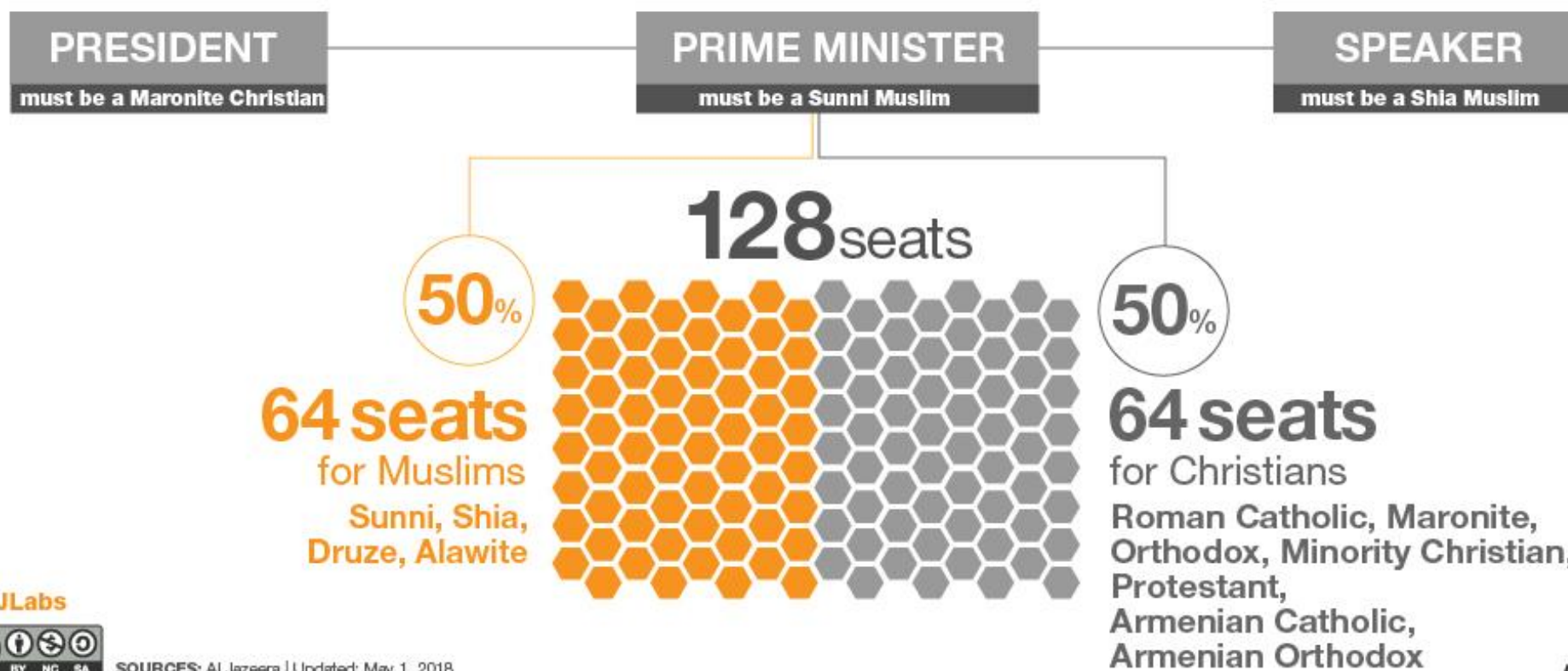


Figure 6: Sectarian Representation in Top Public Positions and Parliament

consociational changes requiring equal representation between Christians and Muslims and proportional representation among confessional groups, or sects, in the parliament and within the government (Bogaards 2019, 32). These changes led to constitutional amendments which means that the constitution was amended to include the principle of equal representation between Muslims and Christians and proportional representation among sects (LC 1926, Art 24-95). Figure 4 demonstrates the current sectarian representation in positions of President, Prime Minister, and Speaker of Parliament in Lebanon as well as Members of Parliament.

Although the Lebanese confessional/consociational system was initially established in order to maintain stability and achieve equal representation among factions of the Lebanese society, it has contributed to instability and inefficiency in the functioning of the government. The confessional power-sharing system has undermined the state government system, spread social political and economic insecurity among its citizens, weakened the government commitment to the public good and its ability to progress and develop the country, and as a result, led to heightened sectarian tensions (Salamey 2009, 84). It also led to inefficiency and failure in the government (M.A 2018), including the appointment of unqualified candidates to meet sectarian quotas (Reuters 2018; Asharq Al-Awsat 2018).

This confessional system has impacted the efficiency and functioning of the judiciary as well. Lebanese civil society considers the Lebanese judicial system to be “ineffective and manipulated by confessional interests” (BRD 2012, 3). Political instability caused by confessional and sectarian conflict interrupted the normal course of examination and appointment of judges from 2005 to 2008 thereby immobilizing the judiciary (Legal Agenda 2018a, 6). Examination

rounds are irregular until this day, and there is over 30% vacancy in judge positions in the judiciary (Legal Agenda 2018a, 6).

Legal experts have also touched on confessional considerations in the appointment of judges. The SJC must consist of five Muslim and five Christian members in accordance with the principle of equal representation. Judge positions within the judiciary are claimed to be based on qualification rather than sectarian quotas, however, statistics prove otherwise (Legal Agenda 2018d, 7). The numbers of judges from each sect in the judiciary reflect relatively equal and

Table 1: Statistics of Judges by Religion and Sect

Year Sect	1993	2004	2010	2017	
				Number	Percentage
Sunni	78	97	111	123	23.5%
Shia	57	87	108	114	22%
Druze	21	26	27	27	5%
Total Muslims	157	210	246	264	50.5%
Maronite	89	144	169	172	33%
Catholic	22	39	38	37	7%
Orthodox	23	35	38	40	8%
Christian Minorities	3	5	5	7	1.5%
Total Christians	137	223	250	257	49.5%
Unidentified	5	-	-	-	-

Translated from Legal Agenda 2018d

proportional representation of religions and sects over the years as shown in table 1 (Legal Agenda 2018d, 7). This is plausible considering the discretion in the process of appointment of judges. The presence of sectarian considerations is reinforced by the events of the 2014-2015 round of judicial appointments when a majority of Christian judges were appointed. This led to protests and to the arrangement of a second round of examinations in the same year where a majority of Muslim judges were appointed (Legal Agenda 2018a, 7).

Sectarian considerations in the appointment of judges violate international norms. The ICJ finds that the selection of judges based on religion is discriminatory and violates international principles (ICJ 2017b, 11). The UN Principles on the Independence of the Judiciary stress that “in the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status” (UN 1985, 10). In addition, although the Lebanese constitution has clauses that put sectarian considerations into place, the same constitution also asserts sectarianism is to end at some point. It states that a committee is to be formed to prepare a plan to “ensure the abolition of confessionalism”, anticipating a transitional plan that cancels confessional representation (Lebanese Constitution 1926, Art 95). However, this has not been considered seriously in practice. Sectarian considerations are also contrary to building the meritocracy the constitution envisions when it states: “no preference shall be made” in holding public office, “except on the basis of merit and competence” (Lebanese Constitution 1926, Art 12).

4.2 Clientelism

Clientelism is another aspect of Lebanese politics. Clientelism describes a system based on the relationship between a *patron* and a *client* that is (1) built around the exchange of social, economic, political, or other resources (Shmuel Noah & Roniger 1980, 49-50) and (2) “built around asymmetric but mutually beneficial and open-ended transactions” (Hamzeh 2001, 167). The patrons in Lebanese system are political elites and the clients are their constituencies. Essentially, political elites provide their constituencies with basic needs and services that the government is “unable” to provide them with, in exchange for their political support. Considering the sectarian nature of political parties, the clientelistic system is mainly based on sectarian lines, strengthening the confessional nature of Lebanese politics. In fact, confessionalism in Lebanon has reinforced sectarianism and contributed to clientelism (Younes 2018, 4). Clientelism, sectarianism and consociational are closely linked in Lebanese politics.

Clientelism in Lebanon can be traced back to the eighteenth century where feudal families provided villagers with protection in return for their political support that was based on personal relationships (Hamzeh 2001, 168-169). The nature of this clientelistic relationship became more confessional in the nineteenth century with the rise of sectarian tensions in the area (Hamzeh 2001, 170). In the early twentieth century, a new category of leaders began providing bureaucratic patronage based on confession and kinship (Hamzeh 2001, 171). Today, the political system is traditional and dependent on special favors and services, that is between ministers and deputies within the government, and between the government and citizens, such as services politicians provide citizens with in exchange for favors in their interest (Iskandar 1996, Ch 2).

Clientelism has contributed to strengthening political elites at the expense of the state as a whole in Lebanon. As previously mentioned, government posts are allocated to different sects to ensure equal and proportional representation of sects and the parties they represent. However, they are also divided among parties “*because they represent opportunities for clientelism*” (Deets 2018, 139-140). In other words, clientelism is taken into consideration when allocating seats in the government to parties and sects. This shows how deeply embedded and institutionalized clientelism is in the Lebanese system. It is not surprising then, that political leaders deliberately limit the government’s ability to provide citizens with their basic rights and needs, in order to control state institutions to gain support and legitimacy from their followers as separate groups rather than as a whole state (Dagher 2018, 96; Deets 2018, 140).

The impacts of clientelism can also be seen in the judiciary. Clientelism combined with the interference of the political elites in the appointment of judges, opens doors to nepotism and favoring judges for certain positions and locations, thereby making politicians stronger and reinforcing clientelism (Legal agenda, 2018a, 14-15). It also puts judges under pressure and leads to judicial capitulation. The power of political elites to influence decisions that can affect the careers of judges can affect the behavior of judges when they see that their career progress is linked to their relations with political powers. Judges learn that those who yield to political elites are backed by them and have an easier path climbing the career ladder as opposed to judges who hold on to their independence and refuse to be manipulated by political powers who, in turn, limit their careers and are viewed as less successful than others in the eye of the public (Saghieh 2019a, 5).

In addition, this opens doors to selectivity in prosecution. The judiciary in Lebanon is known to target the poor and the disadvantaged while giving immunity to the elite and those with “sectarian political connections” (Fernandez 2017). Several cases have shown the judiciary’s trend to try and arrest weaker individuals for minor violations of the law while the more powerful get away with their actions which are much more harmful to public interest (Saghieh 2017).

Chapter 5: Politicians are Ready to Use Their Power

In this section, I will demonstrate that politicians are willing to use their power to limit the independence of the judiciary. I will look at the trends of political pressure exercised on governmental administrations and the judiciary which reflects a lack of political support and therefore a lack of political will for these institutions to function effectively and independently.

5.1 Elites Interfere with Other Agencies than the Judiciary

Iskandar, a Professor of Political Studies and Public Administration at the American University of Beirut, finds that political elites tend to interfere in governmental agencies (Iskandar 1996, Ch 1). He examines five ‘central control agencies’ (CCAs) within the executive branch of the Lebanese government to find the problems and obstacles that prevented them from functioning effectively and independently. CCAs refer to mechanisms established to “practice financial and legal checks within the government to ensure the legality of executive actions and their adherence with laws and regulations” (Iskandar 1996, Ch 1). In other words, they are agencies that hold public agents and officials accountable “to minimize the abuse of authority” (Iskandar

1996, Ch 1). Iskandar finds that political interference and pressure are the most important problems that undermine the work of CCAs.

Iskandar's work examines several forms of political interference with CCAs. The following are the patterns that I find impact the independence CCAs the most:

Hiring personnel who can be influenced: The civil service council, an agency established for the administration of matters pertaining to personnel in the government, met resistance from politicians who "saw it as a threat" and resorted to hiring "unclassified casual workers" who can be hired directly by individual ministers and whose rights are not codified under the public service personnel law (Iskandar 1996, Ch 1). This allowed ministers and politicians to control the civil service council workers and it is a form of clientelism in the public service.

Disciplinary system is tilted in favor of political elites: Inappropriate use of, or protection from, disciplinary action under a system that limits convicted employees' rights to appeal (Iskandar 1996, Ch 1).

Pressuring, bypassing and intimidating: Iskandar notes that some cabinets have pressured and bypassed the Court of Accounts which monitors public funds and acts as the "watchdog of the financial operations of the Lebanese Government" (Iskandar 1996, Ch 1). Examples of cabinets pressuring and bypassing include overruling the court in favor of ministries and proceeding with public works without the court's approval when it was required (Iskandar 1996, Ch 1).

Mutual-interest relationships: Clientelism. Politicians rely on "services and favors" from civil servants in exchange for their political support. Several high-ranked civil servants have stated

that they have been approached by -unbelievably high numbers of- politicians interfering, pressuring, and requesting “special services” from them (Iskandar 1996, Ch 1).

Absence of Accountability: Ministers and members of parliament are not held responsible for misconduct and violation of laws. There is no official “code of conduct for politicians”. There were two laws enacted in 1953 and 1954 regarding illicit wealth and income, however, they outdated and not applied (Iskandar 1996, Ch 2).

5.2 Politicians Interfere in the Judiciary

“Some politicians use judges in high positions (judges from judicial inspectorate, for instance). The way the communication takes place is suspicious. For example, a judge (A) from the judicial inspection calls a judge (B) from the phone number of the judicial inspectorate. When judge B sees the number of the caller, their first thought is that they are in trouble. Judge A tries to influence a case judge B is handling². This way of communication implies that the judge A is coming ‘from above’, like they are calling from inspection.”

Judge, interview with Legal Agenda, 2015
[Retrieved from Legal Agenda 2017b, 45; edited]

Iskandar finds that the behaviour of political elites and their interference in agencies reflects a lack of political will to support their independence. This behaviour extends to the judiciary. In this section, I will demonstrate how the forms of political interference in CCAs are used to interfere in the judiciary as well.

² Influence through *wasta*. For clarification on *wasta*, please see footnote 1.

Mutual-interest relationships + Hiring personnel who can be influenced:

One of the hypotheses that explain judicial capitulation in the literature is the “Regime-related explanation” which sees that authoritarian leaders select judges who are often driven by their “safety and economic security” which means they are less likely to resist political pressure (Hilbink 2007, 27; Moustafa 2003; 924-926). In other words, elites select judges they know are more likely to be influenced which allows elites to manipulate and control courts.

As I previously established, the appointment of members of the SJC is influenced by the executive, and therefore the political elites that the executive represents. Due to the SJC’s power in the administration and functioning of the judiciary and courts, political elites in Lebanon have an interest in controlling it. In fact, the SJC was inactive in 2015-2016 due to the vacancy of most of its seats as a result of political conflict over appointing SJC members (Legal Agenda 2018a, 4). A big portion of civil society and lawyers in Lebanon believe this means the SJC is an “extension” of the political system and they question whether SJC’s role is deviating towards safeguarding the interests of the political system rather than protecting judges from it since the SJC decisions are dependent on the approval of the executive (Saghieh 2019a, 5).

An example of this is judicial formations. Judicial formations assign judges to the courts and chambers they sit in. They are considered a judicial matter that must always be under the control of the judiciary in order to guarantee judicial independence (Valente 1985). This is not the case in Lebanon. The SJC prepares judicial formations with the approval of seven of its members. These formations, however, cannot be enacted without a decree based on the recommendation of the Minister of Justice and the signature of the prime minister, the Minister of Justice, and the Minister of Finance. In case of an unsettled dispute between the SJC and the

Minister of Justice, the SJC makes a final decision with a majority of seven of its members (Decree-Law No. 150/83, 5). Practically, this is not feasible. It is not likely that a majority of seven members will take a stand against the executive considering the relationship between the executive and the SJC. In sum, the SJC prepares the judicial formations but they do not come into effect without the approval of the executive, thus giving the executive, or political elites, the power to assert dominance and control over the judiciary.

To add to that, the SJC no longer limits its contact with the executive and political powers to the Minister of Justice, instead there is a trend for SJC to visit political leaders and listen to their conditions for accepting to enact judicial formations, leading not only to the institutionalization of political interference, but also to accustoming politicians to this power (Saghieh 2019a, 4). This is because these visits are a form of obtaining the approval of political powers regarding which judges sit in what chambers. In other words, if these powers find that the judicial formations do not serve their political interests, they can refuse to enact the decree. Moreover, the fact that the SJC, the highest judicial authority in Lebanon, seeks the approval of the executive leads to the normalization of the interference of the executive.

Disciplinary system is tilted in favor of political elites: As explained in section 1.2.2, judges are not practically guaranteed security of tenure since there are no sufficient safeguards, nor avenues of appeal, to protect judges from being dismissed by the SJC, who is subservient to the executive. Judges are “not immune to arbitrary decisions imposed to punish their independence of mind” (Daoud and Mansour 2010, 24). There are real cases that demonstrated inappropriate enforcement of disciplinary measures that I will address in 2.2.3. In addition, the disciplinary bodies, namely the Judicial Inspectorate and the DC, are appointed by the cabinet and the SJC

respectively. Until 2010, there was significant vacancy in positions of JIC, which according to legal experts, show political intentions of marginalizing this disciplinary body (Legal Agenda 2018c).

In addition, there is a trend to substitute appropriate and proportionate disciplinary punishments for the actions of judges with more forgiving measures such as transfers, resignations, and decisions without trial when elites wish to do so (Legal Agenda 2018c). For example, Ghassan Rabbah, a judge accused of bribery in 2012 was dismissed and removed from the service while keeping his end of service benefits instead of being fired, this punishment has been viewed as disproportional to the crime he was accused of (Saghieh 2013). In 2018, there were allegations of bribery against judge Nadim Ghazal who resigned after being questioned by the State Council, the equivalent of the SJC in the administrative law system in Lebanon. However, no investigations were conducted (Saghieh 2018c). This trend is dangerous because it does not deteriorate judges from breaching the law or submitting to the executive and politicians.

Pressuring, bypassing and intimidating: I will address this in Section 5.3.

Absence of Accountability: I will address this in Chapter 6.

In addition to these patterns of interference, Salim Jreissati, the Minister of Justice, has personally interfered in trial proceedings and outcomes of cases several times (Saghieh 2017a, Saghieh 2017b). While his interference might have resulted in positive outcomes at times, it nevertheless constitutes and normalizes executive interference in judicial proceedings, thereby undermining judicial independence.

5.3 Politicians are Ready to Penalize Judges for their Independence of Mind

The SJC and the executive have attempted to impose disciplinary sanctions on judges for their opinions or decisions when they did not serve their interests. This is possible because, as previously mentioned, judges are not practically guaranteed security of tenure and can be arbitrarily transferred (as a disciplinary measure) or referred to the JIC without clear or valid justification. In 2004, Judge Fawzi Khamis made a number of decisions that displeased the political leaders and as a result, the president of the SJC explicitly asked for his removal from office but he was transferred instead (Daoud and Mansour 2010, 24). A more recent example is the case of retired Judge Rashid Takkoush who criticized the Minister of Justice Salim Jreissati for his judiciary-related work which he considered took a form of interference in the judiciary and looking after the interests of politicians when it came to the judicial formations (Saghieh 2018b). Takkoush was referred to the Judicial Inspectorate by none other than Salim Jreissati (Janoubia 2018). These examples demonstrate the lack of independence of judges in their decisions and opinions.

In addition, the SJC has used its power to pressure and intimidate. As I mentioned in section 1.2.3, judges held several strikes and took collective action in order to protect their rights and demand safeguards to protect them from undue influence when the government attempted to undermine their social and financial rights and when it bypassed the SJC. When judges formed Whatsapp groups in 2017 and signed the petition mentioned in chapter 4 as a form of collective action in response to an attack on the judiciary's financial independence, they were met with

threats of disciplinary action from the SJC (Legal Agenda 2017a). This collective action led to the establishment of the Lebanese Association of Judges³ in 2018, an idea that had been introduced since 2006. Even this association was met with opposition from the Minister of Justice and the SJC who attempted to discourage authorities from approving its establishment and warned judges from joining it (Legal Agenda 2017a).

It should be noted in this regard that the Lebanese law prohibits judges from forming and joining “professional organizations or trade unions”, striking, or “launching collective petitions related to the public sector” (Decree-Law No. 150/83, 2; ICJ 2017c, 9-10). The criminal code also states that “civil servants -including judges- bound by a public law contract can be demoted if they stop their work or agree to do so in groups, or if they resign under circumstances that disrupt the functioning of one of the public services” (ICJ 2017c, 10). This is a source of concern for the ICJ. The prohibition of judges to form or join organizations or unions restricts their freedom to represent their interests and fight for their rights and limits their judicial independence (ICJ 2017c, 11).

Chapter 6: Politicians are not held Accountable

“Oh Pharaoh, who turned you into a tyrant?”

“No one stopped me”

Lebanese Proverb

³ The Lebanese Association of Judges aims to contribute to judicial independence, protect and defend judges and promote the role of judges in Lebanese society.

Political elites in Lebanon are not accountable to the public. In fact, politicians actively seek to “protect” themselves from accountability. Political analysis has shown that politicians (1) do not conceive of the notion that people should or could hold them accountable and (2) fight attempts to implement accountability mechanisms (Atallah 2015). Politicians in Lebanon have oppressed, pressured, and bypassed movements that demanded accountability (Atallah 2015, Iskandar 1996, Ch 2). Although there were some attempts and initiatives to combat corruption, they failed because there of the absence of political will (Haase 2018, 802). In the absence of political accountability, elites have no deterrent from interfering in the judiciary. In this section I will briefly go over several accountability options that have failed in enforcing accountability of politicians in Lebanon.

As explained in section 2.2.2, CCAs that were established as mechanisms to enforce accountability were faced with several obstacles that prevented them from functioning effectively. These agencies include:

- The Civil Service Council: entrusted with the responsibility of overseeing issues regarding personnel in the government (Iskandar 1996, Ch 1).
- The Central Inspection Council: responsible for monitoring the adherence of the work of public servants and officials to the laws (Salamey 2014, 151).
- The General Disciplinary Council: the disciplinary body in the public service that is responsible for investigating and deciding disciplinary measures to be taken in cases of breach of the law (Salamey 2014, 151).
- The Court of Accounts (or Audit): an administrative court established to watch over public funds through monitoring and performing audits (Iskandar 1996, Ch 1).

- The Ministry of Finance: this is a very important accountability mechanism, it is responsible for overseeing public funds, monitoring public expenditures and ensuring their compliance with the laws and budget (Salamey 2014, 152). It is worth noting that financial controls are not applied consistently in Lebanon (UN 2004, 66). From 2005 until 2019 there was no government budget, largely due to political tensions (Haase 2018, 799), and that in itself hinders financial accountability (UN 2004, 66). This is dangerous because monitoring funds and expenditures is one of the most important mechanisms of enforcing accountability.

In practice, CCAs were not able to control corruption and enforce accountability. CCAs function as whistleblowers, whose protection must be ensured in order to enforce accountability (UN 2004, 66). As I mentioned earlier, Lebanese politicians have resorted to several strategies to actively disable CCAs which reflects a lack of support for accountability.

Legislative oversight over the executive branch is one of the most important means of enforcing accountability of the executive. The Lebanese parliament, collectively, has a number of tools to perform its oversight functions including voting confidence, impeachment of the Prime Minister or ministers, and revision of the national budget. However, sectarian political tensions act as an obstacle to parliament's effective functioning especially considering that members of the legislative branch and the cabinet both belong to the political parties in control (Salamey 2014, 134). In addition, the culture of clientelism and special services is present between the legislative and executive branches, which comprises a massive violation of the principle of separation of powers, especially considering that records of parliamentary committees' meetings are kept secret (Iskandar 1996, Ch 2). Moreover, MPs do not have the capacity or the expertise

to perform all of their oversight functions. There have been attempts to strengthen the capacity of the parliament. However, once again, political tensions and manipulations have prevented most of these attempts (Salamey 2014, 135).

Election-wise, Lebanon suffers from democratic deficit. Although the Lebanese parliament -and municipalities- is elected, the election process is not democratic and is far from representative of the will of the public. The literature finds that Lebanese elections are “meaningless” since electoral laws are designed to guarantee the success of representatives of political groups to maintain political power among political elites while minimizing competition from groups outside of the dominant parties and “excluding popular participation” (Atallah 2015, MacQueen 2016, 75). In fact, in all the elections Lebanon had since the end of the civil war, independent groups and reformists have rarely been able to affect electoral platforms or win elections (Deets 2018, 139). In 2017, the Lebanese Parliament adopted a new electoral law based on proportional representation, however, its rules largely limited its representative nature and reinforced confessional divisions (Saghieh 2018d). Not only is the electoral system tilted in favor of politicians, but politicians also bypass regulations that conflict with their interests (MacQueen 2016, 79) and misuse their powers to influence elections (Saghieh 2018d).

Politicians are not legally subject to the jurisdiction of CCAs or other disciplinary agencies. As previously mentioned, there is no official code of conduct that governs ministers and members of parliament which means they are not held accountable and their “misconduct and violations of the laws go unpunished” (Iskandar 1996, Ch 3). MPs enjoy parliamentary immunity. Presidents, PMs, and ministers are protected by their immunity; the consent of the Supreme Council’s is required as a condition for their prosecution (Macaron 2019). The Supreme Council was

established to try presidents and ministers for their crimes but is inactive and has only took on two cases since 1992 (Macaron 2019). Lebanon is party to the UN Convention Against Corruption (UNODC 2019) which covers several forms of corruption including trading in influence (abusing power to influence decision-making) and abuse of functions (UN 2003, Art 18-19) but in the absence of political will, this has not been seriously considered. Therefore, there are no realistic mechanisms to hold Lebanese politicians.

In addition, there has been attempts to suppress criticism of the judicial system in Lebanon. Although Lebanese laws protect freedom of speech, elites usually resort to legal action under the Lebanese Press and Publication Law or the Criminal Code that criminalizes defamation of courts and public officials (Criminal Code 340/1943, Art 386). In 2013, journalist Mohammad Nazzal published an article criticizing a court decision to shed light on corruption in the judicial system. As a result, he was sued by the judge whose decision he had criticized and he was fined although the judge in question was demoted (Haddad 2014). It is worth noting that the definition of defamation is ambiguous and not clearly defined in the laws and regulations (Fakih 2014). This shows that the judiciary, controlled by elites, is not even willing to accept criticism.

Conclusion

A survey conducted by Lebanese NGO “Sakker El Dekkene”⁴ in 2015 found that only 14% of the Lebanese population trusts the judiciary, and 64% of the respondents mentioned political interference as a reason for their distrust (Sakker El Dekkene 2015, 5). On the other hand, 85% of the Lebanese population does not trust political elites, who, as I have established, influence and control the judiciary (Akoum 2019). Lebanese citizens do not trust their justice system and as a result, they tend to avoid going to court or taking legal action. This has prevented legal resolving of disputes and protection of citizens’ rights. Many Lebanese have come to accept that there is no justice system to protect their rights and this has been one of the main drivers of the October revolution.

The Question: What are the Dynamics of the Lack of Judicial Independence in Lebanon?

The main argument in this paper is that the lack of independence of the Lebanese judiciary from political interference is a result of two main factors. First, the Lebanese judiciary is vulnerable to interference. The main reason behind this is the powers granted to the executive in the administration of the judiciary by the law, in addition to the legal gaps and loopholes that allow for the exploitation of the law. The executive heavily influences the SJC which enjoys extensive powers in the administration of the judiciary including making decisions regarding the

⁴ Sakker El Dekkene is a Lebanese non-governmental organization that aims to fight corruption in public administrations in Lebanon by collecting data on corruption and raising awareness. Sakker El Dekkene translates to “Shut down the cornerstore”; cornerstone referring the government since it often operates for financial profit rather than to provide citizens with governmental services.

careers of judges such as their appointment, removal, discipline, and promotion. The law even allows the executive to directly interfere in many of these decisions that require a cabinet decree. Moreover, the law is often vague in specifying the criteria these decisions should be based on, allowing the SJC and other judicial bodies to exercise discretion. Lastly, the executive's control over the budget of the judiciary threatens its independence.

The second factor is the readiness of political elites to interfere as demonstrated by the political context, their interference in the judiciary, and their lack of accountability. Lebanese politics largely depends on confessionalism and clientelism. This has impacted the functioning of the government and the judiciary, leading to inefficiency, favoritism, and pressure on judges in their decision-making. Political elites' behaviour has reflected a lack of will and support for the independence of the judiciary. This is illustrated by their exploitation of their powers in the appointment and assignment of judges to different positions and locations in order to assign judges they can control. Moreover, the SJC and political elites are selective in disciplining judicial misconduct; punishing judges for their opinions and decisions when it displeases them, but also disregarding serious judicial misconduct when it serves their interest to do so. Political elites have directly interfered in the work of judges, pressuring and intimidating judges for their independence of mind. Finally, politicians are not held accountable for their interference in the judiciary due to the absence of political accountability which is largely due to political tensions and lack of political support for political accountability.

Although additional factors also affect the independence of judiciary such as bribes or the partiality of judges, such factors can be best addressed if the vulnerability of the judiciary to the interference of executive and political party actors is first addressed. In other words, all factors

other than political influence are secondary, while political influence is the primary or underlying factor than can determine whether other factors (like bribery or partiality) take effect or not. Judicial vulnerability to political influence, combined with the willingness of political actors to exert such influence, is like the oxygen that enables a fire, while the other factors are mere sparks. Political influence, alongside judicial vulnerability to it, thus represents the most determining factor in the independence of the judiciary in Lebanon.

Relevance and Contribution of this Research

As I previously mentioned, there is scarcity in the literature on judicial independence in Lebanon. The few researchers who have studied this topic reported their findings in the form of reports that analysed the laws and regulations and whether they promote independence or not (similar to part 1 of this paper). Local sources, mainly Legal Agenda, go more into depth and report on the reality of political interference in the judiciary and find how politicians interfere in the judicial system. The Legal Agenda's work is mainly used as part of its activism to reform the judiciary in Lebanon and shed light on issues regarding judicial corruption.

There is an abundance of academic literature on judicial independence in other contexts. However, the topic of political will and support for judicial independence remains neglected. The most relevant research finds that the judiciary is less likely to be independent from political interference when there is political opposition to courts, which is when independence is mostly needed (Rosenberg 1992, 394). The literature briefly touches on political willingness as factor of judicial independence (Gee 2015). Some research finds that laws can only be effective in strengthening judicial independence if they restrict the powers and authority of politicians which

indirectly attributes weak judicial independence to powers of politicians (Abbasi 2014). Most academic research on judicial independence has tried to analyze in what political contexts politicians support judicial independence or what are the conditions that lead politicians to support judicial independence (Hilbink 2012). However, most explanations are not applicable in the Lebanese contexts. The most relevant explanation finds that political competition in “highly democratic countries” strengthens judicial independence due to the significance of public opinion in those countries, while in countries with lower democratization levels like Lebanon, political competition significantly hinders judicial independence (Aydın 2013, 130).

Future Research Avenues

There is a need for further research in the Lebanese context to analyze the reasons behind lack of support of Lebanese politicians for judicial independence. In early 2019, and amidst recent initiatives to reform the judicial system, Lebanese Newspaper Al-Akhbar published an article under the title: “The Independence of the Judiciary: Everyone supports it, who is interfering then?” (Nazzal 2019). This article sheds light on politicians representing multiple political powers all showing intentions of combating political interference in the judiciary (Nazzal 2019). Therefore, there is also need for research and investigation to find which politicians are standing in the way of judicial independence and how they.

This paper is focused on the lack of independence of the Lebanese ordinary courts system, *qaḍā’ adli*, which is composed of civil and criminal courts. It does not analyze administrative, military, or religious -personal status- courts even though it references them at times. It does

not go in-depth in the analysis of the behaviour of judges either. More research is needed to better understand these issues as well.

The Future?

There have been several initiatives from civil society, the Lebanese Association of Judges, and even politicians, to reform and strengthen the independence of the judiciary.

Legal Agenda, whose mandate is to support judicial independence, continuously sheds light on practices and legal gaps that affect the independence of the judiciary to raise awareness and open doors to public debate. Moreover, Legal Agenda published a series of research papers on several topics related to the judiciary where it analyzed and made recommendations regarding issues that lead the lack of independence of the judiciary, its inefficiency and its non-compliance with international standards. In addition, with the support of the 'Lebanese Civil Coalition for the Independence and Transparency of the Judiciary'⁵ and the judges petition mentioned earlier, Legal Agenda prepared a law draft for the independence and the transparency of the judiciary based on international standards and legal principles (Legal Agenda 2018a, 3). This draft law was presented to President Michel Aoun (Daily Star Lebanon 2018) and was discussed with political powers as a step for its enactment by the parliament (Legal Agenda 2018a, 3).

The recently established Lebanese Association for Judges mentioned in section 5.3 has also started to take steps to promote judicial independence and fight corruption. For example, it

⁵ The Lebanese Civil Coalition for the Independence and Transparency of the Judiciary is a coalition of 28 Lebanese rights-based organizations that aim to promote the independence of the judiciary as per international standards. (Legal Agenda 2017d)

demanded the enactment of a law for the independence of the judiciary and the selection of judges based on qualification and independence to ensure accountability for crimes related to public funds. As part of the association's activism in the October revolution, it demanded authorities freeze the accounts of politicians, judges, and public officials to investigate the sources of their funds, and it called for the enactment of laws to (1) lift banking secrecy, (2) return stolen public funds and (3) abolish political immunities that prevent prosecution and trial and (Saghieh 2019b). It is too early to see results of the actions of this association since it was established relatively recently.

In September 2019, a new SJC president, Souheil Abboud, was appointed. This step was welcomed by the Lebanese Association for Judges and the Legal Agenda since Abboud's history seems to reflect activism, professional work ethics and an interest in promoting judicial independence (Saghieh 2019c). However, it is worth noting that the government removed the previous SJC president from his SJC through an unjustified decision (Saghieh 2019c).

Public officials and political elites say they support judicial reform and independence in their speeches and discussions; however, their actions prove otherwise. Laws regarding illicit wealth and income are inactive. Although Lebanese citizens are urgently demanding laws to fight corruption, return stolen public funds and lift banking secrecy (in addition to many other demands), the government seems to take its time in discussing and debating such laws and presents drafts with loopholes that allow for exploitation. It should be noted that the National Anti-Corruption Strategy for the years 2018 to 2023 was recently launched, and it made recommendations to promote judicial independence. Although it is a step in the right direction, it mainly consists of suggestions and plans with no effective enforcement or legislation.

Clearly, there is an abundance of recommendations to promote judicial independence from a number of sources such as the ICJ, international covenants and declarations, Legal Agenda and legal experts. However, there doesn't seem to be any real political intentions to implement any strategies or regulations compliant with recommendations. With the ongoing October revolution, one can only hope for the pressing demands of Lebanese citizens and civil society to have a positive impact on the independence of the Lebanese Judiciary.

References

- Abbasi, Hossein Alikamar. 2014. Judicial Independence, Constitutions, and Politicians. Constitutions, and Politicians.
- ACRLI. Arab Center for the Development of the Rule of Law and Integrity. 2004. National Report on the State of the Judiciary in the Lebanese Republic. http://www.arabruloflaw.org/Files/128085823348266250_Lebanon_CountryProfiles.pdf
- Akoum, Caroline. 2018, 'Sectarian Balance' Delays Employment of 3,000 Lebanese. Asharq Al-Awsat. Retrieved October 4, 2019 from <https://aawsat.com/english/home/article/1431501/%E2%80%98sectarian-balance%E2%80%99-delays-employment-3000-lebanese>
- Akoum, Caroline. 2019. 85% of Lebanese Don't Trust Their Politicians. Retrieved November 29, 2019 from <https://aawsat.com/english/home/article/1603436/85-lebanese-don%E2%80%99t-trust-their-politicians>
- Al-Ahdab, Abd al-Hameed. 2019. 'stiqlāl 'lqaḍā'. [The Independence of the Judiciary]. Retrieved November 5, 2019, from <https://newspaper.annahar.com/article/1067811-استقلال-القضاء>
- Aljazeera. 2019. Lebanon protests: All the latest updates. Retrieved November 5, 2019, from <https://www.aljazeera.com/news/2019/10/lebanon-protests-latest-updates-191021080734203.html>
- Amnesty International. n.d. Lebanon protests explained. Retrieved November 5, 2019, from <https://www.amnesty.org/en/latest/news/2019/11/lebanon-protests-explained/>
- Atallah, Sami. 2015. Accountability: A "National Security Threat" to Lebanon's Elites. The Lebanese Center for Policy Studies. Retrieved on October 7, 2019, from <https://www.lcps-lebanon.org/featuredArticle.php?id=54>
- Aydın, Aylin. 2013. Judicial Independence across Democratic Regimes: Understanding the Varying Impact of Political Competition. *Law & Society Review*, 47(1), 105-134.
- Ayoub, Laure. 2019. 'ab'ad min rafḍ 'lqaḍīya 'lmuḥajaba fi lobnān, hakadha tatim gharbala² 'Imurashaḥīn lidukhūl 'lqaḍā'. [Further than the Rejection of Veiled Judges in Lebanon, this is How Judicial Candidates are screened]. *Legal Agenda*. Retrieved October 4, 2019, from <http://legal-agenda.com/article.php?id=5508>

- BRD. Beyond Reform and Development. 2012. The Sectarian Political System Towards Eradication Confessional Tensions. Retrieved November 29, 2019, from [https://www.beyondrd.com/assets/publications/The%20Sectarian%20Political%20System%20\(English\)%20-%20BRD.pdf](https://www.beyondrd.com/assets/publications/The%20Sectarian%20Political%20System%20(English)%20-%20BRD.pdf)
- Breyer, Stephen G. 1996. Judicial Independence in the United States, *Saint Louis University Law Journal*, 40(4), 989-996.
- Black, Ryan C., & Owens, Ryan J. 2016. Courting the president: How Circuit Court Judges Alter Their Behavior for Promotion to the Supreme Court. *American Journal of Political Science*, 60(1), 30-43.
- Bogaards, Matthijs. 2019. Formal and Informal Consociational Institutions: A Comparison of the National Pact and the Taif Agreement in Lebanon, *Nationalism and Ethnic Politics*, 25:1, 27-42, DOI: 10.1080/13537113.2019.1565176
- Cachalia, Azhar. 2011. Administrative Independence as a Guarantee of Judicial Independence: Experiences from South Africa. Vol 24, No 3. December 2011.
- Cammett, Melanie. 2014. *Compassionate Communalism: Welfare and Sectarianism in Lebanon*. Ithaca; London: Cornell University Press.
- Chehayeb, Kareem & Sewell, Abby. 2019. Why Protesters in Lebanon Are Taking to the Streets. *Foreign Policy*. Retrieved November 14, 2019, from <https://foreignpolicy.com/2019/11/02/lebanon-protesters-movement-streets-explainer/>
- CIA. Central Intelligence Agency. 2019. The World Factbook. Retrieved October 4, 2019, from <https://www.cia.gov/library/publications/the-world-factbook/geos/le.html#People>
- CN, The Courts of CN. n.d. Norwegian Courts Administration. Retrieved on November 29, 2019, from <https://www.domstol.no/en/Norwegian-Courts-Administration/>
- Criminal Code 340. 1943. Lebanon. Retrieved November 29, 2019, from http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=89873&p_country=LB&p_count=124&p_classification=01.04&p_classcount=3
- Dagher, Ruby. 2017. Reinforcing the Legitimacy of the State following a Conflict: Assessing the Institution-building-Legitimacy Paradox (Doctoral dissertation, Carleton University).
- Dagher, Ruby. 2018. Legitimacy and post-conflict state-building: the undervalued role of performance legitimacy, *Conflict, Security & Development*, 18:2, 85-111.
- Daily Star Lebanon. 2018. Civil society coalition presents judicial independence draft law to Aoun. Retrieved November 29, 2019, from

<https://www.dailystar.com.lb/News/Lebanon-News/2018/Jul-02/455083-civil-society-coalition-presents-judicial-independence-draft-law-to-aoun.ashx>

Daoud, Carlos; Mansour, Maya. 2010. The Independence and Impartiality of the Judiciary-Lebanon. Euro-Mediterranean Human Rights Network (EMHRN).

Decree Law 150. 1983. Lebanon. Retrieved November 29, 2019, from <http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=194133>

Deets, Stephen. 2018. Consociationalism, Clientelism, and Local Politics in Beirut: Between Civic and Sectarian Identities. *Nationalism and Ethnic Politics*, 24(2), 133-157

Eisenstadt, Shmuel Noah, & Roniger, Louis. 1980. Patron—client relations as a model of structuring social exchange. *Comparative studies in Society and History*, 22(1), 42-77.

El-Khazen, Farid. 2000. *The breakdown of the state in Lebanon, 1967-1976*. Harvard University Press.

Fakih, Lama. 2014. Freedom of expression under fire in Lebanon. *Executive*. Retrieved November 5, 2019, from <https://www.executive-magazine.com/opinion/comment/freedom-expression-fire>

Fernandez, Belen. 2017. On trial: Lebanon's corrupt justice system. *Middle East Eye*. Retrieved October 4, 2019, from <https://www.middleeasteye.net/opinion/trial-lebanons-corrupt-justice-system>

FIDH, International Federation for Human Rights. 2009. *Judicial Councils Reforms For An Independent Judiciary, Examples from Egypt, Jordan, Lebanon, Morocco and Palestine*.

Gee, Graham. 2015. The Financial and Administrative Independence of The UK Supreme Court: Five Years On. *European Journal of Current Legal Issues*, 21(1). Retrieved October 4, 2019 from http://webjcli.org/article/view/408/519#_ftn10

Haase, Thomas W. 2018. A Challenging State of Affairs: Public Administration in the Republic of Lebanon. *International Journal of Public Administration*, 41:10, 792-806.

Haddad, Emmanuel. 2014. In Lebanon, 52-year-old libel law used to pursue reporters. *Global Journalist*. Retrieved November 15, 2019, from <https://globaljournalist.org/2014/05/lebanon-52-year-old-libel-law-used-pursue-reporters/>

Hammergren, Linn. 2002. Do Judicial Councils Further Reform? Lessons from Latin America. *Carnegie Endowment for Int'l Peace Rule of Law Series, Working Paper No. 28*. Retrieved October 4, 2019, from <https://carnegieeurope.eu/2002/06/21/do-judicial-councils-further-judicial-reform-lessons-from-latin-america-pub-1015>

- Hamzeh, A Nizar. 2001. Clientalism, Lebanon: Roots and Trends. *Middle Eastern Studies*, 37(3), 167-178.
- Hilbink, Lisa. 2007. The Judiciary, the Rule of Law, and Democracy: Aspirations and Impediments. In *Judges beyond Politics in Democracy and Dictatorship: Lessons from Chile*. Cambridge Studies in Law and Society, pp. 13-40.
- Hilbink, Lisa. 2012. The Origins of Positive Judicial Independence. *World Politics*, 64(4), 587-621.
- HRC. United Nations Human Rights Committee. 2007. General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32. Retrieved October 4, 2019, from <https://www.refworld.org/docid/478b2b2f2.html>
- IAJ. International Association of Judges. 1999. The Universal Charter of the Judge. Retrieved October 4, 2019, from <https://www.iaj-uim.org/universal-charter-of-the-judges/>
- ICJ. International Commission of Jurists. 2007. International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors - A Practitioners Guide, Practitioners Guide No. 1. Retrieved October 4, 2019, from <https://www.refworld.org/docid/4a7837af2.html>
- ICJ. International Commission of Jurists. 2017a. The Lebanese High Judicial Council in Light of International Standards. Retrieved October 4, 2019, from <https://www.icj.org/wp-content/uploads/2017/03/Lebanon-Memo-re-SJC-Advocacy-Analysis-Brief-2017-ENG.pdf>
- ICJ. International Commission of Jurists. 2017b. The Career of Judges in Lebanon in Light of International Standards. Retrieved October 4, 2019, from <https://www.icj.org/wp-content/uploads/2017/03/Lebanon-Memo-re-judges-Advocacy-Analysis-Brief-2017-ENG.pdf>
- ICJ. International Commission of Jurists. 2017c. Judicial Accountability in Lebanon: International Standards on the. Retrieved October 4, 2019, from <https://www.icj.org/wp-content/uploads/2017/03/Lebanon-Memo-re-accountability-Advocacy-Analysis-Brief-2017-ENG.pdf>
- ICJ. International Commission of Jurists. 2018. Judicial councils and other national mechanisms for selecting, appointing, promoting, transferring, suspending or removing judges. Submission to the Special Rapporteur on Independence of Judges and Lawyers for a report to the Human Rights Council session in June 2018. Retrieved October 4, 2019, from <https://www.ohchr.org/Documents/Issues/IJudiciary/JudicialCouncils/InternationalCommissionJurists.pdf>
- IFES. International Foundation for Election System. 2004. Global Best Practices: Judicial Councils: Lessons Learned from Europe and Latin America. Retrieved October 4, 2019, from

<https://www.ifes.org/publications/global-best-practices-judicial-councils-lessons-learned-europe-and-latin-america>

IJS Institute of Judicial Studies. 2019a. Characteristics of the JSI. Retrieved July 17, 2019, from <http://ijs.justice.gov.lb/en/pages.asp?id=14&subid=32&subsubid=19>

IJS Institute of Judicial Studies. 2019b. Competition System. Retrieved July 17, 2019, from <http://ijs.justice.gov.lb/en/pages.asp?id=15&subid=45&subsubid=24&LastId=18>

Iskandar, Adnan. 1996. Public Service Accountability in Lebanon. Beirut: American University of Beirut. Retrieved October 4, 2019, from <http://ddc.aub.edu.lb/projects/pspa/PSAccount/PSAccount-0.html>

Janoubia. 2018. Bisabab hadhā 'Imaqāl 'hāla jrayṣātī 'lqāḍi ṭaqūsh litaḥqīq. [Jreissati referred Judge Taqqoush to Inspection due to this Article]. Retrieved October 4, 2019, <https://janoubia.com/2018/07/23/%D8%A8%D8%B3%D8%A8%D8%A8-%D9%87%D8%B0%D8%A7-%D8%A7%D9%84%D9%85%D9%82%D8%A7%D9%84-%D8%A3%D8%AD%D8%A7%D9%84-%D8%AC%D8%B1%D9%8A%D8%B5%D8%A7%D8%AA%D9%8A-%D8%A7%D9%84%D9%82%D8%A7%D8%B6%D9%8A-%D8%B7%D9%82/>

Javier Gil-Flores, M. Teresa Padilla-Carmona & Magdalena Suárez-Ortega (2011) Influence of gender, educational attainment and family environment on the educational aspirations of secondary school students, *Educational Review*, 63:3, 345-363, DOI: 10.1080/00131911.2011.571763

Lebanese Constitution and its Amendments. 1926. Retrieved November 29, 2019, from <https://www.lp.gov.lb/backoffice/uploads/files/Lebanese%20%20Constitution-%20En.pdf>

Legal Agenda. 2014. Nuwab yaṣna'ūn hashasha² 'lqaḍā', wa quḍāa² yarudūn bilḥirāk walmuwajaha² fi lobnān. [MPs Weaken the Judiciary, and Judges Retaliate with Mobilization and Confrontation]. Retrieved November 5, 2019, from <https://www.legal-agenda.com/article.php?id=755>

Legal Agenda. 2017. Quḍāt 'lWhatsapp, hadhihi 'lwaqfa 'ljamīla. [Whatsapp judges, this beautiful stance]. Retrieved October 8, 2019, from <http://legal-agenda.com/article.php?id=3728>

Legal Agenda. 2017b. 'wrāq baḥthiya 'an iṣlāh 'lqaḍā' fi lobnān (5) Hay'a² 'Itaftīsh 'lqaḍā'i. [Research Paper on Reforming the Judicial System in Lebanon (5) The Judicial Inspectorate]. Retrieved November 5, 2019, from <https://www.legal-agenda.com/article.php?id=3920>

Legal Agenda. 2017c. 'wrāq baḥthiya 'an iṣlāh 'lqaḍā' fi lobnān (6) āliyāt ta'dīb 'lquḍāa² [Research Paper on Reforming the Judicial System in Lebanon (6) Mechanisms for Judicial

- Disciplinary]. Retrieved November 5, 2019, from <https://www.legal-agenda.com/article.php?id=3941>
- Legal Agenda. 2017d. Mu'tamar ṣaḥafi da'man limaṭālib lobnān wa 'stiqlālihim. [Press Conference in Support of the Demands of Lebanese Judges and their Independence]. Retrieved November 5, 2019, from <https://www.legal-agenda.com/article.php?id=3838>
- Legal Agenda. 2017e. 'wrāq baḥthiya 'an iṣlāḥ 'lqaḍā' fi lobnān (11) 'y muwāzana lilhay'āt 'lqaḍā'iya? [Research Paper on Reforming the Judicial System in Lebanon (11) Any Budget for Judicial Bodies?] Retrieved November 5, 2019, from <https://www.legal-agenda.com/article.php?id=3941>
- Legal Agenda. 2018a. 'ala 'nqadh 'l'stiqlāliya: 'adad khās 'an 'lqaḍā' fi lobnān. [On the Ruins of Independence: A Special Edition on the Judiciary in Lebanon]. Retrieved November 5, 2019, from <http://legal-agenda.com/uploads/%D8%B9%D9%84%D9%89%20%D8%A3%D9%86%D9%82%D8%A7%D8%B6%20%D8%A7%D9%84%D8%A7%D8%B3%D8%AA%D9%82%D9%84%D8%A7%D9%84%D9%8A%D8%A9.pdf>
- Legal Agenda. 2018b. 'wrāq baḥthiya 'an iṣlāḥ 'lqaḍā' fi lobnān (18) tanzīm ma'had 'ldurūs 'lqaḍā'iya. [Research Paper on Reforming the Judicial System in Lebanon (18) The System of the Institute of Judicial Studies]. Retrieved October 4, 2019, from <http://legal-agenda.com/article.php?id=4707>
- Legal Agenda-Lebanon. 2018c. Muḥasabat 'lquḍāa²: 'lṭarīq 'lrasmiya mohmala walzawarīb tazdahir. [Disciplining Judges: The Official mechanisms neglected while loopholes and alternative ways are abused]. Retrieved October 4, 2019, from <https://www.legal-agenda.com/article.php?id=4342>
- Legal Agenda. 2018d. 'wrāq baḥthiya 'an iṣlāḥ 'lqaḍā' fi lobnān (16) 'lṭā'ifiya fi lobnān. [Research Paper on Reforming the Judicial System in Lebanon (16) Sectarianism in Lebanon]. Retrieved October 4, 2019, from <https://legal-agenda.com/article.php?id=4695>
- Legal Agenda. 2018e. 'y muwāzana lilhay'āt 'lqaḍā'iya min majmū' 'linfāq 'l'ām? [Any Budget for Judicial Bodies from Public Expenditure?] Retrieved December 1, 2019, <https://www.legal-agenda.com/article.php?id=4377>
- Legal Agenda. 2019. Legal Agenda to Lebanese Government: Stop Harassing Judges. Retrieved October 4, 2019, from <https://legal-agenda.com/en/article.php?id=5553>
- Lijphart, Arend. 1969. Consociational democracy. *World politics*, 21(2), 207-225.
- Lijphart, Arend. 2008. *Thinking about democracy: power sharing and majority rule in theory and practice*. London: Routledge.

- M.A. 2018. Why Lebanon struggles to form governments. The Economist. Retrieved October 4, 2019, from <https://www.economist.com/the-economist-explains/2018/12/21/why-lebanon-struggles-to-form-governments>
- Macaron, Joe. 2019. Politicization of the anti-corruption campaign in Lebanon. Retrieved on November 14, 2019, from <https://www.al-monitor.com/pulse/originals/2019/03/lebanon-anti-corruption-hezbollah-sunni-hariri.html>
- MacQueen, Benjamin. 2016. Lebanon's Electoral System: Is Reform Possible? Middle East Policy, 23(3), 71-83.
- Matar, Fouad. 2016. 'Iṣulṭa 'lqaḍā'iya bayna lwāqi' wal murtaja. [The Judicial Authority between Hope and Reality]. Annahar Newspaper. Retrieved November 29, 2019, from <https://newspaper.annahar.com/article/305910-السلطة-القضائية-بين-الواقع-والمرتجى>
- Moustafa, Tamir. (2003). Law versus the state: the judicialization of politics in Egypt. Law & Social Inquiry, 28(4), 883-930
- Nehme, Dahlia. 2018. Lebanon's public sector plagued by inefficiency, waste. Reuters. Retrieved October 4, 2019, from <https://www.reuters.com/article/us-lebanon-politics-waste-idUSKBN1FP1SC>
- Najem, Tom. 2012. Lebanon: The politics of a penetrated society. Routledge. 10.4324/9780203505083.
- Nasser Dine, Nahla. 2019. "l'irāda wal qaḍā' 'Imustaqil" 'qsar 'lturuq li'sti'adat amwāl lobnān 'lmanhūba. [Will and the Independent Judiciary: The fastest way to Return Lebanon's Stolen Public Funds]. Retrieved November 5, 2019, from <https://www.aa.com.tr/ar/التقارير/الإرادة-والقضاء-المستقل-أفصر-الطرق-لاستعادة-أموال-لبنان-1625878/-المنهوبة-تقرير>
- Nazzal, Mohammad. 2019. 'stiqālīya² 'lqaḍā': 'lkol ma'aha idhan man yatadakhhal? [The Independence of the Judiciary: Everyone supports it, who is interfering then?]. Al-Akhbar Newspaper. Retrieved June 1, 2019, from <https://al-akhbar.com/Politics/264896>
- OHCHR. Office of the United Nations High Commissioner for Human Rights. 2003. Independence and Impartiality of Judges, Prosecutors, and lawyers in Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers.
- Papayannis, Diego M. 2016. Independence, Impartiality and Neutrality in Legal Adjudication. Revus, 28, 33-52.

- Ramseyer, J Mark. 1994. The Puzzling (In)Dependence of Courts: A Comparative Approach. *The Journal of Legal Studies*, 23(2), 721-747.
- RLMOJ. Republic of Lebanon Ministry of Justice. 2019a. Supreme Judicial Council. Retrieved July 17, 2019, from <https://www.justice.gov.lb/index.php/court-details/35/1>
- RLMOJ. Republic of Lebanon Ministry of Justice. 2019b. Ministry Departments. Retrieved July 17, 2019, from <https://www.justice.gov.lb/index.php/department-details/17/1>
- Rosenberg, Gerald N. 1992. Judicial Independence and the Reality of Political Power. *The Review of Politics*, 54(3), 369-398.
- Russell, Peter. 2001. Towards a General Theory of Judicial Independence, in *Judicial Independence In The Age Of Democracy, Critical Perspectives From Around The World* (Peter H. Russell & David M. O'Brien eds., 2001).
- Saghieh, Nizar. 2013. qaḍiyat ghasān rabāḥ wa ḥikaya² 'Imuḥasaba 'lqaḍā'i'a: khurūj muhīn ma' ḥabat misk. [The Case of Ghassan Rabbah and the Tale of Lost Accountability: A Humiliating Exit]. *Legal Agenda*. Retrieved November 29, 2019, from <https://www.legal-agenda.com/article.php?id=342>
- Saghieh, Nizar. 2017a. Mādhā ta'alamna min qaḍiyat 'lḥaja khadīja (1) 'lkhiṭāb 'lsha'bawi yushari' 'abwab 'ltadakhul fi 'lqaḍā'. [What Did We Learn from the Case of Hajja Khadeeja? Public Speech Legitimizes Interference in the Judiciary]. *Legal Agenda*. Retrieved November 29, 2019, from <https://www.legal-agenda.com/article.php?id=3652>
- Saghieh, Nizar. 2017b. 'ashrat ma'awil lihadm 'stiqlāl 'lqaḍā' fi lobnān: 'ltashkīlāt 'lqaḍā'iya 2017. [10 Ways to Destroy the Independence of the Judiciary in Lebanon: Judicial Formations 2017]. *Legal Agenda*. Retrieved November 29, 2019, from <https://www.legal-agenda.com/article.php?id=3982>
- Saghieh, Nizar. 2018a. 'lmihan 'lqānūniya tastafīq min "'fyūn" 'lharamiya: muḥāmūn wa quḍāa² min 'jl bī'a² mihaniya² 'afdal. [Legal Professions Wake Up: Lawyers and Judges for a Better Working Environment]. *Legal Agenda*. Retrieved November 29, 2019, from <https://www.legal-agenda.com/article.php?id=4354>
- Saghieh, Nizar. 2018b. 'stiqa² qāḍī mushtabah bihi bil'irtishā': 'lwazīr yaqmo' ḥoriya² 'lquḍāa² takrīsan liriwāyatih. [The Resignation of a Judge Suspected to have been Bribed (1): The Minister Oppresses the Freedom of Judges]. *Legal Agenda*. Retrieved November 29, 2019, from <https://www.legal-agenda.com/article.php?id=4682>
- Saghieh, Nizar. 2018c. "Shubha² Rashwa²" fi majlis shūra 'dawla: 'lmufakira tuṭālib 'niyāba 'l'āma biltahqīq. ["Bribe Suspicion" in the State Council: Legal Agenda Demands the Public Prosecution to Investigate]. *Legal Agenda*. Retrieved November 29, 2019, from <https://www.legal-agenda.com/article.php?id=4651>

- Saghieh, Nizar. 2018d. Legal Agenda. Lebanese Elections: Celebrating on the Ruins of Democracy. Legal Agenda. Retrieved November 29, 2019, from <https://www.legal-agenda.com/en/article.php?id=4539>
- Saghieh, Nizar. 2019a. Liman 'lqānūn fi lobnān 2018? [Whom Does the Law Serve in Lebanon 2018?] Legal Agenda. Volume 59, April 2019. Retrieved November 29, 2019, from <http://www.legal-agenda.com/article.php?id=5533>
- Saghieh, Nizar. 2019b. Legal Agenda. "Nādi qudāt lobnān" lā'ib 'sāsi fi ḥirāk 2019: Ay dawr lilqaḍā' fi ḥimaya² 'lḥirāk wa ta'zīzih? [The Lebanese Association for Judges: An Key Player in the 2019 Revolution: What is the Role of the Judiciary in Protecting and Promoting the Revolution?] Retrieved November 29, 2019, from <https://www.legal-agenda.com/article.php?id=6020>
- Saghieh, Nizar. 2019c. Legal Agenda. Limātha 'l'ḥtifā' bi ta'yīn suhayl 'būd ra'īsan limajlis 'lqaḍā' 'l'a'la? (1) 'ḥtifā' bita'yīn mustahaq. [Why Celebrate the Appointment of Suhail Abboud President of the Supreme Judicial Council? Celebrating a Well-Deserved Appointment]. Retrieved November 29, 2019, from <https://www.legal-agenda.com/article.php?id=5909>
- Sakker El Dekene. 2015. Are the Lebanese Corrupt? Retrieved on November 20, 2019, from <http://www.sakker.com/console/admin/assets/uploads/files/cdf78-survey-report-jan-29en.pdf>
- Salama, Amani. 2019. Na'tadhir min 'lsha'b 'lobnānī... Lākin 'lqaḍā' laysa bikhayr.... [We Apologize from the Lebanese People... The Judiciary is not Doing Okay...]. Legal Agenda. <https://www.legal-agenda.com/article.php?id=5627>
- Salamey, Imad. 2009. Failing Consociationalism in Lebanon and Integrative Options. *International Journal of Peace Studies*, 14(2), 83-105.
- Schwab, Klaus; Sala i Martin, Xavier. 2016. Global Competitiveness Report 2016-2017. World Economic Forum. Retrieved November 29 2019, from <https://www.weforum.org/reports/the-global-competitiveness-report-2016-2017-1>
- Schwab, Klaus; Sala i Martin, Xavier. 2017. Global Competitiveness Report 2017-2018. World Economic Forum. Retrieved November 29 2019, from <https://www.weforum.org/reports/the-global-competitiveness-report-2017-2018>
- SCN. The Supreme Court of Norway. n.d. Separation of Powers and independence of Constitutional Courts and Equivalent Bodies. The 2nd Congress of the World Conference on constitutional justice. Retrieved October 4, 2019, from https://www.venice.coe.int/WCCJ/Rio/Papers/NOR_Supreme_Court.pdf

- Singhvi, L.M. 1987. Draft Universal Declaration on the Independence of Justice: final report / by the Special Rapporteur. UN Retrieved December 2, 2012 from <https://digitallibrary.un.org/record/139884?ln=en>
- Soberg Shugart, Matthew; Moreno, Erika; F Crisp, Brian. 2000. The Accountability Deficit in Latin America. Democratic Accountability in Latin America. 10.1093/0199256373.003.0004.
- The Queen v. Valente. 1985. 2 SCR 673.
- Tiede, Lydia. 2006. Judicial Independence: Often Cited, Rarely Understood. Journal of Contemporary Legal Issues Vol. 15.
- UN. United Nations. 2004. Public Sector Transparency and Accountability in Selected Arab Countries: Policies and Practices. New York.
- UN. United Nations. 1985. Basic Principles on the Independence of the Judiciary. (Appendix 1). Retrieved from November 7, 2019, from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>
- UNCHR. United Nations Commission on Human Rights. 2004. Commission on Human Rights Resolution 2004/33: Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers, 19 April 2004, E/CN.4/RES/2004/33. Retrieved October 4, 2019, from <https://www.refworld.org/docid/43f3136a0.html>
- UNODC. United Nations Office on Drugs and Crime. 2019. Signature and Ratification Status. Retrieved November 29, 2019, from <https://www.unodc.org/unodc/en/corruption/ratification-status.html>

Appendices

Appendix 1: The UN Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

[Retrieved from November 7, 2019, from <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx> ; emphasis added]

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. **It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.**
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. **It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.**

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, **members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly;** provided, however, that in exercising such rights, judges shall always conduct themselves in

such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of **judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination** against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. **Judges, whether appointed or elected, shall have guaranteed tenure** until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. **The judge shall have the right to a fair hearing.** The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

Appendix 2: ICJ Recommendations for Reforms in the Judicial System in Lebanon

Lebanon: the ICJ calls for extensive reforms to strengthen judicial independence and accountability

February 28, 2017

[Retrieved from November 7, 2019, from <https://www.icj.org/lebanon-the-icj-calls-for-extensive-reforms-to-strengthen-judicial-independence-and-accountability/>; emphasis added]

The ICJ today called on the Lebanese authorities to introduce comprehensive legal and policy reforms to ensure that the judiciary is fully independent, impartial and accountable.

Measures must be taken to ensure that the judiciary is not subject to any form of undue influence by political actors and confessional communities, and that it is able to fulfill its responsibility to uphold the rule of law and human rights, added the Geneva-based organization.

The statement came as the ICJ published three legal briefings analyzing aspects of the legal framework regulating the ordinary justice system, in particular Decree-Law No. 150/83 on the organization of the judiciary. The briefings formulate recommendations for amending the provisions relating to the High Judicial Council, the management of the career of judges, and judicial accountability.

“Decree-Law No. 150/83 does not guarantee judicial independence at the institutional and financial levels, nor does it adequately safeguard the independence of individual judges,” said Said Benarbia, ICJ Director of the Middle East and North Africa Programme.

“If anything, **it allows for improper political influence** over virtually every aspect of judges’ careers, including their selection and appointment, their transfer through arbitrary procedures, and their discipline, suspension and removal through unfair and opaque proceedings”, he added.

The assessment by the ICJ concludes that instead of acting as a check against improper political influence in judicial matters, the High Judicial Council itself is vulnerable to such influence. This is evident in the fact that the Minister of Justice is empowered to appoint eight of the Council’s ten members and sets the budget of the High Judicial Council and of the judiciary as a whole.

In its briefings, the ICJ called for:

- the majority of **members of the High Judicial Council to be judges who are elected** by their peers;

- the establishment of **detailed and objective criteria for all elected and appointed candidates**, including for the appointment of the President and the Public Prosecutor of the Court of Cassation; and
- the **High Judicial Council to be given full control over its financial resources**.

The ICJ also called for legal reforms to be introduced to reinforce the independence of individual judges. These are necessary to ensure that their **selection, appointment, transfers and evaluations are based on transparent procedures and objective criteria, and that any disciplinary action against them is only pursuant to well-defined standards** and respectful of all due process guarantees.

Under the current framework, the system for evaluating and promoting judges is opaque and open to cronyism and, in particular, to the undue influence of the executive and political actors. In addition, the **Minister of Justice holds an outsize role in the process of selecting and appointing judges, and in initiating disciplinary proceedings** against them, referring matters to the disciplinary council, and suspending judges pending a disciplinary decision.

“Ensuring that, once reformed and independent, the High Judicial Council is exclusively competent to manage all aspects of the careers of judges is a *sine qua non* condition not only to establish and uphold judicial independence, but also to restore the public faith and confidence in the integrity of the Lebanese justice system,” concluded Benarbia.