



**4 AUGUST 2020 BEIRUT PORT EXPLOSION: THE LEBANESE LEGAL SYSTEM  
CONTINUES TO FAIL VICTIMS A YEAR LATER**

**3 AUGUST 2021**

**LEGAL ACTION WORLDWIDE (LAW)**

**Legal Action Worldwide:** LAW is an independent, non-profit organisation comprised of human rights lawyers working in fragile and conflict affected areas in the Middle East, Africa and South Asia. We have a particular focus on the rule of law and accountability; transformative justice; non-discrimination and gender equality, working to bring justice to those who need it most.

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## **I. Background**

On 4 August 2020, an unconfirmed proportion of approximately 2,750 tonnes of ammonium nitrate detonated at the port of Beirut, Lebanon, causing the most powerful explosion in Lebanon's history and one of the most powerful non-nuclear explosions in history.<sup>1</sup> The explosion killed more than 200 people, who were nationals of Lebanon, Syria, Egypt, Bangladesh, Philippines, Australia, the United States, Pakistan, the Netherlands, Germany and France.<sup>2</sup> The explosion wounded more than 7,000 people, left 150 people disabled, damaged 77,000 apartments, displacing 300,000 people.<sup>3</sup> A year later, the explosion has only compounded the ongoing economic crisis in Lebanon, leaving thousands of children suffering from hunger.<sup>4</sup>

Victims of the Beirut explosion have tirelessly called for justice, accountability and most importantly, truth, about the circumstances of the explosion.<sup>5</sup> In the absence of an international independent fact-finding mission, the national investigation initiated by the Lebanese government is currently the only vehicle for truth seeking and justice.

One hundred days after the explosion, on 13 November 2020, Legal Action Worldwide (LAW) released a detailed report setting out the publicly available facts on the explosion, the progress of the Lebanese investigations, and the significant restrictions on access to justice in Lebanon.<sup>6</sup>

One year after the explosion, in August 2021, LAW outlines the relevant developments relating to the Beirut port explosion, in particular relating to the national investigation. This report sets out the available facts and information; progress of the Lebanese investigation to date; investigations by foreign governments and access to justice in Lebanon today.

So far, 30 people have been arrested and detained in relation to the explosion, around 35 people have been charged, and the investigators have heard from over 50 witnesses.<sup>7</sup> Around 700 criminal complaints were filed on behalf of victims and their families before the Judicial Council and the General Prosecutor, however, key functionaries including former and current ministers continue to evade the investigation by claiming immunity.

In addition to the domestic investigation launched by the Lebanese government, the French government and the US government conducted separate investigations at the request of the Lebanese government. The reports of the French and US investigations were forwarded to the Lebanese government with no publicly available findings into the cause of the explosion.

It is clear that the national investigation has faced multiple hurdles calling into question the independence and impartiality of the investigation into the cause of the explosion. As Lebanon continues to grapple with an economic and political crisis, it is all the more important to shed light on the justice system and the unwillingness of the ruling class to hold itself accountable. In the past, the United Nations Human Rights Committee has flagged multiple issues impeding access to justice in Lebanon, including but not limited to political interference, lack of independence of judiciary and fear of reprisal against victims and witnesses.<sup>8</sup>

The ongoing domestic investigation led by the Judicial Council continues to face these issues at every stage. The failure of the domestic investigation in making any tangible progress has led to growing calls from victims of the explosion, Lebanese nationals, UN agencies, international organizations, religious leaders and human rights practitioners for an independent, impartial and international fact-finding mission. Despite these calls, a year after the explosion, the victims of the Beirut port explosion are no closer to the truth about the explosion and justice than they were on 4 August 2020.

## **II. Investigations**

In the aftermath of the Beirut port explosion, the Lebanese government launched three separate investigations: (1) an administrative inquiry; (2) a military investigation; and (3) a judicial investigation. The administrative inquiry and military investigation were launched on 5 August 2020.<sup>9</sup> The government set up a committee headed by the Prime Minister composed of the ministers of Justice, Defense and Interior as well as the heads of the top four military and security institutions to conduct a five-day administrative inquiry into the explosion.<sup>10</sup> The administrative inquiry did not yield any public findings. The military investigation was led by the internal security forces and the military.<sup>11</sup> The Prosecutor of the Court of Cassation, Ghassan Oueidat, recommended that the military investigation be referred to the Judicial Council.<sup>12</sup> The military investigation ceased thereafter.

A week after the explosion, the Judicial Council set up an investigation led by Judge Fadi Sawan (Judge Sawan). Of the three investigations set up by the multiple wings of the Lebanese government, the investigation led by the Judicial Council is the only one currently active. This report lays down publicly available information about the progress made by the ongoing investigation.

## **III. Arrests, charges and indictments to date**

By 1 September 2020, 30 people had been arrested including the current and former customs chiefs Badri Daher and Shafik Merhi, former port director Hassan Koraytem, Abdel Hafiz Kaissi, director of land and maritime transport at the public works ministry, which nominally oversees the port, and Anthony Salloum, head of the military intelligence at the port.<sup>13</sup> Other prominent persons arrested in connection with the explosion are Brigadier General Antoine Salloum, Major Daoud Fayyad, Major Joseph Al-Naddaf and Major Charbel Fawwaz.<sup>14</sup> In addition, Interpol issued red notices for the arrest of the owner of the Rhosus, Russian national, Igor Grechushkin, the captain of the ship, and Russian national Borys Prokoshew, and a Portuguese national Jorge Moreira.<sup>15</sup>

By mid-October, 30 people had been charged, and Judge Sawan had heard the testimonies of 47 witnesses.<sup>16</sup> According to judicial sources, the charges included ‘*willful negligence that led to the deaths of hundreds of innocent civilians and injury of others*’ and ‘*causing massive destruction to public and private property*.’<sup>17</sup> By mid-November, Prosecutor Ghassan Khoury charged a total of 33 persons in relation to the explosion, including senior customs official Hani Hajj Shehadeh and former customs chief Moussa Hazimeh.<sup>18</sup> The investigating body has also recognized the

Management and Investment Administration of the Beirut port as a legal person who can be held responsible for criminal negligence.<sup>19</sup>

The Judicial Council was expected to release an investigation report in mid-November 2020.<sup>20</sup> However, on 7 November 2020, the Higher Judicial Council issued a statement announcing cooperation from the US, UK and French embassies in the investigation, and acknowledging the receipt of the US FBI report by the Lebanese judiciary. Until November 2020, the Judicial Investigator had pressed charges against low-level and mid-level officials only. Not a single minister, former or sitting had been questioned as a suspect, although Judge Sawan heard testimony from current and former ministers as “witnesses” in cases against port and other administrative employees.<sup>21</sup>

In April 2021, six people were released with the approval of the judge.<sup>22</sup> In June 2021, Judge Tarek al-Bitar (the current investigating judge) referred requests to release 19 individuals who were detained in relation to the explosion. Of these, the court released seven.<sup>23</sup> The court refused to release senior port and customs employees.<sup>24</sup>

#### **IV. Role of ministers and immunity**

High level government officials, including multiple ministers and President Michel Aoun were aware of the presence of the ammonium nitrate and the risks posed by the substance.<sup>25</sup> Al Jazeera reported,

*“Official correspondence between various branches of government, the judiciary and security officials show the president, prime minister, top security officials, members of the judiciary and more than a half-dozen ministers knew the large amount of explosives were at Beirut’s port but failed to take action.”<sup>26</sup>*

On 25 November 2020, in his letter, Judge Sawan noted that ministers and officials of the departments of Finance, Public Works, and Justice may be implicated for negligence.<sup>27</sup> Judge Sawan requested the Parliament to do what it deems appropriate in accordance with the Lebanese Constitution in relation to trying former and sitting ministers. Articles 70 and 71 of the Lebanese Constitution stipulate the procedure for levelling charges and initiating legal action against former and sitting ministers of the Parliament.

In response to Judge Sawan’s request to question the former ministers, the Speaker of the Lebanese Parliament stated that such a step does not respect the principle of separation of powers stipulated by the Lebanese Constitution. Further, the Speaker noted that Judge Sawan violated Article 80 of the Constitution, which stipulates that it is the task of the Supreme Council to try Presidents and Ministers.<sup>28</sup>

Article 70 of the Lebanese Constitution provides that the Parliament may accuse the Prime Minister and the ministers of committing high treason or breaching their duties, and it is not permissible for the indictment to be issued except by a two-thirds majority of the total members of the Parliament. If indicted, they will be tried before the ‘Supreme Council to Try Presidents

and Ministers.<sup>29</sup> The Supreme Council to Try Presidents and Ministers is a special body stipulated under Article 80 of the Lebanese Constitution which comprises Parliamentarians and eight judges; the Supreme Council's conviction decisions are issued by a majority of ten members.<sup>30</sup>

In December 2020, Judge Sawan summoned Lebanon's caretaker Prime Minister Hassan Diab, former minister Ali Hassan Khalil, and former Public Works Ministers Ghazi Zaiter and Youssef Finianos for questioning the following week. None of the four former ministers appeared for questioning, claiming immunity. Ministers Ali Hassan Khalil and Ghazi Zaiter accused Judge Sawan of violating the constitution on the grounds of immunity and moved to the Cassation Court to have him removed from the case.<sup>31</sup> Notably, Judge Sawan's decision to charge the ministers drew criticism from several political and religious leaders who expressed solidarity with the ministers and called Judge Sawan's attempt to indict them a violation of the Lebanese Constitution.<sup>32</sup> The Interior Minister Mohammed Fahmi publicly announced his decision not to carry out Judge Sawan's orders. He said, "*I certainly will not ask the security services to implement a judicial decision of this kind, and [Judge Sawan] can pursue me if [he] wants.*"<sup>33</sup> Alternatively, the Lebanese Parliament has attempted to create a special judicial body to try the former ministers.<sup>34</sup>

In February 2021, following the decision of the Cassation Court of Lebanon, Judge Sawan was relieved of his role in the investigation acting on the complaint of the two former ministers. The court cited conflict of interest because Judge Sawan's house was damaged in the explosion, and Judge Bitar was named his successor. See *Independence of the Investigating body* section below.

The resistance put up by the Lebanese government under claims of Parliamentary immunity continues to stifle the investigation process.<sup>35</sup> Following suit from his predecessor, Judge Sawan, once again, Judge Bitar called in Prime Minister Hassan Diab and the other ministers for questioning.<sup>36</sup> He also issued a request to question Nouhad Mashnouq (former Interior Minister) in relation to the case.<sup>37</sup> He also asked the government and the Interior Minister for permission to question two of Lebanon's most prominent security chiefs – the head of General Security Directorate, Major-General Abbas Ibrahim, and the head of State Security, Major-General Tony Saliba.<sup>38</sup>

As Judge Bitar's request lay before the sitting Interior Minister, Nouhad Mashnouq hosted a press conference on 23 July 2021 where he observed that he received a document about the Rhosus, the vessel carrying the ammonium nitrate, and its contents in 2014. He reportedly asked, "What the nitrates are for." The answer he received was always "a substance used in agricultural fertilizers."<sup>39</sup> In parallel, the Interior Minister, agreed to authorize questioning of the head of General Security Director, only to change his position and deny the request.<sup>40</sup>

As of 29 July 2021, the Speaker of the Lebanese Parliament stated that Parliament is 'ready' to lift the immunity against former Prime Minister Hassan Diab and the former ministers who have been summoned by the investigating body.<sup>41</sup> It is unclear how the readiness of the Speaker of the Lebanese Parliament to lift the immunity will manifest and who it will favor. Regardless, the

continuing evasion of justice by Lebanese authorities obstruct effective investigation into the explosion, denying victims their right to truth and remedy.<sup>42</sup>

The following table represents the names of high-level officials (former and sitting) who were sought by Judge Sawan and Judge Bitar for questioning since November 2020.

<b>Name</b>	<b>Official title</b>	<b>Status</b>
Hassan Diab <sup>43</sup>	Caretaker Prime Minister (Former)	Immunity
Ali Hassan Khalil <sup>44</sup>	Finance Minister (Former) and current Parliamentarian	Immunity
Ghazi Zeaiter <sup>45</sup>	Public Works Minister (Former) and current Parliamentarian	Immunity
Youssef Finianos <sup>46</sup>	Public Works Minister and Transportation Minister (Former)	Immunity
Nouhad Mashnouq <sup>47</sup>	Interior Minister (Former) and current Parliamentarian	Immunity
Abbas Ibrahim <sup>48</sup>	Head of General Security	Immunity
Major General Antoine Saliba <sup>49</sup>	Director General of State Security	Questioned twice
Major Joseph Al Naddaf <sup>50</sup>	Head of Port State Security Office	Questioned; detainee
Major General Walid Salman <sup>51</sup>	Army Chief of Staff (Former)	Questioned
General Qahwaji <sup>52</sup>	Army Chief (Former)	Questioned as witness
Badri Daher <sup>53</sup>	Customs Chief	Questioned; detainee
Yaacoub al-Sarra <sup>54</sup>	Defense Minister (former)	Questioned as witness
Bassem el-Kaissi <sup>55</sup>	Director General of the Port	Questioned

## **V. Possible interference in the ongoing investigation**

Throughout the past year, more than three suspicious fires and/or explosions have broken out in Beirut. Two separate instances of fire broke out at Beirut port on 8 September 2020 and 10 September 2020, giving rise to allegations of crime scene interference.<sup>56</sup> A former customs officer, Colonel Munir Abu Rajeli was killed in his home in December 2020.<sup>57</sup> There is contradictory evidence as to whether Colonel Abu Rajeli had been summoned by Judge Sawan, and reports that he may have possessed critical information “that might have helped uncover the clues of the crime of the port explosion.”<sup>58</sup>

Subsequently, on 23 June 2020, another explosion occurred at the residence of a defense attorney, Sakher El Hachem, representing Hassan Koraytem, one of the suspects and detainees in the Beirut

port explosion.<sup>59</sup> On 21 December 2020, photographer Joseph Bejjani was shot dead outside his home. Unconfirmed reports stated that he had footage related to the Beirut port.<sup>60</sup>

## **VI. Alleged Syrian links**

Since the beginning of the investigation into the Beirut port explosion, the scope of the investigation has broadened, and has called into question possible links between the ammonium nitrate and the Syrian government, suggesting that the ammonium nitrate may have been destined for Syria. In August 2020, investigations conducted by an international team of journalists revealed that the ammonium nitrate could be traced to a company, Savaro Ltd.<sup>61</sup>

Savaro Ltd is incorporated in the United Kingdom, with reported links to three Syrian businessmen, George Haswani, Mudalal Khuri and Imad Khuri. All three businessmen have alleged links with the Assad regime. In fact, the US Department of Treasury has imposed sanctions on all three Syrian businessmen for aiding and providing services to the government of Syrian President Bashar-al-Assad.<sup>62</sup>

According to one report, court documents from 2015 reveal that Savaro Ltd. petitioned for a quality check of the ammonium nitrate through a Lebanese lawyer. An examination showed that approximately 1,900 tons of the highly flammable substances were packed in bags that were ripped, with the content spilling out.<sup>63</sup> Savaro Ltd. then abandoned the substance.<sup>64</sup> In February 2021, Minister of Justice Marie Claude Najm told Reuters that the report on possible links between the ammonium nitrate and the Syrian businessmen must be investigated.<sup>65</sup>

## **VII. Investigations by other governments**

The Lebanese government requested that the US, UK and French governments assist the domestic investigation. In December 2020, the French government announced that it had already handed over relevant images to the Lebanese government. The French official called on the Lebanese government to publicly disclose the results of the investigation.

On 29 December 2020, Prime Minister Diab reported that according to a report by the US FBI, only 500 tonnes of ammonium nitrate exploded on 4 August 2020. He raised questions on the whereabouts of the remaining 2,200 tonnes. Reportedly, 1,300 tonnes of the ammonium nitrate was lost from the warehouse before the explosion.<sup>66</sup> On 30 July 2021, the US FBI reported that approximately 552 tonnes of ammonium nitrate exploded in hangar 12 of Beirut port.<sup>67</sup>

## **VIII. Independence of the investigating body**

The constitution of the Judicial Council has been controversial since its establishment. In August 2020, the Judicial Council appointed Judge Fadi Sawan as the lead investigating judge. His willingness to charge former ministers with negligence caused several setbacks to the investigation. Two former ministers, Ali Hassan Khalil and Ghazi Zaiter filed a lawsuit seeking his removal from the post. The Lebanese Parliament also repeatedly impeded the investigation by shielding the former ministers with Parliamentary immunity, causing Judge Sawan to file requests to recuse himself from the case. In February 2021, the Court of Cassation removed Judge Sawan

from the post, acting on the complaint of the two former ministers. The court cited conflict of interest because Judge Sawan's house was damaged in the explosion.

Subsequently, the Judicial Council appointed Judge Bitar as the investigating judge of the body. In the third week of June 2021, unnamed judicial sources confirmed that Judge Bitar had made important findings regarding the arrival of the ammonium nitrate at Beirut port, and the owners of the ammonium nitrate.<sup>68</sup> However, Judge Bitar now faces the same challenges that littered Judge Sawan's tenure, particularly in relation to questioning former ministers.<sup>69</sup>

## **IX. Conclusion**

The right to truth for victims of gross human rights violations is an inalienable and autonomous right, linked to the duty and obligation of the State to protect and guarantee human rights, to conduct effective investigations and to guarantee effective remedy and reparations. The Lebanese authorities have so far failed to meet their duties and obligations, and the domestic investigation has been riddled with serious due process violations and ongoing political interference.

The lack of accountability that has plagued the domestic investigation into the Beirut port explosion is part of a larger culture of impunity that government officials, and political figures behind them, have long enjoyed in Lebanon. While the Lebanese Parliament has indicated a willingness to lift the claim of immunity for certain officials, it is not yet clear whether this will be realised or whether it will be made in favour of the Supreme Council to Try Presidents and Ministers.

## **X. Recommendations**

The victims supported by Legal Action Worldwide and ASAS Law have five key requests:

1. **To dispatch, without delay, an independent and impartial fact-finding mission**, leveraging global expertise, to investigate the facts and circumstances, including the root causes, of the 4 August 2020 Beirut explosion, with a view to establishing state and individual responsibility and supporting justice for victims.
2. **That the Government of Lebanon do not destroy or render inaccessible any evidence** related to the 4 August 2020 Beirut explosion, and issue clear, public and unequivocal instructions to all government authorities and security forces that all evidence must be secured and preserved. Any investigation will be required to consider the destruction of evidence.
3. **That victims are ensured representation and participation in any proceedings arising from investigations**, including civil or criminal proceedings before a competent court or tribunal, or any public inquiry.
4. That **member states**, specifically: the United States of America and France or other member states **who have conducted investigations into the 4 August 2020 Beirut port explosion, report publicly on all evidence gathered by their state agents**. As a minimum, key findings should be released to victims as defined under the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations



of International Human Rights Law and Serious Violations of International Humanitarian Law, and their families.

5. **That the Government of Lebanon acknowledge and provide a full, public apology to victims** and seek their views on the establishment of a memorial. It should also urgently adopt a comprehensive policy and package of measures regarding the fulfilment of the right to reparation of victims.

Any independent, impartial fact-finding mission should be mandated to investigate:

- alleged violations and abuses of international human rights law in the context of the 4 August Beirut explosion, whether before, during or after the explosion;
- to establish the facts and circumstances of the alleged violations and abuses;
- to identify responsibility for such violations and abuses, including those most responsible;
- to make recommendations, in particular on identifying legal responsibility for human rights violations and abuses, with a view to protecting civilians against further violations and abuses; and
- to present an oral update thereon, and a final, written report.

**XI. Full chronology of relevant events in public domain relating to the domestic investigation until 3 August 2021**

<b>Date</b>	<b>Details</b>
4 August 2020	Huge explosion at the port of Beirut.
5 August 2020	Melhem Khalaf, The Head of the Beirut Bar Association, filed a complaint with the Public Cassation Court Prosecutor Ghassan Oueidat, calling for him to seek the expertise of local and international experts to assess the cause of the Beirut explosion. <sup>70</sup>
10 August 2020	Oueidat, the Public Cassation Court Prosecutor recommends that the Cabinet refer the case to the Judicial Council, which the Cabinet does. Justice Minister Marie- Claude Najm appoints Judge Fadi Sawan to serve as judicial investigator. <sup>71</sup>
10 August 2020	Oueidat confirms arrest of 19 individuals in connection with the explosion. <sup>72</sup>
13 August 2020	The Beirut Bar Association issues a statement denouncing the concerning tension between the Minister of Justice and the Higher Judicial Council on the appointment of the judicial investigator to look into the explosion. <sup>73</sup>
14 August 2020	Press conference held by survivors and families of victims calling on the UN Security Council to launch an international investigation and reading out the letter submitted to the representatives of the UN Security Council members. <sup>74</sup>
14 August 2020	Investigating judge in the preliminary investigation under the State Prosecutor announces the suspension of a planned interrogation of former and current ministers of finance and public works; explaining that he anticipates the investigating judge under the Judicial Council would confirm it did not have jurisdiction to conduct such interrogations. <sup>75</sup>
1 September 2020	A total of 25 individuals are arrested, including current and former customs chiefs Badri Daher and Shafik Merhi, former port director Hassan Koraytem, Abdel Hafiz Kaissi, director of land and maritime transport at the public works ministry, which nominally oversees the port, and Anthony Salloum, head of military intelligence at the port. <sup>76</sup>
28 October 2020	The Beirut Bar Association presents 681 criminal lawsuits on behalf of victims and their families before the Judicial Council and the General Prosecutor. <sup>77</sup>
13 November 2020	Legal Action Worldwide (LAW) released a report on behalf of victims of the Beirut explosion, compiling publicly available facts relating to the explosion, together with nine victim statements. The report requests an independent and impartial fact-finding mission to investigate the explosion. <sup>78</sup>
13 November 2020	The Intelligence unit of the Lebanese Internal Security Forces (ISF) Directorate prepared a report with the summary of investigations, violations, responsibilities and suspects. Judge Fadi Sawan rejected the report stating that it exceeded the powers of the Investigation Branch. <sup>79</sup>

13 November 2020	Marking 100 days of the explosion, the UN Special Coordinator for Lebanon Jan Kubis expressed his disappointment in the investigation, tweeting the following: <i>“One hundred days after the national tragedy of the #Beirut port explosion, one hundred days of investigation engaging serious international expertise and still no clarity, no accountability, no justice”</i> <sup>80</sup> .
24 November 2020	State prosecutor Ghassan Khoury charged senior customs official Hani Hajj Shehadeh and former customs chief in Beirut, Moussa Hazimeh raising the number of individuals charged in connection with the explosion to 33. Of these, 25 persons were under arrest <sup>81</sup> .
25 November 2020	Judge Sawan sent a letter to Parliament through the Public Cassation Court Prosecutor Judge Ghassan Oueidat, requesting that it take action and appropriate measures regarding the responsibility of ministers. <sup>82</sup>
27 November 2020	The Speaker of the Lebanese Parliament responded to Judge Sawan's letter and expressing regret that Judge Sawan had taken such a step “which does not respect the principle of separation of powers stipulated in the Constitution”. He called the message “selective, because it mentioned the heads of government without naming them, but it named certain ministers, including: Ali Hassan Khalil, Ghazi Zaiter and Youssef Fenianos, and did not specify other ministers who were in the same period, including: Salim Jreissati, Albert Sarhan and Ghazi Al-Aridi.” He added that “Sawan violated Article 80 of the Constitution, which stipulates the task of the Supreme Council to try presidents and ministers.” <sup>83</sup>
2 December 2020	A retired customs officer, Munir Abu Rjeili was found dead inside his home in Qartaba. A hypothesis was made by media outlets that the cause of his “mysterious” death was related to the investigations of the Beirut port explosion. <sup>84</sup>
3 December 2020	An official of the French government stated that contrary to rumours, France had handed over images to Lebanese authorities. The source emphasised that the Lebanese government must disclose the results of the investigation into the explosion and “make them public.” <sup>85</sup>
10 December 2020	Judge Sawan summoned Lebanon's caretaker Prime Minister Hassan Diab and former Finance minister Ali Hassan Khalil for questioning, along with former Public Works ministers Ghazi Zaiter and Youssef Finianos <sup>86</sup> .
10 December 2020	Judge Sawan questioned Director General of State Security, Major General Antoine Saliba over a period of three hours as a defendant without previously informing him that he is summoned to be questioned as a defendant. There was no defense attorney present and Saliba refused to postpone his questioning to assign a lawyer. After this questioning he was recalled again to be confronted with Major Al Naddaf. Following the initial questioning of Saliba, the judicial investigator decided to also question the former Army chief of staff Major General Walid Salman. <sup>87</sup>

14 December 2020	Ghazi Zaiter Zaiter, Hassan Khalil and Youssef Fenianos did not appear before Judge Sawan for questioning stating “Sawan is violating constitutional principles.” The Prime Minister’s media office repeated Diab’s previous position, which “respects the Constitution that has been violated by Judge Sawan.” <sup>88</sup>
15 December 2020	The Lebanese Parliament issued a letter to Judge Sawan through the Public Cassation Court Prosecutor Ghassan Oueidat, claiming immunity for Members of the Parliament. The letter referred to Articles 70 and 71, which states that, in case of evidence against former government ministers, they can be tried only by a special court after they have been indicted by a two-thirds vote in Parliament <sup>89</sup> . (Note, the special court is comprised of seven politicians and eight judges).
15 December 2020	State Prosecutor Ghassan Oueidat stepped down from Beirut port explosion investigation due to conflict of interest. Attorney General Ghassan Khoury takes over. <sup>90</sup>
16 December 2020	Judge Sawan postponed the interrogation of former ministers Ali Hasan Khalil and Ghazi Zaiter, until 4 January 2021, as they did not report for questioning <sup>91</sup> .
18 December 2020	Judge Sawan held that the Management and Investment Administration of the Port of Beirut was a legal person, finding it criminally responsible for the crimes stipulated in Article 210 of the Lebanese Criminal Code. <sup>92</sup>
18 December 2020	Former ministers Ali Hassan Khalil and Ghazi Zaiter accused Judge Sawan of violating the Constitution and requested his removal from the position at Lebanon's top Cassation Court. Judge Sawan submits a request, seeking recusal from the case, and halts the investigations for 10 days pending response on his request. <sup>93</sup>
21 December 2020	On 21 December 2020, photographer Joseph Bejjani was shot dead outside his home. Unconfirmed reports stated that he had footage related to the Beirut port. <sup>94</sup>
29 December 2020	Reports suggest that 1,300 tonnes of ammonium nitrate were lost from the warehouse before the explosion. <sup>95</sup> Prime Minister Diab was quoted saying “the FBI report revealed that the quantity that exploded was only 500 tonnes... Where did the remaining 2,200 tonnes go?”
5 January 2021	Two judges at the Court of Cassation, Francois Elias and Roula Moussalem recused themselves “because they sensed embarrassment” on the matter of Judge Sawan’s removal the investigation. <sup>96</sup>
11 January 2021	The Court of Cassation denied Judge Sawan’s request to halt the investigation and decided that the judicial investigator should resume his task until they reach a final decision on his removal. <sup>97</sup> Yet, he judicial investigator suddenly decided to cancel a previously scheduled interrogation session despite the presence of relevant parties. Suspects continued to be detained for a period of five months. <sup>98</sup>
12 January 2021	Prosecutor Ghassan Khoury received a letter from Interpol confirming that, as per his request dated October 2020, it issued “red notices” for the arrest of the owner of the ship, Russian national, Igor Grechushkin, the

	captain of the ship, also Russian national, Borys Prokoshew, and Jorge Moreira, who is Portuguese. He allegedly sourced the ammonium nitrate from a Georgian factory, Rustavi Azot. <sup>99</sup>
15 January 2021	London shelf company Savaro Ltd, with links to three influential Syrian businessmen, has been linked to the Rhosus. <sup>100</sup> The Minister of Justice, Marie Claude Najem, stated that these allegations should be investigated. She also indicated that ongoing investigations are in the hands of the judiciary and will remain confidential for the time being. <sup>101</sup>
26 January 2021	British media speculated that the company “Agroblend,” that initially contracted the ship to transport the ammonium nitrate is not registered in the United Kingdom but is a shell company registered in Albania, raising questions on the authenticity of the documents presented to the investigative judge and relating to the origins of the company. <sup>102</sup>
27 January 2021	The Beirut Bar Association requests British authorities to halt the voluntary liquidation of UK-registered company Savaro, to allow investigations into its possible role in the explosion to continue. <sup>103</sup>
3 February 2021	British parliament members have called for an investigation into UK-registered Savaro, which Lebanese investigative journalist linked to the explosion and to Syrians sanctioned by the United States. <sup>104</sup>
11 February 2021	General Qahwaji (Lebanese Army ex-chief) appeared before Judge Sawan as a witness and confirmed that the army carried out all its duties in accordance with the law. He had earlier recommended that the ammonium nitrate stored at the port be sold privately or returned to importers long before the explosion. <sup>105</sup>
11 February 2021	The prosecutor summoned the acting director-general of the port, Bassem al-Qaissi, and Mustafa Baghdadi, the shipping agent for MV Rhosus for questioning. Qaissi replaced Hassan Koraytem, who was arrested in August for his role in the explosion. <sup>106</sup>
11 February 2021	Judge Sawan summons former minister of public works Youssef Fenianos and former customs chief at the port of Beirut, Moussa Hazmieh, for questioning. <sup>107</sup>
18 February 2021	Court of Cassation accepts the former ministers’ request to remove Judge Sawan from the Beirut port explosion matter. In its decision, the Court questioned Judge Sawan’s impartiality since his house was damaged in the explosion. <sup>108</sup>
19 February 2021	Higher Judicial Council appoints Judge Tarek Bitar as the new lead investigator of the Beirut port explosion. <sup>109</sup>
22 February 2021	Strong Republic Bloc delegation submits a petition to the UN Deputy Special Coordinator for Lebanon calling for an international investigation into the Beirut port explosion. <sup>110</sup>
27 February 2021	Judicial sources report that Judge Bitar announced that he needed two weeks to finish studying the file and devise a strategy for investigations. <sup>111</sup>

1 March 2021	US Congress decides to delegate foreign investigators to the port explosion file citing no confidence in the Lebanese investigation. <sup>112</sup>
3 March 2021	Strong Republic Bloc meets the US Ambassador, handing her a copy of the memorandum submitted to the UN, demanding the establishment of an international fact-finding committee to follow up on the investigation of the port explosion. <sup>113</sup>
8 March 2021	A delegation from the Strong Republic Bloc requests the Russian Ambassador to demand an international investigation on the Beirut port explosion. <sup>114</sup>
9 March 2021	Judge Bitar issues judicial writs related to the ammonium nitrate shipment. <sup>115</sup>
10 March 2021	LAW and Human Rights Watch co-host a side event at the UN Human Rights Council “4 August Beirut Explosion: Can the Lebanese investigation deliver justice?” <sup>116</sup>
15 March 2021	Judge Bitar receives a delegation of family members of victims of the explosion and indicated that <i>no culprit will remain outside the prisons and no innocent will remain in prison.</i> <sup>117</sup>
16 March 2021	The Lebanese Minister of Public Works and Transport, Michel Najjar, reveals that there are 52 containers of hazardous materials in the port of Beirut. <sup>118</sup>
22 March 2021	The Labor party calls on the Morrison Government to work with Lebanon and the international community to deliver an independent, impartial, and transparent investigation into the explosion. <sup>119</sup>
23 March 2021	Judge Bitar questions four military officials who have been detained related to the explosion. <sup>120</sup>
25 March 2021	Judge Bitar requests Switzerland, the United States, the United Arab Emirates, Cyprus, and Germany to lift banking secrecy on Savaro Ltd. <sup>121</sup>
30 March 2021	Judge Bitar questions detained Customs chief, Badri Daher for seven hours in the presence of Daher’s lawyers Munir Hamdan and George Khoury, and the prosecutors. <sup>122</sup>
31 March 2021	Reportedly, Judge Bitar to complete the interrogation of the detainees on 1 April 2021. Judge Bitar summons former Defense Minister Yaacoub al-Sarraf for questioning. <sup>123</sup>
6 April 2021	Former Minister of Defense Yaacoub Sarraf hands over documents relating to the explosion to Judge Bitar and was heard as witness by the magistrate. <sup>124</sup>
10 April 2021	The outgoing Minister of the Economy, Raoul Nehme, calls on the examining magistrate to exclude the possibility of a terrorist or bellicose act, in order to allow compensation by insurance to be released. <sup>125</sup>
13 April 2021	Melhem Khalaf, President of the Beirut Bar Association, calls Raoul Nehme’s request a “violation of the Constitution, which prohibits the political authority from interfering in the judicial work,” adding that it is a criminal offense punishable by the penal code and that, such a request is considered null and void. <sup>126</sup>
15 April 2021	Six people detained under the investigation are released. <sup>127</sup>

15 April 2021	Judge Bitar sends a judicial request to the authorities in Georgia, to investigate the owners of "Rustavi Azot" plant, which manufactured ammonium nitrate and sold it to a company in Mozambique through Savaro Ltd. <sup>128</sup>
18 April 2021	Head of the Administration and Justice Parliamentary Committee, MP George Adwan, meets a delegation of the families of the victims of the explosion, discussing the developments of the dossier. Talks reportedly center on how to establish a special court for the case, in order to expedite the investigations and issue indictments as soon as possible. <sup>129</sup>
26 April 2021	Judge Bitar reportedly hears new witnesses as part of his investigation, according to the National Information Agency. The identities of the witnesses were not revealed. <sup>130</sup>
29 April 2021	Chairperson of the Parliamentary Committee on Administration and Justice, Georges Adwan, presents a bill to create a judicial inquiry committee to assist Judge Bitar in his investigation. <sup>131</sup>
4 May 2021	Judge Bitar requests that countries with satellites stationed over Lebanon provide authorities with images that could help the investigation. <sup>132</sup>
8 May 2021	The judicial police seized the van of the workers of the Chébli company who were carrying out welding work on hangar 12 on the day of the explosion. <sup>133</sup>
17 May 2021	Judge Bitar, hears Bassem el-Kaïssi, the acting Director General of the port of Beirut as an official representative of the port management. <sup>134</sup>
19 May 2021	Congressional Democrats urge US administration to help Lebanon as Several Democrats in Congress write a letter to US Secretary of State Antony Blinken, urging him to address Lebanon's worsening crisis. <sup>135</sup>
25 May 2021	Melhem Khalaf, President of the Beirut Bar Association, who represents the civil party in the case of the port explosion, deplores the lack of international cooperation to advance justice in the investigation. <sup>136</sup>
25 May 2021	Human Rights Watch calls on the US government to support a resolution at the United Nations Human Rights Council to "establish an international investigative mechanism" into the deadly explosions at the port of Beirut. <sup>137</sup>
4 June 2021	In a press conference held at the Justice Palace in Beirut, Judge Bitar reveals that the technical phase of the is almost complete and estimates that two more months would be needed "to clarify the causes of the explosion once and for all." <sup>138</sup>
6 June 2021	Judge Bitar informs journalists that he has excluded the possibility that the explosion was caused by a "rocket attack." <sup>139</sup>
15 June 2021	A group of international and regional rights groups, including LAW, urge member states of the UN Human Rights Council to establish an international investigative mission into the Beirut port explosion. <sup>140</sup>
19 June 2021	Reports state that the investigation file is witnessing tangible progress, that the investigations are close to determining the internal responsibilities and that Judge Bitar has critical information on how the ammonium nitrate arrived in Lebanon. <sup>141</sup>

23 June 2021	Judge Bitar forwards requests for the release of thirteen of the nineteen people detained in connection with the case, to the Attorney General Ghassan Khoury. Judge Bitar continues his interrogations hearing the testimonies of five witnesses. Three other witnesses are expected to appear before the investigating judge. <sup>142</sup>
23 June 2021	Ghassan Khoury orders the release of seven detainees, most of whom are junior port employees. The request to release senior employees was rejected. <sup>143</sup>
28 June 2021	An explosion is reported at the office of a prominent lawyer representing a suspect in the Beirut port explosion. Mr Hachem said he thought the explosion was not caused by gas or electricity faults. <sup>144</sup>
29 June 2021	Judge Bitar is set to hear testimony of two more witnesses. He will also hear ten other witnesses between 30 June and 1 July. The decision on requests for the release of 16 detainees will begin after the witness file is completed. <sup>145</sup>
30 June 2021	LAW and Human Rights Watch co-host a panel at the UN Human Rights Council “The Human Rights Council: An Avenue to Justice for the 4 August Beirut Explosion.” <sup>146</sup>
2 July 2021	Judge Bitar reveals in an interview that he had asked parliament to lift the immunity of three of its members -- former Finance Minister Ali Hasan Khalil, ex-Public Works Minister Ghazi Zaiter and Nouhad Mashnouq, a former interior minister. Judge Bitar also wanted Interior Ministry permission to file charges against Lebanon’s Head of General Security Abbas Ibrahim; and asked the prime minister’s office to approve the pursuit of a case against Tony Saliba, who led security operations at the port. He filed charges against an ex-army chief and other former security officials. <sup>147</sup>
2 July 2021	Judge Bitar set a date to question as a suspect the caretaker prime minister, Hassan Diab, and the three former ministers on suspicion of homicide with probable intent and criminal negligence He also asked the Bar Associations in Beirut and Tripoli to lift the immunity that is conveyed by membership of Mr. Khalil, Mr. Zaiter and a former transportation minister, Youssef Finianos. <sup>148</sup>
6 July 2021	The Speaker of Parliament Nabih Berry calls on the Parliament's office and the Parliamentary Committee on Administration and Justice to meet in a joint committee during a session scheduled for Friday in Ain el-Tiné, to discuss lifting the immunity of the three deputies and former ministers Ali Hassan Khalil, Ghazi Zeaïter and Nouhad Machnouk, implicated by Judge Bitar. <sup>149</sup>
9 July 2021	Judge Bitar’s request to question Major General Abbas Ibrahim, head of the powerful General Security agency, is rejected by caretaker Interior Minister Mohamed Fahmy in a letter to the justice minister. In a statement, Ibrahim said he was subject to the law like all Lebanese, but the probe should take place “far away from narrow political considerations.” <sup>150</sup>

12 July 2021	Judge Bitar rejects the legislature’s request requesting "additional indications of guilt" against the three deputies and former ministers indicted to rule on the lifting of their immunity. <sup>151</sup>
15 July 2021	Amnesty International urges the Lebanese government to lift the immunity against officials summoned in the investigation, warning that not doing so would be an "obstruction of justice." <sup>152</sup>
19 July 2021	Several MPs sign a petition requesting to launch procedures before the “Supreme Council for Trial of Presidents and Ministers” against the sitting MPs and former minister Youssef Finianos and former ministers and current MPs Nouhad Mashnouk, Ali Hassan Khalil and Ghazi Zaiter — all of whom were summoned for questioning by Judge Bitar This petition has been described as a “fraudulent maneuver” to shield the politicians from the investigating body. <sup>153</sup>
21 July 2021	Dozens of Lebanese MPs pledge support for the parliamentary motion allowing a special judicial body to investigate and try caretaker Prime Minister Hassan Diab and four ex-ministers over the Beirut Port explosion, but legal activists and the families of the victims slammed the move as an attempt to shield the officials from accountability. <sup>154</sup>
27 July 2021	The Prosecutor Ghassan Khoury endorses the decision of the outgoing Minister of the Interior, Mohammad Fahmi, to refuse the prosecution of the head of the General Security Abbas Ibrahim. <sup>155</sup>
27 July 2021	The former Lebanese prime minister Hariri chairs a meeting of his parliamentary bloc in which he says that an exceptional decision must be taken. It is a proposal for a constitutional amendment: "Suspending all constitutional and legal articles that give immunity or assets specific to trials, to the President of the Republic, to the Prime Minister, to ministers, deputies, judges, employees and even lawyers." <sup>156</sup>
29 July 2021	Lebanese Speaker supports lifting immunity for political leaders indicted in connection with the Beirut port explosion. <sup>157</sup>
29 July 2021	Public law specialists Salah Honein, and Rizk Zgheib claim that a crime like that of the double explosion at the port of Beirut, is not subject to ministerial immunity by constitutional and legal texts. They support the abolition of all immunity and all jurisdictional privileges. <sup>158</sup>
30 July 2021	President Michel Aoun said that he was ready to be heard by Judge Tarek Bitar, in charge of the investigation into the explosion of August 4, while the head of the Future Movement, Saad Hariri, is leading a force to demand the suspension of the immunities of all officials, head of state included. <sup>159</sup>
30 July 2021	According to the FBI report, "an approximate quantity reaching about 552 tons of ammonium nitrate exploded in hangar 12". The report also notes that the warehouse was large enough to house the 2,754-ton cargo, which was stored in one-ton bags, but added that it "doesn't make sense that they are all present at the moment of explosion ". However, the report from the US Federal Bureau does not explain where the rest of the cargo might be. <sup>160</sup>

2 August 2021	Amnesty International calls granting immunity to officials an obstruction of justice and a violation of the UN Minnesota Protocol 2016 which aims to protect the right to life and advance justice, accountability for unlawful deaths. <sup>161</sup> Weeks of protests by survivors and families of victims are a stark reminder of what is at stake. Their pain and anger have been exacerbated as, time and time again, authorities obstruct their right to truth and justice. The UN Human Rights Council must heed their call and urgently set up an investigative mechanism to identify whether conduct by the state caused or contributed to the unlawful deaths, and what steps need to be taken to ensure an effective remedy to victims.
2 August 2021	The Beirut Bar Association and some victims of the Beirut Port Explosion of 4 August 2020 filed a civil action against Savaro Ltd. in the High Court of Justice in London. <sup>162</sup>
3 August 2021	Judge Bitar postponed the interrogations of the former Director of the Intelligence Service of the Army Camille Daher, and of the Commander-in-chief of the Army, Jean Kahwagi to 23 August and 25 August, 2021. Judge Bitar had also summoned the two military officials on 2 August 2021, but only their lawyers, Marc Habka and Antoine Toubia, appeared before him. <sup>163</sup>
3 August 2021	The families of the victims of the double explosion at the port of Beirut yesterday granted the Lebanese authorities a period of 30 hours to make "the right decision" concerning the lifting of the immunities of those responsible and the authorizations allowing them to appear in court to answer for their responsibilities in this drama. <sup>164</sup>
3 August 2021	The investigating judge at the Court of Justice, Tarek Bitar denied having visited the presidential palace in Baabda to question the head of State Security, General Tony Saliba, to meet with the former minister Salim Jreissati, adviser to the President of the Republic Michel Aoun and to take the testimony of President Aoun. <sup>165</sup>
3 August 2021	Human Rights Watch releases a detailed report suggesting that official evidence indicates officials foresaw the death that the ammonium nitrate's presence in the port could result in and tacitly accepted the risk of the deaths occurring. <sup>166</sup>

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<sup>14</sup> Middle East Monitor, [Lebanon: 25 suspects detained in blast probe as death toll rises](#), 2 September 2020.

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## **XII. Annex I**

LAW's previous report outlined the obligations of the state of Lebanon and the rights of the victims of the Beirut port explosion.<sup>167</sup> In light of the developments relating to the domestic investigation from 4 August 2020 until 3 August 2021, this section reiterates the rights of the victims and Lebanon's obligations under the national and international legal framework.

### National Legal Framework

Lebanon has a mixed legal order combining civil law based on the French civil code, Ottoman legal traditions, and religious laws covering personal status, marriage, divorce, and other family matters for the Islamic and Christian communities. The Constitution of Lebanon, adopted in 1926, with amendments made in 1990, provides in its Preamble that "Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights."<sup>168</sup> The Preamble is an integral part of the Constitution and enjoys the same status in the hierarchy of laws. The international conventions referred to in the Preamble of the Constitution are also an integral part of domestic law.

### *Lebanese Constitution*

Article 7 of the Lebanese Constitution states that all Lebanese shall enjoy civil and political rights equally. The constitution establishes explicit guarantees against arbitrary deprivations of liberty,<sup>169</sup> as well as interference with private property.<sup>170</sup> Article 9 of the Constitution enshrines the right to freedom of conscience and religion, while Article 13 establishes the right to freedom of speech and assembly.<sup>171</sup> The Lebanese Constitution does not limit the enjoyment of civil and political rights referred to in Article 7 to those enumerated in the text of the constitution. Accordingly, Article 7 must be interpreted, in light of the Preamble, as incorporating the rights and freedoms guaranteed by the Universal Declaration of Human Rights and United Nations covenants.

As a founding and active member of the United Nations that abides by its covenants and by the Universal Declaration of Human Rights, Lebanon cannot restrict the enjoyment of fundamental human rights to its own nationals. International law entitles all individuals to the rights and freedoms that exist as a matter of convention or custom, without distinction of any kind, such as race, colour, sex, language, religion, political affiliation, national or social origin, birth or other status.<sup>172</sup> Accordingly, states are obliged to secure recognition and respect for the human rights of all individuals within their territory or jurisdiction.

### *Lebanese Penal Code*

The right to life is protected in Lebanese law by various provisions of the Lebanese Criminal Code establishing felonies and misdemeanours against human life and physical integrity.<sup>173</sup> Article 190 of the Lebanese Criminal Code establishes liability for harmful acts that result from negligence, reckless, or a failure to comply with laws and regulations.



The Lebanese legal framework guards against corruption through provisions of the Lebanese Criminal Code, Criminal Procedure Law and the Law No. 318 of 20 April 2001 (amended in 2003 and 2008) on the fight against money-laundering, the Civil Servants Regulations and the Labour law. Active and passive bribery are criminalized under articles 351, 352 and 353 of the Lebanese Criminal Code.<sup>174</sup>

### International Legal Frameworks

Lebanon is bound by the Universal Declaration of Human Rights,<sup>175</sup> the International Covenant on Civil and Political Rights,<sup>176</sup> the United Nations Convention against Corruption,<sup>177</sup> and the United Nations Convention Against Torture<sup>178</sup> all of which create state obligations and protect the rights of victims. Additionally, the General Assembly resolution on the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law contains authoritative guiding principles on conducting independent investigations to secure the victims' right to remedy and reparation.

#### *Obligations of the state of Lebanon*

The right to life, as enshrined, *inter alia*, in Article 3 of the Universal Declaration of Human Rights (UDHR), Article 6 of the International Covenant on Civil and Political Rights (ICCPR), Article 2 of the European Convention on Human Rights (ECHR), Article 4 of the Inter-American Convention on Human Rights (IACHR), and Article 5 of the Arab Charter on Human Rights, is recognised as the “supreme right” from which no derogation is permitted even in time of public emergency or war.<sup>179</sup>

Article 6 ICCPR establishes an absolute guarantee against arbitrary deprivations of life. This is to say that Article 6 protects individuals from acts or omissions that are intended, or may be expected to cause, their premature or unnatural death arbitrarily. Deprivation of life involves a life-terminating harm or injury. The deprivation can be intentional, or foreseeable and preventable.<sup>180</sup> It can be caused by an act or omission. Importantly, the guarantee extends beyond actual injury to encompass bodily and mental integrity and threats to life.<sup>181</sup>

States are bound to respect the right to life which means, at minimum, refraining from engaging in conduct that would result in an arbitrary deprivation of life. In addition, states must take appropriate steps to ensure that individuals within their jurisdiction enjoy the right to life, which means exercising due diligence to protect the lives of individuals against deprivations. As such, the right to life extends beyond the actions of the state to protect against deprivations of life caused by private persons or entities whose conduct is not attributable to the State. A failure to exercise due diligence to prevent, punish, investigate or redress the harms caused by private persons or entities gives rise to a violation of the right to life by the state.<sup>182</sup>

The obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. Accordingly, states may be in violation of article 6 even if such threats and situations do not result in loss of life.<sup>183</sup>

A state is bound to prevent or deter arbitrary deprivations of life, such as unlawful killings, by enacting and enforcing provisions of criminal law to punish perpetrators. A necessary corollary to the duty to prevent deprivations of life, therefore, is the duty to investigate incidents involving loss of life in order establish the facts leading to the loss of life, to ascertain whether an arbitrary deprivation of life has occurred, and to assign responsibility. International law recognises a number of circumstances which give rise to the duty to investigate, including loss of life that is the result of lethal use of force by state agents,<sup>184</sup> suspicious deaths or disappearances,<sup>185</sup> cases involving domestic violence,<sup>186</sup> and high-profile assassinations.<sup>187</sup> More broadly, the duty to investigate arises when a loss of life occurs that potentially engages the responsibility of the state. That includes incidents in which a loss of life may have occurred due to alleged negligence by the state.<sup>188</sup>

Investigations into arbitrary deprivations of liberty must be effective. Under international law, the effectiveness of an investigation depends on the extent to which it meets certain substantive and procedural standards. Firstly, the persons responsible for carrying out the investigation must be independent from the individuals or entities implicated in the events.<sup>189</sup> Independence means not only a lack of institutional or hierarchical connection, but also practical independence.<sup>190</sup>

Investigations into allegations of violation of article 6 must always be prompt.<sup>191</sup> The passage of time is liable not only to undermine an investigation but to definitively compromise its chances of being completed.<sup>192</sup> Promptness is required to maintain public confidence in the investigation and to prevent any appearance of collusion in or tolerance of unlawful acts.<sup>193</sup>

The purpose of an investigation must be to determine the nature and circumstances of the alleged acts leading to a deprivation of life and to establish the identity of any person who might have been involved.<sup>194</sup> When there is evidence that the responsibility of the state may be engaged in an arbitrary deprivation of life, the investigation must be capable of leading to a determination about the nature and extent of the state's responsibility.<sup>195</sup> Accordingly, states need to take appropriate measures "to establish the truth relating to the events leading to the deprivation of life, including the procedures employed by State forces before, during and after the time in which the deprivation occurred, and identifying bodies of individuals who had lost their lives."<sup>196</sup>

International law prescribes the manner in which an investigation must be carried out to satisfy the procedural aspect of the right to life. Victims and next of kin must be able to participate in the investigation to the extent necessary to safeguard his or her legitimate interests.<sup>197</sup> The state is under an obligation to disclose relevant details about the investigation to victims and next of kin, including information contained in case files.<sup>198</sup> They should be afforded legal standing in the investigation, which allow them to present new evidence, suggest investigative steps that are

necessary, and assert their interests and rights throughout the process.<sup>199</sup> To ensure effective participation by victims and next of kin, investigating authorities should take all necessary steps to ensure their physical and psychological wellbeing and privacy, and to protect them from intimidation and harassment.<sup>200</sup>

Public scrutiny over the investigation or its results is required to the degree necessary to secure accountability in practice as well as theory, to maintain public confidence, and to avoid the appearance of collusion.<sup>201</sup> States are obliged to make public information about the investigative steps taken and the investigation's findings, conclusions and recommendations.<sup>202</sup> This is subject only to absolutely necessary redactions justified by a compelling need to protect the public interest or the privacy and other legal rights of directly affected individuals.<sup>203</sup>

Failure to ensure respect for the fundamental right to life, including by failing to discharge the duty to effectively investigate arbitrary deprivations of life, must be considered a particularly grave breach of Article 6 ICCPR if there is evidence that such failure arose from corruption. Article 5 of the United Nations Convention Against Corruption (UNCAC) requires states parties to “maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.”

In addition, the Convention recommends the criminalisation of a number of acts that constitute corruption, including bribery, abuse of public functions, and obstruction of justice. Bribery involves the promising, offering or giving of an undue advantage to a public official, or the solicitation or acceptance thereof by a public official. Abuse of functions or position is the performance of, or failure to perform, an act, in violation of laws, for the purpose of obtaining an undue advantage. Obstruction of justice is the use of force, intimidation, threats, or promises of an undue advantage to interfere in the giving of testimony or in the exercise of official duties by justice or law enforcement officials.

Where a failure to exercise due diligence in preventing arbitrary deprivations of life, contrary to Article 6 ICCPR and customary law, has resulted from corruption, the investigation into the events leading to the loss of life must be able to uncover the extent to which corruption influenced the outcome and to identify the persons responsible. This is necessary to maintain public confidence in adherence to the rule of law and to avoid the appearance of tolerance of illegal acts.

### *Rights of victims*

In 2005, the UN General Assembly adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the “Basic Principles”), which summarises and crystallises the law in this area. In accordance with the Basic Principles, a state must provide

reparations for any act attributable to it that constitutes a serious violation of international human rights law or international humanitarian law.

Reparations are measures taken to redress breaches of individual or state responsibility. Survivors can seek reparations from states that have breached fundamental human rights guarantees, non-state actors who have violated human rights law, or individual perpetrators of international crimes. Violations of negative as well as positive obligations give rise to a duty to make reparations.

A core principle in international law is that reparations must fully repair the harm caused to the injured party (the principle of “*resitutio in integrum*”)<sup>204</sup>. The harm can be of a material or a moral nature.<sup>205</sup> Material damage includes losses that can be easily subjected to valuation in financial terms, such as loss of property or livelihood. Moral damage, on the other hand, refers to consequences in terms of individual pain and suffering, such as the loss of loved ones or family members, or simply the invasion of a fundamental right.<sup>206</sup>

In international human rights law, moral damage includes emotional and mental harm.<sup>207</sup> The Inter-American Court of Human Rights (IACtHR), for example, has recognised that the principle of *restitutio in integrum* includes “the restoration of the prior situation, the reparation of the consequences of the violation, and indemnification for patrimonial and non-patrimonial damages, including emotional harm.”<sup>208</sup> This understanding reflects a distinct principle in cases involving violations of human rights, namely the principle of due recognition of victimhood.

Various procedural norms have developed around the making of reparations. The first of these is a flexible approach towards the burden of proof. International tribunals have favoured flexibility in the weighing of evidence due to the practical difficulties that a victim may encounter in trying to prove his or her case. As the UN Human Rights Committee has recognised, “the [victim] and the State party do not always have equal access to the evidence and ... frequently the State party alone has access to relevant information.”<sup>209</sup> The International Criminal Court has expressed similar concerns, noting “the difficulty victims may face in obtaining evidence in support of their claim due to the destruction or unavailability of evidence.”<sup>210</sup> In practice, the flexible burden of proof has allowed tribunals to rely on assumptions and circumstantial evidence “when they lead to consistent conclusions as regards the facts of the case.”

A second procedural norm is the principle of victim participation. The General Assembly has stressed the importance of informing victims of their role and scope, the timing and progress of proceedings, and allowing their views to be presented and considered whenever their personal interests are at stake.<sup>211</sup> Under Article 68 of the Rome Statute, the Court must permit victims to participate at all states of the proceedings “where the personal interests of the victim are concerned”.<sup>212</sup> The Court has since confirmed the importance of victim participation at the reparations phase, stating “the Court is mainly concerned at this juncture with the victims.”<sup>213</sup>



International law recognises at least four forms of reparatory measure for restoring the dignity of victims: restitution, compensation, satisfaction and rehabilitation.

### *Restitution*

The purpose of restitution is to eliminate the effects of the harmful conduct, by returning the injured party to the condition they would have been in had the injury not occurred. Restitution is the purest expression of the principle of full reparation (“*restitutio in integrum*”). As such, it is the preferred form of reparation under international law.

When it comes to serious rights human rights violations and international crimes, restitution is often difficult, if not impossible, to achieve. The Basic Principles enumerate some clear-cut cases of restitution, such as the restoration of liberty, citizenship, employment and private property.<sup>214</sup> An example of restitution in human rights adjudication can be found in the IACtHR’s judgment in the *Loayza Tamayo* case, where the Court ordered the restoration of Tamayo’s liberty, as well as her former job and salary. For its part, the ICC has taken the view that restoration is aimed at the restoration of the individual’s life, and can include returning the victim to their family, returning their home or personal property to them, or providing continuing education.<sup>215</sup> It should be borne in mind, however, that the material loss remediable by restitution will only cover a part of the injury suffered by the victim. An arbitrary deprivation of liberty may be brought to an end through restitution, but that act alone does not address the mental anguish the victim has suffered, or the moral damage entailed by the infringement of the right to liberty.

### *Compensation*

International law recognises that, in many cases, it may be materially impossible to return the injured party to their previous condition. In these circumstances, the injured party may be entitled to compensation instead. Compensation involves the payment of a sum that corresponds to what they have lost.<sup>216</sup> Summarising the practice of regional human rights bodies, the International Law Commission (ILC) has noted that compensation includes “material losses (loss of earnings, pensions, medical expenses, etc.) and non-material damage (pain and suffering, mental anguish, humiliation, loss of enjoyment of life and loss of companionship or consortium)”.<sup>217</sup>

The Basic Principles suggest that an award for compensation can only be considered when the harm to the injured party is economically assessable. However, by going on to provide a list of assessable harm that includes mental suffering and moral damage, it would seem clear that the intention is not to subject compensation to a strict market rationality. The ICC has adopted the same criterion in its reparations framework. According to the ICC, an award of compensation should be considered only when the economic harm is sufficiently quantifiable, an award would be appropriate and proportionate, and the award is feasible given availability of funds.<sup>218</sup>

The ICC framework also establishes the importance of gender inclusivity in an award of compensation, with particular emphasis on the need to avoid “reinforcing previous structural inequalities and perpetuating prior discriminatory practices.”<sup>219</sup> Women’s Initiatives for Gender Justice, who made submissions to the Court on the best approach to reparations, had argued that gender inclusivity required the Court to be sensitive to the fact that women and girls might be affected differently than men and boys by the same crime.

### *Satisfaction*

Satisfaction is a category of exceptional reparatory measures that becomes applicable when restitution and compensation are unable to fully address the harm that has been suffered by the injured party. Satisfaction may take the form of a simple acknowledgement of the breach of an obligation, a formal expression of regret, or an apology.<sup>220</sup> There is no exhaustive list of measures that can be used to satisfy the injured party. In some instances, for example, the setting up of a trust fund or memorial has been regarded as sufficient. Breach of a peremptory norm is an example of harm that cannot be fully compensated. The ILC’s Draft Articles presuppose that such breaches cause non-material damage that warrants the making of an apology, or formal guarantees with regard to future conduct.

The Basic Principles set out a list of measures that can be undertaken in satisfaction of the harms suffered by the injury party.<sup>221</sup> Some of these measures directly address the dignity of survivors, such as the need to verify the truth of the injuries suffered as result of gross violations, and to make public disclosure of the same.<sup>222</sup> The right to truth “implies knowing the full and complete truth as to the events that transpired, their specific circumstances, and who participated in them, including knowing the circumstances in which the violations took place, as well as the reasons for them.”<sup>223</sup> Similar measures include the construction of a memorial or trust fund to the benefit of survivors, the making of a formal apology, or a public declaration restoring the survivor’s dignity and reputation.<sup>224</sup> Other measures are more indirect, such as the need to include an accurate account of the violations that have been committed in future official training programmes.<sup>225</sup>

Guarantees of non-repetition are one of the most far-reaching forms of reparative justice. According to the Basic Principles, the guarantee should include the adoption of specific measures intended to ensure that similar violations do not occur in the future, such as: ensuring effective civilian control over security forces, ensuring judicial and administrative procedures satisfy internationally-recognised standards of fairness and due process, strengthening the independence of the judiciary, and educating law enforcement and military officials on human rights and humanitarian standards. By requiring the state to undertake wide-ranging reform, a guarantee of non-repetition is intended to address the root causes of serious rights violations. It embodies the idea that, beyond the particular harm suffered by the particular individual, transitional justice must have “an eye also on the preconditions of reconstructing the rule of law, an aim that has a public, collective dimension.”<sup>226</sup>

## Rehabilitation

Rehabilitation is a crucially important form of reparations in international human rights law. Several human rights instruments establish rehabilitation as a right. For example, the Convention Against Torture establishes for victims of torture an enforceable right to fair and adequate compensation, including “the means for as full rehabilitation as possible.”<sup>227</sup> The UN Convention on the Rights to the Child places an obligation on states to promote the “physical and psychological recovery and social reintegration of a child victim.”<sup>228</sup><sup>[60]</sup> Similarly, the UN Convention on the Rights of Persons with Disabilities requires states to promote “physical, cognitive and psychological recovery” of persons with disabilities who fall victim to exploitation, violence or abuse. The Rome Statute explicitly required the ICC to develop principles relating to rehabilitation of victims.

The principle of *restitutio in integrum* requires a holistic approach to the concept of rehabilitation. This means rehabilitation should be understood to encompass all the various mechanisms of support that a victim might reasonably need to reconstruct his or her previous life. That *restitutio in integrum* favours a holistic approach to rehabilitation is implied in the Inter-American Court’s notion of a ‘life plan’. Damage to a ‘life plan’, according to the Court, “implies the loss or severe diminution, in a manner that is irreparable or reparable only with great difficulty, of a person’s prospects of self-development.”<sup>229</sup>

In the Basic Principles, rehabilitation is said to include medical and psychological care as well as legal and social services.<sup>230</sup> Moreover, in defining compensation, the principles suggest that an award should cover the cost of medicines and medical services, as well as psychological and social services. The ICC has enumerated a similar list of rehabilitative measures, including: the provision of medical services and healthcare; psychological, psychiatric and social assistance to support those suffering from trauma; and legal and social services.<sup>231</sup>

Human rights bodies consistently called for effective rehabilitation for victims. The Committee Against Torture, for example has repeatedly called upon states to set up rehabilitation and assistance schemes for victims.<sup>232</sup> The Committee on the Elimination of Discrimination Against Women has, in the past, promulgated a list of measures that have some relevance to rehabilitation. The Committee has recommended that states provide appropriate protective and support services for victims, rehabilitation and counselling, and services to ensure the safety and security of victims.<sup>233</sup>

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<sup>167</sup> Legal Action Worldwide, [Report on behalf of victims of the Beirut Explosion of 4 August 2020](#), 13 November 2020.

<sup>168</sup> Constitution of Lebanon, promulgated May 23, 1926 with its Amendments 1990, Preamble paragraph B, available at <https://www.wipo.int/edocs/lexdocs/laws/en/lb/lb018en.pdf>.

<sup>169</sup> “Individual liberty is guaranteed and protected by law.” Ibid. Article 8.

<sup>170</sup> Article 14 of the Constitution states that “The place of residence is inviolable”, while Article 15 provides that “rights of ownership shall be protected by law”. Ibid.

<sup>171</sup> Ibid

<sup>172</sup> See Universal Declaration of Human Rights, Article 2; International Covenant on Civil and Political Rights, Article 2; European Convention on Human Rights, Article 14; Inter-American Convention on Human Rights, Article 1; African Charter on Human and People’s Rights, Article 2, and ; Arab Charter on Human Rights, Article 2.

<sup>173</sup> See e.g. Article 547, which criminalizes intentionally killing another person and Article 550 which establishes that anyone who causes the death of another person through beatings, violence, assault or any other intentional act without intending to kill him shall be punishable by hard labour for a term of at least five years.

<sup>174</sup> Lebanese Criminal Code

<sup>175</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html> [accessed 9 November 2020]

significance in the IHRL and IHL contexts by calling for “full and effective reparation” for survivors of violations. Basic Principles, para. 18.

<sup>176</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html> [accessed 9 November 2020]

<sup>177</sup> UN General Assembly, United Nations Convention against Transnational Organized Crime: resolution / adopted by the General Assembly, 8 January 2001, A/RES/55/25, available at: <https://www.refworld.org/docid/3b00f55b0.html> [accessed 9 November 2020]

<sup>178</sup> UN General Assembly, United Nations Convention Against Corruption, 31 October 2003, A/58/422, available at: <https://www.refworld.org/docid/4374b9524.html> [accessed 9 November 2020]

<sup>179</sup> Human Rights Committee, *ICCPR General Comment No 6: Article 6 (Right to Life)*

<sup>180</sup> Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc. CCPR/C/GC/36 (30 October 2018) at 6

<sup>181</sup> Human Rights Committee, *ICCPR General Comment No 35: Article 9 (Liberty and security of the person)*, UN Doc. CCPR/C/GC/35 (16 December 2014) at 9.

<sup>182</sup> Human Rights Committee, *ICCPR General Comment No. 31: The nature of the legal obligation imposed on States Parties to the Covenant*, UN Doc. C/21/Rev.1/Add. 13 (26 May 2004) at 8. See also European Court of Human Rights, *Osman v United Kingdom* (ECtHR) Reports 1998-VIII 3124, para. 116.

<sup>183</sup> Human Rights Committee, *Chongwe v. Zambia, Views*, Communication No. 821/1998, UN Doc. CCPR/C/70/D/821/1998 (9 November 2000) at 5.3.

<sup>184</sup> See e.g., Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc. CCPR/C/GC/36 (30 October 2018) at 27; European Court of Human Rights, *McCann and Others v UK*, Application No. 18984/1 (27 September 1995).

<sup>185</sup> See e.g. European Court of Human Rights, *Iorga v Moldova*, Application No. 12219/05 (23 March 2010).

<sup>186</sup> See e.g. European Court of Human Rights, *Opuz v Turkey*, Application No. 33401/02 (9 September 2009)

<sup>187</sup> See e.g. European Court of Human Rights, *Kolevi v Bulgaria*, Application No. 1108/02 (5 February 2010).

<sup>188</sup> See e.g. European Court of Human Rights, *Lopes de Sousa Fernandez* Application No. 56080/13 (19 December 2017); European Court of Human Rights, *Anna Todorova v Bulgaria* Application No. 23302/03 (24 May 2011).

<sup>189</sup> Human Rights Committee, *Concluding Observations: Cameroon*, UN Doc. CCPR/C/CMR/CO/4 (4 August 2010) at 15.

<sup>190</sup> European Court of Human Rights, *Armani de Silva v United Kingdom*, Application No 5878/08 (30 March 2016) at 232.

<sup>191</sup> Human Rights Committee, *Novakovic v Serbia*, Communication 1556/2007, UN Doc. CCPR/C/100/D/1556/2007 (2 November 2010) at 7.3.

<sup>192</sup> European Court of Human Rights, *Mocanu v Romania* Application No. [10865/09](https://www.refworld.org/docid/3b00f55b0.html) (17 September 2014) at 337.

<sup>193</sup> European Court of Human Rights, *Al-skeini v United Kingdom*, Application No 55721/07 (7 July 2011) at 167.

<sup>194</sup> United Nations Committee Against Torture, *Blanco Abad v Spain*, Communication No 59/1996, UN Doc. CAT/C/20/D/59/1996 (14 May 1998) at 8.8.

<sup>195</sup> This is implied in cases involving use of force by state agents, where courts have ruled that an investigation must be capable of determining whether the force was or was not justified in the circumstances. See e.g. European Court of Human Rights, *Armani de Silva v United Kingdom*, Application No 5878/08 (30 March 2016) at 243.

<sup>196</sup> Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc. CCPR/C/GC/36 (30 October 2018) at 28.

<sup>197</sup> European Court of Human Rights, *Al-skeini v United Kingdom*, Application No 55721/07 (7 July 2011) at 167.

<sup>198</sup> European Court of Human Rights, *Ogur v Turkey*, Application No. 21594/93 (20 May 1999) at 92.

<sup>199</sup> Office of the High Commissioner for Human Rights, *Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016)*, UN Doc. HR/PUB/17/4 (2017) para. 35.

<sup>200</sup> *Ibid.*, para 36.

<sup>201</sup> European Court of Human Rights, *Anguelova v Bulgaria*, Application No.38361/97 (13 June 2002) at 140.

<sup>202</sup> Human Rights Committee, *General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc. CCPR/C/GC/36 (30 October 2018) at 28.

<sup>203</sup> *Ibid*

<sup>204</sup> The rule was established by the Permanent Court of Justice, which held that “reparation must, as far as possible, wipe-out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”, *Case concerning the Factory at Chorzów (Merits)* (hereafter “*Factory at Chorzów*”), PCIJ, Series A, No. 17, 1928, para. 125. The UN General Assembly has confirmed its significance in the IHRL and IHL contexts by calling for “full and effective reparation” for survivors of violations. Basic Principles, para. 18.

<sup>205</sup> International Law Commission, Draft Articles on State Responsibility for Internationally Wrongful Acts, Article 31(2).

<sup>206</sup> *Ibid.*, Article 31, n. 5.

<sup>207</sup> Basic Principles, para. 20.

<sup>208</sup> IACtHR, *Velásquez Rodríguez v. Honduras, Merits*, Judgment of July 29, 1988, Series C No. 4, para. 26

<sup>209</sup> United Nations Human Rights Committee, *Hiber Conteris v. Uruguay*, Communication No. 139/1983 (17 July 1985), U.N. Doc. Supp. No. 40 (A/40/40) para. 7.2.

<sup>210</sup> International Criminal Court, *Decision establishing the principles and procedures to be applied to reparations* (hereafter “Reparations Decision”), Case No. ICC-01/04-01/06 (7 August 2012) para. 22.

<sup>211</sup> General Assembly Resolution, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, A/RES/40/34 (20 November 1985), Article 6.

<sup>212</sup> Rome Statute, Article 68(3).

<sup>213</sup> Reparations Decision, para. 267.

<sup>214</sup> Basic Principles, para. 19.

<sup>215</sup> Reparations Decision, para. 224

<sup>216</sup> *Factory at Chorzów*, para. 125.

<sup>217</sup> Draft Articles, Article 36, para. 19.

<sup>218</sup> Reparations Decision, para. 226.

<sup>219</sup> *Ibid.* para. 227.

<sup>220</sup> Draft Articles, Article 37.

<sup>221</sup> Basic Principles, para. 22.

<sup>222</sup> *Ibid.*

<sup>223</sup> *Id.*, paragraph 59.

<sup>224</sup> *Ibid.*

<sup>225</sup> *Ibid*

<sup>226</sup> Pablo de Greiff, “Justice and Reparations”, in P. de Greiff (ed.), *The Handbook of Reparations*, (OUP 2006), p. 257.

<sup>227</sup> Convention Against Torture, Article 14(1).

<sup>228</sup> United Nations Convention on the Rights of the Child, Article 39.

<sup>229</sup> IACtHR, *Loayza Tamayo v. Peru, Judgment on Reparations and Costs*, 27 November 1998, para. 150.

<sup>230</sup> Basic Principles, para. 21.

<sup>231</sup> Reparations Decision, para. 233.

<sup>232</sup> See e.g. Conclusions and Recommendations of the Committee against Torture, CAT/C/ECU/CO/3, 8 February 2006, Conclusions and Recommendations of the Committee against Torture: Sri Lanka, CAT/C/LKA/CO/2, 15 December 2005; Concluding Observations of the Committee against Torture: Chad, CAT/C/TCD/CO/1, 4 June 2009.

<sup>233</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 19: Violence against women*, 1992, available at: <https://www.refworld.org/docid/52d920c54.html>.