

ALEF- act for human rights is deeply concerned with the extensions of the state of emergency in Beirut. Following years of raising the alarm about a shrinking civic space, this decision can lead to more intimidation, repression, and abuse.

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The implications of the announcement of the state of emergency in Beirut

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I. Background

On 4 August 2020, an unprecedented explosion in scope and impact ripped 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.

In response to the explosion, the government declared a state of emergency, limited to the governorate of Beirut, for 2 weeks from 5 August 2020 till 18 August 2020. It was then unlawfully extended for a month till 18 September 2020¹ and a second time until the 31 December 2020².

II. The Legal Framework of the State of Emergency in Lebanon

A. The legal conditions for declaring a state of emergency

Article 65, paragraph 5, of the Constitution stipulates that a state of emergency constitutes a “basic” issue, i.e. an issue of utmost importance. Thus, the decision to declare it must be approved by a two-thirds majority of the Council of Ministers.

As per the law on “Declaring a State of Emergency or a Military Zone”³ and the National Defense law⁴, a state of emergency is declared in all or in part of the Lebanese territory when the country is at risk of being threatened by external threats or armed revolution or acts or disturbances that threaten public order and security or when events take the character of disaster. However, it may not be declared for an indefinite period; the duration must be specified in the decree declaring the state of emergency. The duration may be extended by a decision of the Council of Ministers based on the same conditions. The Parliament shall also meet within a maximum of 8 days to consider the decision, even if not in session.⁵

These procedural safeguards are meant to ensure that any exceptional measure is disclosed in full transparency and that its sole purpose is restoring order and ending the emergency. Therefore, disrespecting these procedures may be a warning sign of a potential abuse of such powers.

B. The extraordinary powers granted to the Lebanese Armed Forces

Immediately following the declaration of a state of emergency, the Highest Military Authority, through the Commander in-Chief of the army, shall assume the authority of restoring security in the country. All armed forces, including the Internal Security Forces, General Security, Customs, the security forces in the ports and airports, the forestry guards and the firefighters fall under his command.⁶ The army then is granted far-reaching rights and special emergency powers. It may take the following exceptional measures in order to maintain security:⁷

¹ Azakir, Mohamed. “Lebanon Declares Emergency in Beirut, Approves Urgent Funding.” Reuters, 5 Aug. 2020, retrieved from <https://www.reuters.com/article/us-lebanon-security-blast-cabinet/lebanon-declares-emergency-in-beirut-approves-urgent-funding-idUSKCN25128T>

² Sirens Associates: “Siren State of Emergency in Lebanon”, <http://sirerassociates.com/wp-content/uploads/2020/09/Siren-State-of-Emergency-in-Lebanon-Sep-2020-FINAL-3.pdf>

³ Article 1, Legislative Decree No. 52/ 1967 “Declaring a State of Emergency or a Military Zone”

⁴ Articles 3 and 4, Legislative decree No. 102/1983 “National Defense Law”

⁵ Art 2, Legislative Decree No. 52/ 1967

⁶ Art 3, Legislative Decree No. 52/ 1967

⁷ Article 4, Legislative decree No. 102/1983 and articles 4 and 5 of Legislative Decree No. 52/ 1967

- Arrest people, and confiscate animals, goods, and properties.
- Search and inspect any building, house or other place at any time during the day or night subject to the approval of the competent Public Prosecutor's office.
- Give orders to hand over weapons and ammunition, search for them and confiscate them.
- Impose individual and collective fines.
- Keep the suspects away.
- Impose forced residence on persons who engage in activity that poses a threat to security and take the necessary measures to secure the living of these persons and their families.
- Prohibit unauthorized public meetings or public meetings of a military nature or that pose a threat to security.
- Give orders to close cinemas, theatres, parks, and various places of assembly on a temporary basis.
- Impose a curfew on people and cars in places and at times determined in a resolution.
- Prohibit any publication that poses a threat to security and take the necessary measures to impose censorship on newspapers, publications, radio, television, movies, and theatres.
- Monitor ports and ships in territorial waters.
- Monitor foreigners entering or leaving Lebanon.
- Prosecute persons who breach security or violate the constitution or any of the measures imposed by the army, even if these crimes happened outside of the territory declared in a state of emergency.
- Combat smuggling.

The authority to hear cases shall lie exclusively with the Military Court. It shall continue to hear such cases even after the state of emergency has been lifted.

ALEF has repeatedly raised concerns regarding the military in relation to the undermining of human rights and the rule of law. Military judges are appointed by the Ministry of Defense and are not required to have a legal education. Fair trial violations have been frequently reported including ill-treatment and torture by military investigators, arbitrary detention, denial of contacting family members or accessing appropriate legal representation, verdicts issued without an explanation and limited right to appeal.⁸

C. Lebanon's international human rights obligations

Lebanon is a State party to seven core international human rights treaties⁹ including the International Covenant on Civil and Political Rights (ICCPR). Under article 4 of the ICCPR, a state may, under certain circumstances, resort to emergency measures derogating from its human rights obligations, provided that these circumstances are so serious as to constitute a threat to the life of the nation and that the derogations are necessary and of exceptional and temporary nature.

That means that possibility of derogation is not absolute. It is circumscribed by several conditions laid down in the aforementioned article 4, and explained by the Human Rights Committee in its general comment No. 29 (2001) on states of emergency, namely the official proclamation of a state of emergency, the principles of strict

⁸ "Military Tribunal: A Breach in the Integrity of the Judicial System." ALEF, 20 Nov. 2016, retrieved from <https://alefliban.org/wp-content/uploads/2016/10/MILITARY-english.pdf>

⁹ These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the International Convention for the Protection of All Persons from Enforced Disappearance (CPED).

necessity and proportionality of any derogating measure taken, the conformity of measures taken with other international obligations; the principle of non-discrimination; the principle of non-derogability of certain rights, and the principle of international notification.

An official declaration of a state of emergency is crucial for the safeguard of the principles of legality and rule of law at times when they are most needed.

Any emergency derogation:

- Must not adversely affect the substance of the rights as such; they could only lawfully limit their full and effective exercise.
- Must be limited in terms of duration, geographic coverage and material scope to the extent strictly required by the exigencies of the situation.
- Must not discriminate under any circumstances on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Further, certain fundamental rights are non-derogable; They must be fully protected even during a proclaimed state of emergency, in particular the right to life, the prohibition of torture, or cruel, inhuman or degrading treatment or punishment, the right to freedom from slavery and servitude, the right not to be imprisoned merely on the ground of inability to fulfil a contractual obligation, the right to freedom from ex post facto laws, the right to recognition as a legal person, and the right to freedom of thought, conscience and religion.¹⁰

Additionally, when a state party resorts to the right of derogation pursuant to article 4 of the ICCPR, it commits itself to a regime of international notification. Hence it must immediately inform the United Nations Secretary-General of the provisions it has derogated from and of the reasons for such measures and provide a complete documentation of any laws adopted. Further notification is required if the State party subsequently takes additional measures, for instance by extending the duration of a state of emergency or terminating it.¹¹

Given the restrictions on the enjoyment of individual rights that may result from such situation, the state party has to prove that it is faced with a public emergency as defined in the ICCPR and that the ultimate purpose of derogations under international law is to enable it to return to normalcy. Such right shall not be legitimate if used by an authoritarian regime to eliminate human rights or to save a specific government.

The Human Rights Committee has noted in its concluding observations in 1999 that the circumstances under which a state of emergency may be proclaimed and enforced in Lebanon in respect of the National Defense Law “are excessively broad and may be used to restrict the exercise of basic rights in an unjustifiable manner” and urged the state to suspend its application and replace it by a legislation compliant with article 4 of the Covenant.

¹⁰ Article 4 (2) of the ICCPR: “No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision”.

¹¹ Human Rights Committee, Statement on derogations from the Covenant in connection with the COVID-19 pandemic, retrieved from <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf>

III. The human rights implications of the declaration of a state of emergency in Lebanon

A. The illegitimacy and illegality of the State of Emergency in Beirut

The Government of Lebanon considered that the explosion in the Beirut port amounts to an event that falls under the character of disaster, hence justifying its decision to declare a state of emergency. However, it did not provide any clear and tangible reasons of why emergency powers are needed and why ordinary ones are inadequate to address the situation.

The decision to declare a state of emergency has the potential to have an impact on civic space and the ability and freedom of citizens to voice their concerns, to organize protests and be free of demanding justice, accountability and retribution. Indeed, since the explosion, many protests, some that can be considered major (especially the first weekend following the explosion) were organized. During these protests, thousands blamed the government for rampant corruption and negligence that resulted in the death of hundreds and the injuries of thousands of innocent people during the Beirut blast. A state of emergency could be misused as a cover in such political context to restrict free speech, assembly, association, or movement and to “justify” the use of force and detention of protesters, and whistleblowers sharing valuable information to the public on the ongoing legal investigation. Indeed, on Saturday August 8, 2020, the Red Cross and the Red Crescent reported that hundreds of protesters had been injured due to the excessive use of force of security forces (tear gas, rubber bullets, beatings, and in some cases, the use of live ammo). Finally, many journalists and activists from organizations monitoring the protests, were hit or beaten during the protests.

Further, the state of emergency was not declared in conformity with the constitution and the Lebanese laws. The exceptional measures entered into force on August 5, 2020, even though the official decree No. 6792 declaring a state of emergency was issued 2 days later, on August 7, 2020 and published in the official gazette on August 11, 2020. The Parliament took note of the state of emergency on August 13, 2020, nine days following its announcement, which constitutes an explicit violation of the legislative decree that stipulates that it should happen within a maximum of 8 days.¹²

Several parliamentarians were not fully aware of the Parliament’s role in emergencies in relation to having a power of ratification or being restricted to being notified and acknowledging it. A debate also took place regarding the state of emergency starting and ending date. The speaker of the Parliament stated at the end of the parliamentary session that the state of emergency shall last 2 weeks from the date of ratification of the decree by the Parliament, which also constitutes a violation of article 65 of the constitution that grants the right to define the duration of the state of emergency to the government.¹³

In reality, the state of emergency was already applied since August 5, 2020. Considering the date of ratification as a starting date would practically mean that it was unlawfully extended by ten additional days. Four days later, on August 17, 2020, the Secretary General of the Council of Ministers issued a statement by which he extended

¹² Chehayeb, Kareem, and Megan Specia. “Lebanon's Parliament Confirms State of Emergency, Extending Army Power.” The New York Times, 13 Aug. 2020, retrieved from <https://www.nytimes.com/2020/08/13/world/middleeast/lebanon-parliament-emergency.html>

¹³ Hamdan, Akram. “مجلس النواب يوافق على الطوارئ والإستقالات - أكرم حمدان.” Nidaa Al Watan, 14 Aug. 2020, retrieved from <https://www.nidaawatan.com/article/27582-%D8%A8%D8%B1%D9%8A-%D9%8A%D8%AA%D8%AD%D8%AF%D8%AB-%D8%B9%D9%86-%D9%85%D8%A4%D8%A7%D9%85%D8%B1%D8%A9-%D9%84%D8%A5%D8%B3%D9%82%D8%A7%D8%B7-%D8%A7%D9%84%D9%85%D8%AC%D9%84%D8%B3-%D9%88%D9%8A%D8%B7%D8%B1%D8%AD-%D8%B7%D8%B1%D8%AD-%D8%AE%D8%B1%D9%8A%D8%B7%D8%A9-%D8%B7%D8%B1%D9%8A%D9%82-%D9%84%D9%84%D8%AD%D9%84%D9%85%D8%AC%D9%84%D8%B3-%D8%A7%D9%84%D9%86%D9%88%D8%A7%D8%A8-%D9%8A%D9%88%D8%A7%D9%81%D9%82-%D8%B9%D9%84%D9%89>

the state of emergency by an additional month, until September 18, 2020. This decision was issued in a gross violation of the Constitution that clearly stipulates that any extension shall be in accordance with the same conditions of the declaration and by the same authority, i.e. by two thirds of the government members. The secretary general, a civil servant, has no authority to extend the State of Emergency.¹⁴

Finally, Lebanon has failed to fulfill its obligation under article 4(3) of the ICCPR of immediate notification of the Secretary General of the UN about the declaration of a state of emergency in Beirut. It also refrained from notifying the extension, as confirmed by OHCHR office in Beirut. The Human Rights Committee considers this international notification an important tool to prevent abuses of the right to derogate by allowing the monitoring of the situation by other States parties and treaty bodies monitoring organs.

B. Key threats to the full enjoyment of Human Rights

The proclamation of a State of emergency is alarming. It empowers the army to adopt measures that would subject fundamental freedoms that could pave the way for systematic human rights violations. It provides strong incentives to the government to derogate from its international obligations. For example, curfews and measures to prohibit gatherings in public spaces could infringe on freedom of association and peaceful assembly. They may also ban or restrict the freedom of movement and limit civil and political rights. Further, special powers of arrest and detention may lead to arbitrary arrests or detentions or to abuses or deprivation of a person's liberty.

The state of emergency could also be invoked to monitor and gather information from all telecommunications, in violation of the right to privacy or to impose censorship on the media, bloggers and opinion leaders and consequently restrict freedoms of expression and information. Moreover, a state of emergency may also threaten democratic principles since the powers of the Lebanese Army are augmented at the expense of democratic institutions such as the Parliament and the Government.

It also may compromise access to justice and the rule of law. The simple fact that all court proceedings are transferred to the military tribunal during the state of emergency, which will continue to hear such cases even after its termination, is an infringement of the right to be tried by a competent, independent and impartial court which respects the right to a fair trial. The Lebanese Military Court is a special court that do not comply with the due process standards as established in international human rights law and do not provide adequate safeguards nor effective remedies.

C. The alarming measures implemented in the context of the state of emergency in Beirut

ALEF has noted with concern many measures which were taken during this emergency period that fell short of basic human rights safeguards and disregarded Lebanon's obligations under international law, including:

1. Failure to ensure the protection against crime in Beirut

The state of emergency was supposedly proclaimed to ensure security in Beirut in the aftermath of the explosion. However, people residing in the explosion area have reported that they were left on their own and that the security forces have failed to protect them and prevent theft of their damaged places. As a

¹⁴ "بيان المفكرة القانونية حول تمديد إعلان الطوارئ: النظام يحتاط ضد غضب الشعب" *Legal Agenda*, 18 Aug. 2020, retrieved from <https://www.legal-agenda.com/article.php?id=7080>

result, civil groups volunteered to protect the neighborhoods and prevent the theft of the properties of thousands of displaced families who were displaced from the city and neighborhoods.¹⁵

2. Tentative restriction of the movement of humanitarian associations in Beirut

The governor of Beirut issued a communiqué on 14 August 2020 requesting NGOs and civil groups providing humanitarian aid at the explosion site to submit their documents to the Lebanese Army Emergency Operations Room to receive a special permit. The communiqué added that non-permit holders will be prohibited from accessing the streets and neighborhoods that were affected by the explosion.¹⁶

This decision clearly suspends the freedom of movement in the concerned area and constitutes a clear obstruction of the relief work. As per the Legislative Decree No. 52/ 1967, any unauthorized person or group would be arrested by the army and tried before the Military Court. A wave of objections and criticism pushed the Governor to retrieve his decision later that day and issue a statement clarifying that the NGOs are only requested to notify the army of their presence and operations in the explosion area.¹⁷

IV. Recommendations

To the Lebanese State

- The Lebanese state must immediately notify the UN Secretary General of the declaration and the extension of the State of Emergency. Notification must include full information about the derogating measures taken and clear reasons, with a complete documentation of any laws adopted.
- The Lebanese state must not renew the State of Emergency in Beirut beyond 31 December 2020.
- The Lebanese state must replace the laws governing the State of Emergency with a recent legislation compliant with article 4 of the ICCPR and Lebanon's obligations under other international human rights treaties to preserve human dignity, rights and protection, and civic space.

To the Lebanese security forces

- The Lebanese security forces must lay down clear guidelines regarding the imposition of emergency measures: their purpose, necessity, and the legal grounds on which they are based. This should be supported with a monitoring and evaluation framework to assess the effectiveness of the measures.
- The Lebanese security forces must enforce a code of conduct and implement trainings, and most importantly, ensure mechanisms for knowledge retention, for all public officials engaged in the imposition and execution of emergency measures: this must clearly state that human rights

¹⁵Jammal, Rita. "عمليات السرقة تزيد من مصائب اللبنانيين بعد انفجار مرفأ بيروت." New Arab, 12 Aug. 2020, retrieved from <https://www.alaraby.co.uk/%D8%B9%D9%85%D9%84%D9%8A%D8%A7%D8%AA-%D8%A7%D9%84%D8%B3%D8%B1%D9%82%D8%A9-%D8%AA%D8%B2%D9%8A%D8%AF-%D9%85%D9%86-%D9%85%D8%B5%D8%A7%D8%A6%D8%A8-%D8%A7%D9%84%D9%84%D8%A8%D9%86%D8%A7%D9%86%D9%8A%D9%8A%D9%86-%D8%A8%D8%B9%D8%AF-%D8%A7%D9%86%D9%81%D8%AC%D8%A7%D8%B1-%D9%85%D8%B1%D9%81%D8%A3-%D8%A8%D9%8A%D8%B1%D9%88%D8%AA>

¹⁶ <https://www.facebook.com/achrafiehnews/posts/185398456362148>

¹⁷lebanon24. "بلدية بيروت: المقصود بتصريح للدخول الى الاحياء المنكوبة إبلاغ غرفة عمليات الجيش للتنسيق." Lebanon24, 15 Aug. 2020, retrieved from <https://www.lebanon24.com/news/lebanon/735887/%D8%A8%D9%84%D8%AF%D9%8A%D8%A9-%D8%A8%D9%8A%D8%B1%D9%88%D8%AA-%D8%A7%D9%84%D9%85%D9%82%D8%B5%D9%88%D8%AF-%D8%A8%D8%AA%D8%B5%D8%B1%D9%8A%D8%AD-%D9%84%D9%84%D8%AF%D8%AE%D9%88%D9%84-%D8%A7%D9%84%D9%89-%D8%A7%D9%84%D8%A7%D8%AD%D9%8A%D8%A7%D8%A1-%D8%A7%D9%84%D9%85%D9%86>

principles under international law should be followed at all times, including the prohibition of all forms of discrimination.

- The Lebanese security forces must hold accountable any officer who abuses emergency powers and/or infringes on human rights, in particular non-derogable rights.

To the UN, OHCHR, and Human Rights Committee

- The UN Secretary General must ensure that the Lebanese state is reminded of its obligations under article 4 of the ICCPR, in particular in relation to its obligations to justify the need for a state of emergency and its international notification commitment.
- The Human Rights Committee must closely monitor the situation in Lebanon and establish a commission of inquiry for state of emergency practices.

To the Lebanese NHRI

- The Lebanese National Human Rights Institution must monitor the state of emergency practices in Lebanon and share any observations and findings to ensure transparency and accountability.

To Human Rights Groups in Lebanon

- Human Rights groups in Lebanon must set up a monitoring mechanism of the state of emergency practices in Lebanon. They must also issue immediate warning or statement about human rights and rule of law violations once recorded or reported.