

ALEF- act for human rights is particularly concerned with the ability, willingness and capacity of the Lebanese authorities to lead a proper investigation since the legal and justice systems did not show their effectiveness and efficiency neither now nor in the past.

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## Resolving a stranded justice: the inadequacy and inefficiency of a local investigation

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## 1. Background

On 4 August 2020, an unprecedented explosion in scope and impact ripped the Lebanese capital Beirut, leading to more than 220 persons killed, 7000 injured, tens of missing and at least 300,000 homeless and displaced as well as hundreds of thousands of victims suffering material damages.

The catastrophic explosion also led to billions of dollars in economic losses; the capital port and the country's sole grain storage silos were almost completely destroyed and Beirut hospitals and medical equipment severely damaged. This comes at a time where Lebanon is confronted by a devastating political, economic, financial and social crisis as well as the COVID-19 pandemic.

The explosion was potentially caused by the detonation of 2,750 tons of Ammonium Nitrates, used in manufacturing fertilizers and explosives, that were unsafely stored in a warehouse at the Beirut port since 2013, and without any attempts to move them despite recurrent warnings of the danger. Today, two months after the explosion, the circumstances that led to the detonation of the material are not yet clear and the Lebanese society still awaits justice.

## 2. Political inadequacy

### 2.1 Political and administrative responsibility resulting from widespread corruption and negligence

Consecutive governments, the Port of Beirut, customs and security forces had knowledge of the unsafe storage of dangerous chemicals at the port.<sup>1</sup> They all failed to carry out their duties and take any measure to address the threat to life and ensure adequate protection of the residents and workers in this very populated area of Beirut. The explosion, thus, was not an unavoidable accident. It is a flagrant act of criminal negligence whose responsibility falls on the political, security and administrative authorities tasked with overseeing the work of the port. The appointment and oversight of the relevant public officials have always been at the midst of political influence, political nepotism and trade-off between political parties in government. This environment would set clear limitations on the possibility of turning every stone in this investigation.

### 2.2 Lack of credibility and conflict of interest

A great number of citizens have lost trust in the local institutions and duty bearers, which they hold responsible for the explosion. The President of Lebanon, Michel Aoun, has revealed during an interview that he learned about the stockpile of ammonium nitrate at the port on 20 July 2020.<sup>2</sup>

Not only did the Lebanese authorities at all levels (President, Prime Minister, ministers of public works, defense and justice, port officials, security forces and judges) fail to prevent this incident, but they also sought to deflect blame onto each other in an attempt to evade responsibility for this crime.<sup>3</sup>

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<sup>1</sup>Mroue, Bassem. "Officials Long Warned of Explosive Chemicals at Beirut Port." *AP NEWS*, Associated Press, 8 Aug. 2020, retrieved from <https://apnews.com/6bec1c8ecb5061bf2dd98107aeb151d9>;

Nakhoul, Samia. "Exclusive: Lebanon's Leaders Were Warned in July about Explosives at Port - Documents." *Reuters*, Thomson Reuters, 11 Aug. 2020, retrieved from

<https://www.reuters.com/article/us-lebanon-security-blast-documents-excl/exclusive-lebanons-leaders-warned-in-july-about-explosives-at-port-documents-idUSKCN2562L7>

<sup>2</sup>The New Arab Staff & Agencies. "Lebanon President Says He Knew of Explosive Ammonium Nitrate at Port in July." *The New Arab*, 7 Aug. 2020, retrieved from

<https://english.alaraby.co.uk/english/news/2020/8/7/lebanon-president-knew-of-chemicals-at-port-in-july>

<sup>3</sup>Newsdesk, Naharnet. "Beirut Blast: Who Knew What, When?" *Naharnet*, 12 Aug. 2020, retrieved from <http://www.naharnet.com/stories/en/274137-beirut-blast-who-knew-what-when>

It should be clear that those responsible for the catastrophe and for the unlawful deaths of hundreds of people should not oversee the investigation of its causes, and the responsibilities. The Government of Lebanon has direct conflicts of interest in that it exercises authority over the Port of Beirut and the Customs Administration. As a result, the credibility and impartiality of the Lebanese authorities handling the investigation has been questioned by many local and international parties.

### 3. Defective legal and justice systems/mechanisms

#### 3.1 Historical failure to investigate and ensure accountability

The Lebanese political, administrative and judicial systems have proven inefficient and unable in the past to satisfactorily conduct investigations relating to explosions and assassinations of such magnitude and prosecute significant crimes.

A recent study by Information International has indeed demonstrated that the Judicial Council has seldom rendered any decisions regarding the 250 crimes that were referred to it since its establishment in 1923 until July 2019.<sup>4</sup>

#### 3.2 Political interference and lack of impartiality, independence and transparency

Rights groups and civil society organizations have expressed concerns about the ability of the Lebanese judiciary to conduct a credible and transparent investigation. Its lack of independence and its failure to adhere to the rule of law has been documented in several instances.

The Lebanese Judges Association has also called in several occasions for preserving the judiciary from political pressure.<sup>5</sup> Interference has ranged in the past years from intimidating or threatening judges to selecting judges that are close to politicians or influenced by them, to ensuring some judicial positions remain vacant to obstruct justice and prevent accountability. The most recent episode involves blocking the latest judicial appointments by the ministry of justice and the presidency of the republic.

As of direct relation to Beirut explosion, initial evidence suggests that some judges have received several letters and were aware of the storage of hazardous ammonium nitrate in the port and allegedly failed to take action. An investigation and prosecution by the Lebanese judiciary might thus be compromised.<sup>6</sup>

Further, the tussle over the appointment of the investigating judge has further undermined the credibility of the investigation into the Beirut blast. The judge that was first proposed by the caretaker minister of justice was rejected by the higher judicial council on suspicion of proximity to the Free Patriotic Movement. The second nominee refused his appointment. The High Judicial council finally

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<sup>4</sup> "المجلس العدلي: الهيكلية، المهام، والقضايا"، *الدولية للمعلومات*, Monthly Magazine, 6 Aug. 2014, retrieved from [https://monthlymagazine.com/ar-article-desc\\_4861](https://monthlymagazine.com/ar-article-desc_4861)

<sup>5</sup> "نادي القضاة: فرصة تاريخية لتشريع انتخاب أعضاء مجلس القضاء الأعلى كافة" *National News Agency*, 8 May 2020, retrieved from <http://nna-leb.gov.lb/ar/show-news/477847/nna-leb.gov.lb/ar>; "نادي القضاة: قنود استقلالية القضاء أولى من تحرير المجرمين" *National News Agency*, 8 May 2020, retrieved from <http://nna-leb.gov.lb/ar/show-news/474577/>

<sup>6</sup> Haboush, Joseph, and Lauren Holtmeier. "Blame Game for Beirut Blasts Begins among Lebanon Officials." *Al Arabiya English*, 5 Aug. 2020, retrieved from

<https://english.alarabiya.net/en/News/middle-east/2020/08/05/Authorities-knew-ammonium-nitrate-stored-at-Beirut-port-was-dangerous-Customs-head>

approved the third nominee, Military Investigative Judge Fadi Sawan to lead the investigation. Judge Sawan has in fact been accused of having been influenced by former minister of Justice Salim Jreissati in a recent case that involves a political party to which the latter is affiliated.<sup>7</sup>

### 3.3 No guarantee of the right to a fair trial or due process

On 10 August 2020, the Lebanese government has referred the case to the Judicial Council, an Exceptional Court. The prevalent practice within this court do not adhere to international standards and raises several concerns with regard to the independence of the judiciary and to the right to a fair trial or due process.

Furthermore, ministers will be granted a preferential treatment as they will only be tried by a political and exceptional court, the Supreme Council, which consists of 7 MPs and 8 judges. A number of the MPs might belong to the same political party of the suspect. This institution poses a direct threat to the independence and impartiality of the judiciary and has failed to prosecute any politician in the past 20 years.<sup>8</sup>

### 3.4 A flawed local investigation

On 5 August 2020, the Lebanese government initiated an “administrative inquiry”. A commission, headed by the then Prime Minister and composed of the ministers of defense, interior and justice and the heads of the top four security agencies, that is the Army, General Security, Internal Security Forces and State Security, was entrusted to investigate the explosions and render its findings to the cabinet within five days. The cabinet, in turn, will refer the findings to the judiciary.

Many of the members of this commission had acknowledged they received warnings about the presence of the ammonium nitrate and were urged to take action but they considered themselves not responsible for the blast and claimed that the primary responsibility is on those tasked with overseeing the port. Their membership undoubtedly violates the fundamental principle of impartiality of the inquiry. This short deadline is an additional indicator of the government’s lack of intent to conduct a thorough and credible investigation.

The government also took the decision to place under house arrest the officials who oversaw storage and guarding facilities since 2014 without elucidating the charges. It tasked the Lebanese army to identify those who should be arrested under the excuse that a state of emergency has been declared.

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<sup>7</sup> “جريمة قيرشمون: التسييس يبخر الإجراءات القضائية” *Al Modon*, 6 Aug. 2019, retrieved from <https://www.almodon.com/politics/2019/8/6/%D8%AC%D8%B1%D9%8A%D9%85%D8%A9-%D9%82%D8%A8%D8%B1%D8%B4%D9%85%D9%88%D9%86-%D8%A7%D9%84%D8%AA%D8%B3%D9%8A%D9%8A%D8%B3-%D9%8A%D9%86%D8%AE%D8%B1-%D8%B9%D8%B8%D8%A7%D9%85-%D8%A7%D9%84%D8%A5%D8%AC%D8%B1%D8%A7%D8%A1%D8%A7%D8%AA-%D8%A7%D9%84%D9%82%D8%B6%D8%A7%D8%A6%D9%8A%D8%A9>

<sup>8</sup> Jreij, Ramzi. “المجلس الاعلى لمحكمة الرؤساء والوزراء تأسس في العام 1926: هل لبنان مدينة فاضلة لم يخطئ فيها مسؤول فيحاكم؟” *Annahar Newspaper*, 21 Apr. 2020, retrieved from <https://newspaper.annahar.com/article/1171783-%D8%A7%D9%84%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D8%A7%D8%B9%D9%84%D9%89-%D9%84%D9%85%D8%AD%D8%A7%D9%83%D9%85%D8%A9-%D8%A7%D9%84%D8%B1%D8%A4%D8%B3%D8%A7%D8%A1-%D9%88%D8%A7%D9%84%D9%88%D8%B2%D8%B1%D8%A7%D8%A1-%D8%AA-%D8%AA%D8%A3%D8%B3%D8%B3-%D9%81%D9%8A-%D8%A7%D9%84%D8%B9%D8%A7%D9%85-1926-%D9%87%D9%84-%D9%84%D8%A8%D9%86%D8%A7%D9%86-%D9%85%D8%AF%D9%8A%D9%86%D8%A9-%D9%81%D8%A7%D8%B6%D9%84%D8%A9>

The Public Prosecutor also initiated a judicial investigation to specify criminal responsibilities and accountabilities. As a result, 25 persons were detained. The case was then referred to the Judicial Council. Further to the appointment of Judge Fadi Sawan as the investigative judge, a discord about who detains the authority of questioning ministers: the judicial council or the public prosecution office. He also moved the investigation to the military tribunal under the pretext that a clerk was not appointed to assist him at the Palace of justice in Beirut.

### 3.5 Leaked information and suspicion of tempered crime scene

Information about the inquiry and the decisions taken were leaked to the public either through tweets by political activists such as Salem Zahran or through informal media channels.<sup>9</sup> It is clear that it has been complicated to acquire and have access to information related to the investigation. Two months after the blast, the authorities are yet to be transparent, while the Lebanese society has yet to receive justice. Besides the fact that the victims have the right to justice and accountability, it is the duty of the Lebanese authorities to be transparent to make sure the public has access to information and to ensure a strict implementation of the judicial proceedings.

Furthermore, the crime scene is suspected to have been tempered in the immediate aftermath of the explosion and on the days that followed. Several media channels and families of missing victims present at the port reported that persons in civilian attire were entering and leaving the scene. Some of them claimed that a number of Hezbollah members were present at the explosion site for some time.<sup>10</sup> Many international experts were also prevented from entering. Gabriel Ferneini, a member of the municipality of Beirut who was requested to escort the international experts and distract them away from the explosion site, resigned that same day.<sup>11</sup>

It is evident that the process of domestic investigation has suffered from serious flaws. Whether it is caused by a lack of capabilities or commitment, it is unlikely to reach a plausible conclusion.

## 4. THE NEED FOR AN INTERNATIONAL AND INDEPENDENT INVESTIGATION

**4.1** Given the historical failure of the Lebanese authorities to investigate serious government faults and the local and international distrust of the state institutions, an international independent investigation free from any potential political interference, is necessary to ensure truth, justice, and reparations for victims.

<sup>9</sup> <https://twitter.com/salemezahran05/status/1291435283456688129>; <https://twitter.com/salemezahran05/status/1294326793571373064>; <https://twitter.com/salemezahran05/status/1291799774694342657>; <https://twitter.com/salemezahran05/status/1291804462030426112>; <https://twitter.com/salemezahran05/status/1292543626908762112>; <https://twitter.com/salemezahran05/status/1292773888439525378>; <https://twitter.com/salemezahran05/status/1293854083212808193>

<sup>10</sup> Fakhri, Johnny. "شقيق أحد ضحايا مرفأ بيروت: شاهدت عناصر حزب الله هناك." *Al Arabiya*, 12 Aug. 2020, retrieved from

<https://www.alarabiya.net/ar/arab-and-world/2020/08/12/%D8%B4%D9%82%D9%8A%D9%82-%D8%A3%D8%AD%D8%AF-%D8%B6%D8%AD%D8%A7%D9%8A%D8%A7-%D9%85%D8%B1%D9%81%D8%A3-%D8%A8%D9%8A%D8%B1%D9%88%D8%AA-%D8%B4%D8%A7%D9%87%D8%AF%D8%AA-%D8%B9%D9%86%D8%A7%D8%B5%D8%B1-%D8%AD%D8%B2%D8%A8-%D8%A7%D9%84%D9%84%D9%87-%D9%87%D9%86%D8%A7%D9%83#>

<sup>11</sup> "استقالة غريبال فرنيني تكشف عجز بلدية بيروت" *Annahar Newspaper*, 10 Aug. 2020, retrieved from

<https://newspaper.annahar.com/article/1254550-%D8%A5%D8%B3%D8%AA%D9%82%D8%A7%D9%84%D8%A9-%D8%BA%D8%A8%D8%B1%D9%8A%D8%A7%D9%84-%D9%81%D8%B1%D9%86%D9%8A%D9%86%D9%8A-%D8%AA%D9%83%D8%B4%D9%81-%D8%B9%D8%AC%D8%B2-%D8%A8%D9%84%D8%AF%D9%8A%D8%A9-%D8%A8%D9%8A%D8%B1%D9%88%D8%AA>

Victims and their families have requested the international community on 8 August 2020 to decide the international investigation and prosecution of this crime. The victims' calls for accountability must be heard.

**4.2** Further, the Beirut explosion takes an international dimension since it has killed and injured victims from various nationalities including UNIFIL peacekeepers and diplomatic staff and their relatives.<sup>12</sup> Also, the Lebanese state failed to uphold its international obligations and act to confront the risks posed by hazardous substances.

**4.3** Therefore, ALEF urges the UN Security Council Member States to ensure that an immediate, impartial, independent, and transparent international investigation is conducted to examine the underlying human rights failures and uncover the truth. It is apparent that only such international and independent investigation shall enable the accountability of those responsible for the deaths and injuries and the failure to take the necessary measures to ensure the safety of the people in Lebanon over the past years.

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<sup>12</sup> Al Arabiya: "Wife of Dutch ambassador to Lebanon dies of injuries caused by Beirut explosion", 8 Aug, 2020, retrieved from <https://english.alarabiya.net/en/News/middle-east/2020/08/08/Wife-of-Dutch-ambassador-to-Lebanon-dies-of-injuries-caused-by-Beirut-explosion>