

The Career of Judges in Lebanon in Light of International Standards

A Briefing paper

February 2017

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Judicial selection, appointment, promotion and security of tenure

International law and standards on the independence of the judiciary aim to ensure that matters related to the selection of judges, their appointment, training, evaluation, promotion and discipline, are free from improper influence by the other branches of government. This is essential to enable judges to protect and enforce human rights and the rule of law without fear or favour.

As explained by the United Nations Human Rights Committee, mandated by the International Covenant on Civil and Political Rights (ICCPR) to interpret and apply its provisions, the requirement of an independent judiciary set out in article 14 encompasses "the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions".¹ To comply with article 14, the UN Human Rights Committee affirmed that States should 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".²

Lebanon, which is a State party to the ICCPR, has consistently failed to comply with its obligations under article 14, including respecting and upholding the independence of the judiciary.³ The Human Rights Committee has expressed its "concern about the independence and impartiality" of Lebanon's judiciary and recommended that the State party "review, as a matter of urgency, the procedures governing the appointment of members of the judiciary, with a view to ensuring their full independence".⁴

To comply with their obligations under international law, the Lebanese authorities must end the executive's extensive powers and influence over the Lebanese judicial system, not only in terms of its institutional, administrative and financial independence, but also with regards to establishing the exclusive competence of the judiciary to manage the careers of judges, including their selection, appointment, promotion and discipline.

A first step would be for Lebanon to adopt a comprehensive, detailed Statute for Judges with a view to setting out the criteria and the procedures for the management of the career of judges. Until such Statute is adopted, Legislative Decree No. 150 of 16 September 1983 on the organization of the judiciary (Decree-Law No. 150/83) must be amended to conform to international standards on the independence of the judiciary, including the provisions relating to the selection, appointment, training, discipline and removal from office of judges. On these issues, indeed, the current legal framework is inadequate and facilitates political and other unwarranted interference in judicial matters. For instance, while security of tenure and irremovability of judges are provided for in the law, several provisions can – and have – rendered respect for these principles illusory. In addition, Decree-Law No. 150/83 does not provide for any clear procedures or objective criteria for either the evaluation of judges or for their promotion.

In this memorandum, the ICJ analyses the provisions of Decree-Law No. 150/83 relevant to judicial selection, appointment, promotion, and security of tenure in light

¹ Human Rights Committee, General Comment No. 32, article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32 (2007), para. 19.

² *Id.*

³ Human Rights Committee, Concluding observations on Lebanon (second periodic report), UN Doc. CCPR/C/79/Add.78 (1997), para. 15.

⁴ *Id.*

of international law and standards, and formulates recommendations for amendments and reform that, together with sufficient political will, can contribute to upholding judicial independence at the institutional and individual levels.

I. SELECTION, TRAINING, AND APPOINTMENT

i) Selection and appointment procedure in practice

In Lebanon, trainee judges are recruited following a needs assessment conducted by the Minister of Justice, who determines the required number of new judges after consulting with the High Judicial Council (HJC). The Minister of Justice then requests the HJC to organise an exam for this purpose.⁵

The HJC considers the applications and selects the candidates who will participate in the examination. Eligibility is based on general requirements, such as nationality, age, legal qualifications, and proficiency in languages (see p. 6) and on the grades required for admission, as set by the HJC.⁶ The HJC appoints an examination board composed of judges selected for this purpose at the beginning of every competition.⁷

Article 62 of Decree-Law No. 150/83 provides that, if necessary, the HJC may conduct preliminary interviews.⁸ In reality, candidates who have been accepted to undergo examination are generally called to do a primary interview before a panel constituted of the Chairman and Director of the Institute of Judicial Studies (IJS), as well as of a member of the HJC. This interview is aimed at assessing the general and legal knowledge of the candidate as well as her or his linguistic capabilities.⁹ Candidates who succeeded in this preliminary interview are called for a second interview before the HJC, during which legal and judicial topics are discussed.

The HJC then announces the list of accepted candidates, who are considered qualified to undergo the written test. Subsequently, candidates who succeed in the written test undertake an oral examination. The HJC is in charge of determining the subjects on which the candidates are tested during the entire written and oral examination.¹⁰ Successful candidates are appointed as trainee judges by a Cabinet decree based on a recommendation by the Minister of Justice and the approval of the HJC.¹¹

A second avenue to access the judicial office is provided for in article 68 of Decree-Law No. 150/83. According to this article, holders of a doctorate degree in law may be appointed directly as trainee judges by a Cabinet decree, without participating in the competition, upon a recommendation by the Minister of Justice and the approval of the HJC.¹²

In addition, lawyers, employees of the judicial administration or employees in public agencies and institutions who have a law degree and have exercised their functions for at least six years, may be directly appointed as tenured judges by Cabinet decree, upon recommendation by the Minister of Justice and the approval of the HJC.¹³ However, in this track, the candidate does not need to undertake the three-year training programme at the IJS.

⁵ Decree-Law No. 150/83, article 59.

⁶ Decree-Law No. 150/83, article 60.

⁷ Decree-Law No. 150/83, article 60.

⁸ Decree-Law No. 150/83, article 62.

⁹ See the section on the competition system of the Website of the IJS, available at: <http://ijs.justice.gov.lb/en/pages.asp?id=15&subid=45&subsubid=24&LastId=18>.

¹⁰ Decree-Law No. 150/83, article 60.

¹¹ Decree-Law No. 150/83, article 64.

¹² Decree-Law No. 150/83, article 68.

¹³ Decree-Law No. 150/83, article 77.

Once appointed, trainee judges follow a three-year training programme at the IJS, which includes theoretical and practical courses, as well as placements in various judicial chambers where the trainee judge participates in deliberations.¹⁴ At the end of the training programme, the IJS Board prepares a list of candidates who have successfully completed the training programme for the HJC's consideration, along with proposals concerning each trainee judge and his or her ability to perform judicial duties. The HJC, upon receiving the proposals from the Board, decides on the ability of each trainee judge to perform judicial duties and to be transferred to the tenured judiciary. The decision that a judge is deemed ineligible terminates the service of the trainee judge.¹⁵

Once a candidate has been selected as a tenured judge – either following completion of the IJS training or direct recruitment of practising lawyers and judicial employees – she or he must then be appointed to a tribunal. Until then, tenured judges are attached to the Ministry of Justice.¹⁶

Indeed, the appointment of a judge to a specific court or judicial body is based on an agreement between the HJC and the Minister of Justice. In accordance with article 5(b) of Decree-Law No. 150/83, judges in Lebanon are appointed by decree following the approval of the HJC. In cases where the HJC and Minister do not agree, joint meetings are held during which the various points of contention are examined. If no agreement is reached, a final and binding decision is taken by the HJC provided it has a majority of at least seven members. The appointment decision is approved by a Cabinet decree.

Although much of the process described involves important roles for the HJC, it is important to note that the executive influences the appointment of eight out of the ten HJC's members. Indeed, 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 and who automatically then become members of the HJC. The two other members are judges elected from among the Chamber Presidents of the Court of Cassation by all the presidents and associate judges.¹⁷ Moreover, the HJC has no legal personality and is not granted financial or administrative independence. Funds are allocated to it annually through the budget of the Ministry of Justice.

The ICJ is concerned that the entire process for selecting and appointing judges is subject to extensive influence by the executive, does not provide for sufficient safeguards that protect against undue and external interference and is not based on objective and detailed criteria.

The procedure governing the selection and appointment of judges must ensure the effective independence of the judiciary, both in appearance and in reality. Thus, the UN Basic Principles on the independence of the judiciary provide that "any method of judicial selection shall safeguard against judicial appointments for improper motives".¹⁸ The African Commission on Human and Peoples' Rights (ACHPR) Principles

¹⁴ This training includes academic courses, attendance at hearings, examination of case files, preparation of draft decisions, etc.

¹⁵ Decree-Law No. 150/83, article 70.

¹⁶ Decree-Law No. 150/83, article 71.

¹⁷ See the ICJ memorandum on "The Lebanese High Judicial Council in Light of International Standards on the Independence of the Judiciary".

¹⁸ UN Basic Principles on the Independence of the Judiciary, adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by General Assembly resolutions 40/32 (1985) and 40/146 (1985), principle 10. See also Draft Universal Declaration on the Independence of Justice (the Singhvi Declaration), para. 11(b). In the same vein, the European Court of Human Rights (ECHR) has held that "in order to establish whether a tribunal

and Guidelines similarly provide that the process of appointment “shall be transparent and accountable” and that the method of selection “shall safeguard the independence and impartiality of the judiciary”.¹⁹

The Lebanese authorities should therefore ensure that the Minister of Justice is divested of any role in the selection and the appointment of judges, including the Minister’s competencies to: evaluate the need to recruit new judges and the number of new judges to be recruited; propose, under article 77 of Decree-Law No. 150/83, that certain candidates be directly appointed as tenured judges; and propose that holders of a doctorate in law to be directly appointed as trainee judges.

The Lebanese authorities should also ensure the executive’s prerogative to formally appoint judges by decree is not politicized or used to undermine the independence of the judiciary. Indeed, while the HJC is in charge of preparing the list of judicial appointments, this list is only enforceable once given effect through decrees by the Minister of Justice. In practice, trainee judges could remain attached to the Ministry of Justice without being officially appointed for many months or even years.²⁰

Moreover, because the involvement of the executive in the selection and appointment of judges has often been a source of concern throughout the world, international standards recommend that an independent authority be established to be in charge of the selection and appointment of judges.²¹ The UN Human Rights Committee and the UN Special Rapporteur on the independence of judges and lawyers have in this regard repeatedly recommended the use of bodies that are independent from the executive, and that are composed mainly (if not solely) of judges and members of the legal profession.²² According to Recommendation (2010)12 of the Council of Ministers of the Council of Europe, “the authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers”.²³ Similarly, the European Charter on the Statute for Judges envisages 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” for every decision “affecting the selection,

can be considered ‘independent’ for the purposes of Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms), regard must be had, *inter alia*, to the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence”. See, for example: *Incal v. Turkey* (1998) ECHR 48, para. 65; and *Findlay v. United Kingdom* (1997) ECHR 8, para. 73.

¹⁹ African Commission on Human and Peoples’ Rights, Principles and Guidelines on the right to a fair trial and legal assistance in Africa, Principle A.4(h).

²⁰ See Legal Agenda, “2730 months of unemployment and waste in the Lebanese judiciary”, 22 July 2015 (in Arabic), available at: <http://legal-agenda.com/article.php?id=1177&folder=articles&lang=ar>. This issue was addressed in Parliament in 2004, at which time the Minister of Justice promised to submit a draft according to which the Minister of Justice would be required to publish the list of appointments of the HJC within a set deadline. However, this has not yet materialised. On the contrary, in 2005, delays in the publication of such a list of appointments created a crisis during which judges were not appointed for years. See Euro-Mediterranean Human Rights Network, Lebanon: The Independence and Impartiality of the Judiciary, 2010, p. 23, and Legal Agenda, “2730 months of unemployment and waste in the Lebanese judiciary”, 22 July 2015 (in Arabic), available at: <http://legal-agenda.com/article.php?id=1177&folder=articles&lang=ar>.

²¹ See Universal Charter of the Judge, article 9; Committee of Ministers of the Council of Europe, Recommendation No. R(94)12, principle I(2)(c); Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region, principles 11, 12 and 15.

²² See, for example, Human Rights Committee Concluding Observations on: the Congo, UN Doc. CCPR/C/79/Add.118, para. 14; on Liechtenstein, UN Doc. CCPR/CO/81/LIE, para. 12; Tajikistan, UN Doc. CCPR/CO/84/TJK, para. 17; Honduras, UN Doc. CCPR/C/HND/CO/1, para. 16; Azerbaijan, UN Doc. CCPR/C/AZE/CO/3 (2009), para. 12; and Kosovo (Serbia), UN Doc. CCPR/C/UNK/CO/1 (2006), para. 20. See also reports of the UN Special Rapporteur on the independence of judges and lawyers, UN Docs. A/HRC/11/41 (2009), para. 27-29, and A/67/305 (2012), para 113(k). See also, Singhvi Declaration, para.11(c); and Universal Charter of the Judge, article 9.

²³ CoM Recommendation CM/Rec(2010) 12, para. 46.

recruitment, appointment, career progress or termination of office of a judge".²⁴ Where the executive or legislative branches formally appoint judges following their selection by an independent body, the UN Special Rapporteur on the independence of judges and lawyers explains that the recommendations made by the independent body should:

only be rejected in exceptional cases and on the basis of well-established criteria that have been made public in advance. For such cases, there should be a specific procedure by which the executive body is required to substantiate in a written manner for which reasons it has not followed the recommendation of the [...] independent body for the appointment of a proposed candidate. Furthermore, such written substantiation should be made accessible to the public. Such a procedure would help enhance transparency and accountability of selection and appointment.²⁵

The Lebanese authorities should therefore ensure that such procedural guarantees are provided for by the law, and that the HJC is exclusively competent to decide on all issues relating to the selection, appointment and other aspects of the career of judges. To this end, and with view to upholding the independence of the judiciary, they must also reform the legal framework relating to the HJC to ensure that this Council is independent from the executive, including by ensuring that the Minister of Justice is divested of any role in appointing its members, amending its composition to ensure that the at least half of its members are judges elected by their peers, and that it is pluralistic and gender representative.²⁶

The legal framework regulating the procedures for selection of trainee judges is also flawed and needs to be reformed. Candidates are subjected to a two-tiered preliminary interview system before the examination. These preliminary interviews allow a wide range of discretion, lack transparency and are not based on objective criteria. Decisions taken at the end of this preliminary interview are not subjected to any form of review. The ICJ believes that because the preliminary interview system does not provide for the necessary safeguards to protect against undue influence and interference in identifying potential trainee judges, such system must be removed or replaced by a process involving standardized and objective questioning by judicial officers that are not at risk of influence by the executive. As the UN Special Rapporteur on the independence of judges and lawyers has stated, the process for selecting judges and prosecutors should "take place through a public competitive selection process, free from political or economic influences or other external interference".²⁷

The ICJ is also concerned that once trainee judges have completed their three-year training, they have no guarantee of being appointed as tenured judges. Such appointment is based on the HJC's discretionary powers to decide on the ability of each trainee judge to perform judicial duties and to be transferred to the tenured judiciary. At this stage, again, there are no clear and objective criteria to regulate and ensure the transparency of the decision-making process, and the law does not provide for any avenues for the concerned trainee judges to challenge such decisions. The decision that a trainee judge is deemed ineligible terminates his or her service and is not subject to any form of review.

²⁴ European Charter on the Statute for Judges, principle 1.3.

²⁵ Report of the UN Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/11/41 (2009), para. 33.

²⁶ For more information, see the ICJ memorandum on "The Lebanese High Judicial Council in Light of International Standards on the Independence of the Judiciary".

²⁷ Report of the UN Special Rapporteur on the independence of judges and lawyers, UN Doc. A/67/305 (2012), para. 113(j).

The ICJ believes that the reasons for any decision on the selection and appointment of judges should be made available to concerned persons upon their request and should be subject to an independent review. Best practices and regional standards provide that such procedures should "be transparent with reasons for decisions being made available to applicants on request. An unsuccessful candidate should have the right to challenge the decision, or at least the procedure under which the decision was made".²⁸

ii) Eligibility for selection and appointment

Under article 61 of Decree-Law No. 150/83, candidates for the examination on the selection of trainee judges must:²⁹

- Be a Lebanese national and have held Lebanese nationality for the previous ten years;
- Enjoy all their civil rights and have no conviction for a misdemeanour or felony;
- Be free from diseases or disabilities that would prevent them from exercising their duties;
- Hold a Lebanese law degree;
- Be proficient in Arabic and either French or English;
- Be under 35 years of age at the time of the written examination (subject to waiver in certain circumstances).³⁰

No other criteria are provided for the appointment of trainee judges as a tenured judge. Once they are appointed as tenured judges, there are also no objective criteria or qualifications set out in law upon which decisions on appointment for higher positions are made, other than requirements regarding the level or grade of the judge.

The ICJ considers that Lebanese law should set forth, consistent with international standards, clear and objective criteria at all levels of the selection and appointment process. In particular, the criteria for acceptance to undergo the IJS entrance examination, for the HJC decision to appoint a trainee judge as a tenured judge, and to appoint judges to a position within the judiciary, should all be fully and clearly prescribed by the law, based solely on merit and to the exclusion of any political considerations. The criteria should focus principally on qualifications and training in law, experience, skills and integrity, and ensure that the method of selection safeguards against improper motives in judicial appointments. It should also ensure that no discrimination in the selection of judges on any grounds other than nationality is accepted, including by providing for a comprehensive general anti-discrimination clause, covering at least all the prohibited grounds of discrimination covered by the ICCPR.

This is particularly important because judicial appointment in Lebanon has been subjected, in practice, to a religion-based power-sharing agreement,³¹ which *requires*

²⁸ Committee of Ministers of the Council of Europe, Recommendation CM/Rec(2010)12, article 48.

²⁹ Decree-Law No. 150/83, article 61.

³⁰ The age requirement may be lifted in the case of employees of the judicial administration/judicial assistants who served in their post for longer than five years and succeeded in the competition, under the condition that they are no more than 44 years old at the time of application for the examination. See article 69(bis) of Decree-Law No. 150/83.

³¹ 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.

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.³² Thus, for example, the HJC's members are appointed according to a 50/50 ratio between Christians and Muslims.³³ 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 to be representative of the Lebanese society as a whole. The Lebanese authorities should therefore take effective measures to ensure that people belonging to minorities, including religious minorities, enjoy equal access to and participation in the judiciary. The ICJ nevertheless believes that the selection and the appointment of judges, including judges in senior positions, 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, which is adhered with in practice and in full compliance with international standards on judicial selection and appointment. The UN Basic Principles provide that "[p]ersons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law".³⁴ The Universal Charter of the Judge states that "[t]he selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification".³⁵ No other consideration should be taken into account. This includes any discrimination on the grounds of race, colour, sex, religion, opinion (including political opinion), national or social origin, etc.³⁶

In addition, the Lebanese authorities should also provide for specific and concrete measures to ensure women's full and equal representation in the judiciary, including senior judicial positions. This is particularly important in the context of the history of gender inequality between men and women in Lebanon. For instance, no women currently sit on the HJC. Mandated by the Convention on the Elimination of all forms of Discrimination against Women, to which Lebanon has been a party since 1996, the

³² 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).

³³ 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>>.

³⁴ UN Basic Principles, Principle 10.

³⁵ Universal Charter of the Judge, article 9.

³⁶ However, the requirement that a candidate be a national of the country concerned is not considered discriminatory: see, for example, the African Commission Principles and Guidelines, principle A.4(j)(4).

UN Committee for the Elimination of Discrimination against Women has 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”.³⁷ Moreover, the UN Special Rapporteur on the independence of judges and lawyers has stated that “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”.³⁸

iii) Training

International standards are clear about the importance of providing adequate initial and ongoing judicial training.³⁹ While there is no single proscribed system for judicial training institutions, Recommendation (2010)12 of the European Committee’s Council of Ministers states that an “independent authority” should ensure that such training meets “the requirements of openness, competence and impartiality inherent in judicial office”.⁴⁰ The Latimer House Guidelines state that training should be under the control of a judicial body and judicial officers, with the assistance of lay specialists.⁴¹ The European Charter on the Statute for Judges requires States to ensure the preparation of candidates for the judiciary by means of appropriate training administered by an independent authority, which “ensures the appropriateness of training programmes and of the organization which implements them, in the light of the requirements of open-mindedness, competence and impartiality which are bound up with the exercise of judicial duties”.⁴²

The institution in charge of training judges in Lebanon is the IJS, which is a department of the Ministry of Justice and cannot be considered institutionally and functionally independent. Moreover, while the members of the Board are all judges, they are all appointed, directly or indirectly, by the Minister of Justice through Cabinet decree, including the Chairman and Director, both of whom play essential roles in the functioning of the IJS and the training of trainee judges. The Board is led by the President of the HJC, who is appointed by Ministerial Decree, and its Vice-President is the Secretary-General of the Ministry of Justice. The Board is in charge of determining the academic criteria and of preparing the list of the successful candidates for the HJC’s consideration, along with proposals concerning each trainee judge and his or her ability to perform his or her duties. This lack of independence thus exposes the IJS to political interference not only on the matter of ongoing training, but also in the training and assessment of candidates for appointment to tenured positions.

The ICJ believes that Decree-Law No. 150/83 should be amended to reinforce the independence of the IJS, including by: placing it under the oversight of the HJC (which needs also to be properly independent) and not the Ministry of Justice; providing that the members of the Board be judges selected and appointed based on objective criteria and through transparent procedures that protect against undue influence and that guarantees the institutional and functional independence of IJS;

³⁷ 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.

³⁸ Interim Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/66/289 (2011), para. 26.

³⁹ Singhvi Declaration, para. 12; CoM Recommendation CM/Rec(2010) 12, paras. 56-57; European Charter on the Statute for Judges, para.2.3 and 4.4; Latimer House Guidelines, Guideline 3.

⁴⁰ CoM Recommendation CM/Rec(2010) 12, para. 57.

⁴¹ Commonwealth (Latimer House) Principles on the Three Branches of Government, 2003, (Latimer House Guidelines), Guideline 3.

⁴² European Charter on the Statute for Judges, principles 1.3 and 2.3.

and granting it full financial and administrative independence, including the power to set and administer its own budget.

In addition, Decree-Law No. 150/83 should be amended to enhance the IJS mandate in developing and implementing appropriate initial and continuing training programmes, including human rights programmes, consistent with the requirements of open-mindedness, competence, integrity and impartiality.

In light of the above, the ICJ calls on the Lebanese authorities, including the Government and the Chamber of Deputies, to take measures, including through legislative amendments to Decree-Law No. 150/83 and ultimately through adoption of a comprehensive and detailed Statute for Judges, to:

- i. Ensure that the Minister of Justice is divested of any role in the selection and the appointment of judges, including with regards to proposing candidates either as tenured judges or as trainee judges;**
- ii. Ensure that the executive's prerogative to formally appoint judges by decree is not politicized or used to undermine the independence of the judiciary and does not involve undue delays;**
- iii. Ensure that until they are appointed to a tribunal, tenured judges are attached to the HJC, to the exclusion of the Ministry of Justice;**
- iv. Ensure that the HJC is exclusively competent to decide on all issues relating to the selection, appointment and other aspects of the career of judges;**
- v. Ensure that the HJC is independent from the executive, including by amending its composition to ensure that at least half of its members are judges elected by their peers, that it is pluralistic and gender representative and that it enjoys financial and administrative independence;**
- vi. Ensure that the process for the selection of trainee judges takes place through a public, transparent and competitive selection process, free from political influence or other external interference, including by either removing the preliminary interview system or replacing it with a process involving standardized and objective questioning by judicial officers that are not at risk of influence by the executive;**
- vii. Ensure that the reasons for any decision concerning the selection and appointment of judges is made available to applicants upon their request and is subject to an independent review;**
- viii. Set forth, consistent with international standards, clear and objective criteria at all levels of the selection and appointment process. Such criteria should include, among others, qualifications and training in law, experience, skills and integrity;**
- ix. Ensure that no discrimination in the selection of judges on any grounds other than nationality is accepted, including by providing for a comprehensive general anti-discrimination clause, covering at least all the grounds of prohibited discrimination covered by the ICCPR;**
- x. Take effective measures to ensure that people belonging to minorities, including religious minorities, enjoy equal access to and participation in the judiciary;**
- xi. Ensure that the selection and the appointment of judges, including in senior positions, is not uniquely and exclusively based on whether the concerned judges belong to a specific religious group but rather on the above-mentioned objective criteria;**
- xii. Provide for specific and concrete measures to ensure women's full and equal representation in the judiciary, including senior judicial positions;**

- xiii. Reinforce the independence of the IJS, including by:**
 - a) Placing it under the oversight of the HJC rather the Ministry of Justice;**
 - b) Providing for the IJS Board members to be judges selected and appointed based on objective criteria and through transparent procedures that protect against undue influence and that guarantee the institutional and functional independence of IJS;**
 - c) Granting the IJS full financial and administrative independence, including the power to set and administer its own budget.**
- xiv. Enhance the IJS mandate in developing and implementing appropriate initial and continuing judicial training programmes, including human rights programmes, consistent with the requirements of open-mindedness, competence, integrity and impartiality.**

II. EVALUATION AND PROMOTION

The career of judges in Lebanon is organized in accordance with a ranking system. In accordance with article 32 of Decree-Law No. 112 of 12 June 1959 (the Law on civil servants), trainee judges who succeed in their training and continue on to perform their duties as tenured judges are classified in the first grade, then automatically upgraded to the next grade every two years, until retirement at the age of 68.⁴³

International standards recommend that the evaluation or assessment of judges be done in a way that respects their independence, both at the individual and the institutional levels, and allows judges to discharge their duties without any undue interference or restrictions. The evaluation of judges should be carried out by the supervising judge of the court on which the individual judge sits and/or his or her judicial delegate(s), in accordance with a set of objective criteria that are applicable throughout the country and are based on "an objective assessment of the judge's integrity, independence, professional competence, experience, humanity and commitment to uphold the rule of law".⁴⁴ These criteria should be published and made available to all members of the judiciary.⁴⁵ Such assessments must involve discussions with the judge concerned, who should also be able to read and challenge the appraisal.⁴⁶ The executive should not have the power to oversee this process in any way.

These standards are clearly not met in Lebanon. In fact, Lebanese law does not provide for any form of evaluation or assessment of judges, nor does it prescribe a system of promotion that is based on objective criteria. Career progression is only based on judges being automatically upgraded to the next grade every two years, without adequately taking into account their professional competence and performance.

The ICJ believes that it is of crucial importance that the Lebanese judiciary, in coordination with the HJC, establish a clear, transparent and independent system of assessment of the work of judges, based on a set of objective criteria including integrity, independence, and competence, which should be prescribed in detail and made available to all members of the judiciary. Such a system should include a fair procedure for judges to be able to challenge their appraisal.

⁴³ Decree-Law No. 150/83, article 71. The retirement age for judges is provided for in article 1 of Decree-Law No. 2102 of 25 June 1979.

⁴⁴ Singhvi Declaration, para. 14; CoM Recommendation CM/Rec(2010)12, para. 58.

⁴⁵ CoM Recommendation CM/Rec(2010)12, para. 58

⁴⁶ *Id.*

With regard to promotion, such decisions should be based on the same kind of independent and objective criteria that regulate selection and appointment. The UN Basic Principles, the Singhvi Declaration and the ACHPR Principles and Guidelines all provide that promotion must be based on objective factors, including ability, integrity and experience and that promotions should not be based on improper motives.⁴⁷ Moreover, final decisions on promotions should be taken by an independent body in charge of the selection of judges, composed of at least a majority of judges.⁴⁸ The Special Rapporteur on the independence of judges and lawyers stated that this “would enhance the coherence of any decision taken in relation to the judicial career and thereby strengthen the independence of the judiciary”.⁴⁹ The UN Human Rights Committee has observed that where promotion depends on the discretion of administrative authorities, it could render judges vulnerable to “political pressure” and thus “jeopardize their independence and impartiality”.⁵⁰

In Lebanon, judges are appointed to higher positions through the same process as the one governing their initial appointment – through Cabinet decree upon proposal by the Minister of Justice and approval of the HJC – if they have attained the required grade. Article 80 of Decree-Law No. 150/83 establishes the grades required to appoint judges at certain levels and posts. For example, only judges of the second grade or higher may be appointed as single judges, and judges of the fourth grade or higher may be appointed to a court of appeal, as president of a first instance chamber or as an investigative judge. Judges at the level of the Court of Cassation must be at the eighth grade or higher, whereas the First President and the Public Prosecutor of the Court of Cassation must be of the fourteenth grade or higher.⁵¹

The ICJ recommends that a system of promotion for judges be established in Lebanon, in line with international standards, according to which judges are promoted according to clear and objective criteria based on merit, qualifications, integrity, ability and efficiency. The current system of rankings, while affording some protection to judges on the basis of experience, is not sufficient. As the Special Rapporteur on the independence of judges and lawyers has made clear, “while adequate professional experience is an essential prerequisite for promotion, it should not be the only factor taken into account in such decisions. Promotion, like with initial selection and appointment, should be merit-based, having regard to qualifications, integrity, ability and efficiency”.⁵² This system should be put under the competence of the HJC (assuming that its composition is reformed to ensure its independence, as recommended above), as the judicial body in charge of decisions related to the career of judges.

In light of the above, the ICJ calls on the Lebanese authorities, including the Government and the Chamber of Deputies, to take measures, among which legislative amendments, to:

- i. Prescribe detailed and objective criteria and a transparent procedure for assessing the work of judges;**
- ii. Ensure that assessment procedures are uniform, impartial and fair, and include discussions with the judge concerned and guarantee the right of the judge to challenge assessments before the judicial body in charge of the assessment system;**

⁴⁷ UN Basic Principles, Principle 12; Singhvi Declaration, para. 14; African Commission Principles and Guidelines, principle A.4(o).

⁴⁸ See European Charter on the Statute of Judges, sections 4.1 and 1.3.

⁴⁹ Report of the Special Rapporteur on the independence of judges and lawyers (2009), UN Doc. A/HRC/11/41, para. 71.

⁵⁰ Human Rights Committee, Concluding observations on Azerbaijan (2001), UN Doc. CCPR/CO/AZE, para. 14.

⁵¹ The highest ranking is the 24th grade.

⁵² Report of the Special Rapporteur on the independence of judges and lawyers (2009), UN Doc. A/HRC/11/41, para. 72.

- iii. **Set out objective criteria and a transparent procedure for promoting judges, such criteria including, among others, integrity, independence, professional competence, experience and the proper performance of their judicial duties;**
- iv. **Grant the HJC oversight and decision-making power in the latter regard.**

III. OBSTACLES TO SECURITY OF TENURE AND IRREMOVABILITY

The Special Rapporteur on the independence of judges and lawyers makes clear that tenure must be guaranteed through irremovability for the period of time the judge has been appointed, stating that the irremovability of judges is “one of the main pillars guaranteeing the independence of the judiciary”.⁵³

International standards generally recommend tenure for life as a safeguard for judicial independence, subject to judges’ ability to properly discharge their functions. Principle 12 of the UN Basic Principles, Principle I.3 of Recommendation No. R(94)12 of the Committee of Ministers of the Council of Europe and Principle A.4(I) of the African Commission Principles and Guidelines state that 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.

Judges in Lebanon are appointed until the retirement age of 68. Article 44 of Decree-Law No. 150/83 provides that judges can only be transferred or removed in accordance with the law. The combination of these provisions appears to provide for security of tenure for judges. However, other provisions of Decree-Law No. 150/83 undermine this apparent provision for tenure.

i) Removal from office

For instance, article 95 of Decree-Law No. 150/83 allows the HJC to remove from office a judge who is deemed not qualified to remain in the judiciary by reasoned decision approved by a majority of eight of its members, upon the proposal of the Judicial Inspectorate and after listening to the judge in question, but without resort to any disciplinary proceedings. The law does not permit judges to appeal such decisions.

Such provisions run counter to Lebanon’s obligations under international law, including under article 14 of the ICCPPR. In its General Comment on article 14, the Human Rights Committee states that “judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law”.⁵⁴ Likewise, the UN Basic Principles on the Independence of the Judiciary provide that “judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties” and that “all disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct”, and “should be subject to an independent review”.⁵⁵

The Lebanese authorities should therefore repeal article 95 of Decree-Law No. 150/83 and ensure that judges can be removed from office only for reasons of incapacity or behaviour that renders them unfit to discharge their duties, and following a transparent and fair procedure that protects the concerned judge against arbitrary removal and that guarantee his or her right to a fair hearing.⁵⁶

⁵³ Report of the Special Rapporteur on the independence of judges and lawyers (2009), UN Doc. A/HRC/11/41, para. 57.

⁵⁴ Human Rights Committee General Comment No. 32, para. 20.

⁵⁵ UN Basic Principles, principles 18-20.

⁵⁶ This is addressed in more detail in the ICJ memorandum entitled “Judicial accountability in Lebanon: international standards on the ethics and discipline of judges”, July 2016.

ii) Transfers and secondments

The principle of irremovability also extends to the appointment, transfer, assignment or secondment of a judge to a different office or location without his or her consent. To preserve judicial independence, judges must be protected from arbitrary transfers. According to the Special Rapporteur on the independence of judges and lawyers, "the assignment of judges to particular court locations, and their transfer to others, should equally be determined by objective criteria".⁵⁷ Transfer systems should never be used in the framework of punishment or reward mechanisms. In this regard, international standards recommend that assignment and transfer decisions be decided by judicial authorities, and that the consent of the judge in question be sought.⁵⁸ The Singhvi Declaration states that the assignment of a judge to a post "shall be carried out by the judiciary or by a superior council of the judiciary where such bodies exist".⁵⁹ This contributes to protection against undue interference such as using transfers as a means of exerting pressure on judges, which can threaten judicial autonomy and independence in decision-making.

In Lebanon, article 5(a) of the Decree-Law provides that the HJC is in charge of preparing proposals for individual or collective judicial transfers, assignments and secondments, and submitting them to the Minister of Justice for approval. In addition, under article 20, the Minister of Justice may decide on the necessity of assignments, following the approval of the HJC, in cases where judges of the courts of appeal are unable to perform their duties and the President of the Court of Appeal appoints a subsidiary judge. Under article 48, a judge may also be "seconded",⁶⁰ with his consent, to all different public administrations or public institutions, pursuant to a Cabinet decree adopted upon proposal of the Minister of Justice and of the Minister in charge of the department under which the judge in question is seconded, after approval of the HJC. A judge who is seconded receives both their salary and remuneration, as allocated according to category and grade, from the Ministry of Justice's budget, as well as the remuneration allocated to the function to which he is assigned, from the budget of the relevant administration.⁶¹ The assignment may be for a limited or unlimited period of time.

The Lebanese authorities should amend Decree-Law No. 150/83 with a view to ensuring that decisions relating to the secondment of judges protect against arbitrary, undue or unwarranted interference in judicial matters and ensures judges' individual independence. The power to second judges to non-judicial functions contains the potential for abuse and could be used to undermine judicial independence, in particular when seconded positions offer possible lucrative financial and non-financial benefits or, depending on the secondment, act as a form of penalty.⁶² If the secondment process continues to exist, decisions must be taken based on objective criteria, through transparent procedures governed by the HJC.

Moreover, Decree-Law No. 150/83 should also be amended to detail the specific situations in which a judge can be transferred or reassigned. To ensure consistency with international standards, the law should specify that: the HJC is competent to

⁵⁷ Report of the UN Special Rapporteur on the independence of judges and lawyers, UN Doc. A/67/305 (2012), para. 53.

⁵⁸ Singhvi Declaration, para. 15.

⁵⁹ Singhvi Declaration, para. 13.

⁶⁰ The Arabic text of the article says that the judge may be "moved", but the context of the article suggests that it provides for possibilities of secondment.

⁶¹ Decree-Law No. 150/83, Article 49.

⁶² The practice of transferring judges has raised much criticism in Lebanon, particularly because of the lack of transparency and of clear and objective criteria. One such case is described here: Euro-Mediterranean Human Rights Network, *Lebanon: The Independence and Impartiality of the Judiciary*, 2010, p. 24, available at: http://www.constitutionnet.org/files/the_independence_and_impartiality_of_the_judiciary_in_lebanon.pdf.

review and, where necessary, revoke the decision to delegate a judge to another jurisdiction; the consent of the judge to a transfer or reassignment, which should not be unreasonably withheld, is sought in all cases; and the entire process protects against arbitrary transfers and guarantees the judge's individual independence.

In light of the above, the ICJ calls on the Lebanese authorities, including the Government and the Chamber of Deputies, to amend Decree-Law No. 150/83 in order to:

- i. Repeal Article 95 of Decree-Law No. 150/83 and ensure that judges can only be removed from office for reasons of incapacity or behaviour that renders them unfit to discharge their duties, and following a transparent and fair procedure that protects the concerned judge against arbitrary removal and that guarantees his or her right to a fair hearing;**
- ii. Amend Decree-Law No. 150/83 with a view to ensuring that decisions relating to the transfer, assignment or secondment of judges protect against arbitrary, undue or unwarranted interference in judicial matters and ensures judges' individual independence, including by:**
 - a) Ensuring that all transfer, assignment or secondment decisions are taken by the HJC and that the consent of the concerned judge, which should not be unreasonably withheld, is sought;**
 - b) Ensuring that the conditions for the transfer, assignment or secondment of judges are clearly defined by law, that the HJC is competent to review and when necessary revoke such decisions, and that the entire process protects against arbitrary transfers and guarantees judges' individual independence;**
 - c) Ensure that if the secondment of judges to non-judicial functions continues, such decisions are taken by the HJC based on objective criteria and through fair and transparent procedures that protect against arbitrary, undue or unwarranted interferences in judicial matters.**

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February 2017 (for an updated list, please visit www.icj.org/commission)

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