Lebanon on the Path to Judicial Reform

By

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I. Introduction

At the outset of this analysis, it is essential to highlight that the National Reconciliation Accord, which was incorporated into the Lebanese Constitution and led to the adoption of the Taëf Accord and the end of the civil war, effectively constituted a reconciliation among the warlords themselves. These individuals were subsequently entrusted with managing the state's affairs and its citizens, having been granted full political rein following the enactment of a General Amnesty Law in **1992**. This law erased the legal consequences of the violations and crimes committed between **1975** and **1990** by those same warlords. Thus, the political class that was entrusted with overseeing the affairs of the Lebanese people and with upholding the Constitution was, in essence, a political class that neither believed in the rule of law nor in reform.

From that point on, the political class, in a bid to preserve its own interests, set as its top priority the weakening of the very backbone of the rule of law: the judiciary. And so, the collapse began.

Lebanon, once renowned for having one of the most respected and independent judiciaries in the Arab world and the broader Middle East, has, as a result of the deep entrenchment of politically affiliated judges in key positions within the Palace of Justice, come to lack the minimum conditions required for a credible and functioning judicial authority. The judiciary has been reduced to a subordinate body, swayed by political agendas that are actively working to undermine it, thereby extinguishing any real prospect for the emergence of the rule of law, long awaited by the majority of the Lebanese people.

II. The War of Support and the New Era

The catastrophic outcomes of the War of Support, a conflict Lebanon was drawn into, left behind widespread destruction in the South, parts of the Bekaa, and Beirut's southern suburbs. This devastation triggered a positive shock within the international community, prompting a renewed willingness to help Lebanon emerge from its prolonged stagnation and to support its reconstruction on the basis of restoring the sovereignty of the state over all its territory. It also led to the launching of a comprehensive reform initiative aimed at rebuilding public institutions on foundations free from clientelism and corruption.

The Lebanese welcomed the promising new trajectory marked by the election of General Joseph Aoun President of the Lebanese Republic and the appointment of Prime Minister Dr. Nawaf Salam to form the government. A central pillar of both the President's inaugural address and Prime Minister Salam's policy statement was the prioritization of rebuilding and restructuring the judiciary, which, as previously noted, constitutes the backbone of any state governed by the rule of law.

The process of reforming the judiciary requires, first, the reconstruction of the judicial body based on the principles of competence, impartiality, and courage; and second, the rehabilitation of the dilapidated infrastructure of the Palaces of Justice (courthouses) and equipping them with the latest in information technology systems.

III. 1975: The Onset of Decline

Before delving into the general principles that will underpin the judicial reform process, it is necessary, albeit briefly, to highlight some of the key factors that have contributed to the gradual decline in the performance and effectiveness of the judiciary since the outbreak of the Lebanese conflict in **1975** to the present day.

It is well understood that the Lebanese conflict, beginning in **1975**, led to a significant decline in the quality of education across all schools and universities, affecting even its most basic levels. With the subsequent disintegration of state institutions, widespread displacement, and the collapse of the Lebanese currency, many Lebanese lost faith in the idea that public service could offer their children the dignified and free life they aspired to.

Families began sending their top-performing children abroad to pursue higher education and secure better futures, which gradually depleted Lebanon of its rising elite. Those who remained were largely students who lacked the means to emigrate.

As a result, competitive entrance exams for public sector positions (diplomatic corps, security institutions, the judiciary, or others) came to be limited to selecting the **"Best available"**, meaning the most qualified among those who chose or were compelled to stay in Lebanon. However, this pool did not necessarily reflect the academic caliber of Lebanon's top-performing students.

Thus, the quality of legislation—once a point of pride for Lebanon's parliaments, deteriorated to unprecedented levels. The very essence of laws that were originally intended to resolve social, economic, and livelihood-related disputes arising from the civil conflict and its aftermath instead became a contributing factor to the deepening and entrenchment of those very crises, further complicating them.

Due to the poor quality of legislation and the absence of effective legal remedies to resolve citizens' disputes, the judiciary became increasingly overwhelmed and in urgent need of additional judges to handle the growing caseload. This was critical to avoid judicial gridlock, as case files accumulated and remained unresolved within the halls and drawers of the Palace of Justice. This situation occasionally led examining committees to lower the passing thresholds in judicial entrance exams, in order to meet what organizers deemed to be more pressing institutional needs.

In addition, there has been a clear lack of adequate attention to updating the knowledge of sitting judges, particularly through the implementation of mandatory training programs designed to keep them current in their respective areas of specialization.

More recently, it has become evident that repeated efforts to amend specific provisions of the Judicial Judiciary Law and the Code of Civil Procedure, aimed at protecting the judiciary from bad-faith litigants who resort to dilatory tactics, have ended in failure, due to the unwillingness of the entrenched political class to improve the efficiency and effectiveness of the judiciary.

IV. Reform Measures

1. All that the judiciary requires to enhance its performance and to prevent the exploitation of procedural delay tactics, particularly in cases involving motions for recusal, disqualification, transfer of venue for legitimate suspicion, or state liability for judicial conduct, can be effectively addressed through the amendment of **Article 122 et seq.** of the Code of Civil Procedure. These provisions currently stipulate that a judge must cease adjudicating the case assigned to them until a decision is issued on the motion for recusal or disqualification.

   Instead of automatically requiring a judge to recuse themselves upon the mere filing of a motion for recusal or disqualification, as is currently mandated under the applicable legal provisions, these texts should be amended to allow the judge to continue presiding over the case, despite the filing of such a motion, until the court reviewing the recusal or disqualification request issues a decision ordering the judge's withdrawal. Such a decision would only be rendered if the court finds that the grounds for recusal or disqualification are serious and substantiated enough to justify the judge's removal. This amendment should apply uniformly to both civil and criminal proceedings.

2. What the judiciary also requires to expedite the resolution of pending disputes is the establishment of a clear and definitive mechanism for service of process, particularly with regard to the notification of attorneys. This can be achieved by adopting electronic service of process or by serving notices via the attorney's designated mailbox at the Palace of Justice.

3. Encouraging judges to actively apply the provisions of Articles **10, 11, and 551** of the Code of Civil Procedure, which would help alleviate judicial congestion. Currently, most judges rarely enforce these provisions, and when they do, they tend to impose only nominal fines as penalties for bad faith litigation or abuse of the right to litigate or defend.

The element of bad faith by a particular party, or even the abuse of the right to litigation or defense, is often plainly evident in the majority of disputes brought before the courts. Addressing these two issues requires nothing less than the imposition of meaningful and non-symbolic fines on any party engaging in such misconduct.

This is precisely how the issue of judicial congestion has been addressed in France, where the overwhelming majority of judgments and rulings impose deterrent and substantial fines on litigants acting in bad faith or abusing their right to litigation or defense, pursuant to Article **740** of the new Code of Civil Procedure.

Having outlined some initial observations, as well as key reform steps aligned with the broader process of rebuilding the judiciary, we will now turn directly to how we can address the deficiencies that have afflicted judicial performance over the past half-century and continue to do so today.

1. The process of rebuilding the judiciary must begin with a fundamental reassessment of the criteria for selecting candidates for admission to the Institute of Judicial Studies. The foremost test required is to ensure that the candidate possesses the essential qualifications for carrying out the judicial vocation, which can be summarized into three key criteria:
    - **a.** Integrity and impartiality
    - **b.** Academic competence, as well as the judge's ability to engage constructively and neutrally with colleagues, and to remain impervious to any form of external pressure, particularly political or social influences
    - **c.** Courage in rendering decisions the judge deems appropriate.

To verify that candidates meet these criteria, they should be subjected to an aptitude assessment through a psychological aptitude test. The results of this evaluation must be submitted to the President and members of the Supreme Judicial Council prior to conducting interviews with the candidates.

2. Subjecting sitting judges to mandatory annual training programs to ensure the continuous updating of their expertise in the relevant fields of law, in line with the principle of continuous education. In parallel, the judiciary should promote specialization among judges in complex and technical matters that require comprehensive subject-matter knowledge, such as securities law, banking operations, money laundering, anti-corruption, complex real estate disputes, fraudulent bankruptcy, and embezzlement of public funds, among others.
3. At the broader institutional level, the first priority must be to remove the influence of both the legislative and executive branches over the judiciary, by enacting a law that enshrines the independence of the judiciary and explicitly prohibits any interference by either the legislative or executive authorities in judicial affairs. which can be summarized into three key criteria:
    - **a.** Prohibiting the executive branch from interfering in judicial appointments and transfers, which must be solely within the competence of the Supreme Judicial Council, with its decisions in this regard being final and binding, requiring no further approval or procedure.
    - **b.** Electing the President and members of the Supreme Judicial Council by a vote of judges at all levels, Courts of First Instance, Courts of Appeal, and the Court of Cassation.
    - **c.** Securing an independent budget for the Presidents of the Courts of Appeal, enabling them to maintain the Palaces of Justice and provide for all operational needs, including stationery, furniture, cleaning, and routine maintenance.
    - **d.** Basing judicial appointments on the principle of meritocracy, by conducting interviews with candidates for judicial posts, and making appointments based on the outcomes of these interviews with the Supreme Judicial Council, independent of any other consideration.
    - **e.** Imposing mandatory annual training programs for sitting judges, aimed at updating their knowledge, and fostering coherence and harmonization of jurisprudence across courts.

f. Strengthening the role of the Judicial Inspection Authority, granting it adequate powers to effectively implement the principle of accountability and reward, and to enforce Article **95** of the Judicial Judiciary Law.

As for judicial appointments and rotations, it is imperative to demonstrate a firm and decisive will to cleanse or rather, to dismantle the entrenched pockets of corruption and political patronage within the judiciary. These must be neutralized and replaced with judges known for their competence, impartiality, and courage.

It is worth noting that the number of sitting judges in the judicial authority does not exceed **800**, and that purging the judiciary of corruption and political interference requires, above all, the genuine intention and determination to eliminate the sources of this affliction, coupled with the serious and effective enforcement of a system of accountability and merit-based rewards and sanctions.

In this context, and based on extensive experience, Lebanese judges can be classified into three categories:

1. Judges involved in corruption or aligned with the rogue political establishment and influential power brokers. These judges constitute approximately **10** to **12** percent of the sitting judiciary and must, without exception, be permanently removed from office pursuant to the provisions of Article **95** of the Judicial Judiciary Law.
2. Judges who have opportunistically chosen to align themselves with influential power brokers in pursuit of certain appointments or positions. These judges may remain within the judiciary, provided they are made fully aware that they are now under close scrutiny and continuous monitoring by the Judicial Inspection Authority and the Supreme Judicial Council. This category represents approximately **25** to **30** percent of the total number of judges. There remains a possibility for the reform of some within this group, especially once they come to realize that the principle of accountability and reward is no longer a mere slogan but a genuine and enforceable standard within the judicial system.
3. Judges of knowledge, competence, and courage, who have been excluded from important or sensitive positions due to their refusal to engage in corruption or political favoritism. This category represents approximately **55** to **60** percent of the sitting judiciary.

It is worth reiterating the necessity of subjecting all judges, without exception, to mandatory annual training programs aimed at continuously updating their legal knowledge. Additionally, regular meetings should be held among judges sharing common areas of specialization, with the objective of promoting harmonization of jurisprudence across the courts.

V. Rebuilding the Judiciary

There is no doubt that the entrenched political class has never genuinely sought to improve the conditions of judges, preferring instead to keep the judiciary subservient and responsive to its whims.

As a result, the judiciary has long remained “The Neglected Child Of The State”, to the extent that the Palaces of Justice have been reduced to deplorable conditions, lacking even the most basic

necessities of a dignified work environment. There is no running water, no electricity, no functioning elevators, no stationery, no ink, no pens, and no paper supplies. They have even become infested with rats and vermin, gnawing away at case files abandoned on the floors of the dark corridors and recesses of the Palaces of Justice and courtrooms.

It is therefore self-evident that any serious reform effort must begin with the restoration and rehabilitation of the Palaces of Justice, both in their physical structure and furnishings, to reflect the dignity owed to those who administer justice and to the litigants themselves. Much has been said on this matter, and the discourse seems endless. Accordingly, it is imperative to conduct an on-site inspection of the seven Palaces of Justice across the governorates, as well as the courts in the districts, to fully grasp the extent of the neglect afflicting what we have rightfully described as the backbone of the rule of law.

It is worth emphasizing, finally, that the comprehensive digitization of the Palaces of Justice and court registries must be treated as an absolute priority, given its crucial role in organizing case files and court hearings. No meaningful progress can be imagined without it. In parallel, it is essential to conduct heads of registries, clerks, and court bailiff departments, to enable them to adapt to the new digital systems, thereby facilitating their work and enhancing both its efficiency and quality.

These are but the first steps, just a glimpse of what is needed, on the path toward rebuilding the judiciary in Lebanon. It is to be hoped that the Lebanese state, together with the international community, will recognize the critical importance of this reconstruction process, in order to establish and promote the path toward fair trials, and to provide meaningful support for laying the foundational cornerstone of a true state governed by the rule of law and functioning institutions

Authors' Short Bio

Choucri Sader has spent 44 years within the Lebanese judiciary where he occupied key positions, and has intervened in various fields, including commercial law, civil law, criminal law, the recognition and enforcement of foreign judgments, arbitration, and administrative matters. *During his presidency of the Council of Legislation and Legal Advices at the Ministry of Justice in Lebanon, he was in charge of the preparation of draft laws and decrees for the various Ministries of the Lebanese Government. In **2005**, Choucri Sader was appointed as member of the Lebanese delegation tasked with the creation and the establishment of the United Nations Special Tribunal for Lebanon, aimed at judging the persons accused of perpetrating the **February 14, 2005** attacks in Lebanon. He was also, for two years, a member of the Supreme Council of the Judiciary. Following these mandates, and after the Special Tribunal for Lebanon was established, Choucri Sader was appointed President of the State Council of Lebanon in **2008**, which he presided until **2017**. During these nine years, Choucri Sader has acted as a judge in all sorts of disputes in administrative matters, including disputes relating to public concessions, as well as public works. In **2015**, he was also granted the Legion of Honor, Officer Grade, by France, notably for his efforts to consolidate legal ties between Lebanon, France and Europe, and for his continuous*

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