

A DOOMED INVESTIGATION: HOW POLITICAL IMMUNITY, CORRUPTION, AND A LACK OF JUDICIAL INDEPENDENCE STYMY AN INVESTIGATION INTO THE BEIRUT PORT EXPLOSION OF AUGUST 4, 2020

LUCIUS LAMBERT

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I. THE ECONOMIC STATE OF LEBANON BEFORE AND AFTER THE BEIRUT PORT EXPLOSION

On August 4, 2020, in one of the largest non-nuclear explosions in modern history, the Port of Beirut explosion (hereinafter the “explosion”) devastated an already precarious Lebanese population. As a result, 217 people died, 7,000 were wounded, 300,000 people were displaced, half of Beirut’s healthcare centers were rendered nonfunctional, and the World Bank estimated economic damage between \$3.8-4.6 billion.¹ The explosion was due to the faulty storage of approximately 2,700 tons of ammonium nitrate in Warehouse 12 of the Port of Beirut, of which only 552 tons exploded and devastated the Lebanese capital.² It is unclear why only a portion of the ammonium nitrate exploded; but some Lebanese officials predicted that portions of the ammonium nitrate could have been stolen, or blown out to sea.³

It is hard to imagine a worse time for this explosion to occur as Lebanon was already in the throes of a severe economic crisis. In February, 2020, prices of basic necessities spiked while the exchange rate plummeted, rendering the value of a monthly salary of one million

1. *Lebanon: Authorities must lift immunity for officials summoned by Beirut Blast investigator*, AMNESTY INTERNATIONAL (July 14, 2021, 4:08 PM), <https://www.amnesty.org/en/latest/press-release/2021/07/lebanon-authorities-must-lift-immunity-for-officials-summoned-by-beirut-blast-investigator/>.

2. *FBI probe shows amount of chemicals in Beirut blast was a fraction of original shipment*, REUTERS (July 30, 2021, 12:44 PM), <https://www.reuters.com/world/middle-east/fbi-probe-shows-amount-chemicals-beirut-blast-was-fraction-original-shipment-2021-07-30/>.

3. *Id.*

Lebanese pounds into the equivalent to \$100, as opposed to \$700 in 2019.⁴ At this time, reports spread of an elderly man who shot himself in a busy commercial street in Beirut, leaving a note beside him that mentioned starvation as well as a copy of his clean criminal record.⁵ His suicide was not an isolated one.⁶

Following the explosion, the World Bank ranked the Lebanese economic crisis as one of the three most severe crises since the mid-nineteenth century.⁷ Throughout Lebanon, poverty rates have skyrocketed and households are unable to afford costly private alternatives to unreliable public services.⁸ For example, many Lebanese are forced to rely on private generators to provide fuel after the state power provider, Électricité du Liban, proved unable to provide services.⁹ Since last year, the price of fuel increased by 220 percent, while the exchange rate plummeted.¹⁰ As a result, there are widespread fuel shortages, even for critical facilities like hospitals, many of which remain without power.¹¹

This Note contends that both the explosion and the full-blown financial crisis are a result of the negligence and criminal conduct of the Lebanese government. The Lebanese regime, known as *El-Sulta*, has been widely and rightly criticized for its corruption, widespread criminal activity, and negligence in allowing the explosion to happen. Numerous governmental officials were both aware of the ammonium nitrate and the danger it posed to the city and constantly interfered and hampered investigations into the incident.¹² Many politicians pointed fingers away from the government to avoid blame, but the October

4. *Lebanon suicides spark outrage at govt over economic crisis*, FRANCE24 (July 3, 2020, 4:42 PM), <https://www.france24.com/en/20200703-lebanon-suicides-spark-outrage-at-govt-over-economic-crisis>.

5. *Id.*

6. *Id.*

7. *Lebanon Sinking into One of the Most Severe Global Crisis Episodes, amidst Deliberate Inaction*, THE WORLD BANK (June 1, 2021), <https://www.worldbank.org/en/news/press-release/2021/05/01/lebanon-sinking-into-one-of-the-most-severe-global-crises-episodes>.

8. *Id.*

9. *Lebanon's Worsening Fuel Crisis Spurs Violence, Leaves Three Dead*, AL JAZEERA (Aug. 8, 2021), <https://www.aljazeera.com/economy/2021/8/9/lebanons-worsening-fuel-crisis-sparks-violence-leaving-3-dead>.

10. *See id.* (explaining how the exchange rate currently stands at 20,000 Lebanese pounds for a dollar, whereas the official fixed rate is 1,500 for a dollar).

11. *Id.*

12. Ruth Sherlock, *1 Year After Beirut Explosion, Lebanese Push for Government Accountability*, N.P.R. (Aug. 7, 2021), <https://www.npr.org/2021/08/07/1025801043/1-year-after-beirut-explosion-lebanese-push-for-government-accountability>.

Revolution of 2019 demonstrates that the Lebanese people hold the entire government both collectively responsible for the state of the country, and as the greatest obstacle to its recovery.¹³ The devastating explosion at the Port of Beirut only solidifies this conviction.

II. POLITICAL IMMUNITY

Lebanon's constitutional provision for political immunity is perhaps the greatest institutional roadblock to investigating and bringing to justice those responsible for the criminal negligence that resulted in the explosion. Article 40 of the Lebanese Constitution states that no member of parliament "may, during the sessions, be prosecuted or arrested for a criminal offense, without the permission of the Chamber, except when caught in the act."¹⁴ In order for politicians to be prosecuted, parliament must formally lift this political immunity. Furthermore, to even question a public servant, the permission of that servant's superiors must be granted.¹⁵ This immunity is strictly followed. For example, a former judge was removed by the targeted MP after indicting and investigating the culpability of that same MP regarding the explosion, simply because he did so when immunity had not been lifted.¹⁶ The ability of government officials to remove the very judicial actors trying to investigate them clearly goes against the principle of the separation of powers laid out in Preamble E of the Lebanese Constitution.¹⁷ It is all but impossible for any judge to lead a proper investigation when even the smallest measure—such as questioning a civil servant—must be approved by the member of administration under investigation. This, combined with the fact that every turning of the governmental wheel demands something in exchange, makes any attempt at investigation an exercise in Sisyphean futility.

Indeed, it is impossible to truly understand the difficulty of lifting political immunity and conducting proper investigations into the

13. Helen Sullivan, *The Making of Lebanon's October Revolution*, NEW YORKER (Oct. 29, 2019), <https://www.newyorker.com/news/dispatch/the-making-of-lebanons-october-revolution>.

14. THE LEBANESE CONSTITUTION May 23, 1926, art. 40.

15. *Lebanon MPs stall lifting immunity in port blast probe*, AL JAZEERA (July 9, 2021), <https://www.aljazeera.com/news/2021/7/9/lebanon-mps-stall-lifting-immunity-in-port-blast-probe> ("... Lebanese law stipulates that the judge investigating the blast must get authorization to question a public servant from his superiors.").

16. William Christou, *Lebanese MP Blocks Port Investigation in Bid to Stall for Judicial Immunity*, THE NEW ARAB (Sept. 27, 2021), <https://english.alaraby.co.uk/news/lebanese-mp-blocks-port-investigation-stall-immunity>.

17. THE LEBANESE CONSTITUTION May 23, 1926, Preamble, art. E ("The system is based upon the principle of separation of powers, exercising them through constitutional institutions.").

government without understanding the extent of the corruption of Lebanon's regime. A spokesperson for the families of the victims of the explosion accurately stated, "[w]e're not living in a state, we're living in a playground run by the mafia."¹⁸

III. Corruption, Clientelism, and the Civil War

Lebanon's status as a failed state is widely credited to the corruption of its regime.¹⁹ Transparency International's 2020 Corruption Perception Index ranked Lebanon 149 out of 180 countries with a score of 25 out of 100.²⁰ The former United States Secretary of State, when sanctioning Lebanese officials for corruption, stated that "[t]he systemic corruption in Lebanon's political system . . . has helped erode the foundation of an effective government that serves the Lebanese people."²¹ This rampant corruption has its roots in sectarianism and clientelism that stretches back to Lebanon's Civil War.

As a result of both massive emigration from Lebanon and the failure to hold new entrance examinations for public servants, the two major watchdogs of the Lebanese government, the Central Inspection Board (CIB) and the Court of Accounts (CA), were left without sufficient personnel to carry out their operations.²² This was further exacerbated by politicians pressuring these watchdogs to not take action against public servants implicated in irregularities.²³ Politicians also pressured inspectors to investigate and discredit political enemies, further damaging the impartial reputation that watchdog agencies require in order to maintain effective operation of its mandate.²⁴ As such, the CIB and CA have been rendered incapable of monitoring and checking the political actors and institutions under their mandate.

As part of the post-civil war settlement, amnesty was granted to militaristic warlords who were then invited to form a government.²⁵ However, because most of these political actors were granted veto

18. Christou, *supra* note 16.

19. Arwa Ibrahim, *Lebanon: What Life is Like in a Failed State*, AL JAZEERA (Sept. 26, 2021), <https://www.aljazeera.com/features/2021/9/26/lebanon-what-life-is-like-in-a-failed-state>.

20. *Lebanon*, TRANSPARENCY INTERNATIONAL, <https://www.transparency.org/en/countries/lebanon>

21. *Treasury Targets Corruption in Lebanon*, U.S. EMBASSY IN LEBANON (Nov. 6, 2020), <https://lb.usembassy.gov/treasury-targets-corruption/>.

22. REINOUT LEENDERS, SPOILS OF TRUCE: CORRUPTION AND STATE-BUILDING IN POSTWAR LEBANON 164 (2012).

23. *Id.*

24. *Id.* at 166.

25. Faten Ghosn and Amal Khoury, *Lebanon After the Civil War: Peace or the Illusion of Peace?* 65 MIDDLE EAST J. 381, 381-87.

powers—constant standoffs, vetoing wars, and gridlock resulted.²⁶ Robust, insulated institutions could not be established in such an environment, and as a result, individual politicians directly intervened in these institutions, creating conflicts of interest and clientelism.²⁷ The resulting institutional outcomes did not bear the hallmarks of sophisticated, well-functioning bureaucracy,²⁸ but looked more akin to a hectic free-for-all, where institutions functioned to facilitate one party's interest over the interests of rival parties.

The corruption resulting from such an arrangement touches almost every point of governmental interaction and public services. This corruption impacts healthcare, the flagship Middle Eastern Airlines, oil and gas deals, mining, construction, road work, and more.²⁹ The rampant corruption, shocking negligence, and general disrespect for the roles that government officials are supposed to play are not flukes of the system, but rather cemented in the bedrock of how a clientelistic state operates. As one Lebanese deputy explained, “[t]here’s no accountability. No one asks what I’ve done for the last four years. It only matters whose list I’m on, that I went to funerals, that I got someone out of jail, and so on. No one cares about my voting record.”³⁰ MPs are elected based on services and material rewards that they provide their constituents, and in particular, their most powerful constituents. This is the essence of clientelism. Examples of particular payoffs include forgiving utility bills, free prescription drugs, and bailing people out of jail. So long as this relationship continues between politicians and their clients, the Lebanese governmental system will remain a cash cow for governmental officials to plunder, cut corners, and operate unethically in order to maximize the benefit they can draw from their positions. This becomes increasingly problematic when government jobs themselves are rewarded as payment.³¹ As a result, Ministry employees are not in their positions because of necessary competence or skills, but rather simply because they support a specific minister. This inevitably leads to a serious misallocation of state resources, where necessary projects are overlooked and replaced by vanity projects, or projects that simply benefit specific clients.

26. REINOUDE LEENDERS, SPOILS OF TRUCE: CORRUPTION AND STATE-BUILDING IN POSTWAR LEBANON 222 (2012).

27. *Id.*

28. *Id.*

29. *See generally*, LEENDERS, *supra* note 22, at 18-72. (providing an exhaustive examination of various corruption in these fields).

30. DANIEL CORSTANGE, THE PRICE OF A VOTE IN THE MIDDLE EAST: CLIENTELISM AND COMMUNAL POLITICS IN LEBANON AND YEMEN 132 (2016).

31. *Id.* at 134.

Clearly, this system allows for a drastic misallocation of resources. The installment of incompetent or purely politically motivated government services, in combination with complete negligence in all areas that do not directly concern governmental actors' performance is the definition of the clientelistic system. Following the Beirut Port Explosion, no high-ranking political leaders have been arrested, and while Diab's government resigned, numerous politicians have remained in power.³² While certain attempts at accountability by the judiciary have been noble, the judiciary cannot prevail when the executive systematically dominates, both officially and unofficially, its judicial counterpart.

IV. LACK OF AN INDEPENDENT JUDICIARY

The Supreme Judicial Council (the "Council") is a major institution within the judiciary that oversees the operation of the courts, assigns judges to cases, prepares judicial appointments, and investigates judges.³³ However, of the ten members on the Council, eight are appointed by the executive branch, which is largely composed on the basis of a sectarian power sharing agreement.³⁴ This arrangement introduces further concerns of corruption and clientelism that were discussed earlier in this Note, and against the backdrop of widespread corruption, raises questions regarding the quality of appointed judges. Nasri Harb notes that this system results in judges who are unlikely to resist political pressure from elites because the executive prefers judges that will easily conform to the executive's agendas.³⁵ This raises serious concerns about the ability of judges to effectively and independently investigate the Beirut Port Explosion because the administration at fault for the explosion controls the Council that oversees the investigations. Nasri Harb points out that the composition and selection process of the SJC "does not meet international standards raised in the U.N. Special Rapporteur on the Independence of Judges and Lawyers which focuses on the importance of a judicial authority independent from the executive."³⁶

Another major concern relates to direct intervention by the executive. As previously stated, appointed judges are likely those most

32. *Lebanon president accepts gov't resignation after Beirut blast*, AL JAZEERA (Aug. 10, 2020), <https://www.aljazeera.com/news/2021/7/9/lebanon-mps-stall-lifting-immunity-in-port-blast-probe>.

33. Nour Nasri Harb, *The Lack of Independence of the Judiciary in Lebanon: Vulnerability of the System and Political Readiness to Interfere* 9-10 (Dec. 2019) (unpublished major research paper) (on file with the University of Ottawa Library system).

34. *Id.*

35. *Id.* at 45.

36. *Id.* at 12.

amenable to outside interference by elites and the executive. This is especially concerning because the executive controls which judges are assigned to which cases.³⁷ Seven cabinet members of the Council, who could all conceivably be appointed by the executive, must approve formations that are recommended by the Minister of Justice and signed by the Prime Minister, the Minister of Justice, and the Minister of Finance.³⁸ Furthermore, the Council maintains the power to arbitrarily punish judges through dismissal, for which there are no sufficient safeguards, nor opportunities to appeal.³⁹

V. CONCLUSION

Since the Beirut Port Explosion, Lebanon has been plagued with derailed investigations, excessive use of political immunity, and general political apathy towards accountability. Such phenomenon are not aberrations, but rather the inevitable consequences of failed institutional structures in Lebanon. In order to resolve these structural defects, a large number of reforms are required at practically every level. Individuals and powerful families must cease to participate in the clientelistic practices that dominate the country, constituents must hold their elected officials accountable beyond quid-pro-quo, and the judiciary requires serious reform to bolster its power and independence. While there may be hope that change can be achieved following the elections slated for March of 2022, but even a groundswell rejection of the current political parties in power may prove insufficient to root out the deeply clientelistic and inefficient systems that characterize the Lebanese government.

37. *Id.* at 10.

38. *Id.* at 45.

39. *Id.* at 46.