Functional Review of the Justice System in Lebanon
Summary Report

Main findings and Recommendations of the Functional Review Report

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This Summary Report presents the Main Findings and Recommendations of the Expert's Functional Review Report commissioned by the European Commission and written after two peer review missions of the experts to Lebanon (September and November 2022). Events and data are considered until the end of 2022.

A. Introduction

Lebanon is in its worst crisis for decades. Since the 17 October 2019 protests, Lebanon has been facing its largest peacetime socio-economic and financial crisis, aggravated over time, and intensified by the impact of the Covid-19 pandemic on key sectors of the economy. **The multidimensional crisis continues to persist**. There continues to be a lack of political consensus for pursuing and implementing effective reforms, inter alia to strengthen the governance and accountability of public services to generate the necessary State revenues and reduce expenditures.

The Lebanese justice system suffers from the general and very serious problems that affect the Lebanese State overall: a deep economic crisis, political instability, severe budgetary cuts, lack of public trust in State institutions, etc. From the end of August 2022 to the end of the year, the vast majority of judges, and other judicial staff suspended work, as the material conditions and means to continue their work were completely absent. The Ministry of Justice, as well as lawyers and notaries continue to work, despite the aforementioned difficulties, but the judicial sector is in a state of visible abandonment. It is against this dramatic background that **support is urgently needed to avoid the total collapse of the judicial system** and to give hope and prospects to judges and citizens. This is fundamental for the citizens demanding justice for the victims of the 4 August 2020 Beirut port blast, as well as for the general trust of the public in institutions.

In any **international comparison**, Lebanon performs poorly in terms of judicial independence. According to the Global Competitiveness Report (2019), Lebanon scores 34.6 and is ranked 98th out of 141 countries. The World Justice Project further distinguishes between civil and criminal justice. When it comes to the level of improper government influence on civil justice, Lebanon scored 0.36 out of 1.0 in 2020, far below the regional and global averages (0.49 and 0.52 respectively). This results in a ranking of 95th out of 128 globally, 8th out of 8 regionally, and 33rd out of 42 among countries with a comparable income level. The scores are even worse for criminal justice with 0.23 for Lebanon in comparison to regional and global averages of 0.35 and 0.47 respectively, resulting in a rank of 111th out of 128 globally, 8th out of 8 regionally, and 37th out of 42 among countries with a comparable income level.[1]

The **EU-Lebanon Association Agreement**[2] entered into force in April 2006 and forms the legal basis of the partnership between the European Union (EU) and Lebanon. In November 2016, the EU and Lebanon adopted the documents “Partnership Priorities”[3] (extended until a new one is in place) and “Compact”, which set out the framework for EU political engagement and enhanced cooperation with Lebanon. The **Partnership Priorities** include Governance and the Rule of Law.

The **key financial instruments** for bilateral cooperation were the European Neighbourhood Instrument (ENI) from 2014 to 2020 and the Neighbourhood,

[1] World Bank, First Topic Brief. Judicial Governance.
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52006PC0365&qid=1608734811074
[3] https://neighbourhood-enlargement.ec.europa.eu/system/files/2018-12/eu_lebanon_partnership_priorities_2016-2020_and_their_annexed_eu-lebanon_compact.pdf

Development and International Cooperation Instrument (NDICI) from 2021 to 2027. The NDICI aims to go beyond grant funding as it blends EU grants with loans from European and international financing institutions.

The experts understand that, while immediate support is needed, at least in some areas, overall, substantial assistance from the EU for Lebanon's recovery would depend on tangible progress on **necessary reforms** (in the areas of macroeconomic stabilisation, anti-corruption, public finance management, public procurement, the electricity sector and judicial independence). An agreement with the IMF will be crucial to achieving badly needed macro-financial stability. Only with effective implementation of a serious economic reform programme by the Government will Lebanon be able to make efficient use of EU support opportunities.

The **justice sector is of strategic importance** in this process. It can contribute enormously to the stabilisation of the economy and society as well as to re-establishing trust in public institutions. However, it needs to recover capacity and authority to fully exercise its functions. Important reforms are being prepared; international advice, most notably from the Venice Commission, has been sought for a draft law on the reform of the judicial system.

In recent years, the **EU** has rolled out **several programmes** in the field of justice (altogether over EUR 14 million).

In December 2020, the **Reform, Recovery and Reconstruction Framework (3RF)** was adopted, together with the UN and World Bank, in response to the Beirut Port Blast and multiple crises in Lebanon. This programme was developed by the EU to bridge immediate humanitarian assistance with the medium-term recovery and reconstruction while prioritising reforms. The EU adopted the "Action Document for EU response to the multiple crises and support to a people-centred recovery in Lebanon" for 2021.[4]

On this basis, in January 2023 the EU launched a new EUR 6 million programme implemented by the **United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC)**, which seeks to support Justice and Human Rights activities under the 3RF[5], especially to strengthen independent oversight mechanisms of the justice system, providing legal aid and support to victims of the Beirut Port Blast and to vulnerable groups in conflict with the law, to improve safeguards of fundamental rights in the criminal justice system, and preventing violent extremism.

[4] European Commission, Implementing decision of 14.12.2021 on the financing of the individual measure "EU response to the multiple crises and support to a people-centred recovery in Lebanon" in favour of Lebanon for 2021. One of the four strategic components aims to "support access to justice and restorative measures". It seeks to support Justice and Human Rights activities under the 3RF, especially to strengthen independent oversight mechanisms of the justice system, providing legal aid and support to victims of the Beirut Port Blast and to vulnerable groups in conflict with the law, to improve safeguards of fundamental rights in the criminal justice system, and preventing violent extremism.

[5] Lebanon Reform, Recovery & Reconstruction Framework (3RF) (worldbank.org)

B. Mission Objective

A **functional review of the justice system in Lebanon** - with two peer review missions in September and November 2022 - was commissioned by the European Commission, organised and funded by its Technical Assistance and Information Exchange (TAIEX) instrument, and coordinated by the DG NEAR Rule of Law and Democracy Team, together with the European Union Delegation to Lebanon.

The **aim of the Functional Review** was to undertake an overall assessment of the state of play and gaps in the justice system in Lebanon, identify needs and draw conclusions on a way forward in a crisis context.

The findings of the experts led to the following recommendations on ways forward and will serve to provide elements of strategic priorities for EU policy dialogue and programming priorities in Lebanon.

The functional review reflects the **views of the experts only**, but it would not have been possible without the open exchange of views and information provided by Lebanese interlocutors in institutions and civil society. The experts acknowledge their contributions and openness.

C. Methodology of the Functional Review

The functional review is based on **publicly available material** (mostly online), as well as on **first-hand insights** gathered by the expert delegations during their visits to the country in September and November 2022 and takes into account events and data until the end of that year. In some cases, however, events or data after that general deadline were taken into account.

Overall, the state of the Lebanese justice system is mirrored by the close to total absence of official, reliable, and publicly accessible data and statistics. This lack of data is a huge obstacle for an objective evaluation of the situation which is the basis for a tailored set of remedies or recommendations. All data was provided by the authorities in 2022. It took time to source that data and there is no means to verify it. Above all, the data shows a gap in reporting, analytical, statistical capacity.

Focussing on **structural elements** of the independence, accountability, efficiency and professionalism of the justice system, the functional review combines a pragmatic approach with a strategic outlook. The functional review distinguishes between **components**, i.e. systemic, cross-cutting issues (E.1.-4.), and **sectors**, i.e. specific or specialized areas of the justice system (E.5.-8.). For each of these, the experts analysed the legal framework, institutional and operational skills, assessed the factual situation and practice as well as the gaps with international (and European) standards, to come to **recommendations** for short-, medium- and long-term priorities for action. The current crisis situation is taken into due account.

E. Summary of the Main Findings and Recommendations

The main findings of the Functional Review Report are summarized in the form of brief abstracts (the numbers in brackets indicate the respective paragraphs in the full report) followed by the Recommendations.

1. Independence and accountability of the judiciary

The independence of the judiciary is fundamental for any democracy. Lebanon is party to most of the relevant international instruments that guarantee this principle and has endorsed it in its **Constitution** (article 20). Elements of independence are established by the Decree-Law 150 of 1983 on the Independence of Judicial Courts. However, this Decree-Law failed to implement the international standards ratified. Therefore, in recent years, this issue has become increasingly urgent and delicate. An important contribution was provided by the **Opinion of the Venice Commission**, requested by the Minister of Justice and issued in June 2022, which contains substantial indications for the implementation of international standards in the new draft law on the independence of judicial courts.[6] (1.1.)

The **selection mechanism** for the members of the **High Judicial Council (HJC)** does not correspond to international standards which recommend that "at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary",[7] because of the prominent role of the Executive (eight out of ten of the HJC members are nominated/selected by the Minister and the Cabinet) and because the two elected members represent only the Court of Cassation. (1.2.)

Article 95 of the Constitution calls for the overcoming of "The principle of **confessional representation** in public service jobs, in the judiciary, …" and that it is to be "replaced by the principle of expertise and competence". However, judicial appointments in Lebanon are still subject, in practice, to a religion-based power-sharing agreement.[8]

The HJC, as an independent institution, needs to be free from influence by the Minister of Justice in the administration of the respective **budget**. (1.2.)

The HJC, as a self-governing body of the judiciary, manages **selection, appointments and transfers, promotion and disciplinary trials** against judges and prosecutors (article 5 Decree-Law 150/1983). However, the implementation of all these functions appears to be exposed to the risk of excessive and undue influence by the Minister of Justice. The HJC enjoys wide discretionary scope when it comes to the **appointment of judges**, but there is no legal remedy available for candidates who are rejected.

[6] European Commission for Democracy through Law (Venice Commission), Lebanon. Opinion on the draft law on the independence of judicial courts. Opinion No. 1057/2021, Strasbourg, 20 June 2022, CDL-AD(2022)20.

[7] Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, para. 27.

[8] See the comments of the Venice Commission (CDL-AD(2022)020) on the confessional principle and its impact on the judiciary (paragraphs 14-20, in particular para. 20).

Promotions or appointments to higher positions are not based on the evaluation of professional performance according to objective criteria. (1.3.)

The current career management mechanism is a cause of particular concern. Article 44 of Decree-Law 150/1983 is very vague, merely providing that judges can only be transferred or removed in accordance with the law. In practice the Minister of Justice, with the consent of the HJC, may order the **secondment or transfer** ("*mutation*") of any judge, when it is considered necessary for judicial administrative needs. Similarly, the HJC may unilaterally order the transfer and even dismissal of judges on the basis of article 95 of Decree-Law 150/1983, on grounds of incompetence or abuse of authority. The decision is final, even if it is issued summarily without any disciplinary complaints or process, because no appeal mechanism is provided for. Also, the power to second judges to non-judicial functions contains potential for abuse and could be used to undermine judicial independence. (1.4.)

The composition of the Judicial Inspection Committee, and in particular the appointment process for its President and members by the Government, allow for possible political interference which is likely to adversely affect the decisions of this body and of the Disciplinary Council. The members of the Judicial Inspection Committee can be subjected to disciplinary measures, too, by a decree upon the proposal of the Minister of Justice. In Lebanon, the **disciplinary procedure** is run by the Disciplinary Council, exclusively composed of judges; its decisions may be appealed before the High Judicial Disciplinary Commission. However, the law does not provide a detailed list of breaches, their severity, or the corresponding penalties. Vague formulations, to be interpreted, leave the door open to arbitrary use of disciplinary powers. The Code of Ethics, adopted in 2005, does not indicate which parts of its text constitute punishable misconduct and which elements represent non-binding ethical guidance. Thus, considering the vagueness of many of its rules, if applied in disciplinary proceedings, it would leave a lot of discretion to the Disciplinary Council. (1.5.)

In Lebanon, the status of **prosecutors** is similar to the French system where prosecutors are considered as independent "magistrates", together with judges. The fact that the nomination of the Prosecutor General is purely political appears in contrast with the Constitution and the principle of the independence of the judiciary, and it makes them vulnerable to the influence of the Minister of Justice as a member of the Executive. Apart from the Prosecutor General, prosecutors are not represented in the HJC. (1.6.)

Regrettably, the judicial system in Lebanon suffers from all conceivable varieties of **corruption**.[9] But the most insidious forms of judicial corruption are bribery and political interference in judicial proceedings.[10] Inefficiencies create a market for corruption within the judicial system itself. Grand corruption (e.g. capture of institutions by societal groups) will ensure that decisions are not taken against powerful interests. Petty corruption thrives on a plethora of procedural steps and inefficiency, which create incentives for parties to engage in corrupt behaviour to either speed up or to delay procedures at the administrative level;[11] 'procedural advantages' are a recurrent problem. (1.8.)

[9] World Bank, First Topic Brief. Judicial Governance, p. 5.
[10] World Bank, First Topic Brief. Judicial Governance, p. 12-13.
[11] World Bank, Second Topic Brief. Efficiency of Judicial Service Delivery, p. 2.

Several serious incidents of obstruction and undermining of the functioning of the Judges' Association have been reported, and at certain times even serious threats have allegedly been made against its members. The "fact that an association of judges may work in the areas which are also defined as the area of competency of the HJC, or which are governed by the code of ethics, should not render illegal the operation of this association" (Venice Commission Opinion). (1.9.)

It is of utmost importance that the basic principles of the independence of judiciary are developed and formalised in a new law on the independence of judiciary. But this alone is not sufficient, because, as demonstrated by the current situation, it will also be necessary to further implement this principle and its safeguards by means of **secondary legislation** adopted by Lebanese institutions, such as the HJC and the Ministry of Justice (i.e. sub-legislative rules, which are currently totally absent). The lack of internal regulations, defining fair and transparent procedures on recruitment, appointment, career development, disciplinary procedures, currently leave a huge space open to arbitrary behaviour, in clear violation of legal certainty and of the international standards and minimum requirements to which Lebanon too is subject, e.g. UN Conventions and Treaties. (1.10.)

Recommendations

1. The draft law on the Independence of Judicial Courts should be revised not only to include the Venice Commission's comments, but also to introduce the obligation for the Ministry of Justice, the High Judicial Council and any other institution involved, to **adopt internal regulations or implementing legislation** (secondary legislation), within a reasonable time (it is necessary to envisage direct consequences in case of violation of this norm). In fact, as noted during the meetings with various justice stakeholders, one of the main issues in the implementation of the laws in Lebanon is the complete lack of internal regulations; this gap makes the practical implementation of primary legislation very often arbitrary and based on customary procedure (often contrary to the minimum international standards in the sector, such as that prescribed in the UN Basic Principles on the Independence of the Judiciary).
2. The **High Judicial Council** should be a **truly independent institution and its members**, whether appointed or elected, should guarantee integrity, independence, and specific competence. It should be composed also of **representatives of prosecutors**, possibly elected by their peers.
3. The **Prosecutor General** should not merely be selected at political level. The High Judicial Council should be involved in their nomination, with an objective and transparent procedure.
4. The High Judicial Council should elaborate and adopt detailed **internal regulations** on activities related to the **status of magistrates** (transfers, career progression, selection for positions as head of Courts or Prosecution Offices) in order to guarantee the impartiality and transparency of the procedures.

5. The **"*mutation* system" (transfers)** of judges and prosecutors should be brought into line with international standards and thus transformed into a vacancy-based system that will take into due consideration primarily the seniority and - once a regular (and not *ad hoc*) performance evaluation system is established - a merit-based evaluation. **Irremovability**, i.e. the principle according to which magistrates cannot be transferred without their consent, needs to be introduced in practice (through implementing legislation) and, possibly, in the Constitution.
6. The Ministry of Justice and the High Judicial Council should each have **separate budgets with an independent administration**. The High Judicial Council, as an independent institution, needs to be free from influence by the Ministry of Justice in the administration of the respective budgets.
7. The **selection of management positions** as head of Courts or Prosecution Offices should be brought in line with international standards, i.e. based upon objective criteria such as professional capacity and merit, taking into consideration the management skills of the candidates. The Institute of Judicial Studies should organise management training.
8. In conformity with the constitutional objective to gradually abolish political **confessionalism (article 95)** competence and merit-based criteria should gradually become the only criteria for appointments and career decisions for judges and prosecutors (excluding the religious courts, which have limited jurisdiction; nevertheless, also religious courts should prefer merit-based appointment mechanisms).
9. **Disciplinary matters** should be dealt with by independent institutions with a balanced composition, with the guarantee of a fair trial, including the right for the judge to challenge the decision.
10. The **Judicial Inspection Committee** (currently a branch within the Ministry of Justice), should be **independent** and tasked with the duty to conduct inspections not only for disciplinary reasons but also to periodically monitor and promote the efficiency of the judicial system, e.g. on an annual basis. This also means that the Ministry of Justice needs to provide the necessary human and financial resources in addition to guaranteeing the necessary competences to fulfil its institutional mandate.
11. **Potential disciplinary violations** as well as **sanctions** or measures **proportionate** to the breach should be framed in a **detailed list** to guarantee transparency and certainty regarding disciplinary offences, thus preventing any form of abuse and offering useful behavioural guidelines for magistrates.
12. The **case allocation** for judges and prosecutors needs to be based on clear, transparent, and **written regulations** approved by the HJC and **based on a random mechanism** in order to prevent control over and allocation of sensitive files to specific judges or prosecutors (currently, distribution by heads of judicial institutions seems to be the normal procedure).

13. The **Code of Ethics (2005) needs to be reformulated** according to the UN Bangalore principles in order specifically to provide for the freedom of expression and association for magistrates and rules to follow in dealings with the media.
14. The **Institute for Judicial Studies needs to be independent** from the Minister of Justice; it should play a key role in the implementation of the principle of independence of judicial activity, also in cooperation with training institutes of other countries.
15. The **right of the judges to associate** and the right of the Judges' Association to engage in activities is to be respected, according to the observations made in the Opinion by the Venice Commission of June 2022 on the draft law on the independence of the judicial courts.
16. In expanding its membership, the **Judges' Association** should put more effort into including senior magistrates so as not to appear an organisation based on a generational conflict.

Strategic recommendations for future support to the justice reform process:

1. The current crisis constitutes a unique opportunity for far-reaching reforms, which Lebanon's judiciary truly needs. **The adoption of the two draft laws** currently under discussion in Parliament (the one on Independence of Judicial Courts and the other on Administrative Justice) needs to be supported by any means; it is also a chance to create wider public debate. Further EU assistance should take this into account.
2. The EU could offer **technical assistance, in cooperation with the other international partners,** for reforms of the justice sector in Lebanon, starting from the positive experience of the consultation of the Venice Commission on the draft law on the Independence of Judicial Courts. The EU could deploy a **permanent team of three to five high-level jurists** (supported by local jurists), to support local institutions in the drafting process for new legislation and interpreting current laws. This team should be composed of experts from different backgrounds. It could also support the elaboration of a strategy/roadmap for the sector in order to prioritise and sequence a reform path for the justice sector (including the recommendations of the functional review report).
3. **EU support to Lebanese civil society should continue:** EU funded projects such as the one implemented by Legal Agenda in 2015-2018 on "The independence of the judiciary in Lebanon: a social priority" and the one on Legal Aid implemented by the Tripoli Bar Association were very successful and highly impactful with limited financial resources.
4. **Create a dialogue forum with Lebanese universities:** Topical seminars and workshops may be organised by Lebanese universities in which magistrates can participate. Such involvement and exchange between practitioners, academia and NGOs would deepen and enrich expertise in view of future justice reforms

(including the Law on Administrative Justice currently under discussion in Parliament).

Implementing the recommendations (sequencing)

The aforementioned recommendations can be grouped and considered on a scale of priorities as goals to be achieved in the short, medium and long term.

Short term:

1. **Adopt the Draft Laws** on the independence of judicial courts and on administrative justice **in line with the recommendations of the Venice Commission.** They will be the pillars on which to build real and efficient independence of the Judiciary.
2. **Launch a broad and comprehensive public debate** on the draft law on the Independence of Judicial Courts. This public debate should be supported politically and financially by the international community and donors and should involve all stakeholders in the justice sector (judiciary, Bar Associations, Judges' Associations, Institute of Judicial Studies, political parties, civil society organisations, intergovernmental organisations, media, etc.).
3. **Consider deploying a permanent team of three to five high-level jurists** (supported by local jurists and international and EU institutions), to support the local institutions in the drafting process of new legislation and its implementation, e.g. through byelaws, internal regulations and guidelines.

Medium term:

4. **Approve secondary legislation** required by the draft laws on the independence of judicial courts and on administrative justice. This secondary legislation (High Council of Justice Statute, internal regulations, implementing legislation), will implement in practice the main principles stated in the draft laws.
5. **Approve a new Code of Ethics** in line with the new legal framework and international standards.
6. Support the **Judges' Association** in becoming more inclusive and representative of every age and sector.
7. **Reform the Institute of Judicial Studies** in order to make it independent from the Ministry of Justice.

Long term:

8. **Approve amendments to the Constitution to "entrench"** the fundamental and internationally agreed principles of **the independence of the judiciary in a more detailed and binding way.**

2. Efficiency and transparency of the justice system

Efficiency

Apart from independence, efficiency and quality are the principal indicators to evaluate the functioning of a justice system. They are the key components of an 'effective justice system'. Laws are as important as is their **practical implementation**, but “efficiency” is also the result of the use of **managerial tools** and implementing suitable organisational behaviour. This is defined as behaviour targeted at clear, pre-determined and attainable goals, which is achieved with the lowest possible waste of money, time, resources, and organisational effort (effectiveness).

Important tools for the **evaluation** of efficiency are **performance indicators**, which are mainly **quantitative** concepts: efficiency is **measurable.** Hence the importance of data and its consistency. Performance indicators expressed in data are at the same time a source of information and control over the system, serving the transparency and independence of the judiciary.

It appears that **strategic documents** with strategic information are not available in Lebanon. Neither does a clear **action plan** exist, listing the different, urgently needed steps to achieve efficient justice; nor is there an emergency or contingency plan to react to the current severe crisis. Despite the HJC also lacking a coherent strategy or action plan, it has taken several initiatives following the Covid-19 crisis. This is a positive step forward showing that coordinated action, flexibility and initiative are indeed possible. Also, at the level of courts, no strategies have been adopted. An efficient chain of justice requires **good cooperation and networking** between justice institutions. However, the **delineation** of the **responsibilities** of the HJC and of the Ministry of Justice does not always appear to be clear. Initiatives taken by the HJC were reportedly not always followed up by the Judicial Inspection Committee. (2.1.)

An uneven and unbalanced division of the workload between the courts across the country district and *Mohafazat* level was reported. The First President is the head of all human resources and is responsible also for administrative affairs All they can actually do, however, is submit related problems either to the Ministry of Justice or to the HCJ. In practice, this means that **operational management** is highly centralised. Also, the **administration and administrative staff** are directly controlled by the Ministry of Justice and requests regarding operational needs of any kind, including details, require authorisation from the Ministry of Justice. At the moment, **no notion of a Court Administrator** exists. Periodical evaluations of court performance (at the level of the court, as well as at the level of the judges) are rudimentary, basically listing cases on paper, and thus inadequate as a basis for planning or improving the situation in the court. (2.2.)

The funding level of the judiciary is also strikingly disproportionate in comparison to the budgets of the legislative and executive powers), which is an indicator of a functioning and efficient justice system not being a priority. The Ministry of Justice is among the least financed institutions, and, in the 2022 latest adopted budget, it received only 0.49% of the

General State Budget.[12] The division between the court system and the Ministry, the allocation to the various courts and prosecution offices, as well as the allocation between capital expenditure and investments is unknown. (2.3.) Courts have **neither budget autonomy nor accountants**. (2.4.)

Even without the current crisis (with no electricity and, in some courts, not even running water, and with people working in unacceptable conditions), the situation of the **judiciary's infrastructure** can only be described as **dramatic**. Some buildings are unsuitable as courthouses, others have insufficient (or unsuitable) space to accommodate all court services or for the necessary storage of files and/or evidence. As a consequence, also the **security** of court buildings and court information services cannot be sufficiently guaranteed. Judges and court staff also lack the necessary **equipment** to work efficiently. There is **no form of 'automation'** within the court. (2.5.)

As of the end of 2022, a total of approximately 1,800 persons are working in the Court system (First Instance Court, Court of Appeal, Court of Cassation). **No clear picture has emerged as to whether the number of judges is actually sufficient.** However, the number of available judges does not seem to be distributed in relation to the effective workload of a given court (also because of the difficulty in determining this workload without clear and detailed statistics). As a result, it appears that there is a shortage of judges, at least in certain courts. A clear shortage of prosecutors was reported as only a limited number of the legally provided positions have been filled. The efficiency of a court also relies heavily on the quality and quantity of the "non-judicial staff". (2.6.)

No data was provided by our interlocutors on **Key Court Performance Indicators** (e.g. clearance rate, case disposition time). It seems that such a methodology is not familiar to them. One of the obstacles is the **lack of a case management system**. Developed with EU support, such a system has been run as a pilot project in Beirut and two other courts but is currently no longer operational because there is no electricity for running the servers continuously. However, it reportedly functioned properly for several months, and it looks like the project could be restarted. In the specific circumstances, the project might have been too ambitious for Lebanon's reality. It is preferable to set up a system with only the essential content, i.e. case-registration and case-management with only some basic features. There is a striking **lack of any other technology.** (2.7.)

One of the problems observed is the **lack of appropriate and efficient trial management**. Regarding criminal procedures, the so-called 'blocking' of procedures was often mentioned ('recusal of judges'). Corruption was explicitly mentioned several times and even implicitly admitted, such as having to pay a bribe to administrative staff to obtain some services, but also the possibility to postpone criminal cases for a very long time. Another frequently mentioned problem are the **difficulties with notifications**, necessary to summon people to court. There is also **not sufficient** room for or use of **alternative dispute resolution** which could unburden the court at both the correctional and civil levels. (2.8.)

[12] The budget was approved after the mission to Lebanon, but the figure gives an approximate idea of the priorities assigned by the government to the justice system.

Recommendations

Short term

1. **The High Judicial Council needs to become more proactive** in guiding the courts, prosecution offices and judges to be more efficient. It should adopt regulations/guidelines in order to increase the efficiency of the judiciary. This can be, for example, about how to deal with backlogs, how to ensure better access to justice, or how to approach certain types of cases.
2. **Organise a workshop on court communication,** the outcome of which should be some guidelines/best practices about how to set up transparent court communication, which must be implemented within the judiciary under the supervision of the High Judicial Council.

Medium term

3. Develop a **clear strategy and an action plan** at all levels (Ministry of Justice, High Judicial Council, courts, prosecution service) on how to achieve an efficient justice system in the longer term within their own policy responsibility, including identifying short, medium, long-term priorities and how to address them.
4. **Decentralise the operational organisation** at the level of the administration, but also at the level of the courts. Make sure leadership and clear management responsibilities are also established at local level, preferably within each court (first instance, appeal, cassation).
5. **Ensure participation** at a more decentralised level, both administration and judges, in terms of identifying the needs of the organisation (numbers and quality), where it should be possible to work with certain profiles for the people needed.
6. **Establish a case management system** in its simplest form in order to be able to follow up the concrete functioning of the courts and to detect dysfunctionalities.
7. **Initiate case and workload measurement for each court**, taking into account the number of cases, but also the complexity of the cases. This can also be used as a basis to assess the human resources available, but also in the perspective of a judicial reform to rebalance judicial organisation or redraw the distribution of courts in the country.
8. **Establish more formal tools** of consultation (e.g. structural meetings) at all levels in order to achieve much better cooperation and networking between the single institutions of the justice system (Ministry of Justice, High Judicial Council, courts, prosecution service). The purpose is to (better) respect the responsibilities of the different parties within the judiciary, and at the same time to facilitate coordination and cooperation among the single elements within the justice system to act as one integrated system.

9. **Establish a working group to prepare a revision of the procedure codes** (civil and criminal) with a focus on the efficiency of the procedures and possible **trial management**, but also possibilities for **alternative dispute resolution**.
10. **Consider a specific anti-corruption strategy** for the judiciary (judges and administrative staff) with concrete measures to eliminate corruption from the system, if not properly addressed elsewhere.

Long term

11. **Ensure the adequate management of all courts** (first instance, appeal, cassation), including all aspects of court operations, such as the acquisition and deployment of resources. Improve efficiency by encouraging the effective **use of modern technology** but also by **monitoring the work** of the judges/administration, improvement in the quality of the judicial staff and their planning, as well as improvement in **communication** about the role of the judiciary. Improve relationships with lawyers and the public, by appointing **court administrators**, i.e. people with management skills and responsibilities.
12. **Initiate a master plan in terms of logistics** for the judiciary (infrastructure, equipment and guarantees or conditionality of maintenance), where the budget needed is identified and made available based on the work of experts. The focus should be on adequate infrastructure and equipment for the first instance and appeal courts in the six districts. Include the necessary future steps to ensure (further) **digitalisation** of the judiciary in such a master plan.
13. **Initiate greater specialisation, institutionally as well as individually**, by establishing more specialised units in the judiciary and by ensuring judges can participate in more specialised training, adapted to their professional needs. Also, **mandatory training** for more specialised judges is needed and specific training for administrative staff is required.

Transparency

The transparency of public institutions requires that **information** about their activities is **created and made available to the public**, with only limited exceptions, in a timely manner and in open data formats without limits on reuse. In Lebanon, transparency is lacking regarding inclusive consultation during the law drafting process, regarding the publication of reasoned court decisions (which are initialled or anonymised) and regarding the availability of consolidated legal texts online. Instead, statistics are ideally be generated by the tools judges and staff work with and should require no extra work to produce. (2.9.)

No problems were reported about access to courts. Also access to information was said to be unproblematic. An electronic online **database** on case law is available for the necessary research, although due to the lack of computers and the Internet, it was generally consulted by judges at home and on private computers. We found no evidence that **court decisions** are made available to the wider public of citizens and practitioners

through the web. Apparently, paper court records in the court archives can be accessed with no particular restrictions, so that sensitive data can be fully disclosed. Court summons are publicly displayed on notice boards without attention to protecting sensitive data. (2.10.)

The most visible face of judicial communication includes the **information offered to the public and the media** on the actual work of the justice system in connection to specific cases. Any understanding of the importance of good communication is lacking. There is generally no official communication by courts at all, nor any willingness to take initiatives in this regard. Courts have neither a website nor a communication strategy. On the contrary, judges tend to hide behind their obligation of discretion. There are no court spokespersons. The conditions under which journalists do their job in the courts are not satisfactory either. Official contacts with the media are limited to allowing them into the courtroom. An important opportunity to give justice a more positive image is missed in this way. In fact, any information by the courts is provided as a reaction and only if specific questions have been asked. Apparently, **no customer satisfaction surveys** are conducted among court users, and **no annual activity-reports** are published. (2.12.)

Recommendations

Short term

1. **Ensure detailed annual reporting of the main players within the judiciary**, such as the courts, but also prosecution offices, to the High Judicial Council on their concrete functioning, on the results obtained, the problems encountered, and the extent to which the objectives set are achieved.

Medium term

2. **Improve access to court information** by setting up specialised and professional court reception or services where information can be easily requested and obtained.
3. **Improve the quality of legislation by consulting** professionals (judges, academic, lawyers, judges' associations, etc.) during the drafting process and establish more mechanisms of binding advice (e.g. from the High Judicial Council)
4. **Improve communication within the judiciary** (the High Judicial Council, courts) by setting up communication **strategies**, with the appointment of **spokespersons** in court/prosecution offices; ensure active communication to the press and the public using all possible channels.

3. Access to Justice and Legal Aid

The right to legal aid is recognised by various domestic laws and international treaties which together form the legislative rules applicable in Lebanon. For **civil proceedings**, legal aid is regulated in the Code of Civil Procedure. Applicants need to fulfil certain conditions, which include a poverty statement from the local authorities and a tax notice. Legal aid can be denied if the claim or defence is considered meritless by the court. The decision on legal aid is not subject to appeal. In **criminal procedures**, legal aid can be granted before the investigating judge. Legal aid is not mandatory: the defendant does not have to be represented by a lawyer and can in fact decline any assistance. If legal aid is granted, the **Bar Associations** take care of it and appoint a lawyer to represent the applicant. Both Lebanese Bar Associations (Beirut and Tripoli associations) manage funds for legal aid and select lawyers to represent applicants. The State does not directly contribute to the financial coverage of legal aid. (3.1.)

Access to justice remains hindered, especially in the case of vulnerable groups, by the continued absence of a publicly funded legal aid system and the diminishing capacities of the Bar Associations to provide *pro bono* legal representation services out of their own resources. The lack of a legal aid authority, providing central oversight as an independent body to ensure quality, remains a concern. An Access to Justice Working Group, headed by the Ministry of Justice, and coordinated by UNDP, is developing a national vision for the free delivery of comprehensive legal aid services (legal awareness, information, assistance, counselling, representation, and mediation/Alternative Dispute Resolution - ADR), and currently piloting three legal aid helpdesks, implementing two different service delivery models: one through municipalities, the other through the establishment of the judicial and legal aid centre in the Tripoli Bar association. Moreover, a helpdesk through a university was launched in 2023. The passing in October 2020 of the Law amending the Code of Criminal Procedure (primarily articles 47 and 32) was a landmark achievement guaranteeing recourse to a lawyer during preliminary investigations and access to sound and video recordings of interrogations. However, insufficient resources, lack of awareness-raising and resistance from security and justice stakeholders prevented implementation of the guarantees during the preliminary investigation phase; first efforts are now under way (UNDP and Tripoli Bar Association). Considering the size and structure of the Lebanese legal and judicial system, the **creation of an online public database** of legal acts and court decisions should be encouraged. (3.2.)

Bar associations are the key players in supporting and providing legal aid in Lebanon and have started to develop some interesting initiatives in this field. Their activities and the pilot projects have demonstrated a **clear vision, a pragmatic approach and the professionalism** such an initiative requires. (3.2.)

Mediation and alternative dispute resolution (ADR) mechanisms are critical to improving access to justice and the overall performance of the justice system, translating where applicable into de-judicialisation, quicker and/or reduced sentencing, reduced damages to be paid, and into more prevalent use of alternatives to detention. Alternatives to traditional court interventions do exist in Lebanon but are not as developed as they could be. Following the adoption of Law 82 on Judicial Mediation in September 2018, a law on non-judicial mediation was passed in February 2022. These two complementary

texts still require implementation decrees to become effective, in addition to sustained awareness-raising, training and capacity-building of relevant stakeholders. (3.4.)

Recommendations

Short term:

1. **Support Legal Aid Centres now:** Before a unified and national legal assistance programme is established, financial support to Legal Aid Centres is urgently needed to solve the legal problems caused or deferred by the financial and economic crisis. Financial support is needed in a short- and medium-term perspective to allow adjudication or out-of-court settlement of cases and will be needed in the future: the scale of support may be reduced corresponding to the development and use of alternative dispute resolution in Lebanese legislation and policies.
   Commercial arbitration is of a different kind since the fees collected from the parties are supposed to cover the costs of a private trial. Public or international funds could serve as seed money to help overcome the current crisis and establish good infrastructure and practices, but centres should quickly find their own economic model.

Short term and medium term:

2. Provide instructions for judiciary, prosecution service and law enforcement to **ensure article 47 CPC be implemented at the largest extent possible** so that concerned persons be granted all the guarantees - including legal assistance- from the preliminary investigation stage.
3. **Continue support to pilot projects, including the Access to Justice Working Group and assess them thoroughly in order to determine one regulation and unified governance model for the whole country:** Support given to other initiatives such as legal clinics with universities or municipal desks is encouraged for testing purposes, but on the condition of closely assessing the ongoing pilot projects with empirical and interdisciplinary studies very soon. The final goal should be one model for the whole country.
4. **Rely on other legal professions, e.g. notaries, and support their modernisation and digitalisation:** Other legal professionals can play a role, too, in increasing access to justice in Lebanon, for instance notaries. The traditional role of notaries of keeping track of legal and financial transactions in official registries under their responsibility should be enhanced. To this end, the modernisation of the profession should be financially supported to provide them with the digital tools they need to interconnect among other notaries and with the public administration records, with the appropriate regulation. Exchanges with peers abroad who are ahead in digitalisation would help to achieve this goal of modernisation quickly and surely. Also, their scope of intervention could be enlarged where appropriate (such as in succession cases) in order to reduce the

burden on courts. Besides the question of notaries, in general, judges need to be alleviated of many tasks that can be performed by regulated professionals.

5. **Involve universities and the academic community more closely (legal clinics, internships and more) and support their activities:** The representatives from universities met during the mission expressed their interest in participating actively in a programme designed to include both researchers and students in empirical studies and outreach activities, which could add to ongoing, more traditional activities such as legal clinics and internships in justice institutions. The University of Saint Joseph in particular shared an organised draft plan that will lead to closer involvement of scholars and students in (the debate on) judicial affairs in Lebanon.

   Thus, financial and technical support should be offered to universities for the development of activities and participation in international networks where support in developing judicial studies can come from peers abroad, under both a methodological and substantial perspective.

6. **Continue support to NGOs in order to guarantee outreach and debate as well as to monitor the performance of the justice system from a citizen's perspective:** Public outreach is needed to make justice issues transparent and help citizens better understand how, and why, respect for justice is a foundation of any democratic State. Thus, support to NGOs should continue, such as the Coalition for the Independence of the Judiciary and its members. It is essential that solutions come from and are discussed with Lebanese civil society stakeholders who participate in public debate, appear in the media, etc. to support democracy and the Rule of Law. They could also be supported in monitoring legal needs in Lebanon (based on empirical research) that will independently inform justice institutions about the problems they have to solve and how to organise themselves to better tackle them.

4. Professionalism

It appears that the ordinary and periodical **performance assessment** of judges is limited to charts sent by various courts through the first presiding judge to the Judicial Inspection Committee. These show the works and quantitative productivity of these courts, i.e. the number of verdicts delivered by each court in one year, but neither show the type of verdicts, nor do they address the judges' competence. No objective criteria are predetermined; the information is merely quantitative and does not tell anything about the quality of those verdicts. (4.1.)

International standards are clear about the necessity and importance of providing adequate initial and ongoing judicial training. The **Institute of Judicial Studies (IJS)** is a department of the Ministry of Justice and cannot therefore be considered as institutionally independent. The leading positions in the IJS are thus all directly or indirectly appointed by the Minister of Justice through Cabinet decrees. This lack of independence is a concern, as the board of the IJS is responsible for determining the academic criteria and for preparing the list of successful candidates for the HJC's consideration, along with proposals concerning each trainee judge and their ability to perform their duties. This exposes the IJS to political interference in the training and assessment of candidates for appointment to tenured positions. (4.2.)

Although the Institute of Judicial Studies is responsible for the organisation of the **initial training** for trainee judges (3 year-cycle), it does not provide any kind of in-service training for already-appointed judges and prosecutors. This matter is dealt with by the High Judicial Council. There is also **no legal obligation for continuous training** of sitting judges or prosecutors, although such training is clearly needed in order to update their knowledge and/or to acquire further skills in a certain area. The recently adopted principle of continuous training will remain on a voluntary basis. While seminars are organised sporadically by the HJC, there is no systemic or annual programme available to all judges and prosecutors. Participation is upon invitation by the HJC only. Nor do clear criteria for the selection of participants exist. (4.2.3.)

Regarding the quality of judges, the picture is generally very positive, as judges appeared sufficiently trained and qualified; all those met during the mission also seem to be particularly committed. However, judges lack **necessary specialisation**, institutionally as well as individually. In fact, there are no specialisations within the courts. Within the public prosecutor's office, there is some limited specialisation, but this does not prevent a prosecutor from handling all kinds of other matters. (4.2.4.)

As far as the **administration** of justice is concerned, there is no continuous training provided for non-judicial staff, resulting in a reportedly low quality of administration staff, except for staff members who were over-qualified already on entering service. (4.2.5.)

A major complaint voiced by interlocutors was about the loss of purchasing power for judicial personnel's salaries. Following the judges' absence from work, temporary aid is covered by the Support Fund for Judges, while demands for a salary review continue. (4.3.)

Through their professional organisations, **lawyers** have contributed several times to initiatives to reform the judicial sector, also by submitting reform projects for the Lebanese

courts and supporting, when needed, certain claims made by judges. They also did not hesitate to react publicly. The **relationship between judges and lawyers** is governed by the Code of Civil Procedure and the Law on the Legal Profession. The new Code of Ethics of the Legal Profession also includes a number of principles applicable to relations with judges. Its article 35 insists on the importance of coordination between the Bar and the High Judicial Council on issues concerning the justice sector. However, at the institutional level, relations between the two bodies are not structured. (4.4.)

Recommendations

Short term

1. **Organise a Peer Review on judicial training** in order to carry out a thorough analysis of the initial training and to explore options for (mandatory) continuous training and to strengthen the (independence of the) Institute of Judicial Studies.

Medium term

2. Judges must be remunerated by the State in conformity with the dignity of their office and the scope of their duties.

Decree-Law 150/1983 should be amended, or **legislative foundations** be created in order to:

3. **establish and adopt** objective, merit-based and transparent **criteria to measure the performance of judges and prosecutors**, based on the sole principles of integrity, competence, specialisation, experience, and without considering any political or religious factor. These criteria are to be used for the appointment, transfer, and promotion of judges and prosecutors;

4. **create areas of specialisation** within the judiciary;

5. **transform the Institute of Judicial Studies into an independent institution** (from the Ministry of Justice and the High Council of Justice), providing the respective guarantees;

6. provide that the **members of the Institute of Judicial Studies Board be judges selected** and appointed based on objective criteria and through transparent procedures that protect against undue influence and guarantee the institutional and functional independence of the Institute of Judicial Studies;

7. **grant the Institute of Judicial Studies full financial and administrative independence**, including the power to determine its own budget needs and administer its own budget;

8. **make continuous training mandatory** for judges and prosecutors and add it to the **Institute of Judicial Studies'** competences;

9. **strengthen the Institute of Judicial Studies mandate in developing and implementing appropriate programmes** in initial and continuous training, including human rights programmes, consistent with the requirements of open-mindedness, competence, integrity and impartiality;

10. **adopt an internal regulation of the Institute of Judicial Studies** on the selection, deployment and performance evaluation of trainers as well as annual programmes and activity reports (in which feedback on training is integrated).

5. Criminal justice – Security forces

Criminal Justice

The assessment of any domestic criminal justice system needs to start from the established **individual guarantees** in the consolidated set of international and European legal instruments. While the adoption of Law 191 to strengthen basic guarantees and activate human rights in October 2020 was a landmark achievement, the guarantees it enshrines during the preliminary investigation phase have yet to be fully implemented. (5.1.)

In Lebanon the general **conditions of pre-trial detainees** are so degraded as to clearly violate the basic fundamental rights of individuals. Whenever and wherever public authority is unable to grant people under its custody – as here in pre-trial detention – decent living conditions and a trial within a reasonable time limit, the rights of individuals prevail over formal grounds of justice. Therefore, the issue of pre-trial detainees needs to be addressed without delay and by exceptional measures, e.g. the creation of a **temporary task force** of judges in charge of assessing the status of pre-trial detainees. Once the task force has resolved the current severe backlog, the function of reviewing pre-trial detention should be permanently and institutionally provided for in the Code of criminal procedure by introducing a kind **of *juge des libertés*** acting autonomously vis-á-vis the investigative judge who issues the arrest warrant. (5.2.)

The Lebanese **public prosecution** is organised in a **strict hierarchy**, with the Cassation Prosecutor at the top. The Cassation Prosecutor is appointed by the Cabinet upon the suggestion of the Minister of Justice and presides over all prosecutors. The prosecution service is vulnerable to the influence of the Minister of Justice as a part of the executive. In no circumstance should the Minister be able to command the suspension or cessation of criminal justice without having to give reasons. The Cassation Prosecutor is entitled to give **verbal or written instructions** to every prosecutor. This competence is reiterated in Decree-Law 150/1983. However, if instructions are not written down, this rules out the possibility of any review and prevents transparency. Moreover, there is no mechanism provided by law for prosecutors to challenge instructions in cases where these might violate the basic rights of people involved. There is no explicit legislation according to which a person held in **custody** upon the order of the prosecution has to be brought before a judge promptly. Instead, for 48 hours and up to a total of 96 hours a person can be held in custody without a court order. This legal gap needs to be addressed.

With regard to resources, the **prosecutorial service seems understaffed**. A first indicator that prosecutors on duty are overwhelmed by law enforcement calls regarding new criminal cases is that they appear unable to give written instructions on the investigative steps that need to be taken. The second indicator is their *de facto* absence during the investigations carried out by investigative judges. At least in serious and/or complex cases, prosecutors need to participate in all significant actions taken by investigative judges. (5.3.)

As generally no reliable statistics are available, including those on the workload of investigative judges responsible for pre-trial investigations, it is **extremely difficult to assess** their **precise workload.** Therefore, Courts and Prosecution Offices as the parties

interested in the matter should – together and under the supervision and coordination of the High Judicial Council – **identify common criteria** for sharing the workload more efficiently, in conformity with the applicable law. The goal is twofold: first, making the most rational use of the competences, functions, and resources of both services; second, preventing legal controversies between the different services which are usually precisely about competence. These best practice examples should be adopted as guidelines and disseminated among courts and prosecutors. A further step should transform those guidelines into binding procedural rules. (5.4.)

It is questionable whether the current body of **criminal law** needs to be fully kept as such. Its reduction to a smaller number of criminal offences in favour of a broader area of administrative violations or misdemeanours may open up opportunities in terms of effective and efficient prosecution and sanctioning. It is also questionable whether **detention** – both as pre-trial detention and after conviction – must remain the central pillar of criminal justice. On the contrary, a wider range of alternative and proportionate measures may be preferable, both in the interests of individuals and of society. (5.5.)

There are reasons to believe that **asset recovery** deserves much greater attention in order to make the Lebanese asset recovery system effective. By contrast with numerous countries in the world, no Asset Management Agency has been created so far (the achievements of the Financial Prosecutor General need to be better explored). (5.6.)

Military courts can in practice have jurisdiction over civilians in any conflict between civilians and military or security personnel or the civilian employees of the Ministry of Defence, army, security services, or military courts; even children can be tried before military courts. The decisions of the Court lack motivation, which is only partially compensated by the (written and motivated) brief by the public prosecutor. There is a lack of civilian oversight and overall transparency which needs to be addressed. The death penalty still applies according to the Lebanese Criminal Code, but Lebanon has not resorted to executing a convict since 2004 (a de facto moratorium), although the judiciary continues to hand down death sentences.

In general, the *raison d'être* of military justice can be found in the need to have specialized judges and prosecutors for criminal offences, which are strictly related to the functioning of the army and the security forces. The principle of equality suggests a residual role for military justice vis-à-vis ordinary justice. Strong criticism has been expressed regarding this parallel system of justice,[13] mostly because of its lack of respect for fundamental rights. (5.7.)

Recommendations

Short term

1. **Consider a task force to examine pre-trial detention cases.** Create a temporary unit of judges to assess, case by case, whether pre-trial detention is no longer

[13] See for instance, Human Rights Watch, "It's Not the Right Place for Us". The Trial of Civilians by Military Courts in Lebanon, January 26, 2017 (https://www.hrw.org/report/2017/01/26/its-not-right-place-us/trial-civilians-military-courts-lebanon).

allowed or justified because legal deadlines have expired in order to guarantee fundamental rights; lay down basic rules in urgent legislation or decrees.

2. **Prosecutors need to give law enforcement written instructions** for the measures and the investigative steps that must be taken. Oral instructions should be admissible in limited cases only, as an exception to the general rule. The flow of information from police to prosecutors and back needs to be quick, traceable, and transparent. General procedures and details should be consolidated in Memorandums of Understanding.
3. **Prosecutors need to be informed of or be present at,** at least in serious and/or complex cases, **any significant action** taken by investigative judges; Courts and Prosecution Offices should elaborate respective guidelines.
4. **Set up a simple case management system and work out priority strategies**, based upon best practice experience.
5. **Develop criteria for distributing workload between investigative judges and prosecutors**, leaving easier or minor cases to the latter.
6. **Train and incentivise prosecutors, judges, and law enforcement officers, for financial investigations and asset recovery**, including international cooperation to tackle illicit financial flows; this can be actively supported by the EU (training, expert-assistance in elaborating guidelines or training programmes).
7. **Develop a transparency strategy for military justice** in order to provide the public progressively with full and clear information on how this branch of justice works as well as to elaborate a roadmap to amend the legal framework on military justice to reduce its jurisdiction (see below, Rec. 16).
8. **Carry out a specific and deeper peer review in the security sector** (home affairs / serious organised crime) in order to complement this functional review for a comprehensive and coordinated approach in the justice and home affairs sector.

Medium term

11. **Create the function of a "judge of freedoms".** Once the current severe backlog is resolved, the function of reviewing pre-trial detention should be made permanent in the institution of a *juge des libertés,* acting autonomously vis-á-vis the investigative judge who issues the arrest warrant; this needs to be provided for in the Code of Criminal Procedure as part of the system.
12. **Staff numbers** of prosecutors and of investigative judges need **to be significantly increased**, based on a thorough needs assessment**.**
13. Check the list of criminal offences, **decriminalise less serious offences**, and expand the use of **alternative measures to imprisonment.**
14. Reassess the **legal framework to boost and facilitate financial investigations as well as asset recovery.**
15. For prosecutors, frame best practice examples as **internal guidelines**; transform them into (internally) binding rules.

16. **Consider amending** the current **legal framework on military courts** with a view to aligning it more with the level of **guarantees** in the ordinary justice-system, in particular envisaging that
    a) its competences are restricted to cases involving military staff only, except for cases of serious crime against national security;
    b) its verdicts are reasoned;
    c) the ordinary Court of Cassation may be appealed to as a last resort.

Security Forces

The **recruitment** and education of new police officers stopped in 2014. As a result, and due to other aggravating factors (e.g. the economic and financial crisis), the number of police officers dropped from the peak of 40,000 to the current number of 25,000. This trend needs to be stopped as the force is going to age excessively if no recruitment takes place. (5.8.)

While the relationship between the **Judicial Police** and the Prosecutors is reportedly good and efficient, cooperation between the Judicial Police and the investigative judges is rather poor and basic in reality: ‘’primary investigators’’ rely more on confessions than on evidence and try to convince judges to proceed with cases accordingly. Interception of telecommunication is ordered by ministers or by the General Prosecutor. The former can be considered as direct political influence. The executive power should never have the right to order such investigative measures. (5.9.)

The cooperation with prosecutors and investigative judges is reportedly good. The staff of the General Directorate of General Security (GDGS) are in daily contact with prosecutors based on their mandate for administrative arrests (irregular migration) and crime-related arrests (e.g. smuggling of goods and people). However, as the decision-making process between the police and the prosecutor is only verbal, there is a great risk of misunderstandings (see also above, 5.3., on prosecutors). (5.10.)

The Special Investigation Commission (SIC) is a multi-function financial investigation unit with judicial status. The Financial Investigation Unit (FIU) has an impressive operational capacity, and in particular has broad access to data held by local authorities and reporting entities. However, the Lebanese FIU is financed by the Central Bank of Lebanon and even located in its building, which raises doubts as to its independence. In addition, the Director of the Central Bank is also part of the SIC which decides on the execution of temporary measures, e.g. freezing of bank accounts (by contrast, in the EU, a judge and court have to decide). (5.11.)

Despite no specific problems having been reported, the process of international mutual legal assistance appears quite lengthy and requires two ministries to possibly clear the requests before their execution. There is no law for police-to-police cooperation, only rules adopted by the Ministry of Justice. (5.12.)

Prisons and Detention Centres

Prisons of Lebanon fall under the administration of the Internal Security Forces Directorate (ISF). The Ministry of Justice should be responsible for the administration of the respective facilities. The transfer of the prison service under the administration of the Ministry of Justice was provided for by Decree 191/1983, but the Decree still needs to be fully implemented, including the allocation of the necessary resources. In addition to the administration of the prisons, the prison transport service must be organised under the competence of the Ministry of Justice, in order to establish an effective and efficient prison and court process. Lebanese prisons face a severe humanitarian and social crisis, which needs to be addressed and resolved urgently.

Overall, the Lebanese penitentiary system suffers from limited resources and organisational weaknesses, poor infrastructure, an increasing prison population (overcrowding), a lack of specialised personnel, with no adequate training, and a deficit in transparency and accountability. Rehabilitation programmes and vocational training do exist, but the offer needs to be enhanced as it currently depends mostly on donors' contributions.

Recommendations

Short term

1. Reduce the running costs for ISF premises and prisons while introducing a hybrid solution of generators and solar energy systems e.g. for water pumps.
2. Address the excessive ageing of the ISF, due to the long freeze in the recruitment of officers, in order to keep it an effective force.
3. A further assessment of the structure of law enforcement to address serious and organised crime is recommended in order to increase the efficiency of investigations and improve inter-institutional cooperation (e.g. clarify tasks and competences). Currently the structure of the Judicial Police is based more on a geographical orientation and not on a crime orientation.
4. Ensure a balanced age-structure of the GDGS, in order to maintain its efficiency.

Medium term

5. Adjust the legal framework (and already existing rules for Alternative Dispute Resolution and Alternative Measures to Detention) to allow the effective use of alternative measures to detention and imprisonment, such as probation, house detention, and a parole system.
6. Consider the full implementation of Decree 191/1983 for running the prison service under the administration of the Ministry of Justice.
7. Establish a functional prison transport service within the justice system.
8. Establish a clear chain of command for ISF staff and reduce possible political influence.

9. Conclude working and administrative agreements with EUROPOL and EUROJUST.
10. Provide specialised training as regards new crime phenomena, e.g. cybercrime, organised crime, organised economic crime.
11. Establish a procedure, implementing legislation on the matter, based upon written requests and orders by prosecutors to avoid an infringement of human rights (e.g. detention).
12. With regard to the SIC/FIU, the Government should:
    - reassess the dependence of the SIC/FIU on the central bank;
    - reassess the judicial status and powers of the SIC/FIU;
    - guarantee independent funding of the SIC/FIU;
    - implement relevant Financial Action Task Force recommendations.
13. Create secure ways to communicate electronically for the SIC, as it seems that it still has to send all requests via hard copy to local authorities.

Long term

14. Review the tasks and responsibilities of the ISF, e.g. consider putting prisons under the Ministry of Justice, hand back construction oversight to municipalities.

6. Juvenile justice and child protection

Major **general problems** are still not solved. There is for instance no unified age of custody in the different personal status laws or in labour law, nor a minimum age for marriage or for criminal responsibility, nor any prevention strategy for children at risk. In criminal matters rules on diversion and for alternative sanctions to imprisonment do either not exist or are not implemented or applied. The same is true for the protection of child victims and witnesses under Law 422/2002 or any other law. Work is currently underway, under the leadership of the Parliamentary Committee on Women and Child, to amend Law 422/2002, and, with the National Commission for Lebanese Women, to enact a law that prohibits child marriage. There are efforts to enact a law for personal status matters in civil legislation and a draft law was submitted to Parliament. If these legislative efforts are successful, they would represent a significant improvement for the protection of children's rights in Lebanon. (6.2.)

As UNICEF confirms, **existing structures lack the capacity to operate fully**. For example, the Higher Council for Childhood (under the Ministry of Social Affairs, MoSA) does not have the capacity to implement its mandate fully in terms of coordination, strategizing, and monitoring. The Department for the Protection of Children (MoSA), in which the Higher Council for Childhood is placed, lacks the resources to be able to function fully. As for **independent monitoring**, there is **no ombudsperson for children**, and the Standing Committee on Grievances Against Children (which falls under the National Human Rights Committee) has not yet been set up fully. (6.3.)

According to the Convention on the Rights of the Child, ratified by Lebanon in 1990, **everyone dealing with children**, including in legal and protection matters, **has to be specialised**. According to the current "mutation" system, a judge can be appointed anywhere and moved any time without their consent. But it is the president of a court who determines which judge is tasked with specific responsibilities. Often it is chosen the youngest judge, fresh out of the Institute of Judicial Studies and without any practical experience. (6.5.)

There is **no long-term strategy for child protection or public financing** or financing given to NGOs working for children, no fully functional planning or monitoring bodies, and no comprehensive legal framework for children that would guarantee their protection and the respect of their interests as mentioned in the Convention of the Rights of the Child. However, that convention has been ratified and therefore has force of law under Lebanon's Constitution. Most of the work on children's rights has been undertaken by UN agencies, international organisations, and local civil society players. (6.6.)

According to UNICEF and UNODC, the current child protection system has positive elements, e.g. concerning the availability of specialised personnel and some protection mechanisms. However, there is **neither a comprehensive long-term strategy** with clear objectives, as a basis for the work, **nor coordination or any implementation strategy**. Only uncoordinated and fragmented programmes exist, together with projects by different stakeholders. The areas to be addressed are child labour, child marriage, victimised children and trafficking of children. (6.7.)

No information or **awareness-raising campaigns** or efforts **to inform children of their rights** have been undertaken by the Government; no information on such activities has been made available. (6.9.)

There is also no specific plan regarding access to justice for children. (6.10.). The principle of detention as a last resort is not respected sufficiently due to the lack of alternatives to imprisonment. (6.11.)

Recommendations

Short term:

1. ***Urgently* address the situation of children in pre-trial detention:**
   - Look into the situation of children in pre-trial detention with a view to releasing them and providing them with the needed rehabilitation/reintegration support upon release.
   - Speedily continue and end pending procedures for children in detention.
2. Continue to **support mandated NGOs** to provide necessary support to children in conflict with the law as well as to those in need of protection.
3. Continue **financial support for supervising the completion of the new Youth Prison**, but also for organising training for all personnel working there with children.
4. **Finalise and pilot the Rehabilitation and Reintegration Programme for children in contact with the law** (which has been developed by the Ministry of Social Affairs, UNICEF and the Ministry of Justice).
5. **Continue to provide support to build the capacity of justice-related professionals on issues related to child rights and child justice.** These professionals include judges, police, lawyers, social workers, and forensic doctors.

Medium term:

6. **Start suitable reform around child rights and child protection** both on the level of the legal texts themselves (legislative and policy reform) and on the level of implementation (strengthening of systems) to allow for an environment in which children's rights and well-being are safeguarded.
7. **Support existing entities that can promote improved protection of children**, including the establishment of an independent body that acts in that regard.
8. **Either establish an ombudsperson for children**, as a completely independent institution with its own personnel and budget in order to enable it to become a member of the international association of ombudspersons for children, **or include a member specialised in child issues and juvenile justice in the National Human Rights Commission.**
9. **Improve coordination between relevant State entities** through the **capacity-building** of such entities, such as the Higher Council for Childhood and the

National Human Rights Commission (and its standing committee on grievances against children), in order to fulfil their role appropriately.

10. **Create a single database** where all existing (and useful) data can be continuously added, to allow for proper and comparative analysis to see where progress has been made and where gaps still exist.
11. **Organise more training for new judges and prosecutors in juvenile justice matters** at the Institute of Judicial Studies as well as later in targeted courses for sitting judges and assure the availability of trained social workers and probation officers for judges acting in their capacity as juvenile judges.
12. **Establish a substantial training programme on children rights** at the Institute of Judicial Studies as well as other professional academies for stakeholders.
13. **Work towards strengthening standards on children's rights, including the principle of the best interest of the child in informal justice procedures**, especially in settings/living arrangements where access to formal processes is difficult, such as the deprived or isolated regions in the country, as well as camps and informal settlements. Widespread information about the rights of children is essential.
14. Invest in **drug rehabilitation for addicted children** as an alternative to deprivation of liberty and/or as an available treatment within prisons.
15. **Address issues** related to children's rights and protection i**n religious courts** by providing the needed capacity-building and supporting coordination.
16. **Develop information and awareness-raising campaigns** to explain children's rights to the population, to schools, to parents, include modules and initiatives addressing children in a child-friendly way.

Long term:

17. **Develop sustainable working groups** including law enforcement, prosecution, judiciary, the Bar association, social workers, NGOs (civil society) for regular meetings to discuss current problems and new developments on child protection and juvenile justice.
18. **Bring the prison system under the authority of the Ministry of Justice** (instead of the Ministry of Interior) to facilitate the access of judges and prosecutors to prisons for speedy investigation and/or decisions on detainees. A first and concrete step is to have the new Warwar facility managed by Ministry of Justice staff and then envisage a transition from the Ministry of Interior to the Ministry of Justice also for other correctional centres.

Legislative measures to be considered (in parallel to the above measures):

Short term, i.e. as soon as possible**:**

19. Implement **Law 422/2002 on the Protection of Children** in Violation of the Law or Exposed to Danger fully, and amend this law as required to enable the judiciary to make use of diversion mechanisms and alternatives to detention, as well as to increase the age of criminal responsibility.

20. **End corporal punishment** in all settings for all children by law.
21. **Raise the age of protection for children** against being used in begging, debauchery and prostitution to 18.

Medium term:

22. **Adopt a law prohibiting child marriage** (i.e. raising the marriage-age to 18, for boys and girls alike)
23. Ensure mandatory education also for married girls (as a right to be supervised by the courts).

Long term:

24. **Strengthen the priority of State law over religious law** in any dispute over competence.
25. **Amend the law on Military courts** in order to expressly exclude children from their competence.

7. Constitutional justice

The current situation at the Constitutional Council reflects the general profound crisis of the judiciary and the dramatic situation of other judicial and State institutions. Located in an appropriate building, the institution does not have any means for its day-to-day work: there are no computers to be seen on the desks, there is no internet access, no electricity, there are only two secretaries and no assistants, legal advisors, or clerks. The budget is very limited, and even the salaries of the Constitutional Council's members are "outrageously low" (as they are for all judges). A practical problem is even to sustain the cost of notifying the Constitutional Council's decisions which must be delivered by courier (against payment). (7.1.)

The Constitutional Council's two competences are the abstract review of legislation upon request (within one month from adoption) and deciding electoral disputes. However, only the President, the Speaker of Parliament, the Prime Minister, and a minimum of ten Members of Parliament have the right to petition the Council. The constitutional provision (art. 19; implemented by Law 250/1993) does not include indications on the Constitutional Council's composition. (7.2.)

Overall, the powers of the Constitutional Council are very limited, compared with other Constitutional Courts, also in the Arab world. By consequence, citizens have no access and judges have no opportunity to refer to the Constitutional Council to clarify the meaning of constitutional laws or examine the conformity of ordinary legislation with the Constitution in a concrete case they have to decide. These limited powers leave the Council in a comparatively weak and side-lined position within the constitutional system; its work needs to be triggered by the political institutions. However, if not submitted to the Constitutional Council for review, even unconstitutional consensus-based decisions may become valid legislation. And even in the case of such a review, eight of the ten members of the Council must agree within one month to declare a law unconstitutional, otherwise, it enters into force. In 2013, when Parliament approved an extension of its own term for avoiding elections, and the Constitutional Council had to rule on this (obvious violation of the Constitution), three of its members simply did not come to work until the one-month deadline had expired. (7.3.)

Reform proposals have been discussed in the recent past for an expansion of the Constitutional Council's functions. Although useful – or even necessary – in order to effectively establish the rule of law and strengthen the independence of the judiciary, these go beyond the current logic of the political power-sharing system. They also require constitutional amendment. (7.4.)

Recommendations

Immediate:

1. **Urgent action** is necessary to guarantee the Constitutional Council the **material conditions and capacity** to fulfil its mandate and to restore the dignity of this

institution which represents respect of the Constitution. **Support** is needed for infrastructure, computer-equipment, stationery, and staff.

In a **medium term**-perspective:

2. **Consider the creation of some positions for law clerks** (assistants or legal advisors) at the Constitutional Council. These would immediately increase the capacity of councillors and at the same time create a group of young, educated lawyers knowledgeable in constitutional issues. **A law clerk-programme** could be also combined with or managed as a PhD scholarship or a short internship at the French *Conseil Constitutionnel* (or a similar institution) in order to favour independent thinking on the part of these law clerks.
3. **Explore reform proposals and options comparatively.** The position of the Constitutional Council in the system and potential new powers could be explored through a **research project involving various universities, with workshops and public debate** –this in itself would draw attention to the institution and to the Constitution. The EU and other donors could support such a project, promoting cooperation and involving Member State institutions, in particular the French *Conseil Constitutionnel*. Such a project may lay the basis for future reforms.
4. **Reform the decision-making procedure within the Council.** Despite the specific guarantees in Lebanon's consociational system, a blocking minority of three members appears too high a threshold for an effective review of constitutionality. It bears the risk of easy abuse resulting in a lack of control over constitutionality.
5. ***Specific EU assistance/action***: Think about supporting a twinning-relationship with a Constitutional Court in another country (EU Member State, e.g. France).

In a **long-term** perspective:

6. **Provide constitutional status** to the composition of the Constitutional Council and to the guarantees and mandate of its members. These matters should not be left to regulation in ordinary law only. The status of constitutional councillors needs to be further clarified: are they considered judges? They should be treated at least in the same way as the other highest judicial office holders, in terms of independence, status and salary.
7. Consider a **change in the election of the members** of the Constitutional Council as half of them are elected by the Government. A broader base of representation and a more pluralistic composition could, and should, be in line with extended competences and functions.

8. Administrative justice

The Lebanese administrative justice system has been inspired by the **French model** since the establishment of the Conseil d'État in 1924. Today, its status is governed by Law 10434 of 14 June 1975 (Statute of the State Council), and the amendments introduced by Law 227 of 31 May 2000, which created a first-instance administrative court in each of the six provinces (*Muhafazat*). However, these do not yet exist in practice, since their effective creation depends on a pending decision of the Minister of Justice after advice from the Bureau du Conseil d'État and allocation of the resources needed. All judicial, administrative and disciplinary competences of administrative justice are therefore currently still concentrated in the Conseil d'État, which counts approximately 50 judges. The Bureau du Conseil d'État has the same mandate and prerogatives for administrative justice as the High Judicial Council has for the ordinary judiciary. The mission could not access any recent **activity report or statistical data** to objectively show the workforce and activity of the Conseil d'État, in particular with regard to the CEPEJ evaluation criteria, not even for the period before the Covid-19 pandemic and the current crisis of the Lebanese State and justice system. The last directly accessible activity report covers 2012-2013. (8.1.)

Members of the Conseil d'État, like ordinary judges, do not benefit from the principle of **irremovability**, as they can be transferred without their consent to a civil service post on the proposal of the Minister of Justice, with the approval of the Bureau du Conseil d'État (article 18 of the Statute of the Conseil d'État). They may also be seconded (article 19), including to the Ministry of Justice. Resources and management, technical and IT services of Conseil d'État depend on the Ministry of Justice. (8.1.3.)

The in-depth interviews made it possible to confirm the observations in reports on administrative justice in Lebanon:[14] on the one hand, high-level legal qualifications and the individual quality of the members of the Conseil d'État, on the other, also the disastrous reality of their current working conditions. However, there is also fundamental criticism vis-à-vis this court expressed by citizens and expert observers regarding the perception of its lack of independence from political power, religious influence, and public and private interests. Young judges' demand that recruitment, assignments, promotions, file assignments be carried out in complete transparency, outside of political arrangements and interference. A special NGO-report highlights and documents the inefficiency of administrative justice (slowness, undue influence, conflicts of interest, partiality, non-enforcement of decisions) and its inability to protect citizens against the arbitrariness and corruption of public institutions.[15] Among the examples, the practice of some members of the Conseil d'État to give also legal advice in ministries is criticised as a conflict of interest, as those members of the Conseil d'État exercise an institutional advisory and litigation function at the same time. In fact, the Venice Commission invites

[14] E.g. International Commission of Jurists, *The Lebanese Council of State and Administrative Courts*, Geneva, October 2018.
[15] The Legal Agenda, *La justice administrative: qui protège l'Etat? Qui le défend?*, Edition spéciale, 15 juin 2020, p. 8.

the authorities to consider the two draft laws on independence that are currently under discussion as part of the same comprehensive judicial reform. (8.2.)

Recommendations

There is <u>one</u> justice system in Lebanon: Thus, as a principle, all interventions need to be consistent between judicial and administrative justice.

Urgent measures:

1. **Absolute priority for cases concerning freedom and other emergency cases:** This concerns all situations where a citizen is deprived of a fundamental freedom, in first place for ordinary judges, but also for interim relief cases in administrative justice. An administrative decision adversely affecting their freedom can concern, for example, the administrative detention of foreigners. Procedures related to freedoms and emergencies must be given priority (see also '5. Criminal Justice' Recommendations).

2. **Provide tangible support** (hardware and solar panels) **to (re-)create suitable working conditions** and as a motivational factor. The Conseil d'État will benefit from this measure in the same way as the Court of Cassation (as both are situated in the Palace of Justice in Beirut).

3. **Establish a partnership with the French Conseil d'État (institutional twinning):** Among the immediate needs expressed by the judges of the Conseil d'État is that of easy access to reference documentation. This would already be possible with the Ariane case law database and the appointment of a contact person at the French Conseil d'État. In the short term, such cooperation with the Conseil d'État of France and exchanges between similar institutions may already provide concrete answers to the legal questions of Lebanese practitioners.

Medium-term perspective:

4. **Learning by comparison:** Create a **network** of video-conference meetings with the French Conseil d'État and other high administrative jurisdictions in Germany, Egypt, Tunisia, or Morocco, prior to meetings and training courses. In the form of seminars on specific topics, these exchanges could involve specialist lawyers too.

5. **Create dialogue with Lebanese universities:** The magistrates of the Conseil d'État, who participate in the gradual reconstruction of the Rule of Law, should also participate in topical seminars and workshops organised by Lebanese universities. Such involvement and exchange between practitioners and academia would deepen and enrich expertise, also in view of future administrative justice reforms (including the Law on Administrative Justice currently under discussion in Parliament). The allocation of holiday leave, a *per diem* payment or similar for their intervention could facilitate their commitment given the current material difficulties.

Long-term perspective:

There is a complete administrative justice reform project developed by the President of the Conseil d'État, as well as several reports with proposals from international institutions, NGOs and representatives of Lebanese civil society. All of them converge on ensuring that administrative jurisdiction enjoys true independence under the law; however, in the Lebanese context, this requires the necessary balances to be found in a coherent manner.

6. **Guarantee effective independence of the self-governing body:** The functional and judicial independence of all administrative judges needs to be guaranteed by a body which itself offers all the guarantees of independence. This could be a High Council of Administrative Justice on the model of the High Judicial Council, composed of members elected by their peers and qualified external figures, in particular university professors or lawyers.

7. **Review the procedures for career steps and base them exclusively on merit:** The recruitment of administrative judges and members of the Conseil d'État needs to be carried out primarily by competition; security of tenure needs to be guaranteed, and appointments and promotions need to become part of a totally transparent process based solely on skills and abilities. The Council should adopt internal procedural rules with high ethical standards and objective evaluation mechanisms to avoid pressure or interference by politics or religious communities, favouritism and conflicts of interest.

8. **Adopt rules for ethical behaviour and regulate extrajudicial activities:** Ethical standards developed by this Council should complement legal obligations, to help prevent any breaches of impartiality, inappropriate behaviour, conflicts of interest and corruption. Precise rules are necessary for public or private missions and consultations of members of the Conseil d'État, and their remuneration outside of their functions.

9. **Guarantee pluralism in the composition of the Disciplinary Council:** The composition of the Disciplinary Board of the Conseil d'État should be opened to partially to peer election in accordance with the arrangements proposed for the High Judicial Council. Its decisions should be anonymous and published.

Complete (the implementation) of the reform of administrative justice.

10. **Roll the new first-instance courts out gradually:** The reform of administrative jurisdiction needs to allow litigants to benefit from two levels of jurisdiction, as provided for in principle by the Law 227/2000 of 31 May 2000. This implies the effective establishment of at least one administrative court in Beirut. Before opening the other administrative courts (as planned in each province), an impact study should be carried out, which would make it possible to adapt the locations progressively to real needs, based in particular on the number of actual cases to be handled.

11. **Provide legal aid also for administrative justice:** Litigants lacking means should be able to benefit from a system of legal aid to access administrative justice, according to the same modalities as those envisaged for judicial justice (see Legal Aid).

12. **Create an efficient and fast notification system:** All sources agree that the enforcement of decisions is a major problem, even though the statute of the Conseil d'État makes it an obligation for the administration. However, the question of the notification of decisions, linked to bureaucracy, costs, slowness and the shortcoming of the postal system, needs to be urgently resolved and reformed.

The management of administrative jurisdiction

Reforms of legislation will have no impact if the way in which administrative courts are managed and operate does not change.

13. **Guarantee budgetary responsibility:** The independence of Courts also means administrative and financial independence. In the future, the Bureau du Conseil d'État, with a more open pluralist composition (including members elected by peers), could manage and administer its own resources on the basis of a global budget negotiated with Parliament. The necessary conditions for such budgetary responsibility are full transparency of management, independent budgetary control and technical support from the ministry and/or the allocation of *ad hoc* resources, including budgetary, technical and IT services, public procurement contracts.

14. **Introduce a computerised case management system:** The introduction of a computerised case management system should be planned, after thoroughly assessing the reasons for previous failures in order to find appropriate solutions for a future system. A support mission consisting of computer experts and practitioners from comparable administrative justice models that have already implemented and used such a system is essential.

15. **Create statistical data and make it available for monitoring:** This case management application should result in reliable statistics with simple dashboards that make it possible to monitor and evaluate activity (flows, stocks, deadlines by type of dispute and distribution of the workload) in complete transparency.

16. **Guarantee transparency and privacy:** This principle of transparency needs to guide the content of all judicial activity, by making decisions available to the public free of charge, protecting privacy by concealing the names of the parties and data relating to private life, but mentioning the names of the judges who contributed to the decision. This dissemination of case law is the best way to achieve both uniformity in judicial decisions, as it will help prevent contrasting decisions between the different chambers of the Conseil d'État, and strengthening guarantees of a fair trial by preventing conflicts of interest that are more easily detected due to transparency.

F. Conclusions: investing in authority and capacity

The following conclusions are the results of a common reflection of the expert team during the visits and after the missions to Lebanon. They try to summarise the findings from a systemic perspective and to identify strategic options for the future, in particular regarding the assistance and the support of the European Union and the international community.

The overall assessment: structural shortcomings and gaps

The current crisis dramatically reveals that Lebanon's justice system suffers from serious, structural shortcomings and from a chronic deficit in resources that have brought the whole system to the brink of collapse. In order to avoid implosion, coordinated efforts in many areas are needed in order to guarantee a wide array of well sequenced short-, medium- and long-term support measures.

Various reports, over several years, have stated that **Lebanon has consistently failed to comply with its obligations** under article 14 of the International Covenant on Civil and Political Rights (ICCPR), including respecting and upholding the independence of the judiciary.[16] 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".[17]

To comply with their obligations under international law, but also for fully guaranteeing the separation of powers and checks and balances of a democratic system, the **Lebanese authorities need to 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.[18]

"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 laws can – and have– rendered respect for these principles illusory. In addition, Decree-Law 150/1983 does not provide for any clear procedures or objective criteria for either the evaluation of judges or for their promotion."[19]

[16] Human Rights Committee, Concluding Observations on Lebanon (second periodic report), UN Doc. CCPR/C/79/Add.78 (1997), paragraph 15. Lebanon has been a State party to the ICCPR since 1972. 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".

[17] Idem.

[18] International Commission of Jurists (ICJ), The Career of Judges in Lebanon in light of International Standards. A Briefing Paper, Geneva, February 2017, p. 3.

[19] Idem, p. 3.

Thus, as a priority, a comprehensive and detailed statute for judges needs to be adopted, setting out the criteria and the procedures for the management of their careers. The **adoption and implementation of the new draft law on independence of judicial courts**, following the recommendations expressed by the Venice Commission in its Opinion, need to become a top political priority. All support possible must be given by the EU and the international community in order to facilitate concrete steps leading to the realisation of this priority.

The Lebanese **judiciary lacks efficiency and effectiveness and** this negatively impacts **public trust.** The system is far from having the means needed to address societal demands and from being a solid pillar of the State and representing one of its unifying symbols. The result of the experts' assessment is that the justice system appears **neglected and marginalised in the strategic political priority setting**, as it is left heavily underfunded, understaffed, underequipped, and not sufficiently professionalised. In addition, the justice system is affected by alleged deep corruption, patronage, politicisation and sectarianism, and a complete lack of transparency. This situation is due to an institutional and legislative framework which sees the judiciary as a power and not as a service, thus equating adherence to the law to efficiency. Strategic planning and management of courts are absent both as theoretical notions and in practice.

The situation evidently predates the current dramatic economic crisis, although many interlocutors tended to describe the past as a kind of 'Golden Age' when everything worked smoothly. But **the crisis exposes all the structural problems** in the foundation of Lebanese society, including the place the judiciary holds among State powers.

Despite Lebanon not being a European country, its legislative framework is European inspired. And by ratifying international treaties, the country has also subscribed to respect their obligations. **The main gap in the judiciary in respect to international standards is that it is not capable of ensuring the Rule of Law and protecting citizens' rights, in and outside the courts.** In order to do so, the system needs to effectively ensure a due process of law, grant the right of information, the freedom of the press, access to justice and the independence of the judiciary. Currently, the justice system is neither transparent nor accountable. It lacks financial resources, although some specific parts are funded by international donors.

Above all, **a clear long-term vision, proper internal steering and management, a sense of mission and operational capacity in managing large innovation projects are needed.** The non-functioning of the IT court automation project is a telling example, despite significant EU funding. The professionalisation and integrity of judicial and non-judicial staff are also problematic issues which need to be improved. The system needs to attract and retain skilled professionals in domains other than the legal one (e.g. court managers, IT and forensic experts). Culturally, a profound shift towards a managerial, non-legalistic, result-oriented approach is sorely needed.

Meaningful **support by foreign and international donors** to Rule of Law institutions, starting with the justice system, is necessary to assist the implementation of most recommendations expressed by the experts in the specific sections of this report. However, most recommended measures or their implementation depend on **the willingness of the political establishment to change the *status quo*** and to restore

the judiciary as an independent, well-equipped, and trained branch of government, with its capacity to defend rights and prosecute crimes regardless of political and sectarian affiliation. Only this way can the judiciary, and in general all State institutions, regain public trust.

Outlook. How to move forward?

Considering the aforementioned gaps and needs, and the finding that at present Lebanon cannot sustain over-ambitious technical projects, nor take charge of their ownership, how can an independent, functioning, and trustworthy judiciary be built?

Any engagement and assistance in order to strengthen the justice system should focus on the support of:

- ***authority***, in order to rebuild trust vis-à-vis the public, i.e. principles as well as guarantees of independence, including professionalism and ethics;
- ***capacity***, i.e. (self-)organisation and administration, through the adoption of internal regulations and strategic as well as court management.

Sustainability in the justice system can only come from within and can only be achieved by restoring institutional and individual authority as well as capacity. For the experts, this leads to the following overall **strategic recommendations:**

1. The first aim is to ensure a legal framework that guarantees the independence of the judiciary. **Legislative reform is necessary** (and, in the long-term perspective, possibly constitutional reform, too) **as well as a strategic approach**. But apart from the time-dimension and the political will, experience suggests that reforms and strategies will remain on paper unless there is a structure and capacity to sustain their implementation.
2. In order to guarantee implementation, it is fundamental to prioritise **operational independence.** Courts need autonomous management, budgeting, governance. To be independent, a court system needs to be decentralised and distributed, in contrast with the current situation which is highly pyramidal and hierarchical.
3. From this follows the third general recommendation which is to **invest in capacity-building**, and especially in human resources. It prepares the ground for more ambitious, overarching, and comprehensive structural reforms, by preparing and training motivated professionals for their implementation and for supporting change in an often-stagnant environment. Only Lebanese people can change Lebanon.
4. In parallel, **transparency** needs to be promoted and created at all levels, as a prerequisite for transformation. The collection of **data of all kinds** and its publication is an important step, as it allows monitoring of the justice system from within (efficiency) and from the outside (stakeholders and citizens).

The EU can offer guidance for issues related to constitutional and judicial matters (principles, rights, and values) as well as regarding effective standards (i.e. the concrete functioning of justice systems). Its expertise and the experience of real examples may be

of great use. In particular, the fact that France remains a reference model in legal and judicial spheres may be positively used.

In concrete terms, **EU and international support** may be provided **for:**

- ***legislative reform and implementation***, through creating **wider debate** with authorities, stakeholders, and citizens.[20] The inclusion of a phase of expert consultation, such as the Opinion of the Venice Commission, may become a procedural precedent for future reforms in the sector. A transparent and inclusive debate can be guaranteed through the involvement of universities, public hearings, civil society, etc. Ideally, this may create a **civic platform of support** for (cultural) change in the judiciary which accompanies reforms, creating trust by transparency and participation as well as inclusion;
- the ***effective implementation*** of (new) legislation:

  (a) starting from the adoption of implementing legislation, **internal regulations and general guidelines** (in particular adopted by the HJC) as well as

  (b) based on **Strategies and Action Plans** for the justice system (Ministry of Justice, High Judicial Council, Bureau of the State Council, etc.), as endogenous change needs to be based on strategic vision and guidance as well as on a clear road map, and

  (c) accompanied by expert advice and followed by training programmes.
- the detailed **assessment of options** regarding important single issues (e.g. court organisation and management), e.g. through **technical assistance** such as organisation of **TAIEX seminars, peer reviews and twinning programmes**.

Coordination is key. The **justice system** needs to be seen and to see itself as **one system**, and the single elements need to understand themselves as integrated parts of that system, despite their autonomy. In this sense, also the EU and the international community need to coordinate efforts in supporting reforms and their implementation.

The experts recommend that institutions of judicial self-administration as well as judicial authorities become more responsive to the needs of the population. This means a **cultural change.** Thus, not only should the justice system be addressed: the EU could also **engage with civil society, universities, and independent media** in a number of projects focused on the functioning of the justice system, including activities such as media training, management training, study visits, exchange programs, workshops, etc.

The **judicial sector is of strategic importance** for the future of Lebanon, the stabilisation of its economy and society as well as for re-establishing trust in public institutions. This functional review of justice provides an overall assessment of the situation in the justice system in Lebanon from a systemic perspective. The identification of the gaps and needs

[20] This debate may even be put on a wider basis, e.g. the format "*Pravo na pravdu*" (Rights for justice) in Bosnia and Herzegovina (https://ba.n1info.com/english/news/a489523-public-debate-pravo-na-pravdu-hosted-by-eu-delegation-to-take-place-in-sarajevo/), where a platform of stakeholders regularly discusses the state of the judiciary together with judicial office holders: transparency and accountability at the same time.

is a fundamental prerequisite for reflections on the way forward, in the context of the current crisis and beyond.

Assisting, with EU support, in (re-)building a sustainable, responsive judiciary, will be beneficial for the Lebanese people, for the democratic process and for the economic recovery.

Strategic and methodological follow-up recommendations

1. **Provide tangible support to magistrates to (re-)create work conditions** (e.g. hardware and solar panels), in order to motivate judges and prosecutors, to permit them to effectively do their work and thus ensure the functioning of the Rule of Law. Such tangible support, with computers, printers and consumables in a jurisdiction that has resumed a meaningful priority activity, could help motivate judges, whose resilience, despite the immense difficulties, must be appreciated. Support for the installation of solar panels at courts, first and foremost at the Beirut Palace of Justice, is an important measure to guarantee electricity.
2. **Support strategic planning and build up respective capacity:** The main institutional bodies (Ministry of Justice, High Judicial Council, Bureau of the Council of State, …) need to coordinate and develop a **comprehensive reform strategy** as well as an **action plan for implementation** (including the two draft laws). In addition, the adoption of **secondary legislation and guidelines** may be supported with technical advice and expertise.
3. **Support judicial reform by involving stakeholders.** The multiple crisis and the dramatic situation have created momentum among the judges and within the legal community (attorneys, law faculties, etc.). The objective should be to **forge a support platform** for the justice system consisting of domestic and international actors alike.
4. Support **inclusive debate on reforms:** continue to support the debate on the two draft Laws on the Independence of the Judicial Courts and on the Administrative Justice **and follow-up on their implementation, once adopted.** Use the current momentum for **further reforms in the justice sector** to guarantee transparency and information as well as the necessary expertise, also regarding experiences abroad. **Universities** can provide **a suitable forum** for such debate and reach out to civil society organisations (CSOs) and interested citizens as well as to judges and lawyers (Bar Association).
5. **Follow up on the functional review of Lebanese justice system:**
    a. Present the report, its findings and recommendations. The format may be a workshop in order to continue the dialogue between the EU experts and the Lebanese authorities opening it to the international community.
    b. Consider support for the preparation of a comprehensive MoJ reform-strategy as part of an overarching and inclusive roadmap for the reform of the justice sector.

6. **Engage with other bodies from the International Community** (UN, World Bank, IMF, US, EU Member States, like-minded embassies), **and civil society**. Use the overall consensus and the momentum for change. Advocate and support a strategic, deep and comprehensive reform of the justice system, and forge a support platform with domestic and international bodies for a focused debate and structured involvement.
7. **Guarantee a uniform approach** regarding reforms of the justice system, to face the crisis and afterwards. **Donors need to coordinate** with Lebanese authorities and among themselves (e.g., in the 3RF-format).
8. **Make technical expertise** available for **legislative drafting,** including regulations and guidelines which are important for implementation. **A pool of international experts**, familiar with the situation in Lebanon, may be set up for this purpose thus being easily and on short notice available for advice. They can provide further assessment in detail and on single issues.
9. **Use TAIEX seminars** for exploring specific issues and **twinning programmes** in order to benefit from other, similar experiences and good practice, as complementary support tools. The Venice Commission may become involved again with comments on major legislative changes and their implementation.
10. **Connect Lebanese institutions** through membership in European and international networks as well as through bilateral contacts.

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*The present Summary Report consists of extracts of the Functional Review Report written by **the team of experts** listed below. The Main Findings of the Functional Review Report were presented to the Lebanese authorities and the 3RF group on 20 June 2023.*
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The Functional Review and the team of experts

Strategic roll-out and coordination of the Functional Review by the European Commission: Lora Ujkaj, Giulio Venneri, Heini Hyrkko (DG NEAR), Marie Delplace (DG JUST), together with the European Union Delegation to Lebanon.

Week 1 (12 to 16 September 2022):	
C 1 - Independence and accountability of the judiciary	Gianluigi Pratola and Giovanni Pasqua
C 3 - Access to Justice	Harold Epineuse
C 4 – Professionalism	Gianluigi Pratola and Giovanni Pasqua
S 7 – Constitutional Justice	Jens Woelk
S 8 – Administrative Justice	Jean-Paul Jean
Week 2 (19 to 21 September 2022) and Week 3 (14 to 18 November 2022):	
C 2 - Efficiency and transparency	Theo Byl and Dario Quintavalle
S 5 - Criminal justice	Oliver Hoffmann and Alberto Perduca
S 6 - Juvenile Justice	Renate Winter
Report coordination	Jens Woelk