

Justice Working Group Minutes of Meeting

Meeting chairs	UNDP Resident Representative, Melanie Hauenstein EU Head of Cooperation, Alessandra Viezzer
Meeting attendees	TAIEX Expert, High Judicial Council, State Council, Ministry of Justice (MoJ), Ministry of Interior & Municipalities, Parliament Administration and Justice Committee, Central Management Unit (PCM), Beirut Bar Association (BBA), Tripoli Bar Association (TBA), Lebanese Judges Association, Independence of Justice Coalition, Konrad Adenauer Stiftung, ALEF, AICS, Embassy of France, Embassy of Canada, Embassy of Switzerland, US Bureau of International Narcotics and Law Enforcement Affairs, UNICEF, UN Women, World Bank, European Commission, UNRCO, 3RF Independent Oversight Board, Lebanese Center for Human Rights (CLDH)
Location	EU Delegation Beirut
Date	21 June 2023
Duration	2 hours
Meeting nr.	5
Agenda	<ol style="list-style-type: none"> 1. Opening remarks 2. Presentation of the conclusions and recommendations of the Functional Review – EU experts 3. Group Discussion 4. AOB
Link to previous minutes	https://www.lebanon3rf.org/wp-content/uploads/2023/06/3RF-Justice-WG-Meeting-26-April-2023-Minutes.pdf

Minutes of meeting
<p>1. Opening Remarks:</p> <ul style="list-style-type: none"> • The EU Head of Cooperation explained that the comprehensive Functional Review (FR) of the justice sector in Lebanon was done under the auspices of the Ministry of Justice by ten independent experts with funding from the EU. In line with standard practice, the FR documentation was handed over to the Lebanese authorities earlier in the day for their feedback., The complete report will not be published, however the conclusions and recommendations should inform the way forward. • The UNDP Resident Representative noted the importance of an effective justice system not only for the justice sector, but more broadly for governance and reform, laying the foundations for longer term prosperity. She noted UNDP’s readiness to support stakeholders in devising a way forward. <p>2. Presentation of the conclusions and recommendations of the Functional Review by TAIEX expert, Jens Woelk:</p> <ul style="list-style-type: none"> • The TAIEX expert noted that the opinions expressed in the FR are those of the experts, not of the EU. The cut-off date for the FR was the end of 2022. • The FR’s objective was a comprehensive and structured assessment of the justice system, identification of gaps and needs, drawing conclusions and make recommendations, including prospects for financial/technical assistance, on the ways forward in the crisis and beyond. • The FR used publicly available material and first-hand insights as a basis, to focus on structural elements, analyzing the legal and institutional framework, stakeholders’ operational skills, the actual situation and practice, and comparing these with international and European standards and best practices.

- The FR notes how the current crisis impacts State institutions and how it translates into deficient material and work conditions in the justice system (limited provision of electricity, salary devaluation, limited supplies, etc.). This situation exacerbates underlying structural issues and Lebanon's poor performance by international comparison in terms of judicial independence, and the availability of data and statistics.
- However, it is positive that the judicial sector remains of strategic importance. The IMF program offers an opportunity for necessary reforms; the dialogue with the Venice Commission was opened; there is a qualified and knowledgeable cadre of judges, who remain committed in spite of difficulties, and a will to improve the situation.
- The analysis and assessment covered:
 - Cross-cutting components: 1) Independence and accountability of the judiciary 2) Efficiency and transparency of the justice system 3) Access to justice and legal aid 4) Professionalism
 - Specific Sectors: 1) Criminal Justice 2) Juvenile Justice 3) Constitutional Justice 4) Administrative Justice

Please refer to the presentation of the expert in annex

Group discussion:

- **MoJ:** Grateful for the report and comprehensive presentation. MoJ is eager to translate the recommendations into a national roadmap for the reform of the justice sector. We suggest to develop the roadmap through a legal platform organized around the themes of the FR. We would be happy to establish this platform together with our national and international partners.
- **State Council:** We are also in support of organizing a legal platform in order to put a strategy in place that aims to take the recommendations forward.
- **High Judicial Council (HJC):** Grateful for the work of the experts in drafting such comprehensive report. The HJC also recommends to translate the conclusions and recommendations of the FR into a national roadmap, through a justice forum that gathers national justice actors. A committee to monitor the implementation of this roadmap would also need to be established.
- **Parliament Administration and Justice Committee:** The FR provided a comprehensive overview of the justice sector in Lebanon, noting that it's a pure justice crisis. Without a functioning justice sector, we cannot revive other sectors. It seems that everyone is telling us they are aware about the importance of reforming this sector, yet not everyone is willing to be involved in paving the way to this. Lebanon is suffering from two main problems, namely a political deadlock and economic crisis. Even if there is an intention to implement the FR suggestions, the deadlock remains. We cannot attend any legislative session without a President being elected. But we have to send a message to the political class that the MoJ, HJC, State Council, and Parliament are ready to take this forward together with the international community, thus preparing the ground for reforms. Once we have a new President and a functional Government, we will have a clear roadmap. In the meantime, we could prepare the infrastructure to implement reforms. All reforms mentioned in the FR report are linked to laws that the Administration and Justice Committee has already transferred to the General Assembly. I call on all stakeholders to hold this justice forum co-sponsored by the Parliament, MoJ, Higher Judicial Council, and State Council to develop the roadmap. The signature of the of the roadmap and the adoption of the laws on the independence of the judiciary would allow for the implementation of the reform of the justice sector.
- **Lebanese Judges Association:** One of the issues is that judges' salaries are not reformed yet. There needs to be a will from stakeholders to implement reforms. We are happy to hear about the prospect of a legal platform and are willing to participate in it.
- **CLDH:** While it is important to acknowledge the efforts of everyone, it would have been important to hold a validation session before issuing the recommendations, as some of them may contradict findings of our organizations, such as on military courts. Existing laws need improvement to strengthen the

independence of the judiciary. Judges are being punished today in different ways, including by being relocated (permutated) far from their place of residence for exposing the truth. The problem of impunity has been dragging since the civil war. Today we need more actions than discussions. The Venice Commission recommendations have been discarded by the MoJ and HJC, who preferred to just amend five articles of the law.

- **MoJ:** No, the Ministry and the HJC did not only amend five articles of the law. This is a misconception that has been corrected several times in the past. The MoJ has submitted comments on each observation of the Venice Commission.
- **HJC:** The HJC has held numerous sessions to comment on the draft law and we have provided comprehensive observations, the great majority of which aligns with international standards, while taking into account the Lebanese context.
- **Independence of Justice Coalition:** The economic collapse is four years old, the need for reform is much older. Hearing about the potential establishment of a new legal platform, it would be important to avoid duplication of efforts with other existing platforms such as the Independence of Justice Coalition. The Coalition will be discussing the idea of the forum and take a position on its participation. The Coalition also would like to know whether the FR will be made public.
- **HJC:** Regarding judicial permutations, the HJC has elaborated criteria for fair transfers. However, most judges who are transferred out of Beirut believe they are being punished.
- **Beirut Bar Association (BBA):** The problem of reforms goes back 20 years. A draft law on the independence of judiciary was already in Parliament in 2017 but was withdrawn. Judges perceive MoJ's policy of forced rotation as a punishment because when they are transferred outside of Beirut, they have to use their own car to commute without any compensation for this. The MoJ has only one car at its disposal, while other ministries have thousands. In order to have an independent judiciary there is a need for transitional / provisional direct funding assistance – also to avoid the brain-drain of good human resources.
 - **EU:** While the international community is committed to support a Lebanese-owned process, starting with reform-minded institutions, having the international community fund salaries of judges would send the wrong message. There is a need to ensure that civil servants are funded through taxes and appropriate budget allocation. As for the report, it is common practice that these reports are not made public. However, we are considering how to make conclusions and recommendation available to inform the way forward.
 - **UNDP:** This is why it is important to have a roadmap, which represents commitments for reform and avoids the risk of open-ended assistance.
- **TAIEX Expert:** Indeed, there is a need for clear criteria and consultation with judges before rotations. This issue is an important example of where something could be changed, while acknowledging that it is a complex and systemic issue.
- **Lebanese Judges Association:** It is also a matter of actually implementing those criteria, so that permutation is not used as a weapon against judges; we need to break the link between permutations and the political class.

Closing Remarks:

- The UNDP Resident Representative and EU Head of Cooperation closed the meeting by thanking the experts, highlighting the resounding commitment expressed by stakeholders during this meeting to take the recommendations of the FR forward and noting that the 3RF Justice Working Group co-leads will follow-up with stakeholders to develop a proposal accordingly.

Functional Review of the Lebanese justice system

Findings

Missions: September and November 2022

Functional Review

Objective

- Overall assessment of the situation in the justice system:
 - identify gaps and needs
 - draw conclusions on ways forward
- Prospects for engagement and support:
 - Technical assistance
 - Financial assistance
 - Policies for IC
- Priorities and recommendations: in the crisis situation and beyond

Methodology

- Basis:
 - Publicly available material
 - First-hand insights (visits)
- Focus: structural elements
- Analysis:
 - legal framework
 - institutional and operational skills
 - factual situation and practice
 - Comparison with international and European standards (gaps?)

*Findings:
views of the experts only!*

The situation

- Crisis, but structural issues
- Very serious overall problems of the Lebanese State
- Poor performance in any international comparison, in terms of judicial independence
- Complete lack of the material conditions for work in judicial system (electricity, ...)
- Judges absent from work (2022)
- *Data and statistics...*

On the positive side:

- Strategic importance of judicial sector
- Reforms necessary (IMF): opportunity!
- Dialogue started, e.g. Venice Commission
- Qualified and knowledgeable judges
- Commitment: will to improve the situation

Cut-off date:

End of 2022

Focus of report:

- systemic
- mid-term

Findings: analysis and assessment (structure)

Cross-cutting components:

1. Independence and accountability of the judiciary
2. Efficiency and transparency of the justice system
3. Access to Justice and Legal Aid
4. Professionalism

Specific sectors:

5. Criminal justice
6. Juvenile Justice
7. Constitutional Justice
8. Administrative Justice

Strategic Recommendations: *How to move forward?*

1. Strategy: *systemic* approach

- legislation (on independence)
- + implementation (action plans)

2. *Operational* independence

- autonomous management, budgeting,
- decentralised governance

3. Capacity-building

4. Transparency

- collection of data (all kinds)
- + their publication
- Monitoring (efficiency + stakeholders and citizens)

- **Authority**

-> trust!

- **Capacity**

-> (self-)organisation

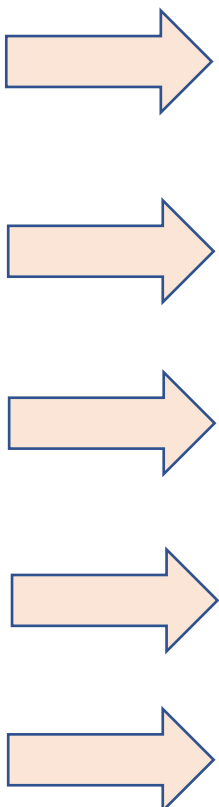
Use the momentum:

- Support judicial reform by involving stakeholders
- Support inclusive debate on reforms

1. Independence and accountability of the judiciary

- HJC – High Judicial Council
 - Central institution of judicial self-administration
 - Independence – representation (more peer-elected members)
 - Powers
- “Mutations”-system – periodic rotation
 - Not in line with irremovability-principle
 - Criteria? consultation?
- Lack of written rules
 - for appointment, disciplinary and recruitment procedures
- Draft Law on independence of the judiciary
 - Adequate public/stakeholder-consultation? Reform debate
 - Conformity with Venice Commission Opinion
- Administrative and financial independence of courts

2. Efficiency and transparency of the justice system

- Top-down approach in justice system
 - No court management, all tasks on First President
 - Enormous lack of resources (logistical, financial, IT)
 - No specialisation
 - Lack of transparency and reliable data; no CMS or automation
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- Need for operational decentralisation
 - Court management and administration
 - More than 0,5% budget!
 - Institutional and individual specialisation
 - Communication and E-Justice

3. Access to Justice

- Accessibility of courts
 - Assessment: distribution of courts and judges
 - Court fees + corruption (clerks)
- Legal aid:
 - Absence of government finances, but other actors fill in the gap
 - Working Group and pilot projects
 - Bar Associations
 - Legal clinics (universities)
 - Objective: unified approach

4. Professionalism

No merit-based career

- No performance evaluation-criteria

Education and training

- Initial training: Institute of Judicial Studies (MoJ)
- Continuous training:
 - no legal obligation; seminars HJC and MoJ
 - no publication of training opportunities or programmes
- No management training:
 - Not for First Presidents and Chief Prosecutors
 - No training for clerks or non-judicial staff

Specific: 5. Criminal justice

Assessment:

The criminal justice system needs serious reform in order to make it function and independent, as well as to combat corruption.

Main Recommendations:

Urgent: Joint Task Force on the [situation of pre-trial detainees](#)

- Narrow the area of criminal law
- Make use of alternative measures to criminal sanctions
- Review competencies of Prosecutors and Investigative Judges
- Improve the recovery of criminal assets: legal framework and best practices for their sale or management in the public interest
- Increase the effectiveness of the police and justice cooperation
- Resumption of recruitment: Judges and Police
- Strengthen the Independence of the FIU
- Review of SIM

Specific: 6. Juvenile justice

The situation of minors in detention needs to be *urgently* addressed!

- Opening of EU-funded juvenile correctional facility due in December 2023
- Cooperation between stakeholders in child-protection and juvenile justice to be improved
- No specialisation of judges, prosecutors or lawyer in youth affairs as demanded by the CRC
- Juvenile judges not equally considered; problem: rotation

Recommendations:

- Ideally: juvenile judge by choice
- Support by NGOs needs to continue and to be institutionalized
- Awareness raising for children rights essential
- Training in youth matters at Institute of Judicial Studies and continuous training
- Implement/amend Law 422/2002 (diversion mechanisms and alternatives to detention)
- Increase the age of criminal responsibility

Specific: 7. Constitutional Justice

Crisis: minimum of concrete support necessary

Limited powers of the *Conseil Constitutionnel*

- Abstract review procedure and electoral disputes
- No direct access for citizens, no judicial review, no controversies among constitutional institutions
- Reform for opening access?

Constitutional guarantees (long-term)

- Composition
- Status of members

Specific: 8. Administrative justice

- Still single institution: Conseil d'État
Roll out new first-instance courts out gradually
- Concerns for its independence
regarding appointment and functioning
- Create a legal basis for regulatory power
- Consistency between judicial and
administrative justice for all interventions:
similar problems and answers
- Establish a partnership with the French *Conseil d'État*
(institutional twinning)
- Guarantee effective independence of the self-governing body
(long-term)

The team of experts

Week 1

12 to 16 September 2022:

- Harold Epineuse, FR
- Jean-Paul Jean, FR
- Giovanni Pasqua, IT
- Gianluigi Pratola, IT
- Jens Woelk, DE

Week 2

19 to 21 September 2022,
14 to 18 November 2022:

- Theo Byl, BE
- Oliver Hoffman, DE
- Alberto Perduca, IT
- Dario Quintavalle, IT
- Renate Winter, AT
- Jens Woelk, DE