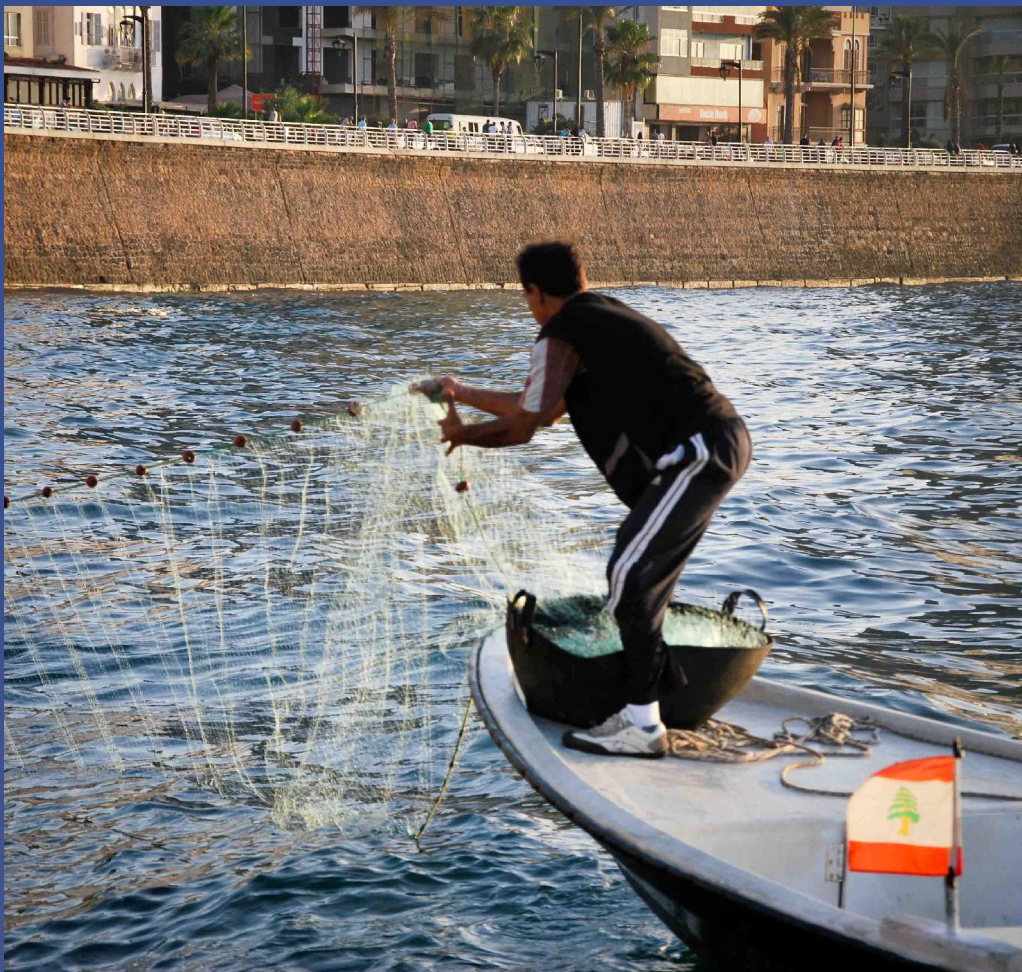


## *Rule of Law Quick Scan Lebanon*



The Rule of Law in Lebanon:  
Prospects and Challenges

# Rule of Law Quick Scan Lebanon Prospects and Challenges

## Hiil Rule of Law Quick Scan Series

This document is part of Hiil's Rule of Law Quick Scan Series. Each Quick Scan provides a brief overview of the status of rule of law in a country.

April 2012

*The writing of the Quick Scan was finalised in January 2012*

## Foreword

This document is part of HiIL's Rule of Law Quick Scan Series. Each Quick Scan provides a brief overview of the status of rule of law in a country.

The Quick Scan Series is primarily meant for busy practitioners and academics who want to have a snapshot of the rule of law in a country, particularly with a view to understanding what the main trends and challenges regarding the rule of law are and where local and international stakeholders can possibly make a positive difference.

Each Quick Scan is written by a reputable rule of law expert from academia and/ or practice, who is either from the concerned country or has spent many years living and working there.

The Quick Scan Series aims to be neutral and balanced. To achieve this aim, the authors have consulted sources from a wide range of stakeholders, including the government, (inter)national NGOs, academia, and international organizations. They present differences of opinion or analysis, but do not pronounce judgment on which view is correct. In the context of their work on the Quick Scan they have visited the country and talked to different stakeholders, presented drafts and revised in view of the comments they received.

All Quick Scans have the same format. Part A describes relevant historical, social, political and economic context. Part B analyses positive trends and challenges. Part C is an overview of relevant indicators on rule of law. To identify relevant trends and challenges in rule of law, the Quick Scans are guided by the conception of the rule of law developed by the World Justice Project Rule of Law Index.

This Quick Scan on the rule of law in Lebanon has been prepared in partnership with the Arab Center for the Development of the Rule of Law and Integrity (ACRLI). In particular, ACRLI organized national level meetings to generate input and feedback from a wide variety of stakeholders. ACRLI's outstanding professionalism in identifying and committing stakeholders, leading the workshops, assisting the authors and organizing outreach activities has been invaluable.

The Series is made possible by generous funding of the Dutch Ministry of Economic Affairs for the Innovative Rule of Law Initiative.

The Hague,

Ronald Janse  
Hague Institute for the Internationalisation of Law

April 2012

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## Part A: Overview of the Rule of Law in Lebanon





# 1. Definition of Rule of Law

The term 'rule of law' is defined differently according to different concepts<sup>1</sup> and categories.<sup>2</sup>

In its most basic form, it refers to the principle that no one is above the law. The rule follows logically from the idea that truth, and therefore law, is based upon fundamental principles which can be discovered, but which cannot be created through an act of will. The most important application of the rule of law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly-disclosed laws adopted and enforced in accordance with established procedural steps that are referred to as due process. The principle is intended to be a safeguard against arbitrary governance, whether by a totalitarian leader or by mob rule. Thus, the rule of law is hostile both to dictatorship and to anarchy.<sup>3</sup>

According to the United Nations Development Programme (UNDP), the definition of rule of law "entails equal protection of human rights of individuals and groups, as well as equal punishment under the law. It reigns over governments and protects citizens who are treated equally and are subject to the law rather than to the whims of the powerful. The law should also afford vulnerable groups protection against exploitation and abuse."<sup>4</sup>

Some of the aims of the rule of law can be achieving the following: (1) a government bound by law, (2) equality before the law, (3) law and order, (4) predictable and efficient rulings, and (5) human rights.

This report uses the definition from the Rule of Law Index 2011 by the World Justice Project, especially in tackling some of the positive trends and challenges in Lebanon. Accordingly, the rule of law refers to a rule-based system in which the following four universal principles are upheld:<sup>5</sup>

- The government and its officials and agents are accountable under the law.
- The laws are clear, publicized, stable, fair, and protect fundamental rights, including the security of persons and property.
- The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient.
- Access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives, and judicial officers who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

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<sup>1</sup> Ghaleb Ghanem, *Rule of Law*, available at <http://www.pogar.org/publications/arabniaba/books/ruleoflaw-ar.pdf>, p. 13 (22 November 2011).

<sup>2</sup> "Definitions of the rule of law fall into two categories: (1) those that emphasize the ends that the rule of law is intended to serve within society (such as upholding law and order, or providing predictable and efficient judgments), and (2) those that highlight the institutional attributes believed necessary to actuate the rule of law (such as comprehensive laws, well-functioning courts, and trained law enforcement agencies)." Rachel Kleinfeld Belton, *Competing Definitions of the Rule of Law: Implications for Practitioners*, Democracy and Rule of Law Project, No. 55 in Carnegie Papers, (2005).

<sup>3</sup> See <http://www.lexisnexis.co.uk/about-us/rule-of-law/> (accessed 22 November 2011).

<sup>4</sup> Ghanem, *Rule of Law*, p. 13.

<sup>5</sup> See [http://worldjusticeproject.org/sites/default/files/wjproli2011\\_0.pdf](http://worldjusticeproject.org/sites/default/files/wjproli2011_0.pdf) (accessed 22 November 2011).

## 2. Historical background

Lebanon is an Arab state with a number of peculiarities. In addition to its remarkable geographic location and natural resources, its diverse society includes 18 different religious groups.<sup>6</sup> This multi-sectarian population is what distinguishes Lebanon from other Arab states.

Starting in 1516, the Lebanese territories were part of the Ottoman Empire. Under Ottoman rule, Mount Lebanon enjoyed a certain level of autonomy.<sup>7</sup> When the Ottoman Empire entered World War I, the provincial system was canceled and substituted by direct military rule. This continued until the fall of the Ottoman Empire during World War I. After World War I, Lebanon became a French mandate (7 November 1918).

Although the French rule is often regarded as single period preceding Lebanese independence, it can be divided into different stages. First, the French army occupied Lebanon in 1918. Then, in 1920, French rule was affirmed by the San Remo Conference where France was allocated territory that included what is now Lebanon and Syria. Finally, this mandate was formalized when it was signed and then approved by a decision of the League of Nations on 29 September 1923.

According to the Mandate Document, within three years of signing, the French were obliged to consult with the local authorities in order to draft and adopt a constitution that answered the goals and aspirations of the Lebanese people. Thus, the Lebanese constitutional system dates back to 23 May 1926, the date of issuance of the Constitution and the establishment of the State of Greater Lebanon.

France's mandate remained until 22 November 1943, the date of the independence of Lebanon. Since that time, Lebanon is no longer referred to as Greater Lebanon; rather the official name of the state is the 'Lebanese Republic' or 'Republic of Lebanon' (*Al Jumhuriyah Al Lubnaniyah*).

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<sup>6</sup> According to Law No. 553 dated 24 July 1996 which amended Annex 1 of Decision No. 60 L.R. of 13 March 1936, the recognized religious sects in Lebanon are: Alawite, Armenian Catholic, Armenian Orthodox, Assyrian Church of the East, Chaldean Catholic, Copts, Druze, Greek Catholic, Greek Orthodox, Isma'ili, Jewish, Maronite, Protestant, Roman Catholic, Sunni, Shi'a, Syriac Catholic, Syriac Orthodox.

<sup>7</sup> Even though Lebanon enjoyed certain autonomy under the Ottoman rule, it was, in fact, an Ottoman province. Its level of independence was based on the priorities and will power of the various Ottoman rulers and on western interventions. Khalil Mohsen, *Political Systems and Constitutional Law*, (Beirut: Dar Al Nahda Al Arabiyah, 1979), p. 503.



### 3. Characteristics of the Lebanese constitutional and political system

The Lebanese Constitution is characterized by a rigid nature and written form. The Constitution was drafted in 1926 and has 102 articles. Additionally, a number of customary constitutional rules exist.

The Constitution is considered rigid because its amendment is more complicated than the procedures of issuing or amending regular laws. The Lebanese Constitution does not prohibit any amendment to its articles provided that this is done in light of the rules set forth in Articles 76, 77, 78, and 79.

The legal and political system of Lebanon is characterized as being republican, representative, parliamentary, democratic, liberal, and confessional.<sup>8</sup>

#### a. Republican

Ever since the establishment of Lebanon in 1926, the choice fell on republicanism. This republican form of state was established in many articles of the Constitution. According to Article 101 of the Constitution, as of 1 of September 1926, Greater Lebanon shall be named The Lebanese Republic.<sup>9</sup> Further, Section C of the Preamble states, "Lebanon is a parliamentary democratic republic...". Also Article 49 section (1) states, "The President of the Republic is the head of the state and the symbol of the nation's unity...".

#### b. Liberal and Democratic

Lebanon has traditionally adopted the system of liberal economy. This principle was embedded in the Constitution by Section F of the Preamble: "The economic system is free and ensures private initiative and the right to private property." As in any liberal system, state intervention is restricted to providing security and guaranteeing a free market and laissez-faire policies. Furthermore, the Constitution concentrates on the civil and political rights and barely mentions social and economic rights.<sup>10</sup>

One of the peculiarities of the Lebanese system is its democratic form. Section C of the Preamble states that "Lebanon is a parliamentary democratic republic...", and according to Section D, "The people are the source of authority and sovereignty; they shall exercise these powers through the constitutional institutions."

Recently, a new concept has been discussed in the political circles and that is the concept of consensual democracy. According to this theory, the classical democratic practice of the rule of the majority is substituted with the consensus of all the political constituencies. In the case of Lebanon, the constituencies are the confessions. It is worth mentioning that there is no general acceptance of the consensual democracy theory. The idea of consensual democracy has replaced the concept of majority and minority with the idea of the nation's participation. This idea perceives classical democracy as a type of tyranny of the majority. Supporters of this theory believe that the need for such system arises in the societies that lack national harmony. Their examples included European countries such as Belgium, Holland, Switzerland and Austria. According to them, this system is the result of practical experiences and based on the needs of society.

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<sup>8</sup> The term sectarian is also used to mean confessional. This report uses the term confessional.

<sup>9</sup> Article 101 [Greater Lebanon, The Lebanese Republic]: Beginning 1 Sep 1926, the state of 'Greater Lebanon' is to be known as 'The Lebanese Republic' without any other change or modification (translation from Arabic).

<sup>10</sup> Mohamad Majzoub, *Constitutional Law and the Lebanese Political System*, (Al-Halabi Publishers, 2002), p. 252 ff.

Unlike the concept of classical democracy, which is based on the concept that the majority rules the minority, consensual democracy is based on four elements: 1) An expanded coalition government (including the party with the most supporters); 2) a principle of proportional representation in ministries, public institutions, elections, etc.; 3) the mutual veto right (for majorities and minorities); 4) self-management for the private affairs of each group.

During the war phase, especially between the years 1943 and 1975, the supporters of the consensual democracy perceived Lebanon as a true example of the European experiences. The beginning came with the National Charter of 1943 and the distribution of the three major political positions between Maronite, Sunni, and Shiite, which was eventually implemented in the chamber of deputies. The Lebanese consensual system also granted various confessions independence in managing internal affairs.

Regardless of the experiences that the advocates of consensual democracy focus on, they eventually managed to focus on the consensual side at the expense of the constitutional institutions and the continuity of the state's work. The consensual term is a factor that attracts the various groups that are interested in retaining their religious and ethnic characteristics. Yet, the veto right stalls the work of the institutions, and the consensual factor holds back institutional leaders' goals of clear rules, efficiency, and equal opportunity.

Within the Lebanese system, consensual democracy was never a long-term goal. Rather, the consensual system is rooted in the national charter and was a temporary solution used to close the gaps of the internal politics and to handle early group tension. The charter was based on the idea that Lebanon should eventually become an independent state. The old confessional system that granted independence to the confessions in dealing with religious and social matters was used prior to the establishment of the Lebanese state. Thereafter, abolition of the consensual system became a national goal. For example, Article H of the National Charter states, "The abolition of political confessionalism is a basic national goal and shall be achieved according to a gradual plan." Further, as the number of confessions in Lebanon grew, with now 18, granting each confession a veto right disables the political, administrative, and legal life, and is a dangerous barrier to the idea of a united Lebanese state.

### c. Representative

Lebanon adopted a representative form of democracy where the people rule through their representatives. Such a system is characterized by the following:

- Having a parliament with actual powers:  
Article 16 of the Constitution states that "Legislature lies with a single assembly: the Chamber of Deputies". The first section of Article 24 states that "The Chamber of Deputies is composed of elected members; their number and the method of their election is determined by the electoral laws in effect." This means that the number of deputies and the conditions of their election is based on the election law.
- The Chamber of Deputies has real and fundamental powers related to the enactment of legislation and monitoring the government's work. According to Article 18 of the Constitution, "The Parliament and the Council of Ministers have the right to propose laws. No law shall be promulgated until it has been adopted by the Chamber." In the field of financial and tax related legislations, the Chamber has powers related to the following: establishing and collecting taxes (Article 81), modifying or abolishing taxes (Article 82), voting on the budget article by article (Article 83), prior approval of public loans (Article 88), and the granting of contracts and concessions for the exploitation of the natural resources of the country (Article 89).

- As for monitoring executive power, Article 66 states, "Ministers are collectively responsible before the Chamber for the general policy of the government and individually responsible for their personal actions." Therefore, the Chamber of Deputies has power over votes of confidence of the government and of specific ministers.
- Fixed terms of representatives:  
In order to allow the people to monitor and hold their deputies accountable for their actions, the Lebanese constitutional system adopted the concept of specifying the parliamentary period. According to Article 1 of the elections law number 59 dated 27/12/2008, the membership period is set at four years.
- Deputies represent the whole nation:  
Article 27 states that "a member of the Chamber represents the whole nation. No restriction or stipulation may be imposed upon his mandate by his electors."
- Deputies are independent of their voters:  
This point means that, throughout the period of membership, a deputy is independent from the people in his legislative and monitoring tasks. During this period, the deputy is not subjected to any of the voters' opinions or instructions. On the other hand, the people have no direct participation in the Chamber's tasks and rulings. The Lebanese system did not give the people the right to participate through referring, proposing, or objecting to laws.

#### d. Parliamentary

Since its independence, Lebanon has adopted a parliamentary system. Yet, this system has been heavily criticized and is often classified as a presidential system rather than a parliamentary system. Despite the fact that the Constitution adopted several articles that indicate a parliamentary system, their implementation proved to be different. Contrary to the parliamentary system, neither the Council of Ministers nor President of the Council of Ministers has had a significant role in the constitutional life. Instead, the ministers were directly responsible towards the President of the Republic, who had the power to appoint and dismiss them.

In 1990, the National Reconciliation Accord and a constitutional amendment were passed with the purpose of bringing back a balance between the powers, and to once again turn the Lebanese system into a parliamentary one. Since 1990, the Lebanese constitutional system has had the following characteristics:

- Dualism in Executive Authority:  
Like in other parliamentary systems, in Lebanon there is dualism in the executive authority. Executive authority is divided between the President of the Republic and the Council of Ministers. The actual executive powers are in the hands of the Council of Ministers while the role of the President is of a representative nature on one hand and of a consensual nature on the other.
- Separation of Powers:  
One of the characteristics of parliamentary systems is a separation of powers. Lebanon adopted this principle, and according to Section E of the Preamble, "The political system is established on the principle of separation, balance, and cooperation amongst the various branches of Government."

This separation is not a rigid one. Rather, it also relies on cooperation between the powers. Additionally, each power exercises some kind of supervision over the other. For example, the legislative power approves the budget set by the Council of Ministers and sanctifies the treaties signed by the President. Also, it questions the ministers prior to deciding on whether to remove confidence or not.

On the other side, the executive power has the right to call the parliament to convene and attending ministers have the priority to speak in parliamentary sessions. In certain cases, the executive has the right to propose laws and to dissolve the parliament.

#### e. Confessional

Lebanon is a state with 18 confessional groups. This religious division found its way into the political life by granting each confession certain political rights. The political confessionalism in Lebanon has been strongly criticized and has had grave negative effects on the civil, political, and social life of the Lebanese people. Despite the many attempts to abolish it since the year 1943, all such efforts have unfortunately been unsuccessful.

Until 1990, confessionalism was a customary rule in the constitutional and legal systems of Lebanon and any attempt to solve this issue remained a political one. With the Taef Accord in 1989 and the subsequent Constitutional Amendment of 1990, Lebanon witnessed the first formal attempt to end confessionalism, through Section H of the Preamble of the Constitutional Amendment. This section states, "The abolition of political confessionalism is a basic national goal and shall be achieved according to a gradual plan." In order to complement this step, Sections (1) and (2) of Article 95 of the Constitution provide certain procedural details to achieve this goal.<sup>11</sup>

Problems surfaced with the application of section (3) of Article 95. This section provides a gradual plan during which the rights of the various confessions are guaranteed. It also calls for the equal distribution of the "grade one posts" like undersecretaries and their equivalents based on proportional distribution among the confessions of each religion and the geographic areas in Lebanon.<sup>12</sup>

It has been eleven years since this constitutional amendment and until this date no practical action has been taken to implement any of the abovementioned rules; thus, the only applicable rule is Article 95 (3) of the Constitution confirming the political rights of the confessions.

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<sup>11</sup> Article 95 [National Committee]

(1) The first Chamber of Deputies which is elected on the basis of equality between Muslims and Christians takes the appropriate measures to realize the abolition of political confessionalism according to a transitional plan. A National Committee is to be formed, headed by the President of the Republic, including, in addition to the President of the Chamber of Deputies and the Prime Minister, leading political, intellectual, and social figures.

(2) The tasks of this Committee are to study and propose the means to ensure the abolition of confessionalism, propose them to the Chamber of Deputies and the Ministers, and supervise the execution of the transitional plan...

<sup>12</sup> Article 95 ...(3) During the transitional phase: a. The confessional groups are to be represented in a just and equitable fashion in the formation of the Cabinet. b. The principle of confessional representation in public service jobs, in the judiciary, in the military and security institutions, and in public and mixed agencies are to be cancelled in accordance with the requirements of national reconciliation; they shall be replaced by the principle of expertise and competence. However, Grade One posts and their equivalents are exempt from this rule, and the posts must be distributed equally between Christians and Muslims without reserving any particular job for any confessional group but rather applying the principles of expertise and competence.

## 4. The Judiciary

In a democratic system, the judiciary forms the third power-base after the legislature and the executive. Unlike the other two powers, the role of the judiciary is restricted to rendering judgments in order to settle legal disputes between natural persons and entities. The ultimate goal here is to achieve justice and stability in society.

According to Article 20 of the Constitution, "Judicial power is to be exercised by the tribunals of various levels and jurisdictions. It functions within the limits of an order established by the law and offering the necessary guarantees to judges and litigants. The limits and conditions for the protection of the judges are determined by law. The judges are independent in the exercise of their duties. The decisions and judgments of all courts are rendered and executed in the name of the Lebanese people."

### a. Independence of the Judiciary

From the rules of Article 20, it is clear that the Constitution grants the judges their independence. In addition to this rule, Article 1 of the Code of Civil Procedure provides: "The judiciary is a power independent from other powers in the examination and resolution of lawsuits. Its independence shall not be limited except as provided in the Constitution".

Thus, we deduce from the abovementioned articles that the independence of the judiciary in Lebanon takes on the following forms:

- They monopolize the right to rule over disputes.
- They are independent of any other authority regarding the achievement of their duties.

### b. Structure of the Judiciary

The Lebanese judicial structure has been influenced by a number of legal systems including the French (especially in civil and administrative court systems) and the Ottoman (especially in the religious court systems). Thus, the structure includes the following:

- **Ordinary Courts:** The ordinary courts include civil and criminal courts. In civil matters, the courts rule over disputes related to civil and commercial matters. While in criminal matters, the courts rule over misdemeanors and crimes. As a general rule, ordinary courts include three degrees of jurisdiction: Courts of First Instance, Courts of Appeals and the Court of Cassation.
- **Administrative Courts:** Lebanon has only one administrative court named the State Council (Conseil d'État). It is comprised of ten chambers and rules over all administrative disputes between the state, public institutions, and individuals.<sup>13</sup>
- **Political Court:** The political jurisdiction is entrusted to the Supreme Council, whose function is to try presidents and ministers. It consists of seven deputies elected by the Chamber of Deputies along with eight of the highest Lebanese judges. The Supreme Council has the power to issue Decisions of Condemnation, which is possible through a majority of ten votes.
- **Constitutional Council:** In Lebanon, constitutional jurisdiction is exercised exclusively by the Constitutional Council. According to Article 19 of the Constitution, the Constitutional Council is established to supervise the constitutionality of laws and to arbitrate conflicts that arise from parliamentary and presidential elections.

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<sup>13</sup> Maya Mansour & Carlos Daoud, *Lebanon: The Independence and Impartiality of the Judiciary*, (Copenhagen: Euro-Mediterranean Human Rights Network, 2009), p. 14.

- **Military Court:** These courts are responsible for any misdemeanor or crime for which a member of the armed forces is a party. Many jurists have criticized this arrangement and have requested to limit the jurisdiction of such courts to matters where there are military defendants.
- **Religious Courts:** Due to the confessional nature of the Lebanese political system, each confession enjoys its religious courts.
- **Special Courts:** These courts include a number of courts established under special circumstances and for a period limited by the existence of such special circumstances, examples of which are labor courts, state audit courts, and juvenile courts.

### c. Judicial Guarantees

The Lebanese law grants the litigants as well as the judges a number of guarantees to ensure their enjoyment of their right as litigants and to ensure the independence of the work of judges. Such guarantees include the following:

- **Equality before the judiciary:** The judiciary is accessible to any person, and the people have equal rights in referring any dispute to the courts without any discrimination based on any social, financial or other reasons.
- **Gratuitous nature of justice:** Although parties to litigation pay judicial fees, such fees are of an administrative nature and do not go to the judges hearing the case. Thus, the justice is free of charge. The judges are paid monthly salaries from the state regardless of the work they rule on or the value of the disputes.
- **Obligation to render decisions:** Since the judicial power is monopolized by the courts, judges are obliged to render a decision in every case referred to them. Except in cases where procedural rules have not been satisfied, judges are not excused from ruling and might even be considered as denying justice if they refuse to rule.
- **Two-tier system:** In order to achieve justice, Lebanese law has a two-level system of adjudication (courts of first instance, and courts of appeal). This system grants the losing party in a dispute a second chance to present his/her point of view. In addition to the previous point, this system serves another purpose. It motivates judges in courts of first instance to issue legally solid decisions in order to avoid having their decisions overruled by the Court of Appeals.
- **Right of representation:** In criminal procedures, the law states that no person can be indicted unless a lawyer legally represents him. In case the accused is not in a position to appoint a lawyer, the court shall appoint one for him. The same rule applies to cases tried before the civil courts of appeals and the Court of Cassation.
- **No penalty without a law (nulla poena sine lege):** Article 1 of the Criminal Code states that no penalty shall be applied unless it is based upon in a valid legal text issued and published in the official gazette. This guarantee ensures that sanctions correspond to the crimes and that this information has been disclosed to the people prior to its application.

### d. Guarantees of the judges

The independence of the judiciary is meaningless unless supported by actual guarantees. The purpose of such guarantees is to protect judges from any intrusion into their work, whether it comes from the parties in a dispute or from politicians. Such guarantees serve as a moral and material immunity for the judges.



- Method of appointment: The independence of the judiciary is a practice that begins at very early stages, i.e. from the appointment phase. There are two methods for the appointment of judges – by examination and by appointment.
- The Judicial Training Institute is the responsible authority within the judicial power for the preparation of the entrance exam and for the three-year training that trainee-judges undergo.
- In other cases, judges are appointed from certain groups of people with certain expertise or high academic degrees. This practice is also entrusted to the judiciary and no political body can intervene therein.
- Monthly salaries: In order to enable judges to maintain adequate living standards suiting their needs and their positions and to help them to concentrate on their work and rule independently of any temptation, they are given a monthly salary and a set of benefits and insurance.
- Reparation from any damage: According to Article 53 of Ordinary Courts law, the state guarantees judges full reparation related to any damages in relation to their jobs that might affect them, their families, or their property.
- Immunity from re-assignment: This guarantee is one of the most important protective measures that judges enjoy. It protects them from the abuse of the executive branch in the form of a constant threat of being deprived of the position.

#### e. Inter-judicial institutions

As authorities work through institutions, the independence of the judicial authority is not attainable without the availability of institutions that promote this independence. Therefore, the legislator established private institutions that manage and monitor the affairs and workflow of the judicial authority. These institutions are the Supreme Judicial Council and the Judicial Inspection Authority.

- The Supreme Judicial Council: It is formed by the President (first president of the court of cassation), vice president (the attorney general of the court of cassation), in addition to eight members (which include the president of the Judicial Inspection Authority). The council monitors the judicial work in order to retain the dignity and independence of the judiciary. According to the law, the council is responsible for the transfers and formations in addition to establishing the disciplinary board for judges. The council also voices its opinion concerning legal bills and judicial systems, and it proposes the bills and the legal texts that it sees fit.
- The judicial Inspection Authority: According to Article 98 of the Judicial Law, the Inspection Authority handles the following matters: A) monitoring the workflow of the judiciary, the judges, clerks, and the remaining appointed employees; B) pointing out work flaws and proposes methods to fix them; C) disciplining judges, clerks, and central departments at the ministry of labor; D) assisting individuals who are being inspected by pointing out their work flaws.
- The judicial Inspection Authority is formed of 11 judges appointed according to a decree and for an unlimited period of time. Its authority includes the judicial and administrative courts, the court of audit, the clerks, and the central departments at the ministry of labor.

## f. The relationship between the judicial authority and the remaining authorities

The Lebanese system is based on the separation of powers. In this context, Article E of the Constitution's preamble stated that "The system is established on the principle of separation, balance, and cooperation amongst the various branches of Government." This indicates that this separation is flexible and there exists cooperation and monitoring between the legislative and executive authorities.

Despite the fact that this principle is applicable for both the legislative and executive authorities, it lacks accuracy when it comes to the judicial authority:

- Article 20 of the Constitution states that "The judges are independent in the exercise of their duties". This principle is translated through offering the judiciary its functional and organic independence.
- Unlike other authorities, the judiciary handles the task of adjudicating and ruling in disputes. In certain cases, some of the powers of the legislative authority might be delegated to the executive authority.
- The judge is prohibited from occupying his position while sharing it with another position in a public job. The only exception is teaching in law institutes and according to specific organizing rules.

Despite that, some believe that the independence of the judiciary should be only in terms of ruling, while the rest is related to the legislative and executive authorities. This opinion is based on the Constitution that states that the judicial authority is regulated by the law. This means that the legislative authority intervenes in the enactment of the judicial authority's laws. On the other hand, the executive authority intervenes in executing the rulings and in appointing the judiciary.

Contrary to this belief, many researchers believe that the political authority intervenes on a high and dangerous level, as they point out to the political influence in the formation of the Supreme Judicial Council.

## 5. Rights and public freedoms in Lebanon

Since the dawn of the Lebanese republic, the Constitution, which was based on the Constitution of the Third French Republic, adopted the individual doctrine. Therefore, the rights and freedoms in Lebanon are based on the main traditional rights and with no intervention by the state. Thus, prior to the 1990 constitutional amendment, the human rights related articles in the Lebanese Constitution were restricted to the second chapter, such as Articles 7, 8, 9, 10, 12, 13, and 15.

Constitutional amendment number 18 dated 21/9/1990 added human rights related preamble to Constitution, which states:

- Lebanon is committed to the UN covenants and the Universal Declaration of Human Rights.
- Lebanon is a parliamentary democratic republic based on respect for public liberties, especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination.
- Lebanese territory is one for all Lebanese. Every Lebanese has the right to live in any part of it and to enjoy the sovereignty of law wherever he resides.

The rights and freedoms in Lebanon can be classified in the following categories: right to equality; physical and personal freedoms; sanctity of the home and ownership; intellectual freedoms; collective freedoms; and economic freedoms. The sections below describe these types of rights and freedoms.

### a. Equality

The Lebanese Constitution contains provisions related to equality between all Lebanese. Article 7 states that “all Lebanese are equal before the law. They equally enjoy civil and political rights and equally are bound by public obligations and duties without any distinction”. Article 12 states that “every Lebanese has the right to hold public office, no preference being made except on the basis of merit and competence, according to the conditions established by law.”

Noting the fact that equality is not absolute, the Constitution refers to the guarantee of equality as between individuals of similar legal positions. In Lebanon, the concept of equality faces by many obstacles, such as:

- The Constitution distributed the three first presidencies as follow: the President is Maronite, the President of the Parliament is Shiite, and the Prime Minister is Sunni. This distribution disregards the remaining Lebanese sects.
- The distribution of the parliament seats is not based on the people's right in electing their representatives but rather on a confessional basis that distributes them based on the size of the religions, Islam and Christianity. Therefore, the standards shift from focusing on efficiency to merely focusing on confession.
- Even though the Constitution, as amended, cancelled the confessional representation in the public offices, the Constitution still approves of confessional representation in grade one posts.

### b. Physical and personal freedoms

This type of freedoms guarantees the individual's financial entity, housing rights, and freedom of movement. Article 8 of the Lebanese Constitution states that “Individual liberty is guaranteed and protected by law”. In this context, two principles are adopted:

- No offense may be established or penalty imposed except by law.
- No one may be arrested, imprisoned, or kept in custody except according to the provisions of the law

These rights also include the secrecy of all means of communication such as mail and telephone calls. According to the criminal law, these rights may only be interfered with on the basis of a judicial order. On 27 October 1999, Law no. 140 on protecting the right to privacy in telecommunications regardless of the means of communication was enacted. This law should restrict any breach of secrecy and limit interferences with privacy to cases of extreme urgency and upon obtaining a judicial or administrative order.<sup>14</sup>

Section I of the preamble of the Constitution states that “every Lebanese has the right to live in any part of the Lebanese territory.”

### c. The sanctity of home and ownership

Article 14 of the Constitution states “citizen's place of residence is inviolable. No one may enter it except in the circumstances and manners prescribed by law.”

As for the protection of ownership, Article 15 states, “rights of ownership are protected by law. No one's property may be expropriated except for reasons of public utility in cases established by law and after fair compensation has been paid beforehand.”

### d. Intellectual freedoms

We can separate intellectual freedoms as follows:

- Freedom of expression and belief: Section C of the preamble states, “Lebanon is a parliamentary democratic republic based on respect for public liberties, especially the freedom of opinion and belief.”
- Freedom of religion: Article 9 of the Constitution states, “There shall be absolute freedom of conscience. The state respects all religions and creeds and guarantees, under its protection, the free exercise of all religious rites provided that public order is not disturbed. It also guarantees that the personal status and religious interests of the population, to whatever religious sect they belong, is respected.”
- This absolute freedom guarantees the individual's right of belief, while ensuring that the state does not embrace a specific religion. In this context, the Constitution has guaranteed the people's freedom of religion through allowing them to pick their suitable religion and to change their beliefs according to procedures provisioned by the law. The Constitution also allowed the free exercise of all religious rites provided that public order is not disturbed.
- Freedom of education: Article 10 states, “Education is free insofar as it is not contrary to public order and morals and does not interfere with the dignity of any of the religions or creeds. There shall be no violation of the right of religious communities to have their own schools provided they follow the general rules issued by the state regulating public instruction.”
- Freedom of expression: Article 13 states that the “freedom to express one's opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association are guaranteed within the limits established by law.”

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<sup>14</sup> The administrative decision is restricted to the minister of interior or to the minister of defense after obtaining the approval of the prime minister.

- It is natural to consider this freedom as complimentary to the freedom of thought, and freedom of thought would be lacking without the right to express thoughts and opinions. This right encourages people to form and express their own opinions in any means possible. The Constitution also ensures freedom of the press and protects it from any abusive acts carried out by the authority, such as confiscating or preventing the printing of newspapers.

#### e. Collective freedoms

These freedoms include the following:

- Right of assembly: This refers to organized assembly that aims to promote or defend a certain opinion. The Lebanese Constitution does not state the right of assembly, but instead it mentions it as part of the political rights in Article 13. The right of protest is considered as one of the many branches of the freedom of assembly. Protests are allowed if they proved to be peaceful, legal, and organized according to the legal procedures. Yet, the political authority has the power to approve or reject a protest.
- Article 13 of the Constitution guarantees the freedom of association within the limits established by law. The law conditions the practice of this right to informing the government, not carrying firearms, and not violating the state's public order and morals.

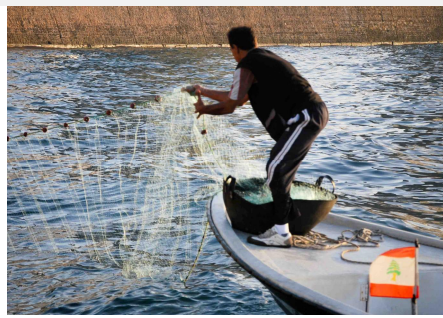
#### f. Economic Freedoms

The Economic Freedoms include the freedom of economy and the right of property:

- The Lebanese system is based on the freedom of economy, and it adopts the concept of individual initiative and private property. Section F of the Constitution's preamble states, "the economic system is free and ensures private initiative and the right to private property."
- The individual initiative relates to the commercial, industrial, and agricultural fields. The right of property is one of the oldest rights in the democratic systems and the most expressive of economic liberalism.
- Article 15 of the Constitution states, "Rights of ownership are protected by law. No one's property may be expropriated except for reasons of public utility in cases established by law and after fair compensation has been paid beforehand."

## Quick Scan Lebanon

# Part B: Positive Trends and Challenges regarding Rule of Law





# 1. Introduction

It is not easy to categorize the indicators of the Rule of Law into positive trends and challenges. Of the indicators addressed, each one has advantages and possibilities of improvements on the one hand, and the disadvantages and challenges on the other hand. Thus, the division of the trends and challenges below is based on the dominant characteristics of each indicator.

Despite the fact that the importance of each the indicators will vary at the local level, such indicators were chosen in this report according to their importance and role in the Lebanese regime as a whole. It should be noted that while working on each indicator, this report adopts a unified methodology that deals with the indicator from the international perspective according to the international treaties, the perspective of the Constitution and national laws, and finally from a practical perspective related to the actual application.

## 2. Positive trends

### a. Freedom of opinion and expression

Freedom of expression is what differentiates Lebanon from other countries in the Arab World and region since Lebanon is considered to be a haven for thinkers, journalists, and activists. This freedom, which is affected by the regime and the current culture, in turn, affects society and the democratic practice. Lebanon solidified the respect and security of freedom of expressions by adopting it in the Constitution and legal texts and by signing international treaties and charters.

In terms of treaties, Article 19 of the International Covenant on Civil and Political Rights states, "everyone has the right to freedom of opinion and expression without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." It should be noted that Lebanon has not yet joined the Optional Protocol of the International Covenant on Civil and Political Rights.

Articles 13 and 17 of the Convention on the Rights of the Child (CRC) declare that the child shall have the right to freedom of expression and to access information. Article 17 of the CRC also stresses the important role that is played by media and obliges countries to encourage mass media and the dissemination of information and material of social and cultural benefit to the child. The CRC also encourages countries to cooperate in the production, exchange, and dissemination of such information and material from a diversity of cultural, national, and international sources.

On the national level, section D of the Lebanese Constitution's preamble refers to freedom of opinion, while Article 13 states that the freedom to express one's opinion orally or in writing, freedom of the press, freedom of assembly, and the freedom of association are guaranteed within the limits established by law.

Despite the fact that all of the above aim to ensure the absolute freedom of opinion and expression by all means, the following Lebanese statutes regulate and restrict free expression:

- The Press Law of 1962, which regulates journalism in Lebanon;
- The Press and Publication Law;
- The Media Law of 1994;
- As for the Penal Code, it regulates this freedom through imposing penalties on some of the violations related to the work of the press and media.

In practice, Lebanon is considered to be one of the countries that embraces political activists as well as immigrants from neighbouring countries who have escaped oppression by nearby authorities. This is due to the fact that Lebanon benefits from a wider margin of public freedoms as compared to nearby countries.<sup>15</sup> According to the 2010 annual report of Reporters Without Borders, Lebanon is ranked 61<sup>st</sup> out of 175 countries. The report points out, "deep political polarization is mirrored by Lebanon's different media. Although the Lebanese press continues to enjoy freedom of expression virtually unrivalled in the region, it has been undermined by political tensions."<sup>16</sup>

A number of positive developments occurred in recent years and helped to ensure freedom of expressing opinion and freedom of media. Among these developments are:

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<sup>15</sup> Freedom of expression and opinion and information, the national plan for human rights, the parliament, human rights parliamentary committee, p. 7.

<sup>16</sup> See <http://en.rsf.org/report-lebanon,157.html>.

- Law number 330 dated 18/5/1994 cancelled pre-trial detention and imprisonment of journalists. This law guarantees that upon violating the Publication Law, such as publishing false news, refusal to publish a correction from the Minister of Information, or publishing confidential deliberations and parliamentary sessions, journalists and publishers receive full protection from imprisonment. Despite the decrease in number of sanctions, the imprisonment of journalists is still possible in cases such as slander, libel, jeopardizing public safety by publishing false news, and inciting sectarian and ethnic prejudices.<sup>17</sup>
- The reopening of the Lebanese MTV channel on 31 March 2009 after a forced closure period that started in 4 September 2002 when the channel was accused of violating Law No. 171 dated 6/1/2000 that prohibits broadcasting election advertising. This closure was based on a judicial decision of political background that was ratified by court of appeals of publications.<sup>18</sup>
- Since the year 2005, the treatment of reporters has improved. For example, leniency was shown towards Mr. Charbel Khalil, the director of the program *Basmat Watan* that is on LBC channel. Despite his criticism of the character of Hezbollah's Secretary General, Al Sayed Hasan Nasrullah, through his comedy program in a way that affects his religious position, Mr. Charbel Khalil did not stand in front of security authorities although he was called. This was due to the insistence of the Minister of Information to deal with this case according to the law. In addition, after the year 2005, one notices a significant increase in the courage of the media and the public to present public criticism, which was not possible prior to that year.<sup>19</sup>

Despite the recent decrease in the number of pre-trial detentions and imprisonments of journalists, the Skeyes Center for Media and Cultural Freedom (Samir Kassir Eyes), which issues annual reports monitoring cases related to freedom of media and culture in the region, reported that more than 50 lawsuits were filed against journalists in the year 2010. Most of the lawsuits alleged slander, libel, or inciting sectarianism due to the increase of political divisions.<sup>20</sup>

The report also noted thirteen cases of assaults on journalists in 2010 carried out with the intention of preventing them from expressing their views. The methods of intimidation varied between threats, verbal and physical abuse, and threatening messages with varying character and tone. Violations against journalists in Lebanon reached the level of assassinations and the use of force and terrorism in order to suppress the freedom of expression. Samir Kassir, a journalist and university professor, was assassinated using a car bomb on 2 June 2005. The assassination suffocated his journalistic boldness and voice that had affected public opinion. Also, Gebran Tueni, a member of the Lebanese parliament and a renowned courageous journalist, was assassinated by a car bomb on 12 December 2005.<sup>21</sup> Gebran Tueni, the son of journalist Ghassan Tueni and chairman of *An-Nahar* newspaper, participated in the 14 March uprising that occurred after the assassination of the former Lebanese Prime Minister, Rafik Hariri. This uprising eventually led to the withdrawal of the Syrian army from Lebanon. On 25 September 2005, journalist May Chidiac suffered severe injuries in her left leg, but survived an assassination attempt. The attempt was due to Chidiac's continuous tackling of political issues and to her daring criticism. The assassination of some of the most prominent faces in the media during the same year forced journalists to fear for their personal security and put journalism as a whole under a continuous threat.<sup>22</sup>

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<sup>17</sup> Arab Center for the Development of the Rule of Law and Integrity, *Media in the Arab World: Monitoring and Analysis (Jordan – Lebanon – Morocco – Egypt)*, (2007), pp. 245-246.

<sup>18</sup> *The Reopening of MTV Channel Reminds the Lebanese of the Syrian Era*, (Middle East University, 9 April 2009).

<sup>19</sup> Human Rights Parliamentary Committee, *Freedom of Expression and Opinion and Information: The National Plan for Human Rights*, p. 18.

<sup>20</sup> Samir Kassir Eyes, *2010 Annual Report*, (Center for Media and Cultural Freedom).

<sup>21</sup> See [www.march14.org](http://www.march14.org).

<sup>22</sup> *Four Years Since the Assassination Attempt of May Chidiac*, (The Arab Network for Human Rights Information, 2009).

The Lebanese Constitution and the laws that regulate freedom of expression and media offer protection and guarantees to the freedom of journalism and broadcasts, yet it does not include cinemas, theaters, and publications.<sup>23</sup> Permission from the General Security is required for publications that are not issued in periodicals.<sup>24</sup> Moreover, imported movies as well as the films of local publication undergo prior censorship. The General Directorate of the General Security and a committee formed of several officials, carry out the role of censoring and voting on what movies to air and what to ban, or what parts to exclude prior to releasing the movie in Lebanese cinemas. It should be noted that this restriction and prior licensing is only limited to movies that are being shown in cinemas and does not include VHS movies sold in specific retail stores or aired on local television.<sup>25</sup> Since the year 1977, the theater has been subject to similar prior censorship from the General Directorate of the General Security. The imposed penalties vary from banning the showing, shutting down the theater, fines, or imprisonment.

Establishing a television channel, a radio station, a satellite channels, a daily or periodical newspaper, or a publication, requires prior licensing from specialized authorities. Only books are not subject to any censorship or prior licensing. This turned Lebanon into a center of attraction for Arab publishers.<sup>26</sup>

As for the internet, the network is still unorganized and internet cafes are scattered all over the Lebanese territory. Even though the Ministry of Telecommunication's website indicates that the internet sector benefits from absolute freedom, the Ministry also declares that voice and video communication are illegal in Lebanon.<sup>27</sup>

#### b. The laws are publicized and widely accessible

As for the possibility for the public to access Lebanese laws, Lebanese laws are usually published in the official gazette and any person is allowed to easily access them. The right to access Lebanese laws is based on the right to access information, which Lebanon has abided to.

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<sup>23</sup> Arab Center for the Development of the Rule of Law and Integrity, *Media in the Arab World: Monitoring and Analysis (Jordan – Lebanon – Morocco – Egypt)*, (2007), p. 205.

<sup>24</sup> Legislative Decree number 55 issued in 1967.

<sup>25</sup> Arab Center for the Development of the Rule of Law and Integrity, *Media in the Arab World: Monitoring and Analysis (Jordan – Lebanon – Morocco – Egypt)*, (2007), p. 206.

<sup>26</sup> Arab Center for the Development of the Rule of Law and Integrity, *Media in the Arab World: Monitoring and Analysis (Jordan – Lebanon – Morocco – Egypt)*, (2007), p. 210.

<sup>27</sup> Arab Center for the Development of the Rule of Law and Integrity, *Media in the Arab World: Monitoring and Analysis (Jordan – Lebanon – Morocco – Egypt)*, (2007), p. 213. This information was certified by the Ministry of Telecommunication.

In addition, Articles 10<sup>28</sup> and 13<sup>29</sup> of the United Nations Convention against Corruption guarantee the freedom to access information.

Additionally, Lebanese law states that the freedom of expression and the freedom to access information is guaranteed. Yet, there is no law or provision that further details the freedom to access information.

All the Lebanese laws are published in the official gazette and made available to public. The official gazette is issued by a designated department of the directorate general of the Council of Ministers' presidency. The gazette is issued on Thursday of each week and also as needed. The designated department also issues the minutes of the parliamentary sessions. The content of the official gazette includes constitutional laws, decrees, official decisions, official declarations, legal provisions, laws, lawsuit announcements, commercial register announcements, and the official statements issued by the administrations, public institutions, and municipalities.<sup>30</sup>

The gazette also includes summaries of judicial rulings, judicial announcements, announcements of the commercial register's secretariat, announcements of the real estate register's secretariat, private announcements such as the call for holding a general assembly meeting, companies' budgets, and announcements related to the protection of commercial, industrial, and literary property.<sup>31</sup>

In order to accompany the current development, the official gazette has been mechanized and published on the internet. Certain websites offer essential and important information to people in Lebanon and people abroad on how to complete their transactions in the public sector.<sup>32</sup> These websites also link people to other websites that might contain information of interest.

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<sup>28</sup> The text of Article 10 reads: "Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:  
(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;  
(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and  
(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration."

<sup>29</sup> The text of Article 13 reads: "1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:  
(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;  
(b) Ensuring that the public has effective access to information;  
(c) Undertaking public information activities that contribute to nontolerance of corruption, as well as public education programmes, including school and university curricula;  
(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:  
(i) For respect of the rights or reputations of others; 16  
(ii) For the protection of national security or ordre public or of public health or morals.  
2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention."

<sup>30</sup> See <http://www.lebanonwindow.com/modules/publisher/item.php?itemid=29>.

<sup>31</sup> Elias Chalhoub, *Report on the State of the Judiciary in Lebanon*, (The Arab Center for the Development of the Rule of Law and Integrity, 2004).

<sup>32</sup> See [http://www.informs.gov.lb/informs\\_ar/Pages/Home.aspx](http://www.informs.gov.lb/informs_ar/Pages/Home.aspx).

The right to access laws is not absolute as citizens are prohibited from accessing certain decisions and laws, such as the parliament's internal organization and the organization of the Council of Ministers and the public administrations.

Due to the absence of any law related to freedom of access to information and the prohibition of accessing certain laws, the National Network for the Right of Access to Information was established in April 2008 by the Lebanese Parliamentarians against Corruption (LebPAC), the Lebanese Transparency Association (LTA), and Association pour la Défense des Droits et des Libertés (ADDL), in collaboration with the American Bar Association (ABA) Rule of Law Initiative in Lebanon. It includes representatives from the government, civil society, media, public sector, and the private sector. The goal of the network is to enhance transparency and accountability in Lebanon, as well as to promote the rule of law and civil participation through access to information and whistleblower protection.

This network has submitted to the Parliament a draft law related to the access to information. It has also worked on raising awareness on this right among the citizens, private and public sector, the parliament members and candidates, and media, as well as working to prepare citizens to be able to ask for their right of access to information and right to whistleblower protection.<sup>33</sup>

### c. Freedom of belief and religion is effectively protected

Lebanon is a secular state that does not have any religious identity. According to the Lebanese Constitution, the only source of power is the people (subsection B of the Preamble). Thus, there is no reference in the Constitution to any religion as a source of law.

Lebanon guarantees the right to freedom of religion and belief in its Constitution and laws. Additionally, freedom of religion and belief is protected by a number of international treaties that Lebanon has ratified.

The neutrality of the state, as set down in some national laws, is a characteristic of a secular Lebanon where the right to freedom of religion and belief is guaranteed. For this reason, many people have immigrated to Lebanon while running away from violations and religious discrimination in other countries.

Articles 18 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights guarantee the freedom of belief and religion. The protection of freedom of religion and belief stated in these treaties includes the right to have a religion and to change a religion, and the right to manifest religion or belief in observance, practice and teaching. Such freedom has no limitation except certain restrictions provided by law and that are necessary for the respect of the rights and reputation of others, national security, public order, public health, and public morality. Since Lebanon has ratified both treaties, it is obliged to protect and guarantee these freedoms.

The Lebanese Constitution guarantees in Article 9 the absolute freedom of belief with no limitations<sup>34</sup>. It also respects all religions and confessions. The associated religious practices are guaranteed with no limitations on condition that they do not interfere with public order.

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<sup>33</sup> Hiba Huneini, *Right of Access to Information*, (2010).

<sup>34</sup> Article 9 Lebanese Constitution [Conscience, Belief]: "There shall be absolute freedom of conscience. The state in rendering homage to the Most High shall respect all religions and creeds and guarantees, under its protection, the free exercise of all religious rites provided that public order is not disturbed. It also guarantees that the personal status and religious interests of the population, to whatever religious sect they belong, is respected.", [http://www.servat.unibe.ch/icl/le00000\\_.html](http://www.servat.unibe.ch/icl/le00000_.html) (last accessed 20/11/2011).



In addition to the abovementioned, Article 10 of the Lebanese Constitution provides further guarantees associated with freedom of religion and belief.<sup>35</sup> This Article refers to the right of religious groups to have their own schooling systems provided that they abide by the laws on education, do not interfere with public order and morals, and do not offend other religions and beliefs.

Despite the fact that the religious rights stipulated in Article 9 of the Constitution does not cover many tangible religious expressions due to the lack of any non-sectarian civil recognition of religion; Article 10, on the other hand, covers tangible religious manifestation related to public education.

On another level, the Lebanese Constitution grants some political rights to the confessional groups, as set in the articles below:

- Article 24 of the Constitution distributes all seats of the parliament equally between Christians and Muslims and proportionally among the confessions of each religion and among the different Lebanese territories.<sup>36</sup>
- Article 95 also states that the parliament is to be elected on the basis of equality between Muslims and Christians and that the government should take the appropriate measures to achieve the abolition of political confessionalism according to a transitional plan. However, measures toward abolition of sectarian distribution of government power have not been achieved at this time, 37 and past proposals have had negative effects on social and political relationships among the different religious groups.<sup>38</sup>

According to Resolution No. 60 LR dated 13/3/1936 that governs the religions in Lebanon, there are 18 confessional groups in Lebanon. However, the number of followers for each confession is unknown due to the absence of official statistics. The 18 official confessions are divided into five Islamic confessions, twelve Christian confessions, and one Jewish confession.

Articles 24 and 95 of the Lebanese Constitution grant the official religious communities, as stipulated in Resolution no. 60 LR dated 13/3/1936, the right to be represented in public offices, in the cabinet, and in the parliament. Such representation has caused the regime to be confessional where religious affiliation largely determines one's political rights and privileges.<sup>39</sup>

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<sup>35</sup> Article 10 [Education, Confessional Schools]: "Education is free insofar as it is not contrary to public order and morals and does not interfere with the dignity of any of the religions or creeds. There shall be no violation of the right of religious communities to have their own schools provided they follow the general rules issued by the state regulating public instruction.", available at [http://www.servat.unibe.ch/icl/le00000\\_.html](http://www.servat.unibe.ch/icl/le00000_.html) (last accessed 20/11/2011).

<sup>36</sup> Article 24 [Electoral Laws]:

(1) The Chamber of Deputies is composed of elected members; their number and the method of their election is determined by the electoral laws in effect. Until such time as the Chamber enacts new electoral laws on a non-confessional basis, the distribution of seats is according to the following principles:

a. Equal representation between Christians and Muslims.

b. Proportional representation among the confessional groups within each religious community.

c. Proportional representation among geographic regions...", available at [http://www.servat.unibe.ch/icl/le00000\\_.html](http://www.servat.unibe.ch/icl/le00000_.html) (last accessed 20/11/2011).

<sup>37</sup> UNDP, *Lebanon 2008-2009 National Human Development Report, Towards a Citizen's State*, (UNDP, 2009).

<sup>38</sup> Article 95 [National Committee]:

[...] (3) During the transitional phase:

a. The confessional groups are to be represented in a just and equitable fashion in the formation of the Cabinet.

b. The principle of confessional representation in public service jobs, in the judiciary, in the military and security institutions, and in public and mixed agencies are to be cancelled in accordance with the requirements of national reconciliation; they shall be replaced by the principle of expertise and competence. However, Grade One posts and their equivalents are exempt from this rule, and the posts must be distributed equally between Christians and Muslims without reserving any particular job for any confessional group but rather applying the principles of expertise and competence.", [http://www.servat.unibe.ch/icl/le00000\\_.html](http://www.servat.unibe.ch/icl/le00000_.html) (last accessed 20/11/2011).

<sup>39</sup> UNDP, *Lebanon 2008-2009 National Human Development Report, Towards a Citizen's State*, (UNDP, 2009).

Any sect that is not considered official as stated in the law is not granted any legal privileges. For example, people belonging to such sects cannot get married, divorced, or have official governmental posts. However, they are granted the right to manifest and practice their religion, as well as to own real estate in Lebanon. Any religion or sect that seeks official recognition by the Lebanese authorities must submit documents about its beliefs and principles to the government to determine whether the principles contradict the Lebanese Constitution and the values. The religious group must also guarantee that the number of people in this group is enough to maintain its continuity.<sup>40</sup>

If anyone wants to leave his sect, he must “convert” to another official sect and will be subjected to the personal status system of the second sect. Therefore, everyone in Lebanon must belong to a sect and cannot be secular. Otherwise, he will be deprived of his personal status rights.<sup>41</sup>

Although the Lebanese Constitution and laws protect the freedom of belief and religion, such laws have enabled religions to interfere in politics and led to a political system and society based on confessionalism. Since the electoral law is based on religious affiliation, the parliament members have become representatives of the religious communities whose seats they occupy rather than representatives of the whole nation or even the geographic districts that elected them.

Confessionalism’s role as a constitutional custom has been increased since Lebanon’s independence. The national pact promulgated in 1943 that ended the French mandate was considered a political compromise between the Christian and Islamic religions to obtain independence and continue to govern the state on the basis of the pre-determined religious representation ratios provided for in the Constitution. Since independence, the practices of distributing government power based on religion expanded to include other groups for representation in certain administrative and political positions, including the President, Prime Minister, and the Speaker of the Parliament.

However, Lebanese society exploded in 1975 with a civil war that lasted until 1990. The civil war ended when the Lebanese parliament members enacted the Taef Agreement in Saudi Arabia. Such agreement aimed to put an end to the civil war and restructure the confessional regime. The Taef Agreement considered abolishment of confessionalism as an important national goal that must be achieved in while starting with removing the markers of one’s confession or sect from national identity cards, and abolishing the practice of religiously-apportioned representation in governmental institutions.<sup>42</sup>

In 2008, after an armed conflict between political parties in Lebanon, an agreement among the main political parties was concluded (the Doha Agreement). According to this agreement, no major decisions by the Lebanese government can be made without the consent of all major religious communities, no matter how large the majority supporting the government is. Thus, this agreement increased the interference of religion in politics.

Religious language is being used on many religious, political, and social occasions as an incitement method among the confessions and sects. Such incitement has divided people and led to decreased solidarity and cohesion among the Lebanese people.<sup>43</sup> However, there are several initiatives that have been taken to ameliorate this problem and to guarantee the freedom of religion.

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<sup>40</sup> Permanent Peace Movement, *Annual Report on Tolerance in Lebanon*, available at <http://ppm-lebanon.org/ar/content/97>.

<sup>41</sup> Permanent Peace Movement, *Annual Report on Tolerance in Lebanon*, available at <http://ppm-lebanon.org/ar/content/97>.

<sup>42</sup> Omar Hourî, *Constitutional Law*, p 137

<sup>43</sup> Permanent Peace Movement, *Annual Report on Tolerance in Lebanon*, available at <http://ppm-lebanon.org/ar/content/97>.

The Minister of Interior and Municipalities, Ziad Baroud, issued a decree on 11 February 2009 that granted the Lebanese citizens the right to remove their religious affiliation from their national personal identification documents and from their civil records.<sup>44</sup>

There are also spontaneous campaigns and marches by youth independent from political parties that are lobbying for toppling the sectarian-based regime. Such campaigns and initiatives have been promoted by a number of Facebook groups starting in February 2011 that led to organizing marches, conferences, and sit-ins in Beirut and other cities.<sup>45</sup>

#### d. Freedom of assembly and association is effectively protected

##### Establishment of Association

Freedom of assembly and association is the main factor that reflects the level of freedom and respect of human rights in a society. Thus, the laws that govern these freedoms are also indicators of the level of democracy and the level of which the state controls civil society.<sup>46</sup>

Lebanon has long been characterized as having an active civil society that plays a key role in influencing the state and the democratic practice. The roots of this culture are based on the state's role and the status of the private sector in the Lebanese economy, education, medical care, social system, and all the fields that affect the nation.<sup>47</sup>

In the south and east Mediterranean region, Lebanon is considered one of the countries that possess laws that highly encourage the establishment of associations. Amongst the Arab countries, Lebanon is renowned for not imposing any limitations, regulations, or conditions on the right to establish associations.

In Lebanon, simple procedures are required to officially establish an association. These procedures do not include the need for a prior licensing and only require the submission of a notice to the Ministry of Interior and Municipalities.

Even though the Ministry of Interior has not yet issued any official reports regarding the number of active associations in Lebanon, it is estimated that the rate is one association for every three thousand people.<sup>48</sup>

On one side, the right to establish associations and the freedom of assembly is a sacred right in the international conventions that Lebanon has joined, and on the other side, it is a sacred, fixed, and organized constitutional right based on Lebanese laws. For example, according to Article 20 of the Universal Declaration of Human Rights, "Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association."

Further, Article 22 of The International Covenant on Civil and Political Rights discusses in detail the freedom of association and states:

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<sup>44</sup>Permanent Peace Movement, *Annual Report on Tolerance in Lebanon*, available at <http://ppm-lebanon.org/ar/content/97>.

<sup>45</sup>Ashraf Monzer, "Activists Gear-Up for Second Anti-Sectarian Rally", (5 March 2011), available at <http://www.dailystar.com.lb/News/Local-News/Mar/05/Activists-gear-up-for-second-anti-sectarian-rally.ashx#axzz1e4yNRPEQ>.

<sup>46</sup>Lebanese Center for Human Rights, *The Situation of Freedom of Association in Lebanon: What Are the Future Chances*, p. 9.

<sup>47</sup>Farid Al Khazen, *Political Parties in Lebanon: The Boundaries of Democracy in the Experience of Parties*, (Beirut: 2002), pp. 65-96.

<sup>48</sup>Lebanese Center for Human Rights, *The Situation of Freedom of Association in Lebanon: What Are the Future Chances*, p. 10.

- Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
- No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
- Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

According to Article 15 of the Convention on the Right of the Child:

- States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
- No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

However, Lebanon has not made the necessary amendments to the law on associations to be in compliance with this convention, and thus the legal age of joining associations is still 20.

In addition to the Constitution's general principle guaranteeing public freedoms as a basis for the establishment of the Lebanese state, several Lebanese provisions regulate the creation of associations and the right to establish them:

- Article 13 of the Lebanese Constitution states, "The freedom to express one's opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association are guaranteed within the limits established by law."
- The 1901 Law of Associations regulates all associations except certain associations that are governed by private law and require prior licensing. This law, which was inspired by the French law and issued by the Ottoman Empire, has never been changed and only few amendments have been adopted.
- The Lebanese Law of Association also regulates the political parties, and therefore regulates the rules on establishing associations also applies on establishing political parties. Due to the lack of a law that allows the state's intervention in the parties' internal affairs, Lebanon is distinguished as a country that offers guarantees to political organizations.

It should be noted that the 1901 Law of Associations does protect the associational right of all citizens because it excludes certain groups from establishing or joining associations. Civilian employees are prohibited from joining professional associations or labor unions. The judicial law imposes similar prohibition on judges. Palestinians in Lebanon are considered foreigners and have no right to establish associations, and thus the Palestinian organizations already established are deemed unofficial.

There are also decrees and circulars that regulate associations, such as the circular issued by the Ministry of Interior on the 15 June 2006 numbered 10 A.M/2006, which deals with the establishment and workflow of associations. The circular stresses the principle of freedom of association in order to try to end any abusive practices or violations by the administration. The circular also states that requirements for establishing an association is limited to notifying the administration, and prior permission is not required.

The administration is allowed to refuse such notice in only two cases:

- If the statement of information does not include the information specified by the law.
- If the association's type of work contradicts with public morals, state security, or public order.

The circular also states that an association is considered admissible only through a decree issued by the Council of Ministers. This principle is important as it secures the freedom of association, and it puts an end to the administration's abuses. Therefore, this shows that the Lebanese legislator is keen on securing the right of establishing associations without any restrictions.

In addition to the associations sponsored by the 1909 Law of Associations, there are certain associations regulated by private law and requiring prior licensing for establishment. The associations that require prior licensing includes the foreign associations, sports and youth associations, trade unions, employers' unions, cooperative funds, and cooperatives.

The foreign associations are those headquartered abroad, or managed by foreigners, or with at least one fourth of their members as foreigners. Based on a decree by the cabinet of ministers, these associations require prior licensing, while the registration process requires a lot of time and has described as boring, slow, and expensive. The sports and youth associations include the scout associations, the youth and education movements, the sports and youth clubs and its unions, and the committees responsible for assembling unions. The reasons behind the separation between these associations and the ones governed by the 1909 Law of Associations are not clear. Some stipulate that the reason is that some of these associations have members who are younger than the permitted age (20 years) in the 1909 Law of Associations.

#### Freedom to form trade unions

Because Lebanon is a member of the International Labor Organization (ILO) and has ratified a number of international treaties, Lebanon abides to ensure freedom of trade unions. Lebanon is committed to the rules of the Declaration of Philadelphia of 10 June 10 1944, upon which the principles of the International Labor Organization are based on. It is also committed to the convention 98 "Right to Organize and Collective Bargaining Convention", and to The International Covenant on Civil and Political Rights that sanctifies the general principles in the social and labor field.

Article 8 of the International Covenant on Economic Social and Cultural Rights guarantees the following:

- The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
- The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;
- The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

Lebanon has not yet ratified the 1948 ILO Convention 87, which concerns with the freedom of association and the protection of the right to organize. This convention sanctifies the right of workers and employers to establish and join organizations without previous authorization.

## Right of Assembly

As for the freedom of assembly, the Lebanese state adopted this freedom and labelled it as the true face of the democratic system. Lebanon has joined international conventions that deal with these rights, and implemented these conventions with the following laws:

- Law number 44 was issued on 24/6/1971 and allowed Lebanon to join the International Convention on the Elimination of All Forms of Racial Discrimination. Article 5 of this convention covers the right to freedom of peaceful assembly and association.
- Based on the Decree Number 3855 dated 1/9/1972, Lebanon joined the International Covenant on Civil and Political Rights. Article 21 of the Covenant states that the right of peaceful assembly shall be recognized, and that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society.

Freedom to demonstrate is regulated by Decree Number 115 dated 12/8/1932. Article 2 of this Decree addresses suppressing violations that might threaten public security. The Decree limits the freedom to demonstrate in the following manner: "it is considered as disruption of the peace and public order and therefore is part of the sanctions mentioned in article 1: Participating in unauthorized groupings, gatherings or parades." Thus, the legislator has limited the freedom to demonstrate. The Ministry of Interior and Municipalities issued Decree Number 4082 dated 14/10/2000, which assigns to the department of political affairs, parties, associations the task of commenting on the notices related to meetings and demonstrations.

In reality, since 2005, Lebanon has witnessed an increase in number of associations, especially human rights associations, which are now working with a wider margin of freedom and effectiveness. In 2008, the assigned Minister of Interior Ziad Baroud put an end to many of the administration's violations and abuses. The government's interventions into associations' activities ended, such as the refusing to deliver notices and dissolving associations for arbitrary reasons. Additionally, the waiting period for the delivery of notices decreased to a maximum of two months.

Because of the 2009 parliamentary elections, the Minister of Interior and his team succeeded in building a partnership with Lebanese civil society organizations. This was one of the important elements that characterized the performance of this ministry and contributed to it winning the United Nations Public Service Award beating out over 400 other candidates from all over the world.

Minister Ziad Baroud played an important role in supporting civil society by adopting a new parliamentary elections law. The level of cooperation between the state authority and civil society was a positive and unprecedented experience.

Even though freedom of assembly and association in Lebanon is protected by international treaties and by the Lebanese laws and Constitution, these rights are not absolute, and instead, are limited by administrative practices, such as requiring prior licensing for demonstrations. Even though the administration is obliged to deliver notices of establishment, in some cases it delays or refuses to do so. Under the pretext of helping the founders of an organization, the administration proposes model organizational rules that eventually turn into mandatory requirements.

In addition to the administration's violations against the right to assemble and right to associate, the report also highlights violations by the associations themselves. These violations reflect poorly on civil society and increase chaos and corruption without achieving the goals of the civil society, which is the development and advancement of society. Recently, establishing an association has turned into a means for financial gain as some associations aim only for prestige, attention, or political gain. The trade and craft unions have turned into political and sectarian tools that have no relations to any of the unions' demands. Lebanese civil society is suffering from due to chaotic associations, and a lack of coordination and unification of efforts. There is too much overlap between the projects of different organizations and there is a general lack of specialization in the services that associations offer. Most of the associations in Lebanon suffer from poor experience and administrative skills, and from a lack of financial expertise.

## 3. Negative trends

### a. Government officials do not request or receive bribes

In general, the term “corruption” covers cases where the principle of integrity has been violated. The Transparency International Organization defines corruption as the “abuse of power for the personal benefit”. The World Bank defines it as the “abuse of public office for personal gains”. Lebanese law did not introduce a specific definition for corruption, yet Lebanese law attempts to combat corruption through some of the provisions in the Lebanese Penal Code and other laws, such as Articles 359 through 366 of the Lebanese Penal Code, based on Legislative Decree Number 340 dated 1/3/1943.<sup>49</sup>

As for bribery, which is considered one of the most blatant types of corruption, Lebanese law has adopted a series of articles for this issue. These extend from Articles 351 to 356, in addition to Articles 357 and 358.

The different forms of corruption

In an Arab-language article titled *An Attempt to Define Corruption*, Lebanese writer Samir Al Tanir states that corruption usually occurs when an employee accepts any demand, extortion, or bribe in order to facilitate withholding or conducting a public competition. It also occurs when agents or brokers from private businesses offer bribes in order to benefit from public policies or procedures or in order to defeat competitors and achieve profits outside the applicable legal framework. It also occurs through the abuse of public office by appointing relatives or by stealing state funds.

Based on this definition, one can identify two main types of corruption. The first involves making payments to employees and officials in the government and the public or private sector in order to facilitate the signing of an agreement. The second is through acquiring public funds and appointing relatives to public office. The latter is the most common in Lebanon.

Reality of Corruption

The article titled “Bribery is the Key to Facilitate Administrative Transactions in Lebanon - Its Clients Vary from the Poor to the Director” published on AIQuds website on 18 June 2010 states:

*Elie, the successful architect, explains upon starting a new project, he is forced to distribute envelopes of Asprin or Panadole. These names refer to the bribes offered to the employees and officials to entice them to sign the project's papers. While refusing to reveal his family name, Elie adds “we need a lot of panadole envelopes to distribute on the municipality employees, the security forces and the inspectors, as each one of them is related to the project and its continuity. In case we fail to pay, they always manage to find excuses to delay the project for months, if not years.*

In an interview published in issue 50 of *Mar'at Al Khaleej* magazine, Abdul Hafiz Ghalayini, lawyer and member of the Beirut Municipal Council, acknowledged that corruption is present to varying degrees in all the Lebanese administrations.

Factors of corruption

The preamble to the Civil Service Board’s annual report for the year 2010 referenced the behavior of some officials in the public administration who act on behalf of confessional, regional, or political groups, rather than for the benefit of the people as a whole.

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<sup>49</sup> Article 359: “each employee, entrusted to manage, collect, or maintain funds or other belongings of the state, who embezzles shall be punished by imprisonment from 3 months to 3 years and to pay a minimum fine equal to the amount he embezzled.”

Article 362: “Similar punishment is imposed on any employees who offer illegal exemption of taxes, fees or fines.”

These officials also hold these positions equally as they disregard the concept of public service, public benefit, and public office, which carry with it utmost respect to the principle of equality between citizens.

The rule of law has not been achieved in this area. This rule involves the subjugation of rulers and ruled, in all their behaviors, actions, and businesses, to the rules of law, to respect, implement and abide to the legal basis, and to consider the constitutional and legal rules as a source of power and pride.

An article published in Annahar Newspaper on 18 November 2004 and written by an advisors to the former minister of interior, Rabih Al Shaer, addresses the causes of corruption and ways to combat it:

*Several things have contributed in reaching this level of corruption, such as ignoring the issue for decades which resulted in considering corruption as one of the social norms and characteristics. Another cause of corruption is the absence of the state's legitimacy during the civil war and the appointment of some of the militia members after the war. The complications increased with the low wages, political interventions in the judiciary, disruption of the role of the parliament, spread of the confessional mentality, absence of the regulatory devices, discretion in the compilation and implementation of the laws, absence of the culture of citizenship, and the media's negative performance in uncovering the truth.*

Due to the above-mentioned reasons, corruption is transformed into a pure social phenomenon. This phenomenon increased when democracy in Lebanon was introduced as an image rather than an actual thing, and when it was clear that accountability is absent and that the public opinion might be in a state of coma.

In a recent press statement, the Minister of Environment, Ahmad Rahhal, announced that there are employees within the administration who receive bribes in order to protect mining companies. The minister was referring to mining companies that extract sand and stones from the Lebanese mountains and thus pollute the environment and decrease green spaces.

The report prepared by the Lebanese Transparency Association, in cooperation with the United Nations, tilted *Towards a National Anti-Corruption Strategy*, which was released on 25 March 2009, states:

*The reasons behind corruption in Lebanon are not unique. Corruption is the result of a long history of favoritism, devastating civil war, various conflicts, economic suffering from heavy debt, unbalanced political democratic system, and rooted sectarianism that merges with other causes to create additional obstacles.*

Therefore, most reports refer to the same factors and causes for corruption in Lebanon. Yet, the above-mentioned report selected nine causes and factors for corruption in Lebanon, which are:

- Sectarianism, which is considered the main cause of corruption in Lebanon and has resulted in inequality between citizens;
- The political situation, which represents a fertile ground for corruption;
- The continuous violation of laws.
- A weak legal framework characterized with ambiguity and imbalance in the basic laws and legislations;
- Incompetent state body that fails to accomplish its task effectively;
- Undeveloped economy in some of the sectors, especially the agricultural sector, and increasing level of poorness;
- Complete absence of the culture of accountability and its mechanisms;
- The inability of civil society and the media to adopt an effective role in monitoring and implementing the decision-making process.



## Initiatives of administrative reform

The Lebanese state's attempts to combat corruption has been described as timid. These attempts began with joining the United Nations Convention Against Corruption through Law Number 33, issued in 2008.

In Lebanon, there is no series of interrelated projects that deal with administrative reforms. Instead, there are reformatory islands that still require wider dissemination of experience in addition to further publicity. When closely monitoring the Lebanese administrations, observers are surprised to find some administrations that adopted modernity and development, while other administrations are still working according to out-dated methods. The model of the Lebanese administration offers a clear picture of an administration going through a difficult transition period while two strong opposing forces clash. Since adopting modernization is not an easy task, and since the risk of falling behind is always present, the Lebanese administration is in desperate need of support and follow-up measures on all of the reform initiatives.

In this context, the above-mentioned report of the Lebanese Transparency Association points out that corruption is first fought by adopting a political decision with unanimous support and a comprehensive vision. Based on this pillar, the process of adopting further public policies becomes a mere translation of this decision.

## b. Equal treatment and non-discrimination

Adopting one generic definition for the term "discrimination" is almost impossible, as neither the Universal Declaration of Human Rights nor other international treaties have done so, even though they use the term several times.

International and regional human rights instruments dealing with specific forms of discrimination differ in their definitions depending on the type of discrimination involved.<sup>50</sup>

Lebanon has ratified several international treaties under which it is bound to guarantee equality as a fundamental right that must be protected. The Constitution, as well as other laws, all asserts the equality among all citizens. On the other hand, the Constitution and some Lebanese laws violate certain rights and discriminate on more than one basis, whether between Lebanese and non-Lebanese or among the Lebanese themselves. Selected cases of non-equality and discrimination have been chosen in this discussion such as the right to public office, women's rights, and Palestinian rights in Lebanon.

### Right to Public Office

The Constitution confirms the principal of equality and equality clauses can be found in several articles therein. Section C of the Preamble guarantees equality and non-discrimination among people by stating, "Lebanon is a parliamentary democratic republic based on respect for public liberties, especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination".

Furthermore, Article 7 also states, "All Lebanese are equal under the law, enjoying equally civil and political rights, and performing duties and public responsibility without any discrimination among them."

In addition to the two general clauses on equality, Article 12 refers to equality in public office by stating, "Every Lebanese has the right to hold public office, no preference being made except on the basis of merit and competence, according to the conditions established by law."

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<sup>50</sup> Patricia Brander et al, *COMPASS: A Manual on Human Rights Education with Young People*, (Council of Europe, 2002), p. 331.

From the above-mentioned articles, it is clear that the Lebanese Constitution guarantees equal treatment and non-discrimination on more than one level. Yet, other rules and articles contradict these equality clauses.

The confessional system in Lebanon manifests itself by granting the different confessions political rights. It reserves certain positions for certain confessions, the clearest example of which is reserving the position of the President of the Republic to the Maronite Christians, the position of the Speaker of the Parliament to Shi'a Muslims and the position of the Prime Minister to the Sunni Muslims. Needless to say, such a restriction is discrimination because it prevents any eligible person of other confessions to take on any of these posts.

In order to abolish this confessional system, the constitutional amendment of 1990 proposed a gradual plan. Section H of the Preamble notes, "The abolition of political confessionalism is a basic national goal and shall be achieved according to a gradual plan."

Article 95 (3) sought to administer the transitional phase leading to the total abolishment of the confessional system in Lebanon by stating, "The principle of confessional representation in public service jobs, in the judiciary, in the military and security institutions, and in public and mixed agencies are to be cancelled in accordance with the requirements of national reconciliation; they shall be replaced by the principle of expertise and competence." Unfortunately, it also stated in subsections (a) and (b) that during the transitional phase:

- the confessional groups are to be represented in a just and equitable fashion in the formation of the Cabinet; and
- grade one posts and their equivalents are exempt from this rule, and the posts must be distributed equally between Christians and Muslims without reserving any particular job for any confessional group but rather *applying the principles of expertise and competence*.

This has negatively affected the administration, in addition to the political life, as confessionalist principles have been remained and even spread throughout the political and administrative life in Lebanon. While commenting on the illegality of the decision of the Beirut Municipality to appoint employees directly even though they did not satisfy the condition of passing the exams, the *2010 Annual Report of the Civil Service Board* indicated that such practices clearly violate the rules of Article 12 of the Constitution, the law, general principles of law, and the rules of justice and fairness.<sup>51</sup>

#### Women's Rights

Lebanon ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) on April 21, 1997, with reservations to Article 9(2), Article 16(1) (c), (d), (f), and (g) and Article 29(2).

Article 9 of CEDAW addresses equal rights for men and women with respect to citizenship and nationality, and Article 16 commits the state to eliminate discrimination against women in matters of the family and marriage.

Even though the Lebanese Constitution guarantees equality before the law according to the Section C of the Preamble and Article 7 above-mentioned, there has not been any article or clause that explicitly prohibits sex discrimination.<sup>52</sup> Furthermore, certain laws explicitly deny the equality between women and men, such as the Nationality Law No. 15 that governs Lebanese citizenship.<sup>53</sup>

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<sup>51</sup> *Report of the President of the Civil Service Board on the Works of the Board for the Year 2010, (23/11/2011)*, available at <http://www.csb.gov.lb/AnnualReport/default.aspx>.

<sup>52</sup> See <http://www.freedomhouse.org/template.cfm?page=176> (last accessed 22/11/2011).

<sup>53</sup> Resolution No. 15 dated 19 January 1925, last amended by Law date 11 January 1960.

The Nationality Law violates women's right to equality by restricting matrilineal granting of Lebanese nationality. Article 1 of the law states the situation in which persons can be considered Lebanese nationals:

- Every child born to a Lebanese father.
- Every child born in Lebanon with no proof of acquiring any nationality by paternity.
- Every child is born on the Lebanese territories of unknown parents or parents with unknown nationalities.

Thus, one can notice that Article 1 states that citizenship is inherited through the father and not via the mother.

Article 5 of the Nationality law grants a Lebanese man the right to give his wife the Lebanese nationality one year after the registration of marriage and upon her request. However a Lebanese woman cannot grant her husband Lebanese nationality. In addition, Article 4 gives a mother of foreign nationality who has gained Lebanese nationality through marriage the right to grant her nationality to her children in the case of the death of the husband/father. However, this right is not granted to the widowers of deceased Lebanese women.

Therefore, one may conclude that the Nationality Law is a violation of the woman's right to equality by violating her right to grant her children the Lebanese nationality under the same conditions as men.

A number of initiatives and campaigns have been organized to raise awareness on this basic right and to lobby for a fair nationality law that guarantees equality between men and women. However, such initiatives are always blocked by the confessional regime in Lebanon. Many politicians in Lebanon are against amending the nationality law because they are afraid of any demographic change that will affect their political strategies. For this reason, such a right in Lebanon is not discussed on as a matter of human rights, but rather as a matter of a political and confessional strategy.

In addition to the Nationality Law's discrimination against women, the Social Security Law<sup>54</sup> also violates the basic rights women, especially in relation to compensation and benefits they enjoy in labor relationships. Such discrimination is based on the ancient supposition that the man is the provider for the family.

According to Article 14 (2) of the Social Security Law, the wife of the secured man enjoys, as a family member, social security benefits. However, the husband of the secured woman does not benefit from such security unless he has reached the age of 60 or is unable to work because of a handicap.

Furthermore, Article 46 (2C) of the Social Security Law states that the family compensation is granted to the wife who is present in the home with her husband and does not work. It is clear from this article that restricting this compensation to the wife who does not work represents discrimination against women.

#### Rights of Palestinian refugees

Palestinian refugees are the largest group of refugees in Lebanon.<sup>55</sup> Many have lived in Lebanon for more than sixty years. Their treatment, as foreigners in Lebanon, represents a total disregard for their specific vulnerable situation.<sup>56</sup>

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<sup>54</sup> Decree No. 13955 dated 26 September 1963, as amended.

<sup>55</sup> All refugees in Lebanon are subject to the reciprocity principle, which means that refugees enjoy their rights on condition that the Lebanese people enjoyment the same rights in the country of the foreigner. However, Palestinians are stateless and can't enjoy the rights of foreigners according to the reciprocity principle. Thus, there is discrimination between Palestinians and foreigners, Committee for Employment of Palestinian Refugee in Lebanon, Legal Texts Governing the Employment of Palestinian Refugees in Lebanon, Executive Summary

<sup>56</sup> Committee for Employment of Palestinian Refugee in Lebanon, *Legal Texts Governing the Employment of Palestinian Refugees in Lebanon Executive Summary*.

The majority of Palestinian refugees live in camps that are found in different Lebanese cities, with a higher concentration in the South and in the suburbs of Beirut. Palestinian refugees in Lebanon live under circumstances of extreme poverty and economic duress where they do not have basic fundamental rights.<sup>57</sup>

Lebanon is a signatory to a number of Arab and international treaties guaranteeing the right to work for every person on its territory, without discrimination for any reason, including status, and on the basis of equality between all in obligations, rights, and benefits. However, Palestinians face large problems in employment because they are prohibited from work in certain jobs that are restricted to Lebanese citizens, and they are required to pay large fees for a work permit because they are considered foreign subjects in Lebanon.<sup>58</sup> However, Palestinians are even not treated equally as other foreigners due to the political rejection of Palestinians' settlement in Lebanon. However, employment is a key factor for integration into a new society. In this way, there could better rules in order to achieve permanent settlement of Palestinians in Lebanon.

In addition to what has been mentioned, Palestinians, in comparison to other nationalities, face a peculiar form of discrimination. All foreigners are allowed to purchase real estate in Lebanon except for Palestinians. Although they might have been born in Lebanon and lived their entire life there, they are prohibited from exercising the basic right to buy land.<sup>59</sup>

#### Human Trafficking

Lebanon is considered to be a destination country for human trafficking victims.<sup>60</sup> Women from Sri Lanka, the Philippines, and Ethiopia who travel to Lebanon legally in order to work as household servants often find themselves in conditions of forced labor through withholding of passports, non-payment of wages, restrictions on movement, threats, and physical or sexual assault.

Trafficking in Lebanon constitutes discrimination against the abovementioned people, especially migrant workers, because they are exploited in the following manner:<sup>61</sup>

- restrictions on movement and/or confinement to the workplace or to a limited area;
- retention of passport and identity papers so that the worker cannot leave or prove her identity and status;
- withholding of wages or refusal of payment;
- debt bondage/bonded labor;
- threats of physical or sexual violence;
- threats of denunciation to the authorities.

Lebanon participated in the drafting of the UN Convention Protocol to Prevent, Suppress and Punish Trafficking and signed it on 15 September 2005. However, Lebanon has not yet approved the International Convention on the Protection of the Rights of all Migrant Workers and their Families and the UN Supplementary Convention on the Abolition of Slavery.

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<sup>57</sup> See <http://www.freedomhouse.org/template.cfm?page=176>.

<sup>58</sup> See <http://www.freedomhouse.org/template.cfm?page=176>.

<sup>59</sup> Law Number 296 published in the official gazette on 5/4/2001.

<sup>60</sup> Children in Lebanon, whether nationals or residents, are trafficked within the country for the purpose of forced labor (mostly street vending), and sexual exploitation, for more information, refer to <http://www.unodc.org/unodc/en/frontpage/lebanon-unodc-launches-report-on-trafficking.html> (24 November 2011)

<sup>61</sup> Kathleen Hamill, *Trafficking of Migrant Domestic Workers in Lebanon A Legal Analysis*, (Kafa - Enough Violence and Exploitation, 2011).

On 24 August 2011, Law No. 164 on Trafficking in Persons was promulgated and was effectuated through an amendment to the Criminal Code by adding Chapter 3 of Book 8 of the second part of the Code. Even though this law is a big step forward in combating trafficking, it failed to offer precautionary measures to protect the victims.<sup>62</sup>

### c. Civil justice is free of unreasonable delays

#### Civil Justice

The work of the civil courts is regulated according to the new code of civil procedure 25, the judiciary law 26 and the law of judicial organization 27, according to three levels:

- First degree courts, which are constituted by one judge or a panel of three judges, and are in charge of examining civil law claims. The one-judge courts usually examine claims of a lesser value than the ones examined by the three judge panels.
- Second degree courts: Courts of Appeal, which are based in each governorate, and are mandated to serve as a second degree court reviewing the decisions of the lower court.
- Court of Cassation, which serves as the ultimate judicial recourse. It is based in Beirut and formed of many chambers.

Regardless of the facts, the Court of Cassation considers cases based on legal rules. When it accepts an appeal, it does not refer the file to a different court of appeal; instead, it considers the case and makes a ruling.

The code of civil procedure is based on principles that established the rules that regulate the courts and determine the way a litigant has to behave until receiving his sentencing. These rules are: independence of the judiciary system, equality before the courts, the need to sentence, the need to explain the provisions, and the need for public trial.

The Lebanese civil courts suffer from constant delay in imposing justice. This is linked to several factors such as the administration's behaviour in general, in addition to factors particularly related to the judicial system and the courts. These factors are: administrative corruption, attacks on the independence of the judiciary, weak coordination between state agencies, lack in quantity and quality of judges, the situation of the Justice Palace in terms of equipment and building, the absence of mechanization, the effective monitoring of legal assistants, and the lack of modern legislation to help speed up the trial process.

#### The reality of work in the Lebanese civil courts

Corruption and a lack of independence of the judiciary also affect the civil courts and are considered to be two of the most important factors undermining the work of the courts. On 22 February 2010, the Euro-Mediterranean Human Rights Network issued a report, written by lawyers Maya Mansour and Carlos Daoud, which stated:

*The independence of the judiciary is a current, if not continuous, debate in Lebanon since it is constantly threatened, directly or indirectly, by various phenomena -structures, institutions, governmental bodies – that have a greater or lesser impact on the organization of the judiciary depending on political, social, historical, cultural, ideological, or even religious factors. According to a UN corruption assessment<sup>64</sup>, six out of ten respondents “strongly agreed” or “agreed” that the Lebanese judiciary is not independent in its decision-making. A few cases which have had extensive media coverage, have led public opinion to question the trust they put in the judiciary. That being said, threats to the independence of the judiciary do not always and necessarily come from the outside, but also, and more insidiously, from within the judicial apparatus.”*

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<sup>62</sup> Ghida Frangieh, *Human Trafficking Law*, (Legal Agenda, 18 October 2011), available at <http://legal-agenda.com/article.php?id=46&lang=en>.

Political interference in civil courts affects the regular functioning of these courts, and also the appointment and transfer of civil judges. Thus, in 1997, the publication of the decree on judicial appointments and transfers led to the resignation of a large number of judges because the executive appointed friendly judges to important positions. The former Minister of Justice Khaled Kabbani himself stated that judicial appointments were considered by the executive as a means of effective pressure on the judiciary because control of appointments exclude unfriendly judges from certain positions and instead permit the appointment of judges with whom politicians can work. In an attempt to limit the interference in the appointment process by political authorities, the Judicial Inspectorate Council published a circular that asked judges to cease contact with politicians who have power over judicial appointments. So far, it has remained ineffective.

Interference with the judiciary, either through the work of courts or the designation of judges, is one of the major obstacles that hinders the workflow of the civil courts and delays the disposition of cases.

#### Processing and construction of the Justice Palace

In order to achieve any given task, the right atmosphere is required. However, the judicial buildings for the Lebanese courts lack the minimum requirement for the assigned tasks. For example, upon observing the Justice Palaces in the districts of Beirut and Mont-Liban, one notices that the building is old and lacks the necessary processing. There have been numerous requests to improve and develop these buildings in order to be worthy of the name 'Temple of Justice'.

#### The decrease in number of judges

The decrease in number of judges is considered to be one of the main reasons causing the delay in the disposition of cases. Citizens, residents, and investors have complained about this problem, which is directly related to the training and preparation of judges. In his report from 2004 issued by the Arab Center for the Rule of Law, lawyer Elias Chalhoub stated:

*In parallel to legislative development, it is necessary to develop the entire juridical/judicial system as it is the cornerstone in the foundation of modern legislation and it is indispensable for ensuring its efficiency, knowing that this system is going to apply, protect and develop the legislations by jurisprudence and by adjusting them accordingly to the social and economical dimensions. Therefore, the juridical/judicial system has to be efficient, quick, decisive, impartial and trustworthy; consequently, it is important to add to the judges' juristic culture some knowledge about economy, finance and the modern techniques of conflict resolution, such as arbitration with all its aspects. It is also important to educate judges about the international and multi-resource contractual and different legal types of conflict resolution.*

There is also lack of education/training among the civil courts employees (legal assistants). Most of the civil courts have suffered a severe decrease in number of legal assistants, who are the ones who execute the majority of the work in the civil courts. For this reason, courts are forced to share legal assistants, which no doubt contributes to the slowness of the judicial process. It has been a long time since Lebanon has had an open competition for legal assistant jobs, and as usual, the main factor behind this hindrance is the on-going political conflict, and the fact that a competitive job process would not fit the current confessional balance in Lebanon. Several of the exams held to appoint legal assistants have been cancelled due to the lack of confessional balance. Despite large donations from governmental and non-governmental organizations, the efforts to develop and train legal assistants for the Palace of Justice have faced many obstacles.

#### The absence of mechanization

The lack of modernization of the work of the civil courts is one of the reasons for the delay in the disposition of civil conflicts. In comparison with other countries, the mechanization of the Lebanese administration is mediocre. This process has yet to find its way into the civil courts, which still follow the old system of recording all data in physical records that might get lost or damaged or lost, resulting in delays in the judicial process.

## Free Litigation

There is no doubt that the importance of the free litigation model is based on adopting the principle of equality before the courts. Yet, the Lebanese legislators have only partially adopted this principle. The Law of Legal Fees imposed various fees on litigants. The highest fee is the fee for executing court decisions, which is 2.5% of the total amount awarded in the lawsuit. This fee is paid in every stage of appeal. In addition, there are other fees and judicial fees that are 1/5 of the above-mentioned fee. These fees are considered very high according to the economical situation in Lebanon.

The above fees are in addition to lawyer fees, which in most cases reach 20% of the value of the claim. Despite the efforts by the Beirut Bar Association and some of private organizations, the availability of legal aid programs has decreased due to the complexity of this issue. The Bar Association's efforts have not succeeded due to lack of financial potentials and a failure to convince some of the major lawyers to do free representation.

Similar to the Lebanese state, the judiciary needs comprehensive reform, starting from the independence of the judiciary, to corruption, to increasing the number of judges, to better training of judges, to the technical processing of the Justice Palaces, and to the reduction of legal fees as part of the free litigation model.

## d. The criminal adjudication system is timely and effective

The new Criminal Procedure Code of 2001 regulates criminal justice and divides criminal courts into two types:

- Criminal courts in charge of misdemeanors: These are formed in first instance by a single penal judge, and in the second instance by the Court of Appeal for misdemeanors, and last instance in cassation by the penal chamber at the Court of Cassation. The follow-up with the single penal judge is done in person, while no follow-up is allowed at the court of cassation.
- Criminal courts in charge of felonies: These are formed in the first instance by a criminal court, and on appeal go directly to the criminal chamber of the Court of Cassation. Prior to holding a trial before the criminal court, a judge and an accusatory committee investigate the case.

The Criminal Procedure Code is the link between two key elements in the penal code - the crime and the punishment. The Criminal Procedure Code organizes the procedures for a criminal trial in addition to the procedure for issuing a ruling. Therefore, the link between the Criminal Procedure Code and the Penal Code is much stronger than the link between the Civil Procedure Code and the civil law.

When the defendant in a criminal trial is already under arrest, a fast track procedure is available. However, trials tend to extend for a long period of time in cases where the file does not include any detainees, in addition to the effect of the new amendment on the Criminal Procedure Code which relates to the detention period and which negatively affects the rights of litigants.

A report written by lawyer Elias Chalhoub in 2004 and issued by the Arab Center for the Rule of Law stated:

*The low number of judges equaling 400, with some of them only having the required qualifications, since the brilliant students of law usually prefer to practice the law rather than being judges, makes that a large number of pending cases flagrantly delay judicial proceedings. During 2003, the juridical courts had 180,000 pending cases, 5,000 of which before the Court of Cassation. The slowness of settling disputes, and Article 108 of the New Criminal Procedure Code, has become a reason for denial of justice. The legislator has insisted, through this Article, and under a humanitarian cover, that detainees should generally be released after six months of arrest for a felony, and two months for a misdemeanor, subject to renewal one time by a reasoned decision. This Article has not, however, mentioned the reasons for prolonging the period of arrests.*

*This amendment, along with the slowness of settlement of disputes, and the impossibility of rendering criminal decisions within the time limit specified under Article 108, have transformed the criminal courts in Lebanon, the cases reaching them one year following the time of the commission of the crime, into dead bodies whose work has been limited to issuing default judgments against arrested criminals who usually disappear or run away to abroad after being released according to the above-mentioned Article 108. This, actually, incurs damages on the rights of petitioners who do not obtain but non-enforceable default judgments.<sup>63</sup>*

There are also additional factors that negatively affect the criminal justice process, such as corruption, the use of violence, a lack of modern investigation means, overcrowded prisons and detention centers, and detentions without trial.

A report written by lawyers Maya Mansour and Carlos Daoud and issued by the Euro-Mediterranean Human Rights Network in 22/2/2010 stated:

*Corruption, namely "the abuse of public power for private benefit" undermines the judiciary as it denies victims and defendants the fundamental right to a fair trial. Judicial corruption, which may involve financial and material interests as well as immaterial ones (political or professional ambitions, etc.), encompasses any undue influence on the impartiality of the judicial process by any actor of the judicial system. Judicial corruption can occur at all stages of the judicial process, from pre-trial activities (police investigation, judges' investigation, etc.) until the enforcement of the court decision, including at the appeal stage. The objectives that underlie acts of corruption in the judicial sector vary. If certain forms of corruption are designed to alter the outcome of the trial, others are intended to accelerate the process, without necessarily influencing its outcome, for instance.*

*Some lawyers may play the role of middlemen in corruption, including by conveying the wishes of the parties to judicial officers or those of the judicial officers to the parties, or by failing to act when the conduct of the court suggests that there was corruption. In some cases, lawyers may also benefit themselves from corruption, notably in exchange for promises to ensure the faster processing of a particular file."*

The actual events during the entire criminal justice process are still very far from the standards that are being implemented in other countries. Lebanon still lacks modern methods of criminal investigation, such as the necessary experience and expertise to achieve a transparent investigation process. This was revealed in the report submitted by the Fact Finding Committee that was assigned by the Security Council in order to investigate the assassination of the former Prime Minister, Rafik El Hariri, which occurred during February 2005. Subsequently, an international investigation under the supervision of the United Nations led to the establishment of the Special Tribunal for Lebanon.

Whenever defendants or accused persons are asked to confirm a statement they gave to the law enforcement personnel in a preliminary investigation, they are also asked if it was extracted from them using illegal methods such as physical and moral violence.

In his report, lawyer Elias Chalhoub added:

*The Lebanese legislator has regulated prisons and detention centers and juvenile correction centers by Decree N° 14310/N dated February 11th, 1949. This decree has classified prisons and their administration into central and departmental prisons, yet not taking into consideration as a criterion for this 37 classification the extent to which the personality of the convicted or the detainees criminals is dangerous, criminal background, and the extent to which the circumstances surrounding the commission of crime are dangerous. In fact, Article 2 of the said Decree, amended by Decree N° 2426 dated November 15th, 1979, states that "detainees, accused, and convicted are all placed in the Roumieh prison no matter what the period of the penalty is".*

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<sup>63</sup> Elias Chalhoub, *Report on the State of the Judiciary in Lebanon*, (The Arab Center for the Development of the Rule of Law and Integrity, 2004).



*This, actually, constitutes a serious legal mistake, and contravenes humans rights laws; for it is as much inadmissible to place in one prison convicted along with detainees who are innocent until proven guilty, as to place all convicted in one prison without a distinction being made as to the crime committed and to the extent of its dangerousness, the personality of the convicted, criminal background and the extent of its dangerousness.*

*Although Article 8 of the above-mentioned Decree stipulates that "detainees or convicted minors shall be placed in special centers in accordance with the Criminal Law," facts however point to the contrary, for instead of creating a institute for correcting/rehabilitating convicted minors which had been provided for by Decree N°6675 issued on August 6th, 1946, a place has been reserved to detainee minors in Roumieh prison, only.*

*The Lebanese legislator has not taken into consideration, as we have just mentioned, the principle of classifying prisons on the basis of the person convicted, except for the distinction made as to sex. Article 9 of the aforementioned Decree stipulates that "convicted women shall be placed in special prisons," without however specifying a place for women placed under provisional detention during inquiries. Thus, we notice today that the Lebanese prisons are jammed full of prisoners of all kinds, where convicted for a felony sit along with convicted for misdemeanors, let alone the fact that prisons in Lebanon do not keep up with health prerequisites standards, and do not meet the criteria that civilized countries follow.*

The problem of prisons in Lebanon has turned into a major issue in the country, as evidenced by daily news stories of prison-related incidents. This issue recently boiled over into disobedience inside prisons, in addition to detaining security officers, food strikes, and igniting fires inside prisons. The prisons' problems include the overcrowding, lack of minimum essential healthcare, extended trials, rampant corruption in the prison administration, and a growing drug distribution phenomenon. The Lebanese state's has been unable to ensure a clear solution to these problems.

Despite the continuous demands by multiple Ministers of Justice concerning the need to put prison administration under the authority of the ministry of justice, prison administration is still currently under the authority of the Ministry of Interior. This has increased the problems faces by the criminal courts concerning accompanying the defendants and accused to the trials, and the obstacles that hinder this process such as the coordination between the two ministries. This lack of coordination often results in trial delays.

In addition to the above-mentioned problems, one should mention the problem of foreign detainees and prisoners. In most cases, these individuals are from Arab nationalities and manage to enter the Lebanese territories without authorization. Thus, they are arrested and brought before the criminal courts. After serving their sentence, they face deportation at their own expense. Because these individuals do not have the means to pay their departure fees, they are often placed under arrest for long period of times, during which involved organizations and their home countries try to pay the fees.

In 2010, the Lebanese government established a parliament committee to study this issue. In a press conference held during the cabinet's session on September 7th 2010, the Minister of Information, Tarek Mitri, stated, "the Council of Ministers has approved the parliament committee's report concerning the deportation of foreign inmates after serving their sentencing period." During April 2010, the Directorate General of General Security issued the recommendations of the committee. The recommendations were to complete the deportation and release of 478 detained Arab and foreign nationals in cooperation with their home countries' embassies.

The Directorate General of the General Security addressed and decided on 896 files related to foreign detainees in Lebanon. The Directorate indicated that they were following the directions of the Minister of Interior in the caretaker government, Ziad Baroud, whose authority included dealing with the problem of overcrowded prisons. The Directorate adopting procedures to deal with the situation of prisoners who

had served their prison time, especially the Arab and foreign individuals arrested at the General Security. Based on these directions, the directorate adopted the following measures:

- 478 Arab and foreign prisoners were released from Lebanese detention centers, 205 of whom had been deported in coordination with respective embassies.
- Another 213 Arab and foreign inmates who had completed their official prison terms were put under the custody of the General Security.
- The Directorate General of the General Security has addressed and decided on 896 files related to foreign detainees in Lebanon
- In coordination with the UN High Commissioner for Refugees and according to the mechanism adopted by the council of ministers, the directorate will continue handling the applications for asylum to a third country.

The Lebanese authorities ought to address the problem of detention without trial. Family members of detainees have demanded that the government address this problem. These demands have been expressed in various ways, including protesting in front of governmental headquarters, setting up roadblocks in some regions, and food strikes and riots inside prisons.

Quick Scan Lebanon

## Part C: Lebanon Rule of Law Indicators



## 1. World Justice Project, *Rule of Law Index 2011* Report

The WJP Rule of Law Index is the most comprehensive source of data on countries' adherence to the rule of law in practice. It measures the extent to which countries adhere to the rule of law, focused on practical consequences of the rule of law status on the daily lives of people. All variables are expressed in a scale from 0 (low adherence to the rule of law) to 1 (high adherence to the rule of law) and aggregated into factors and sub-factors. Each factor represents one of the following nine dimensions of the rule of law: limited government powers; absence of corruption; order and security; fundamental rights; open government; effective regulatory enforcement; access to civil justice; effective criminal justice; and informal justice. Those are further divided into 52 sub-factors, corresponding to outcomes that rule of law that societies seek to achieve. The conceptual definition of each factor is linked to the individual questions in the survey administered to samples representative of the general public and of local experts in each of the 66 studied countries.

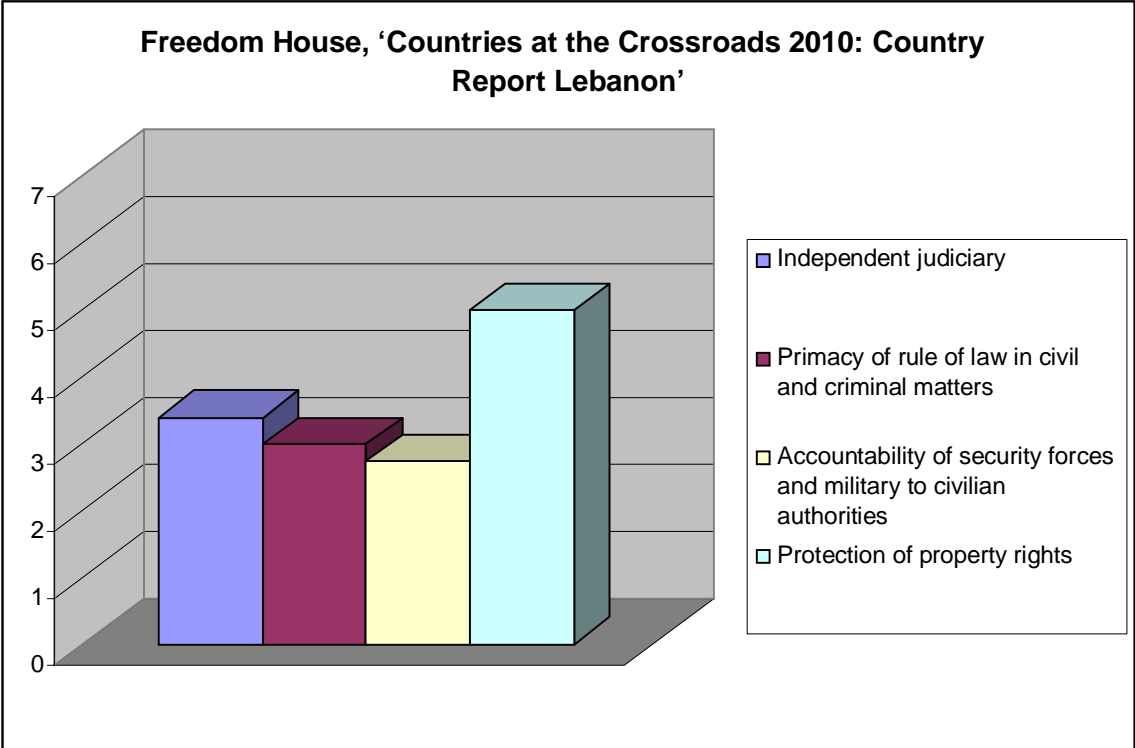
Lebanon was covered only in the recent 2011 report, in most categories scoring as one of the worst in the region and income group. While relatively safe from crime (ranking 34th out of total 66 studied countries and 3rd out of 5 MENA countries), its public institutions remain corrupt (ranking 48th globally and 4th regionally), intransparent (ranking 57th globally and 5th locally), and particularly inefficient in regulatory enforcement (ranking 5th regionally and 61st globally). Absence of due process guarantees, discrimination, delays, corruption and political intervention in the civil courts, together make access to justice ineffective (ranking 52nd globally and 5th regionally). At the same time, Lebanon scores exceptionally high with respect to guaranteeing civil rights and freedoms among its people (ranking 1st regionally and 27th globally).

## 2. Freedom House, 'Countries at the Crossroads 2010: Country Report Lebanon'

[www.freedomhouse.org/template.cfm?page=140&edition=7&ccrcountry=118&section=78&ccrpage=31](http://www.freedomhouse.org/template.cfm?page=140&edition=7&ccrcountry=118&section=78&ccrpage=31)  
Accessed 3 November 2011

The influential Freedom House index, used widely in the works of international and academic organizations, is composed by regional experts who review an extensive collection of data, primarily newspaper reports as well as analysis by think-tanks and NGO's. The index measures the quality of democratic governance reflected by 4 core categories – Accountability and Public Voice, Civil Liberties, Rule of Law, and Anticorruption and Transparency. The rule of law is measured with respect to four sub-areas of government performance: independent judiciary; primacy of rule of law in civil and criminal matters; accountability of security forces and military to civilian authorities; and protection of property rights. On the basis of this information, separate reports are written for individual countries, which subsequently lead to a score on the Freedom House indicators. The Freedom House report is based on numerical rating on a scale from 1 to 7, assigned to each country, where 1 stands for a free society and 7 for the lowest regard for civil and political freedoms.

The Freedom House report is based on numerical rating on a scale from 1 to 7, assigned to each country, where 1 stands for a free society and 7 the lowest regard for civil and political freedoms. Two separate ratings are given; a political rights score and a civil liberties rating. On both dimensions, scores range from 1 to 7. Lebanon was assessed in the 2010 report, scoring 3.54 in the rule of law category. This result stands out as the strongest in its regional group<sup>64</sup> and ranks 11th among all 32 covered countries. It does not, however, reflect the country's uneven partial scores. While the protection of property rights was assessed particularly high (5.0), the score for accountability of security forces and military to the civilians, and for the primacy of rule of law in civil and criminal matters were nearly a half lower (2.75 and 3.0 respectively). Despite its primacy in the region, Lebanon's overall score on the rule of law is around the middle of the scale, thus leaving much room for improvement.



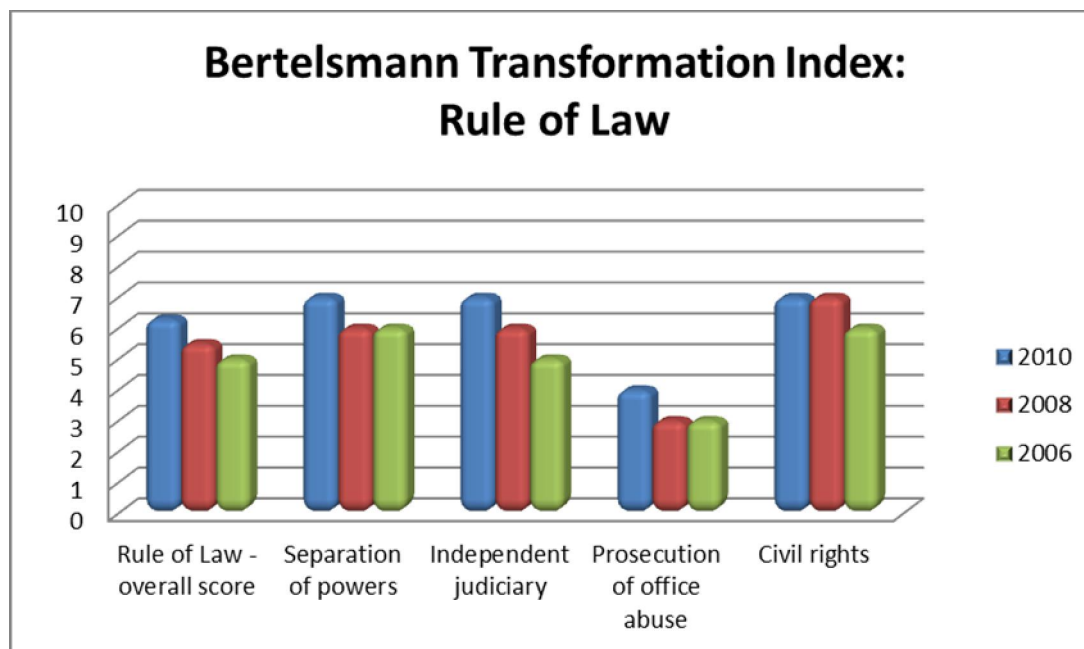
<sup>64</sup> Before Jordan, Bahrain, Yemen and Saudi Arabia.

### 3. Bertelsmann Transformation Index

The Bertelsmann Transformation Index measures the progress of 128 countries towards full democracy based on the rule of law and a market economy protected by sociopolitical safeguards. It has been calculated for years 2003, 2006, 2008 and 2010. In contrast to minimalist definitions of electoral democracy, the BTI's understanding of democracy includes the rule of law and representativeness. It focuses on 3 dimensions: democracy, market economy and political management. The composite index relates to both a description of their democratic and market economic state and the country's leadership management performance to steer it on a course of solid transformation.

For 128 states, individual reports are written by a country expert, which is then subject to peer review by another expert. This narrative report deals with the whole chain of issues mentioned above. Subsequently, scores (1-10) are given by country experts on 49 questions. For the present purpose, the political transformation dimension of the index is particularly useful, with a focus on the rule of law sub-category.

Lebanon has been included in the BTI since 2003. With respect to the rule of law sub-factor, it marked a consistent improvement over the years, from 2.0 in 2003, through 5.5 in 2008, to 6.3 overall score in 2010. While with this result, Lebanon currently ranks among the first 50 out of the total 128 countries included, the partial scores on particular dimensions of the rule of law are not consistently high. As relatively strong, rated at 7.0, come the separation of powers, where a weak central government subject to a complex system of checks and balances; the largely independent judiciary, partially limited by corruption, political interference and confessional representation; and respect for civil rights, with the right to freedom of religious beliefs, association, assembly and demonstration practiced freely. Prosecution of office abuse was evaluated much lower (4.0) due to the widespread perception of corruption within the public sector, not adequately prosecuted under the law.



## 4. Transparency International: Corruption Perceptions Index

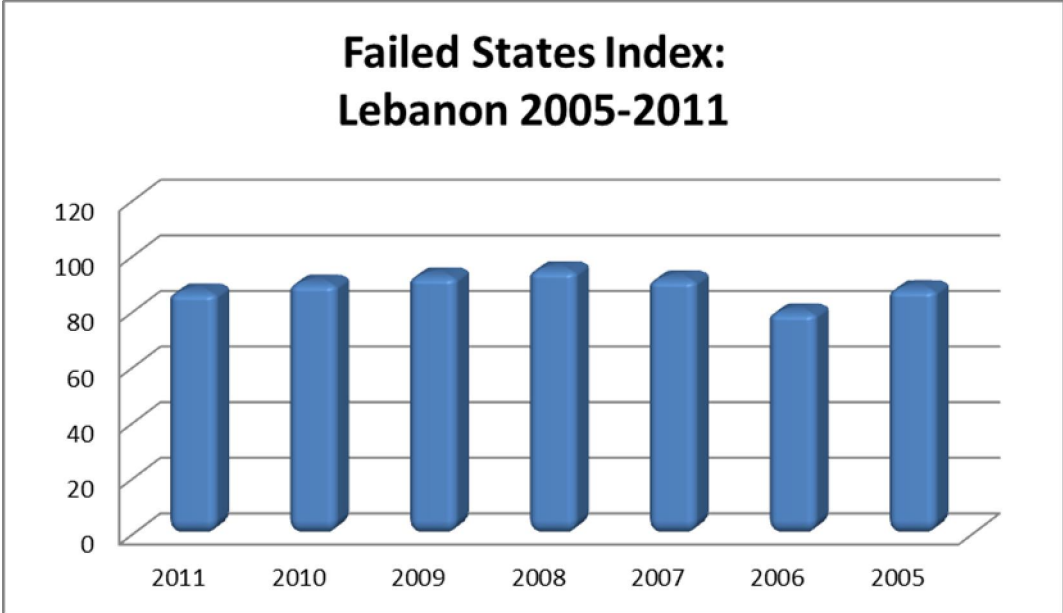
The Corruption Perceptions Index (CPI) indicates the perceived level of public-sector corruption in a country or territory. The CPI table indicates a country's ranking compared to other countries in the index. The index is based on data from 13 independent surveys and 10 independent institutions. These sources measure the prevalence of corruption in the public and political domains. This assessment is carried out for virtually all of the world's countries.

The index includes a country's ranking and score, the number of surveys used to determine the score, and the confidence range of the scoring. Scores range between 1 to 10, with 1 indicating the highest perceived level of corruption and 10 the lowest. The rank shows how one country compares to others included in the index. The reliability of the CPI scores is determined by the confidence range. Lebanon has been assessed since 2003, with the popular perception on corruption consistently high (average 2.9). Since its highest score in 2006 (3.6 ranking 63rd of the total 163 countries), the country's performance has regressed, scoring only 2.5 and ranking 127th in 2010. This result stood as 14th among 19 studied MENA region and fell in the 23rd percentile, meaning that only 23 percent of all covered countries scored lower. Overall, Lebanon's results have indicated a serious corruption problem deteriorating over the years.

# 5. Failed States Index

Published since 2005 by the Fund for Peace and the magazine Foreign Policy, the Failed States Index is composed of twelve indicators of vulnerability to collapse or conflict over 3 distinct dimensions (social, political and economic). The indicators include: Demographic Pressures, Refugees/IDPs, Group Grievance, Human Flight, Uneven Development, Economic Decline, Delegitimisation of the State, Public Services, Human Rights and the Rule of Law, Security Apparatus, Factionalised Elites, and External Intervention. For each indicator, the ratings are determined on the basis of computer-based quantitative analysis of publications and newspaper articles on a scale of 0 to 10 (where 0 indicates the highest degree of stability and 10 the lowest). The total country score is the sum of the 12 indicators and ranges from 0 to 120.

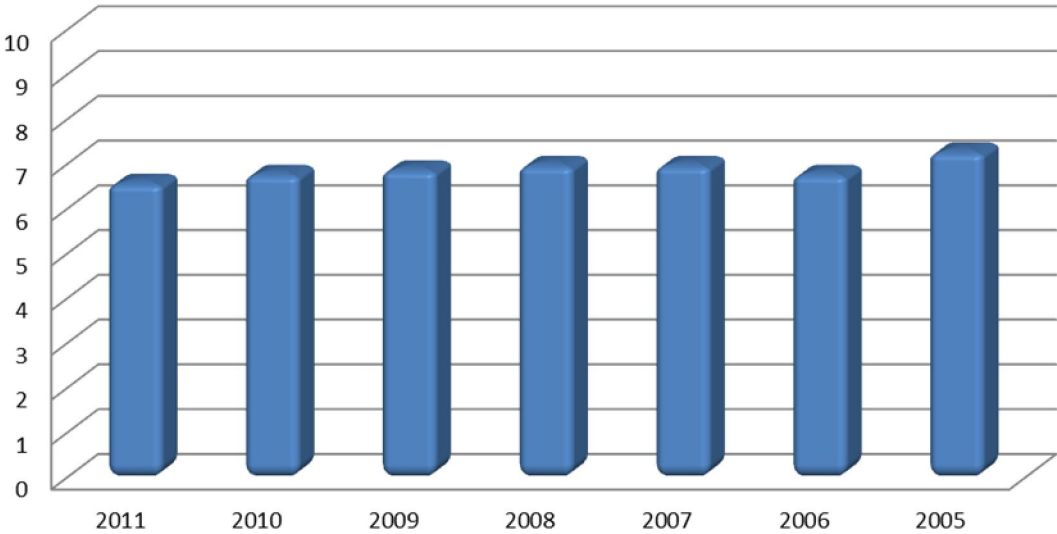
With the average overall score of 90, Lebanon has over the past years ranked among countries with a growing democratic deficit. The country noted its highest ranking in 2008 (18), which coincided with the period of fights between the supporters of the March 14 Coalition government and Hezbollah, posing a serious threat to civil peace and a challenge for democratic governance. Since then, the country's ranking continued to improve, reaching 43rd position in 2011, lumped in the group of states 'in danger' together with Egypt, Syria or Yemen.



The index shows that there has been a slight decline in terms of human rights and rule of law situation, on the decrease from 6.6 in 2005 to 7.3 in 2011. The score continues to indicate a considerably weak rule of law and remains of the weakest points of Lebanon's governance.



### Indicator: Human Rights and Rule of Law

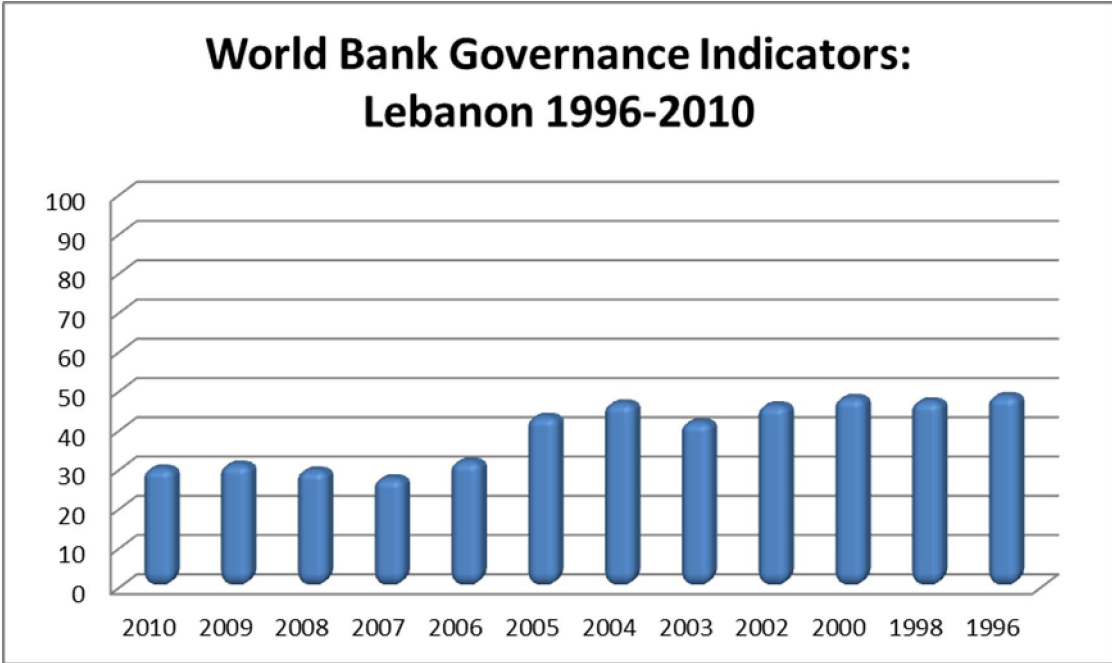


## 6. World Bank Governance Indicators

An authoritative scientific indicator in the field of law and governance is the World Bank Governance Indicators. Instead of working with its own data, the World Bank Governance Indicators Project compiles statistics from various other indices (among which are some of the indicators used in this study). Data are statistically rescaled to a score from 0 to 1, with a score of 0 indicating a bad result on a particular variable. Six different dimensions are measured; (1) voice & accountability, (2) political stability and lack of violence/terrorism, (3) government effectiveness, (4) regulatory quality, (5) rule of law, (6) control of corruption.

The World Bank Governance indicators result in a percentile rank on each of the six dimensions. Thus, a percentile rank of 20 on any certain dimension means that only 20% of the world's countries have a worse score. Likewise, when a state scores 90, only 10% of the world's countries do better. Therefore, a high percentile rank indicates better government performance.

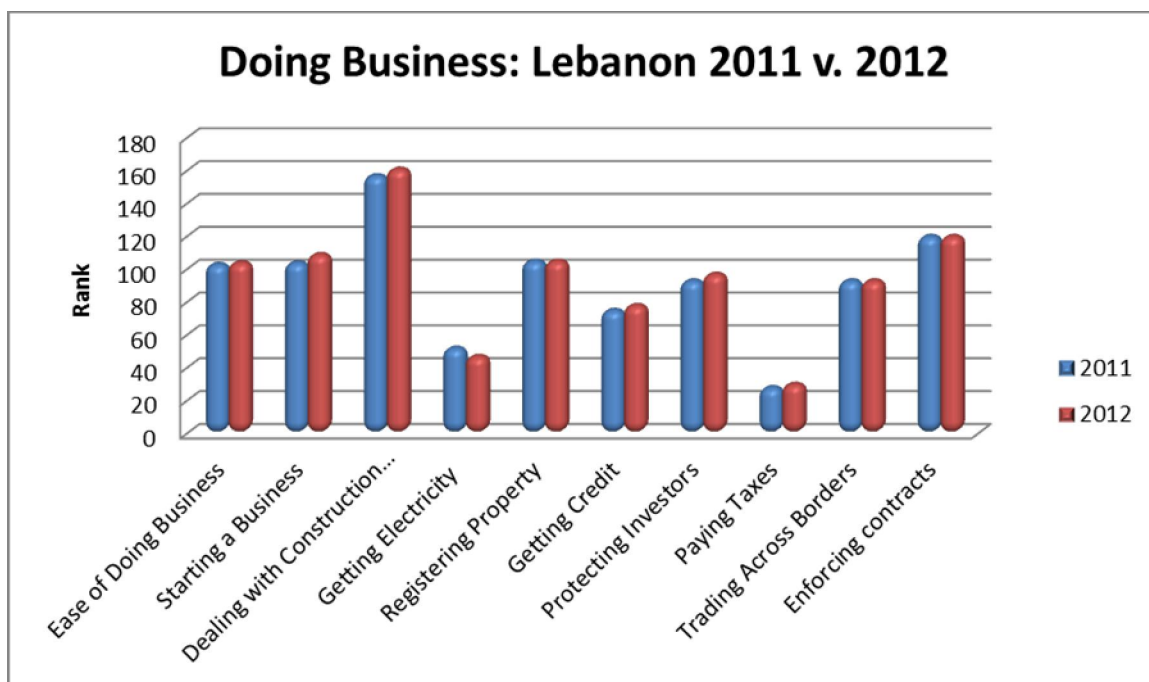
Between 1996 and 2010, Lebanon's percentile rank on the rule of law dimension averaged 39.5, meaning that it was outperformed by over 60 percent of all studied countries. Over the years, notwithstanding slight fluctuations, Lebanon's already poor scores have shown an overall downward trend, dropping from 48.8th percentile rank in 1996 to 30.3rd in 2010. This last score places it substantially below the average of its regional group (48.1st percentile rank) and especially of its income category (50.9th percentile rank). Worth noting is the major decrease since 2005, culminating in the country's lowest score in 2007 (27.8th percentile rank). This period was marked by a strong political unrest, spun off by the death of the former Prime Minister Hariri in a powerful bombing in 2005, followed by massive rallies and further assassinations targeting members of the parliamentary majority. Between 2006 and 2007, the country faced a number of threats to its internal security, from the 34-day Israel-Hezbollah War to the attack on the Fatah al-Islam extremist group that displaced the resident of the Palestinian refugee camp in the north of Lebanon.



## 7. World Bank (Doing Business)

The World Bank's "Ease of Doing Business" index ranks 183 economies on 10 categories: starting a business; dealing with construction permits; registering property; getting credit; protecting investors; paying taxes; trading across borders; enforcing contracts; resolving insolvency; and getting electricity. Each country's ranking is calculated as the simple average of the percentile ranking on each of the categories. The higher the country's ranking, the simpler its regulations and the stronger its protection of property rights, which results in a more favourable business climate. Although the index has no immediate bearing on the rule of law, transparent and efficient regulation as well as effective implementation enable businesses to operate within the rule of law and benefit from protections and opportunities provided by the law<sup>65</sup>.

Lebanon has been assessed in the years 2011 and 2012, ranking slightly above the middle of the table in the overall category of the ease of doing business (103rd and 104th respectively) and showing stability rather than improvement on individual dimensions. The country's strongest points were the ease of getting electricity (ranking 52nd in 2012) and paying taxes (ranking 28th in 2012). Importantly, the Lebanon's assessment on the categories most relevant to the rule of law has much closer towards the low end of the ranking: protecting investors (ranking 97th in 2012), registering property (ranking 105th), contract enforcement (ranking 120th) and especially dealing with construction permits (ranking 161st).



<sup>65</sup> World Bank Group, "Doing Business 2011 – Making a Difference for entrepreneurs", World Bank Publications, 2010, [www.doingbusiness.org], last visited on November 14, 2011.

## 8. Cingranelli-Richards (CIRI) Human Rights Dataset

One of the the largest human rights data sets in the world, the CIRI consists of standards-based quantitative data for years 1981-2009 on government respect for 15 internationally recognized human rights in 195 countries. The covered human rights are categorized into 3 sets.

The first set, physical integrity rights, included the rights not to be tortured, summarily executed, disappeared, or imprisoned for political beliefs. Country performance is measured for each of these on a scale 0-2 (where 0 signifies the least observance and 2 virtually no violation of a right in a given year), and for the overall respect for the set of rights on scale 0-8 (where 0 represents no government respect for the four rights and 8 stands for high level of government respect for the four rights).

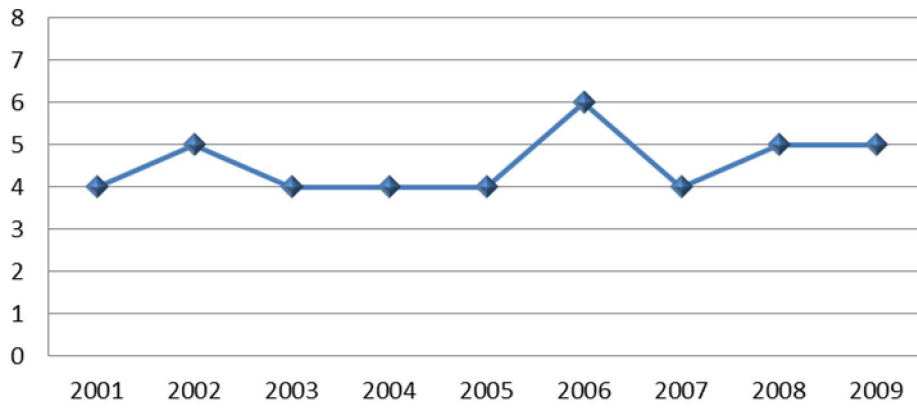
The second set, empowerment rights, include that to free speech, freedom of association and assembly, freedom of movement, freedom of religion, and the right to participate in the selection of government leaders. Alike the previous category, countries score on each separate right on a scale 0-2, as well as on the entire set of rights – here a scale ranges from 0 (no government respect for these seven rights) to 14 (full government respect for these seven rights).

Another set includes women's rights to equal political, economic, and social treatment, evaluated on a scale from 0 to 3. A score of 0 indicates that a given women's right was not enshrined in the law or that the law was characterized by discrimination based on sex. A score of 1 means that while recognized in the law, a given right lacked effective enforcement. A score of 2 indicates that although the government effectively enforced a given women's right recognized under law, women would continue to experience a low level of discrimination. Lastly, a score of 3 stands for a full realization of a given right, protected by law and enforced by the government in practice, by nearly all women.

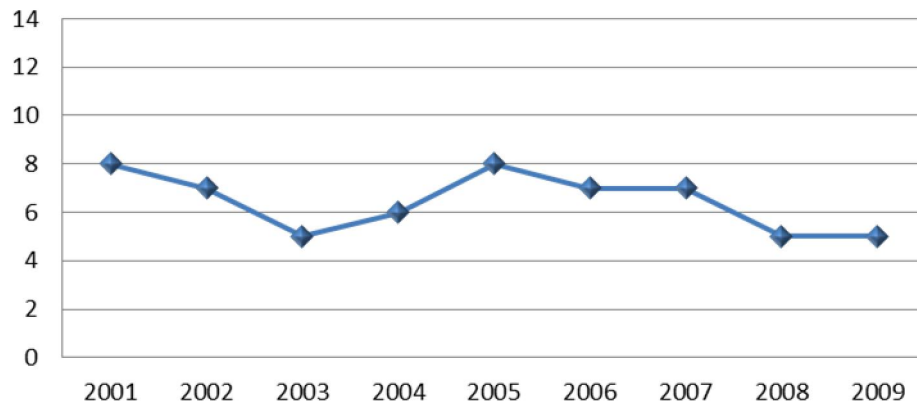
Finally, like the rights included in the first two sets, the remaining workers' rights and independence of the judiciary are measured with scores 0-2.

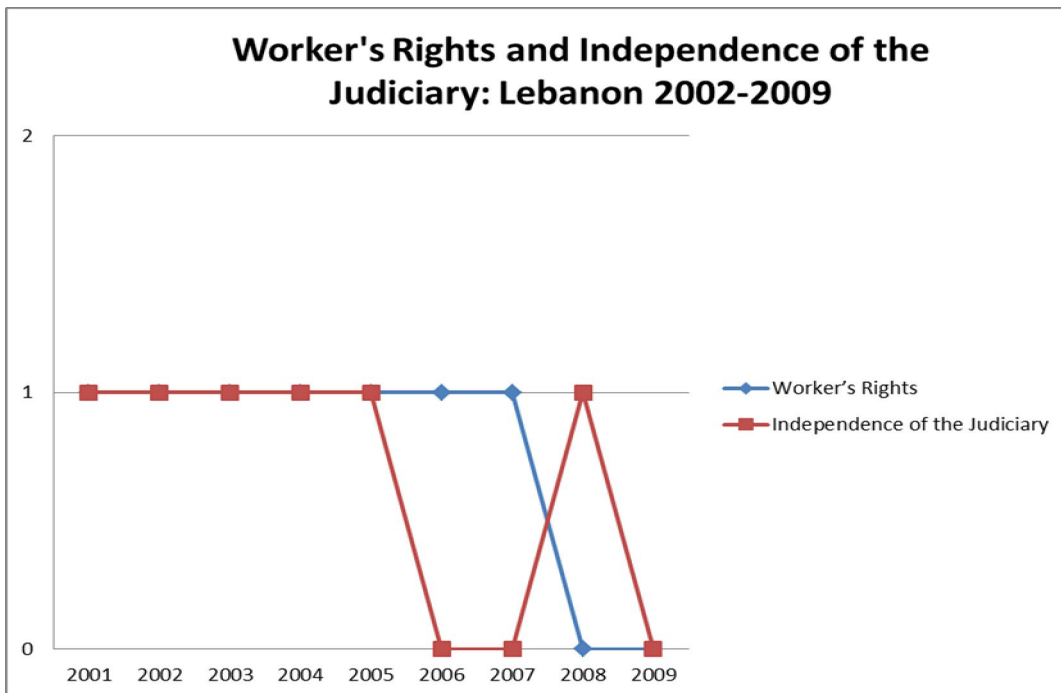
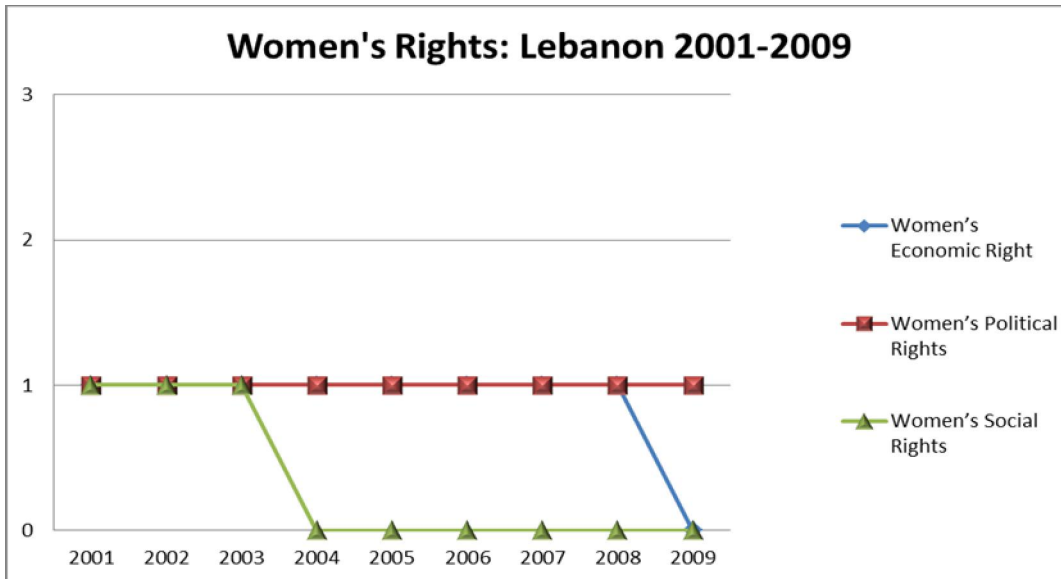
Lebanon has been included in the dataset for years 2002-2009. Over the years, the country's performance on all dimensions has been consistently poor, mostly deteriorating and only sometimes showing stability but no improvement. In 2009, Lebanon's score of 5 on the physical integrity index was merely above the middle of the scale, whereas the empowerment rights were assessed, scoring 5 out of 14, were way towards the lower end. Interestingly, both the country reached its highest result in both indexes around years 2005-2006 that saw the major national instability, with the assassination of Prime Minister Hariri and the war with Israel. Both, however, shortly after considerably declined. Over the entire seven-year period, women's rights situation in Lebanon appeared as severely restricted, with social rights rated as virtually non-existent since 2004. Economic rights were diagnosed with the same lack of both legal basis and enforcement in practice only in 2009. As for political rights, given routinely the score 1, while women can enjoy them in the law, they had faced discrimination in practice. In 2009, workers' rights and the independence of the judiciary both received the lowest score, indicating severe limitations.

### Physical Integrity Rights Index: Lebanon 2001-2009



### Empowerment Rights Index: Lebanon 2001-2009





# 9. ANNEX

World Justice Project, *Rule of Law Index 2011 Report*

## Lebanon

Beirut, Tripoli, Saita

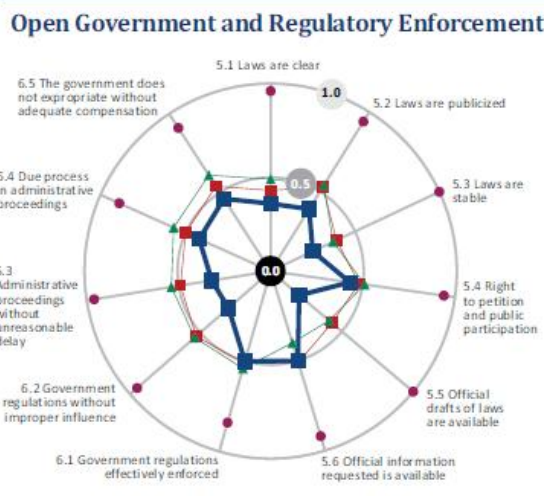
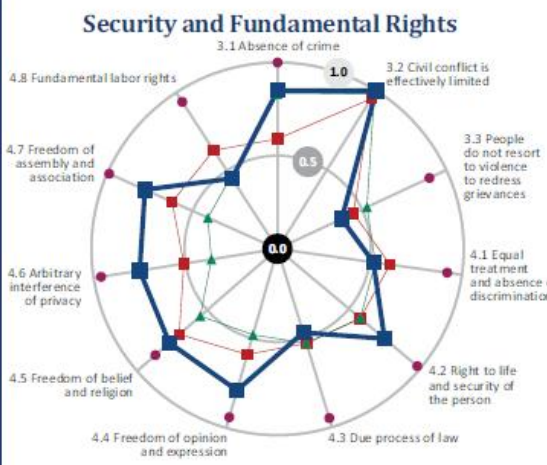
### 1. WJP Rule of Law Index

Income Group	WJP Rule of Law Index Factors	Score	Global Ranking	Regional Ranking	Income Group Ranking
Upper Middle	Factor 1: Limited Government Powers	0.52	39/66	3/5	8/19
Region	Factor 2: Absence of Corruption	0.45	48/66	4/5	14/19
Middle East & North Africa	Factor 3: Order and Security	0.74	34/66	3/5	6/19
Population	Factor 4: Fundamental Rights	0.66	27/66	1/5	5/19
4m (2010)	Factor 5: Open Government	0.35	57/66	5/5	18/19
87% Urban	Factor 6: Regulatory Enforcement	0.40	61/66	5/5	19/19
67% in three largest cities	Factor 7: Access to Civil Justice	0.48	52/66	5/5	17/19
	Factor 8: Effective Criminal Justice	0.48	45/66	4/5	12/19

### 2. Scores for all WJP Rule of Law Index sub-factors

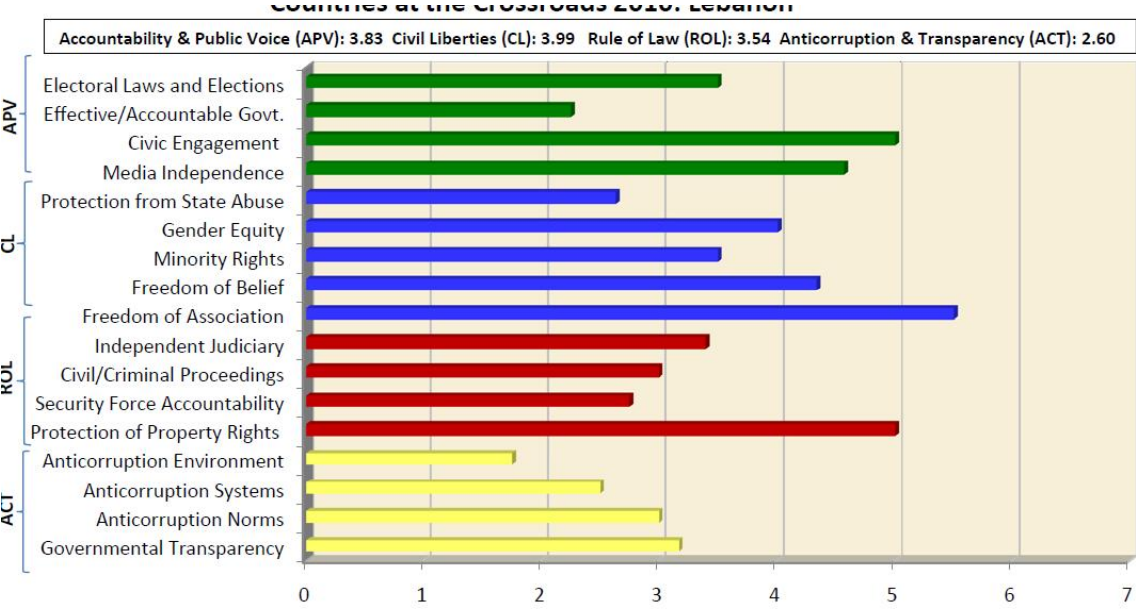
In each graph, a sub-factor is represented by a radius from the center of the circle to the periphery. The center of each circle corresponds to the lowest possible score for each sub-factor (0.00); the outer edge of the circle marks the highest possible score (1.00).

Key — ■ Lebanon    ● Top Score    ■ Upper Middle Income    ▲ Middle East & North Africa





### Freedom House



### Transparency International

year	rank	score	surveys
2010	127	2.5	4
2009	130	2.5	3
2008	102	3	4
2007	99	3	4
2006	63	3.6	3
2005	83	3.1	4
2004	97	2.7	5
2003	78	3	4



## Failed States Index

			Pressures and IDPs	Grievance Human	Developme nt	and Decline of the State			Rule of Law	Apparatus			TOTAL SCORE		
2011	177	<b>43</b>	6.5	8.5	8.7	6.6	6.8	5.7	7.0	5.8	6.6	8.7	8.8	8.0	<b>87.7</b>
2010	177	<b>34</b>	6.8	8.9	9.0	7.0	7.2	6.1	7.3	6.0	6.8	8.9	8.8	8.1	<b>90.9</b>
2009		<b>29</b>	7	9	9.2	7.2	7.4	6.3	7.8	6.2	6.9	9.1	9.1	8.3	93.5
2008		<b>18</b>	7.2	9	9.4	7.1	7.4	6.3	8	6.7	7	9.3	9.4	8.9	95.7
2007		<b>28</b>	6.9	8.6	9	7	7.1	6.3	7.3	6.4	7	9	8.8	9	92.4
2006		<b>65</b>	6.8	4.3	7.8	7	6.8	5.3	6.4	5	6.8	7.5	8.3	8.5	80.5
2005		<b>37</b>	8	8	7.5	7.1	7	4.7	8.7	4.3	7.3	8.1	9.2	9	88.9
2011	177	<b>43</b>	6.5	8.5	8.7	6.6	6.8	5.7	7.0	5.8	6.6	8.7	8.8	8.0	<b>87.7</b>
2010	177	<b>34</b>	6.8	8.9	9.0	7.0	7.2	6.1	7.3	6.0	6.8	8.9	8.8	8.1	<b>90.9</b>
2009		<b>29</b>	7	9	9.2	7.2	7.4	6.3	7.8	6.2	6.9	9.1	9.1	8.3	93.5
2008		<b>18</b>	7.2	9	9.4	7.1	7.4	6.3	8	6.7	7	9.3	9.4	8.9	95.7
2007		<b>28</b>	6.9	8.6	9	7	7.1	6.3	7.3	6.4	7	9	8.8	9	92.4
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2005		<b>37</b>	8	8	7.5	7.1	7	4.7	8.7	4.3	7.3	8.1	9.2	9	88.9

Bertlesmann Transformation Index

Q3   Rule of Law	Q3.1   Separation of powers	Q3.2   Independent judiciary	Q3.3   Prosecution of office abuse	Q3.4   Civil rights
6.3	7	7	4	7
5.5	6	6	3	7
5.0	6	5	3	6

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