

Fighting corruption and Ensuring the Rule of Law

I. Challenges

A. Corruption, Impunity, and Inept Governance

- o Corruption, lack of **accountability**, as well as mismanagement and overall incompetence, have long been persisting obstacles in the way of a prosperous Lebanon, and have irreversibly disillusioned the Lebanese from expecting alternatives, particularly following the thawra of October 2019.¹
- o Lebanon is currently under the strain of what the Fall 2021 issue of the Lebanon Economic Monitor (LEM) dubs a deliberate economic depression imposed by the elite on the general population, crippling basic public services, and leading an increasing number of the youth outside the country.²
- o The LEM projects that the GDP will plummet by 10.5% in 2021, following a 21.4% contraction in 2020; this marks a drop from US\$52 billion in 2019 to US\$21.8 billion, which amounts to a 58.1% contraction.³
- o Lebanon's breakdown can be explained by its administrative structure post-civil war. Under this system, official positions including that of the President of the Republic, the Prime Minister, and the speaker of the Parliament, are divided among the country's 18 formally recognized sects (a Maronite Christian, a Sunni Muslim, and a Shiite Muslim respectively). The structure of this system as defined by the Taif Agreement of 1989 was intended to ensure that every group was represented; however, it has instead allowed impunity and corruption to flourish by enabling leaders to reframe criticism targeting them as attacks on their sects.⁴

B. Outdated Public Procurement System

- o During the "Conférence Économique pour le Développement, par les Réformes et avec les Entreprises" (CEDRE) convention held in Paris in April of 2018, the Lebanese Government pledged to commit to several sectoral reforms as part of a comprehensive plan with the ultimate aim of strengthening Lebanese governance, public infrastructure and services, and stimulating investment inflows; one of the principal commitments concerned the country's procurement law.⁵
- o In Lebanon, in addition to an outdated public procurement law, other procurement challenges include: (i) a weak control environment that does not enforce the implementation of rules and procedures; (ii) lack of an institutional and independent procurement policy unit and of complaints handling mechanism; (iii) lack of procurement performance information/data; (iv) lack of private sector competitiveness; (v) weak implementing agencies; and (vi) lack of transparency.⁶
- o To ensure competitiveness, Lebanon needs to ensure the implementation of its newly passed competition law and safeguard the implementation of sound competition measures that protect market entry regulations and prevent illicit agreements and illegal oligopolistic and monopolistic structure in the market.⁷

¹ The inaction trap: Paralysis and denial in Lebanese politics | Middle East Institute
<https://mei.edu/publications/inaction-trap-paralysis-and-denial-lebanese-politics>

² Lebanon Economic Monitor (Fall 2021): The Great Denial | World Bank Group
<https://openknowledge.worldbank.org/bitstream/handle/10986/36862/LEM%20Economic%20Monitor%20EXECSUMM.pdf?sequence=3&isAllowed=y>

³ Idim.

⁴ How Corruption Ruined Lebanon - The New York Times
<https://www.nytimes.com/2021/10/28/magazine/corruption-lebanon.html>

⁵ Lebanon - CEDRE Conference (06.04.18) - Ministry for Europe and Foreign Affairs
<https://www.diplomatie.gouv.fr/en/country-files/lebanon/news/article/lebanon-cedre-conference-06-04-18>

⁶ Government of Lebanon Economic Plan

⁷ Government of Lebanon Economic Plan

C. A Constrained and Biased Lebanese Judiciary

- o Judiciary independence is a prerequisite for safeguarding human rights within society and delivering justice; the rights enjoyed by citizens should be protected by a judiciary which assures non-interference and repels potential exploitation. The Lebanese judiciary, which in theory is supposed to be independent, is in fact submissive to the dominant political elite. Indeed, the High Council for the Judiciary—which governs the judiciary—is financially reliant on the executive.⁸
- o The High Judicial Council (HJC) is designed to allow political interference in the civil judiciary. Half of its members are appointed by a cabinet decree after names are proposed by the Minister of Justice, while three members are members by virtue of their positions—the First President of the Court of Cassation (who acts as the HJC's president), the State Prosecutor at the Court of Cassation (who acts as the HJC's vice-president), and the President of the Judicial Inspectorate. These three individuals are appointed by decree from the Council of Ministers. The remaining two members are elected by the judges in the Court of Cassation.⁹
- o The sectarian nature of judicial formations allows for politicized appointments. For example, the State Prosecutor at the Court of Cassation is, by established practice, always Sunni, the governorate-level public prosecutors are divided on a sectarian basis, while the First President of the Court of Cassation and hence the president of the HJC, is Maronite.¹⁰
- o The politicized control over the public prosecution office, particularly the position of State Prosecutor at the Court of Cassation, is crucial for Lebanon's political class, since the State Prosecutor has significant powers over the whole hierarchical public prosecution office. He can issue binding written and oral orders to the public prosecutors at the governorate-level, and can thus effectively halt any investigations over corruption allegations. The political class have ensured that the judge occupying this position is in their favor.¹¹
- o The politicized nature of the judiciary came on full display in the spring of 2021, when a public dispute broke out between State Prosecutor Judge Ghassan Oueidat, perceived to be close to the Future Movement, and Mount Lebanon public prosecutor Judge Ghada Aoun, perceived to be sympathetic to the Free Patriotic Movement.
- o Every reference or judicial district, especially the penal ones, is affiliated with political influence when it comes to appointments, formations, discipline, promotions, and decision centers. As for honest and independent judges, they are either placed in ineffective positions, or they are dismissed within administrative positions in the Ministry of Justice.
- o Additionally, judicial formations also rely upon the signatures of the President of the Republic, the Prime Minister, and the Minister of Justice in order to go through. Thus, if the judicial formations are deemed detrimental to the leaders' interests, they can block or delay them.

⁸ How Corruption Ruined Lebanon - The New York Times
<https://www.nytimes.com/2021/10/28/magazine/corruption-lebanon.html>

⁹ Towards an Independent Judicial Branch in Lebanon? Part 1: The Civil Judiciary
<https://timep.org/commentary/analysis/towards-an-independent-judicial-branch-in-lebanon-part-1-the-civil-judiciary/>

¹⁰ Towards an Independent Judicial Branch in Lebanon? Part 1: The Civil Judiciary
<https://timep.org/commentary/analysis/towards-an-independent-judicial-branch-in-lebanon-part-1-the-civil-judiciary/>

¹¹ Towards an Independent Judicial Branch in Lebanon? Part 1: The Civil Judiciary
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D. Hindered Central Inspection Bureau and Audit Bureau

- o The Central Inspection Bureau (CIB) is Lebanon's central investigative body. Its function is to keep track of public services and finances. However, its current president Judge Georges Attieh has recently voiced concern over factors hindering the CIB from operating the way it ought to: namely, CIB inspectors are prohibited from inspecting numerous governmental entities due to the immunity enjoyed by ministers and their employees.¹²
- o This has become especially relevant in the unproductive investigations surrounding the Port of Beirut in the aftermath of its explosion. Although the CIB is entitled to keep tabs on the operations of the port, the Ministry of Public Works and Transport—itself additionally responsible for the port—has explicitly barred its employees from working together with the CIB.
- o In fact, one of the first actions taken by the new Mikati administration was to require that the CIB obtain authorization from the Prime Minister prior to examining any public body.
- o The Central Inspections oversight mandate has limitations. While some institutions are subject to its full oversight, others completely escape its scope, or are subject to financial inspection only. Central Inspection also suffers from lack of specialized human resources and financial means, as it is subordinated to the Presidency of the Council of Ministers.¹³
- o The Audit Bureau is an administrative tribunal with financial jurisdiction that oversees the management of public funds; it is the highest financial tribunal in Lebanon. The Court of Audit exercises both administrative and judicial controls on the state administration, certain municipalities and public enterprises, and institutions and associations funded by the state. The Court of Audit's administrative control is twofold: A prior control to approve the use of public funds in specific projects/transactions and a subsequent control to confirm the proper use of these funds. The Court of Audit prepares annual reports with their findings on public spending.¹⁴
- o The Audit Bureau's decisions are often ignored, or violated by politicians.¹⁵

II. Recommendations

- o **Ensuring the independence of the judiciary** by re-activating the judicial inspection that has an essential mandate to audit and monitor the conduct of judges and has an essential role in ensuring the independence of the Judiciary in any democratic state; electing the judges of the higher judiciary council; and allocating an increased budget to the Ministry of Justice.
 - The judiciary as an institution and judges as individuals must be able to exercise their professional responsibilities without the influence of executive, legislative, or other inappropriate sources. In Lebanon, the Lebanese Constitution is the basic text that determines the functioning of the Lebanese judicial system, and Article 20 of the Lebanese Constitution enshrines the independence of the judicial authority necessary to realize the right. The provisions of the Lebanese Constitution generally reflect the provisions of relevant international instruments, especially the first of the basic principles related to the independence of the judiciary, which states that "the state guarantees the independence of the judiciary, which should be stipulated in the constitution or national legislation (...)"

¹² How Corruption Ruined Lebanon - The New York Times
<https://www.nytimes.com/2021/10/28/magazine/corruption-lebanon.html>

¹³ Public Procurement in Lebanon: A Gateway to Malpractice
<https://sirenassociates.com/wp-content/uploads/2020/12/Institutional-Mapping-Final-Report-Dec-9-2020.pdf>

¹⁴ Public finances reach Court of Audit - Executive Magazine
<https://www.executive-magazine.com/economics-policy/public-finances-reach-court-of-audit>

¹⁵ Breaching the decisions of the Audit Bureau over the years - Lebanon News
<https://www.lbcgroup.tv/news/d/corruption-lbci-reports/562115/breaching-the-decisions-of-the-audit-bureau-over-t/en>

- As for the judiciary in Lebanon, it is politicized, and all the sensitive positions within it, are appointed by a decree issued by the government. Today, there are problems with the law regulating the judiciary. The Supreme Judicial Council, whose duty is to guarantee the independence of the judiciary, appoints the government 8 of its 10 members. This council then sets the judicial formations that do not pass until after they pass the tunnels of the Ministry of Justice, Finance and Defense and the Presidency of the Government. The formations are not issued except by a decree signed by the President of the Republic.
- The Independence of the judiciary law should: 1- enlarge the role of the judicial inspection that has an essential mandate to audit and monitor the conduct of judges and has an essential role in ensuring the independence of the Judiciary in any democratic state; 2- Electing the majority of the members of the High Judicial Council by fellow judges; 3- having the High Judicial Council's recommendations go through despite any political objection.

o Developing and implementing open government strategies and initiatives

(including e-government) in collaboration with different stakeholders, as well as ensuring the existence and implementation of the necessary open government legal and regulatory framework, and establishing adequate oversight mechanisms. The OECD defines open government¹⁶ as the opening up of government processes, proceedings, documents, and data for public scrutiny and involvement.

- Adopting a national strategy for e-governance will facilitate the setting up of internet-era institutions that will support Lebanon in dealing with opportunities and challenges of the information age, ensure modern and affordable communication infrastructures, and adopt a supportive legal and governance framework to improve digital literacy and promote transparency in government interactions. Public administration in Lebanon has long suffered from bureaucracy, poor service delivery, corruption, outdated technology, ineffective processes and inadequate governance structures, whereby trust in the state has been completely lost. The lack of e-governance has created a 'wasta' culture and has allowed for political and sectarian employment, leaving little efficiency and transparency.

o Implement the Public Procurement Law passed in June 2021;

develop and deploy e-procurement; and amend the law to directly reference the Right to Access Information law.

- Implementing the Public Procurement Law should pave the way for the deployment of an electronic public procurement platform and the building of a procurement database. The most direct result of the online hub will be to boost competition, limit corruption and substantiate indicators related to transparency, efficiency and economic activity.

o Promoting the culture of accountability by safeguarding the notion of checks and balances through upholding the constitutional right of the parliament to hold the executive branch of government accountable for its actions, and increase capacity and independence of the audit bureau and the central inspection bureau.

- Increasing capacity and independence of the CIB and the Audit Bureau includes a digital transformation, whereby digital technology and even artificial intelligence are included to root out clientelism and to increase efficiency. A fully digitized, comprehensive platform where data transfers and documents submissions can take place will result in a faster, more comprehensive, and more transparent audit process.
- In the notion of the separation of powers, the parliament is meant to hold the executive branch of government accountable for its actions and/or lack thereof. Over the years, the separation of powers has been eroded in Lebanon, with many parliamentarians becoming ministers and vice versa, leaving little room for accountability. A crucial point in accountability is to have a parliament that does its role and takes up its responsibility in holding the government accountable.

¹⁶ Open government - OECD
<https://www.oecd.org/gov/open-government/>

- o **Implementing the Competition Law.** Lebanon's Parliament recently approved the long-awaited competition law while abolishing the scheme of exclusive dealerships in a bid to jumpstart the national economy. To ensure competitiveness, Lebanon needs to ensure the implementation of its newly passed competition law and safeguard the implementation of sound competition measures that protect market entry regulations and prevent illicit agreements and illegal oligopolistic and monopolistic structure in the market.
- o Formulating and implementing a 'Declaration of Assets' Law, in a step against corruption, whereby a system of declarations of interests, income, assets and liabilities of persons performing public functions will be established.



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