

The Lebanese High Judicial Council in Light of International Standards

A Briefing paper

February 2017

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The right to an independent and impartial tribunal is an integral part of the right to a fair trial as enshrined in article 14 of the International Covenant on Civil and Political Rights (ICCPR).¹ In interpreting this article, the UN Human Rights Committee, the group of experts mandated by the ICCPR to interpret and apply its provisions, has noted that article 14 imposes on States the obligation to take measures guaranteeing the independence of the judiciary "through the constitution or adoption of laws establishing 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".² In a similar vein, the UN Basic Principles on the Independence of the Judiciary provide that it is the duty of every State to guarantee the independence of the judiciary and to enshrine such independence in law.³

In Lebanon, article 20 of the Constitution guarantees the separation of powers and provides for judges to be "independent in the exercise of their functions." It further provides that the law shall "determine conditions and limits of the judicial guarantees".⁴

Legislative Decree No. 150 of 16 September 1983 on the organization of the judiciary (Decree-Law No. 150/83) determines such conditions with regards to the "ordinary" court system and the High Judicial Council (HJC). Under the Decree, the HJC is charged with ensuring "the proper functioning, dignity and independence of the judiciary, the proper functioning of the courts, and with taking the necessary decisions in this regard."⁵ The Decree-Law also details the composition and competencies of the HJC.

In this memorandum, the ICJ examines the framework governing the work of the HJC in light of international standards, details how the provisions relating to its composition, competencies and the guarantees of its independence fall short of such standards, and formulates recommendations for amendment and reform that, if combined with sufficient political will, can help uphold judicial independence in Lebanon.

a. Composition

In order to safeguard the independence of both the judiciary as an institution and of judges individually, judicial councils must themselves be independent. A significant proportion of their membership should be judges who are chosen by their peers, which contributes to ensuring that such councils are both independent and representative.

¹ Lebanon has been a party to the ICCPR since 1972.

² Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to fair trial, UN Doc. CCPR/C/GC/32, 23 August 2007 ("General Comment No. 32"), para. 19.

³ 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 ("UN Basic Principles"), Principle 1.

⁴ Article 20 of the French version of the Constitution provides: "*La loi fixe les limites et les conditions de l'inamovibilité des magistrats.*" [The law shall determine the limits and conditions of judicial security of tenure.] However, the Arabic version, which is the official one, follows the English translation and only mentions "judicial guarantees".

⁵ Decree-Law No. 150/83, article 4. According to article 6 of Decree-Law No. 150/83, the HJC meets at the request of its President or, in his absence, its Vice President. It can also meet at the combined request of four of its members or at the request of the Minister of Justice, who can call on the HJC to convene.

In Lebanon, under article 2 of Decree-Law No. 150/83, the HJC is composed of the following ten members:

- Three *ex officio* members:
 - i. the first President of the Court of Cassation, who is the President of the HJC;
 - ii. the Public Prosecutor, who is the vice-President of the HJC;
 - iii. the President of the Judicial Inspectorate.
- Five members appointed by Cabinet decree⁶ upon a proposal by the Minister of Justice:
 - i. one judge chosen from among the chamber presidents of the Court of Cassation;
 - ii. two judges chosen from among the chamber presidents of the courts of appeal;
 - iii. one judge chosen from among the chamber presidents of the first instance courts;
 - iv. one judge chosen from among the presidents of tribunals or heads of departments of the Ministry of Justice.
- Two judges elected from among the Chamber Presidents of the Court of Cassation by all the presidents and associate judges⁷ of the Court of Cassation through secret ballot.

The three *ex officio* members are appointed to their positions through Cabinet decrees upon the proposal of the Minister of Justice.⁸ The term of their mandates is not indicated in these decrees. They can only be transferred or dismissed in accordance with the provisions of Decree-Law No. 150/83.⁹

The other seven members of the HJC – both appointed and elected – hold their posts for a non-renewable period of three years.¹⁰ Decree-Law No. 150/83 provides that, in the event of a vacancy, another member is either elected or appointed – following the appropriate procedure – for the remainder of the term, which is renewable once if the first term did not exceed a year and a half. The law is silent on the ways in which a vacancy may arise.

The ICJ is concerned that the composition of the HJC as provided for by Decree-Law No. 150/83 falls short of international standards. The UN Special Rapporteur on the independence of judges and lawyers has stated that the composition of a judicial council “matters greatly to judicial independence as it is required to act in an objective, fair and independent manner when selecting judges”.¹¹

⁶ A Cabinet decree is a decree adopted by Council of Ministers, which is the body in which executive authority is vested. See articles 65 and following of the Constitution.

⁷ According to the Annex to Decree-Law No. 150/83, in addition to the First President, there are 11 Presidents and 26 associate judges attached to the 11 chambers of the Court of Cassation.

⁸ The latest decrees appointing judges to these three positions are: Decree No. 9111 of 16 October 2012 appointing the First President of the Court of Cassation; Decree No. 9112 of 10 October 2012 appointing the Public Prosecutor of the Court of Cassation; and Decree No. 3543 of 11 March 2010 appointing the President of the Judicial Inspectorate.

⁹ The questions of appointment, transfer and discipline are all addressed in the ICJ’s accompanying memoranda on the statute for judges and on judicial conduct and discipline.

¹⁰ Article 80 of Decree-Law No. 150/83 also prescribes the required grades to obtain various judicial posts. For example, only a judge from the eighth grade or higher may be appointed to the Court of Cassation, and from the tenth grade or higher as president of a Chamber of the Court of Cassation. To see the procedure for judicial appointments, see the section on appointment in the ICJ’s memorandum on the statute for judges.

¹¹ Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc A/HRC/26/32 (2014), para. 126.

In this regard, the ICJ is concerned that the provisions of Decree-Law No. 150/83 allow for executive influence over the composition of the HJC, and provide for an inadequate procedure for the election of its members.

The Minister of Justice is directly responsible for both the selection and appointment of five of the HJC members. The Minister also directly influences the selection of the three *ex officio* members of the HJC, since the Minister is tasked with proposing a candidate for the positions of President of the Cassation Court, Public Prosecutor and President of the Judicial Inspectorate, each of whom is then appointed by a Cabinet decree.¹² Moreover, the President of the Judicial Inspectorate operates as head of a body that exercises its functions under the supervision of the Minister of Justice, rendering his position that much more vulnerable to executive interference.¹³

One of the fundamental conditions of an independent and impartial judiciary is respect for the principle of the separation of powers. As the UN Human Rights Committee has pointed out: "A situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal".¹⁴

Judicial councils should therefore be bodies that are independent of the executive and legislative powers. The rationale behind this, as noted by the Special Rapporteur on the independence of judges and lawyers, is that "if the body is composed primarily of political representatives there is always a risk that these 'independent bodies' might become merely formal or legal rubber-stamping organs behind which the Government exerts its influence indirectly".¹⁵ Insofar as the HJC conducts disciplinary proceedings concerning judges, the Special Rapporteur has recommended that the independent body responsible for judicial accountability "should preferably be composed entirely of judges, retired or sitting, although some representation of the legal profession or academia could be advisable. No political representation should be permitted."¹⁶

According to international standards, it is good practice to ensure that at least half of the members of judicial councils are judges chosen by their peers. The European Charter on the Statute for Judges states that, "[i]n respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary".¹⁷

The fact that only two members of the HJC are elected and that these two members must be Chamber Presidents at the Cassation Court, elected by members of this Court only, does not allow for a truly representative judicial council and means that the judges of tribunals of first instance and the courts of appeal in Lebanon are not adequately represented in the judicial body that is in charge of overseeing their careers.

¹² Respectively, Decree-Law No. 150/83, article 26; New Code of Criminal Procedure, adopted by Law No. 328 of 7 August 2001, article 13; and Decree-Law No. 150/83, article 100 (the President of the Judicial Inspectorate is chosen from among judicial judges of the 14th grade or higher, or the equivalent of such a ranking from within the State Councils or the Audit Bureau).

¹³ As described in the ICJ memorandum on judicial conduct and discipline, the Judicial Inspectorate is a unit of the Ministry of Justice.

¹⁴ General Comment No. 32, para. 19.

¹⁵ Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/11/41 (2009), para. 28.

¹⁶ Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc A/HRC/26/32 (2014), para. 126.

¹⁷ European Charter on the Statute for Judges, Strasbourg, 8-10 July 1998, Principle 1.3. See similarly Council of Europe Committee of Ministers Recommendation CM/Rec(2010)12, adopted 17 November 2010 ("CoM Recommendation CM/Rec(2010)12"), para. 46.

As such, the ICJ recommends that Decree-Law No. 150/83 be amended to provide that at least the majority of the HJC members be judges from all courts and tribunals who are elected by their peers.

The ICJ is also of the view that if the membership of the HJC continues to contain *ex officio* members, Decree-Law No. 150/83 must be amended to ensure that the President and Public Prosecutor of the Court of Cassation and the President of the Judicial Inspectorate are each appointed to their offices in an independent manner, through a transparent procedure that is based on objective criteria including, among others, skills, knowledge, experience and integrity. The ICJ believes that if the procedure of such appointments is not improved, not only will this continue to undermine the independence – real and perceived – of their offices, but also the ability of the HJC to function as an independent body.

This is particularly important because the appointment of senior judicial positions in Lebanon is subjected, in practice, to a religion-based power-sharing agreement,¹⁸ which *requires* the President of the Republic to be Christian Maronite, the Prime Minister to be Sunni Muslim, and the Speaker of the House to be Shia Muslim. The agreement also impacts on the composition of Parliament, the Cabinet and the Judiciary.¹⁹ Thus, the HJC's members are appointed according to a 50/50 ratio between Christians and Muslims.²⁰ As a matter of established practice, the First President of the Court of Cassation is Maronite Christian, the Public Prosecutor of the Court of Cassation and President of the Judicial Inspectorate are Sunni Muslim, and the Director of the Institute of Judicial Studies is Shia Muslim.

The ICJ is of the view that it is important for the judiciary and the HJC to be representative of the Lebanese society as a whole. To achieve this objective, the Lebanese authorities should provide for a comprehensive general anti-discrimination clause, covering at least all the grounds covered by the ICCPR, and should take effective measures to ensure that people belonging to minorities, including religious minorities, enjoy equal access to and participation in the judiciary. However, the ICJ believes that the selection and the appointment of judges, including senior judges, as

¹⁸ This despite article 95 of the Constitution, which aims to ensure the abolition of the confessional system. Article 95(b) states: "The principle of confessional representation in public service jobs, in the judiciary, in the military and security institutions, and in public and mixed agencies shall be cancelled in accordance with the requirements of national reconciliation; they shall be replaced by the principle of expertise and competence." However, this has not yet been achieved in Lebanon, and it is not envisaged that the confessional system will be abolished in the near future.

¹⁹ See article 24 of the Lebanese Constitution, as amended by the Taif Agreement of 1990 that put an end to the Lebanese civil war, according to which the distribution of seats within the Chamber of Deputies shall ensure equal representation between Christians and Muslims, as well as proportional representation among the confessional groups within each of the two religious communities (for example, the Maronite, Greek Orthodox and Greek Catholic confessional groups fall under the Christian community, and the Shia, Sunni and Druze fall under the Muslim community).

²⁰ Indeed, the current HJC's composition respects this ratio. It is composed of the following members: Judge Jean Fahd, President of the HJC and First President of the Court of Cassation – Maronite; Judge Samir Hammoud, vice-President of the HJC and Public Prosecutor – Sunni; Judge Akram Baassiry, President of the Judicial Inspectorate – Sunni; Judge Marwan Karkaby, President of the Department of the Judiciary in the Ministry of Justice – Greek Catholic; Judge Habib Hadthy, President of the First Chamber of the Court of Cassation – Maronite; Judge Tannous Mishlib, First President of the Court of Appeal of Beirut – Maronite; Judge Michel Tarazi, President of the fifth chamber of the Court of Cassation – Greek Orthodox; Judge Ghassan Fawaz, President of the eighth chamber of the Court of Cassation – Shia; Judge Afif el Hakim, President of the seventh chamber of the Court of Appeal of Mount Lebanon – Druze; Judge Mohamed Mortada, President of third chamber of the Tribunal of First Instance of Mount Lebanon – Shia. See the official website of the HJC: <<http://www.csm-lib.com/%D8%AF%D9%88%D8%B1-%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A1-%D8%A7%D9%84%D8%A3%D8%B9%D9%84%D9%891.ws>>.

well as their representation in the HJC, should not be uniquely and exclusively based on whether the concerned judges belong to a specific religious group. Doing so would be discriminatory against judges who are adherents of other religions or who do not hold a religious belief. Rather, judicial selection and appointment should be based on objective criteria provided for by the law and complied with in practice.

This is particularly important because Decree-Law No. 150/83 contains no further criteria for the appointment or election of the HJC's members other than the required judicial ranking.²¹ The Decree-Law should therefore be amended to provide for objective criteria for the election and appointment of the HJC's members, including qualifications, integrity, ability, efficiency and experience, and to exclude discrimination on any ground.

The Decree-Law should also provide for specific and concrete measures to ensure women's full and equal representation in the HJC and the judiciary as a whole, in particular in the context of the history of gender inequality between men and women in Lebanon. No women currently sit on the HJC. The Committee for the Elimination of Discrimination against Women, mandated by the Convention on the Elimination of all forms of Discrimination against Women, which Lebanon ratified in 1996, with interpreting and applying its provisions, emphasized that article 7 of the Convention requires States not only to remove any legal barriers, but also to take additional measures to ensure that women enjoy equal opportunities to participate in the judiciary in practice. These may include temporary special measures such as "recruiting, financially assisting and training women candidates, amending electoral procedures, developing campaigns directed at equal participation, setting numerical goals and quotas and targeting women for appointment to public positions such as the judiciary".²² Moreover, the UN Special Rapporteur on the independence of judges and lawyers stated: "since a primary function of the judiciary is to promote equality and fairness, the composition of courts and other judicial offices should reflect the State's commitment to equality."²³

The ICJ is of the view that such judicial offices include judicial councils. Consequently, Lebanese legislation should include provisions to ensure that the HJC is representative of the judiciary as a whole and society in general, including by containing safeguards and specific measures and procedures to ensure women are adequately represented in the HJC.

Finally, the ICJ is also concerned by the fact that the law is silent regarding the possible causes of an early vacancy of a post and the procedure that applies in such cases. It is of crucial importance that the mandate of the members of the HJC is secured until the end of the term unless for reasons of incapacity or unethical behaviour that render them unfit to discharge their duties. The grounds and procedure for the dismissal of members of the HJC should be clearly defined and set out in the law, guarantee the rights of the concerned HJC member to a fair and transparent procedure, and protect against arbitrary dismissal. Moreover, the term of office of all the members of the HJC should be the same, which is not the case in Lebanon.

²¹ Only judges of the fourteenth grade or above may be appointed as First President or Public Prosecutor of the Court of Cassation. The President of the Judicial Inspectorate must either be a judicial judge from the fourteenth grade or above, or a judge of equivalent ranking from among the personnel of the State Council or the Audit court. In addition, only judges of the fourth grade or higher may be appointed president of a first instance court; only judges of the sixth grade or higher may be appointed president of a court of appeal chamber; and only judges of the tenth grade or higher may be appointed president of a chamber of the Court of Cassation. Moreover, according to article 33 of Decree-Law No. 150/83, certain judges are attached to the Ministry of Justice.

²² Committee on the Elimination of Discrimination against Women, General Recommendation No. 23: Political and public life, UN Doc. HRI/GEN/1/Rev.9 (Vol. II) (1997), para. 15.

²³ Interim Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/66/289 (2011), para. 26.

In light of the above, the ICJ calls on the Lebanese authorities to amend Decree-Law No. 150/83 to:

- i. Ensure that the Minister of Justice is divested of any role in the selection and the appointment of the HJC members;**
- ii. Ensure that the HJC consists of a majority of judges who are elected by their peers from all ordinary courts and tribunals;**
- iii. Establish detailed and objective criteria for all elected and appointed candidates including, among other things, integrity, independence, impartiality and competence;**
- iv. Set out transparent procedures for the selection and appointment of senior judicial positions, in particular the President and Public Prosecutor of the Court of Cassation and President of the Judicial Inspectorate. While such appointment should reflect the diversity of the Lebanese society as a whole, including its various religious groups, it must be based on detailed, objective criteria, including, among others, skills, knowledge, experience and integrity;**
- v. Include provisions to ensure that the HJC is representative of the judiciary as a whole and society in general;**
- vi. Provide for effective measures and safeguards to ensure the fair and adequate representation of women in the HJC;**
- vii. Ensure that all members of the HJC have the same term of office, clarify the grounds on which a post may become vacant and ensure that their mandate is secured until the end of their term, except in cases of incapacity or behaviour that renders them unfit to discharge their duties; and**
- viii. Where individuals can be dismissed from the HJC, clearly define and establish the grounds and the procedure for dismissal of members of the HJC and ensure that this procedure is fair, transparent and protects the rights of the concerned member, including against arbitrary dismissal.**

b. Independence

The judicial bodies in charge of overseeing the judiciary must be truly independent and granted the necessary authority to promote the efficient functioning of the judiciary and safeguard its independence. Judicial councils must both be able to act independently and have the ability to ensure that the judiciary as a whole, and each judge, is truly independent. In this regard, the Human Rights Committee has recommended the establishment of "an independent body charged with the responsibility of appointing, promoting and disciplining judges at all levels".²⁴

Such independence must be guaranteed in law and complied with in practice, including at the institutional, administrative and financial levels.

With a view to ensuring and enhancing the institutional independence of the HJC, Decree-Law No. 150/83 must be amended to: end the role of the Minister of Justice in the selection and the appointment of the HJC members, including the *ex officio* members; provide for objective criteria for the selection and the election of the HJC members; and ensure that the majority of the HJC's members are elected by their peers.

The HJC's institutional independence would be enhanced further if granted oversight and authority over the Judicial Inspectorate, which is the institution in charge of

²⁴ Human Rights Committee, Concluding Observations on Tajikistan, UN Doc. CCPR/CO/84/TJK (2005), para. 17. See also Human Rights Committee, Concluding Observations on Honduras, UN Doc. CCPR/C/HND/CO/1 (2006), para. 16.

supervising the proper functioning of the judiciary and the work of the judges, staff of the registrar and other affiliated persons.²⁵

Under Decree-Law No. 150/83, the Judicial Inspectorate works under the supervision of the Minister of Justice.²⁶ The Judicial Inspectorate is composed of a president, four inspectors general, and six inspectors, all appointed by Cabinet decree upon proposal of the Minister of Justice, and from among various judicial grades (depending on the position).²⁷

Insofar as the HJC manages the careers of judges, including appointments, promotions, transfers, and discipline, and that various aspects of such management are based on the reports of the Judicial Inspectorate, the ICJ believes that Decree-Law No. 150/83 should be amended to end the Minister of Justice's supervision over the Inspectorate and ensure that the HJC is fully empowered to oversee its work and appoint its members.

In addition, under Article 2 of Decree No. 11360 of 1 May 2014 establishing the Secretariat of the HJC, the HJC's Secretary General is appointed from among the HJC's members by Cabinet decree upon proposal of the Minister of Justice. The Secretariat is also aided in its functions by a maximum of three judges (of third ranking or higher), who are appointed by Cabinet decree upon the proposal of the Minister of Justice and pursuant to the approval of the HJC.²⁸

The ICJ believes that in order to enhance the administrative independence of the HJC, the HJC should be able to appoint all the members of the Secretariat, including the Secretary General. Any role played by the Executive in this regard must be removed. The Secretariat should report to, and be overseen by, the HJC as a whole, and not only its President. Decree No. 11360 must be amended to this effect. Such amendments are particularly important given the Secretariat's wide range of functions, including, among others, its role in ensuring "administrative preparation for entrance examinations to the justice system" and carrying out "everything assigned to it by the President of the HJC, within the limits of its role".²⁹

The Secretariat is also tasked with "monitoring the judges' social and private affairs at their request and as commissioned by the HJC." The ICJ is concerned that the wording of this provision is overly broad and could potentially lead to situations where judges are not adequately protected against improper influences, pressures, or interferences from the judiciary itself, or where the exercise of fundamental rights and freedoms by judges, including the right to freedom of expression and association is undermined. The ICJ is of the view that Decree No. 11360 should be amended not only to ensure that the composition and functioning of the HJC's Secretariat enhances the HJC's independence, but also that the exercise of the Secretariat's functions protects and guarantees the rights of individual judges, including to act independently and without any undue influence or interference.

The ICJ also believes that, in addition to ensuring the HJC's institutional and administrative independence, for the HJC to be truly independent and able to guarantee judicial independence, it has to have sufficient financial resources to carry out its mandate and, consequently, be able to develop and manage its own budget and the budget of the judiciary as a whole.

²⁵ Decree-Law No. 150/83, article 98. The Judicial Inspectorate has the power to inspect the judicial and administrative courts as well as the bodies of the Ministry of Justice, i.e the Audit Bureau and its subsidiaries and the central departments.

²⁶ See Decree-Law No. 150-83, article 97.

²⁷ Decree-Law No. 150/83, articles 99, 100 and 101.

²⁸ Decree No. 11360 of 1 May 2014 ("Decree No. 11360"), article 3.

²⁹ Decree No. 11360, article 4.

With regard to financial independence, the UN Special Rapporteur has stated that a judicial council tasked with overseeing judicial affairs “should manage its own budget” and “have enough human and financial resources to carry out its mandate”.³⁰

In order to ensure the proper application of the rule of law, the independence of the judiciary, the right of access to courts and the right to a fair trial, States must ensure that the judiciary is provided with adequate resources. This is a practical matter; to ensure the respect of all these rights, the judiciary must be able to discharge its functions effectively.³¹ The UN Special Rapporteur on the independence of judges and lawyers has recommended that a fixed percentage of GDP should be established in favour of the judiciary and that this budget be progressively increased.³²

In Lebanon, the Constitution provides that the Government must introduce a budget to the Chamber of Deputies every year, including State expenditures and its revenues for the next year.³³ The Constitution contains no details on how the budget for the judiciary should be determined; rather, this information is contained in the Law on Public Accounting No. 14969 of 30 December 1963 (with amendments). Every year, the proposed budget is prepared by the Ministry of Finance – after review of the estimates prepared by the ministries³⁴ – and submitted to the Council of Ministers by September 1. After review by the Council of Ministers, the budget is forwarded to Parliament by 15 October for its review and approval. Each article of the budget is subjected to a vote during the general session of Parliament between 15 October and 31 December.

In reality, Lebanon has not had an official budget since 2005 due to political standoffs and a failure to convene Parliament to discuss the budget bills.³⁵ Therefore, all departments have been using roughly the same amount of funds as had been afforded to them by the last official budget, in line with article 86 of the Constitution.³⁶ According to the last annual country profile report from the Ministry of Finance, in the absence of approved budgets, “Government expenditures have been incurred and are currently incurred on the basis of the ‘one-twelfth rule’, pursuant to which the Government is authorized to spend monthly one-twelfth of the last approved budget (i.e. the 2005 budget) and other enabling legislation. In October 2012, Parliament approved an increase in the legal spending limit from the last approved budget.”³⁷

³⁰ UN Special Rapporteur on the Independence of Judges and Lawyers, Report on Accountability, UN Doc A/HRC/26/32 (28 April 2014), para. 126.

³¹ UN Basic Principles, Principle 7. See also Human Rights Committee, Concluding observations on the Central African Republic, UN Doc. CCPR/C/CAF/CO/2 (2006), para. 16.

³² Report of the Special Rapporteur on the independence of judges and lawyers, Addendum, Mission to Maldives, UN Doc. A/HRC/4/25/Add.2 (2007), para. 77. The Special Rapporteur has also underlined that the reduction of the judiciary’s budget significantly hampers the administration of justice: Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/11/41 (2009), para. 41.

³³ Lebanese Constitution, article 83.

³⁴ Law on Public Accounting No. 14969 of 30 December 1963, article 13.

³⁵ The Daily Star, “Ministers gear up for battle over budget”, 17 April 2015, available at: <http://www.dailystar.com.lb/News/Lebanon-News/2015/Apr-17/294767-ministers-gear-up-for-battle-over-budget.ashx>. See also Republic of Lebanon Ministry of Finance, Lebanon Country Profile 2014, p. 63, available at: <http://www.finance.gov.lb/en-US/finance/ReportsPublications/DocumentsAndReportsIssuedByMOF/Documents/Sovereign%20and%20Investment%20Reports/Country%20Profile/Lebanon%20Country%20Profile%202014.pdf>.

³⁶ “If the Chamber of Deputies has not given a final decision on the budget estimates before the expiration of the session devoted to the examination of the budget, the President of the Republic, in coordination with the Prime Minister, shall immediately convene the Chamber for an extraordinary session [...] The budget of the previous year shall be adopted as a basis.”

³⁷ Republic of Lebanon Ministry of Finance, Lebanon Country Profile 2014, p. 63, available at: <http://www.finance.gov.lb/en-US/finance/ReportsPublications/DocumentsAndReportsIssuedByMOF/Documents/Sovereign%20>

The budgets of the judiciary and of the HJC are a part of the budget of the Ministry of Justice. Both these budgets are therefore entrusted to the Ministry of Justice, which is responsible for the entirety of the judiciary's financial matters.³⁸ The Ministry of Justice sets its budget in accordance with the law, but the HJC does not play a role in the setting of its own budget nor of the budget of the judiciary.

The UN Special Rapporteur on the independence of judges and lawyers has consistently urged that the judiciary be involved in the drafting of its own budget.³⁹ Where judicial councils exist, as in Lebanon, such bodies should "be vested with the role of receiving proposals from the courts, preparing a consolidated draft for the judicial budget and presenting it to the legislature".⁴⁰ Moreover, the management and administration of the courts' budget should be entrusted to the judiciary, through the independent body responsible for the judiciary where this body exists. According to the UN Special Rapporteur on the independence of judges and lawyers, this has the effect of reinforcing judicial independence.⁴¹

The ICJ is concerned that the lack of participation by or consultation with the HJC in the drafting of the budget for the judiciary and in the management and administration of its budget undermines judicial independence and impartiality. Moreover, the control granted to the Minister of Justice over both the amount of funds allocated to the judiciary as a whole and how this should be implemented opens the judiciary to executive interference. As the ICJ has previously stated: "Inasmuch as other branches of power or State institutions wield an important influence in the allocation and administration of those resources given to the judiciary, there is a real possibility of influencing the outcomes of particularly sensitive cases, which would entail an attack on the independence of the judiciary".⁴²

In addition, the ICJ is concerned that there are no guarantees in the Constitution or in the law for the judiciary to be provided with adequate resources. This is all the more concerning in Lebanon where an official budget has not been adopted in ten years, which leads the ICJ to believe that the judiciary's budget cannot be reflective of its current needs.

The ICJ believes that, to be in line with international standards, the HJC should be directly involved in the preparation of its own budget and the judiciary's budget, and that it should be empowered to manage and administer the allocation of judicial resources. Further, adequate resources for the judiciary must be guaranteed in law.

In light of the above, the ICJ calls on the Lebanese authorities to amend Decree-Law No. 150/83 and Decree No. 11360, to:

- i. End the Minister of Justice's powers in relation to the selection and the appointment of HJC members, the members of the Judicial Inspectorate, and the members of the HJC's Secretariat;**

[and%20Invensment%20Reports/CountrC%20Profile/Lebanon%20Country%20Profile%202014.pdf](#).

³⁸ According to the 2005 Budget, the Ministry of Justice was granted 49.05 billion Lebanese Pounds (approximately USD 32.445 million). See Schedule 1 of Law No. 715 of 2005 establishing the national budget.

³⁹ Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/11/41 (2009), para. 39.

⁴⁰ *Id.* A number of regional standards also provide that the judiciary should be consulted regarding the preparation of the budget and its implementation. See CoM Recommendation CM/Rec(2010)12, para.40; African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Section A, Principle 4(v).

⁴¹ Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/11/41 (2009), para. 42.

⁴² ICJ, *Practitioners' Guide No. 1: International principles on the independence and accountability of judges, lawyers and prosecutors*, Geneva, 2007, p. 33.

- ii. **End the Minister of Justice’s supervision over the Judicial Inspectorate;**
- iii. **Ensure that the HJC is fully empowered to oversee the work of the Judicial Inspectorate and appoint its members, including its President;**
- iv. **Ensure that the procedures for the election and nomination of both the members of the Judicial Inspectorate and of the Secretariat protect against the executive’s undue or unwarranted interference in judicial matters;**
- v. **Provide for the HJC to appoint and oversee the work of the HJC’s Secretary General and other members of the Secretariat;**
- vi. **Ensure that the competencies of the Judicial Inspectorate and the Secretariat are clearly defined in the law and that the exercise of such competencies protects and guarantees the rights of individual judges, including to act independently and without any undue influences or interferences;**
- vii. **Ensure that the HJC has sufficient financial resources to carry out its mandate, exercises full control over these resources, and is empowered to develop and manage its own budget;**
- viii. **Require that the legislative and executive involve the HJC in determining the budget for the judiciary, including through meaningful, direct consultation;**
- ix. **Ensure that the management and administration of the courts’ budget is entrusted to the HJC.**

c. Competencies

As referred to above, international standards envisage an independent authority to oversee the judiciary and to manage the career of judges, including their selection, appointment, promotion and termination of office.

According to article 5 of Decree-Law No. 150/83, the HJC is entrusted with a wide range of powers related to the careers of judges, including appointments, preparing proposals for individual or collective judicial transfers, judicial discipline, and requesting the Judicial Inspectorate to investigate judges and subsequently to take appropriate measures and decisions.

However, in the implementation of all these functions, the Minister of Justice plays a central role, including on issues pertaining to the selection, training and disciplining of judges, leading to the real and pervasive issue of interference by the executive. The ICJ believes that the HJC should be exclusively competent, to the exclusion of the Minister of Justice, to manage the careers of judges, including the selection, appointment, promotion, transfer, and the disciplining of judges, based on objective criteria that protect the individual independence of judges and the independence of the entire judiciary. The issues relating to the management of the careers of judges are addressed in an accompanying ICJ’s memorandum on the statute for judges.

In addition to these powers, the HJC may, in accordance with article 5 of Decree-Law No. 150/83, express opinions on draft laws and regulations related to the judiciary and, in this regard, propose projects and texts that it deems appropriate to the Minister of Justice.

It is positive that the HJC may, of its own initiative, report on matters relating to the judiciary and contribute to judicial reform processes, including legislative reform. However, the ICJ believes that the role of the HJC in these matters should be expanded so that all authorities, in particular the Parliament and the Government, are required to consult the HJC and to consider its opinion on all matters relating to the judiciary, including judicial reforms.

In addition to the above-outlined competencies, in conformity with article 5(e) of Decree-Law No. 150/83, the HJC is mandated to consider requests for amnesty for persons convicted and sentenced to the death penalty. Although Lebanon does not have a mandatory death penalty and there is a *de facto* moratorium on executions – the last execution in Lebanon took place in 2004 – the death penalty has not been officially abolished, and at least 67 individuals were on death row as of May 2014.⁴³ There are also other instances in which judges have requested the death penalty in cases of terrorism or threats to state security.⁴⁴ Capital punishment therefore remains an issue of serious concern in Lebanon.

Articles 391 and following of the Lebanese Code of Criminal Procedure prescribe the rules relating to pardons. The HJC has the competence to consider applications for pardons submitted by persons sentenced to death by definitive judgement, or referred to it by the competent authorities.⁴⁵ More specifically, when the death sentence becomes irrevocable, the Minister of Justice refers the case file, along with the report of the Public Prosecutor of the Court of Cassation, to the HJC, which has ten days to deliver its opinion on the enforcement or commutation of the sentence.⁴⁶ The President of the HJC, or a member of the HJC he delegates, prepares a report summarizing the facts of the case, the evidence on which the judgment was based, and the grounds of the application for pardon, and gives his opinion on the matter.⁴⁷ The HJC then considers the charge against the convicted person, the evidence on which the judgment was based, the grounds provided in support of the application for pardon, and the pre-conditions for enforcement or commutation of the death sentence. It delivers its opinion to either grant or reject the application *in camera* and submits a report to the Minister of Justice.⁴⁸ The death penalty may only be enforced after consultation with this committee and with the consent of the President of the Republic.⁴⁹ For all other applications for special pardons, the HJC sets up a committee consisting of three of its members for consideration of the matter. This committee may decide on applications for pardon in cases of felonies and misdemeanours where a sentence other than the death penalty has been imposed.⁵⁰

The ICJ opposes the death penalty in all circumstances and considers its imposition in all cases as a violation of the right to life and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The ICJ urges the Lebanese authorities to introduce a clear and absolute prohibition on the use of the death penalty. Until such prohibition is established in law, procedural safeguards must be provided for in terms that strictly comply with international standards, including those related to the right to seek pardon or commutation of the penalty for anyone sentenced to death.⁵¹ While the modalities of procedural safeguards required to effectively implement this right is left to the States, the relevant procedures must not

⁴³ See Nadine Elali, "No more death sentences?", NOW., 16 May 2014, available at: <https://now.mmedia.me/lb/en/reportsfeatures/547596-no-more-death-sentences>.

⁴⁴ See "Abu Ghaida seeks death penalty for 11 in Tripoli bombings case", NOW., 5 May 2014, available at: <https://now.mmedia.me/lb/en/lebanonnews/545962-abu-ghaida-seeks-death-penalty-for-11-people-in-tripoli-bombings-case>. See also, "Judge requests death penalty for ISIS members", NOW., 13 May 2014, available at: <https://now.mmedia.me/lb/en/lebanonnews/547065-judge-requests-death-penalty-for-isis-members>.

⁴⁵ Law No. 328 of 7 August 2001 [Code of Criminal Procedure], article 391.

⁴⁶ Code of Criminal Procedure, article 393.

⁴⁷ Code of Criminal Procedure, article 394.

⁴⁸ Code of Criminal Procedure, article 395.

⁴⁹ Code of Criminal Procedure, article 420.

⁵⁰ Decree-Law No. 150/83, Article 5(f), and Code of Criminal Procedure, article 396.

⁵¹ ICCPR, Article 6(4); Arab Charter on Human Rights, Article 6; Safeguards guaranteeing protection of the rights of those facing the death penalty, approved by Economic and Social Council resolution 1984/50 of 25 May 1984, Paragraph 7. See on this issue, Amnesty International, *Fair Trial Manual*, Second Edition, 2014, p. 215.

effectively negate the right to seek pardon.⁵² To avoid cursory or illusory pardon processes, certain procedural safeguards should be considered an integral part of the right itself.⁵³ Such a procedure should include the right of the condemned person to make representations in support of this request referring to whatever considerations might appear relevant to him or her; to be informed in advance of when that request will be considered; to be informed promptly of whatever decision is reached; and to receive legal counsel.⁵⁴

The ICJ is concerned that the current procedure for pardon does not appear to protect the convicted person's right to a fair and adequate pardon procedure. The ICJ recommends that the law be amended to set out fair and adequate procedural safeguards for such proceedings, including at a minimum those required by international standards.

The law should also provide for a political process to seek pardon or commutation of the death penalty. As the Special Rapporteur on Extrajudicial Executions has pointed out, one of the purposes of clemency procedures is, "To provide an opportunity for the political process, which is rightly excluded from otherwise interfering in the course of criminal justice, to show mercy to someone whose life would otherwise be forfeited."⁵⁵

In light of the above, the ICJ calls on the Lebanese authorities to amend Decree-Law No. 150/83 to:

- i. Ensure that the HJC is exclusively competent, to the exclusion of the Minister of Justice, to manage the careers of judges, including the selection, appointment, promotion, transfer, and the disciplining of judges, based on objective criteria that protect the individual independence of judges and the independence of the entire judiciary;**
- ii. Provide that the legislative and the executive branches of government must consult the HJC and consider its opinions on all matters relating to the judiciary, including judicial reforms;**
- iii. Introduce a clear and absolute prohibition on the use of the death penalty. Until such prohibition is established in law, set out for all requests for pardon referred to the HJC, clear, transparent, fair and adequate procedures that guarantee the rights of the concerned persons to present all evidence supporting granting the pardon or amnesty, to be informed in advance of when the request will be considered, to be informed promptly of the decision, and to receive legal counsel.**

⁵² Human Rights Committee, *Kennedy v. Trinidad and Tobago*, Communication No. 845/1998 (2002), para. 7.4.

⁵³ Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/8/3 (2008), para. 65.

⁵⁴ Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/8/3 (2008), para. 67; UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Guideline 6, para. 47(c); and see UN General Assembly resolution 65/208, para. 5.

⁵⁵ Special Rapporteur on extrajudicial executions, UN Doc. A/HRC/8/3 (2008), para. 62.

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