

# Shrinking Democracy in Lebanon: How a Securitised State of Emergency Is Threatening Democratic Norms\*

## Executive Summary

Lebanon is experiencing one of the most crushing challenges in its 100 years of existence. In the wake of the covid-19 pandemic and the 4 August Beirut port explosion, national authorities have resorted to highly controversial martial law regulations in the form of the General Mobilisation Plan (GMP) and declaring a State of Emergency (SoE). Such measures are unprecedented despite regularly experiencing exceptional circumstances, triggered by both internal and external factors.

Worldwide emergency measures to counter covid-19 have disrupted the foundations of democratic principles and the rule of law, at a time when democratic practices were already at risk in many countries.<sup>1</sup> As feared by thinker Amartya Sen, “the world does face today a pandemic of authoritarianism, as well as a pandemic of disease, which debilitates human life in distinct but interrelated ways”.<sup>2</sup>

SoE legislation, as framed and implemented in Lebanon, is threatening democratic principles and the rule of law. It has affected the basic rights of citizens and the aspirations of the protesters who took to the streets in October 2019, demanding dignity, good governance, and social justice from their government. To protect these rights, the political factions in power need to abandon the securitisation approach in addressing people’s well-being in the context of the covid-19 pandemic and abide by national and international law. Decision-makers should correct this course of action and engage in crucial reforms to strengthen the legislative branch and the independence of the judiciary to play their crucial role in ensuring checks and balances against emergency responses. At the same time they need to overturn corruption and unconstitutional practices.

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1 States of Emergency and the Rule of Law: A Primer, Democracy Reporting International, April 2020, available on [bit.ly/3gNWFBb](https://bit.ly/3gNWFBb).  
2 Amartya Sen, “A Pandemic of Authoritarianism”, Scroll.in, 1 November 2020. Available on [bit.ly/3r1oHxY](https://bit.ly/3r1oHxY).

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## 1. Introduction: Grave Concern over the Rule of Law in Lebanon

Since 2019, Lebanon has been facing extreme challenges, from financial bankruptcy to socio-economic collapse, including the massive street protests of October 2019 which led to the resignation of the government. Lebanon then faced, as the rest of the world, the worst contemporary outbreak of an infectious respiratory disease (covid-19). Added to these challenges, the crushing tragedy of the Beirut Port explosion of 4 August 2020 claimed 205 fatalities, 7,000 injuries and more than 300,000 displaced persons.

The pandemic and the port explosion led to a governmental response focusing on declaring the State of Emergency (SoE). A General Mobilisation Plan (GMP) was announced in March 2020 to mitigate the threat of covid-19. In the immediate aftermath of the Beirut explosion, the SoE unnecessarily granted exceptional powers to the Lebanese Armed Forces (LAF). The scale of these emergency responses raises great concerns as to whether the rule of law in Lebanon is under attack, in the wake of the rising repression from security services and the crumbling state of accountability mechanisms. On 17 December 2020, the investigative judge even suspended the probe into the Beirut Blast, further uncovering the fragility of the country's judiciary.<sup>3</sup>

This paper will be looking at how democratic norms and compliance with human rights have been damaged in a country traditionally distinct in the Middle East for its relatively free press, liberal regulations, and democratic political process.

## 2. A Continuum of Exceptional Circumstances

### 2005–2018: Constitutional Breaches and Power Vacuum Become the Norm

When Lebanon formed its first government in the post-Syrian tutelage era in 2005, optimism as to the prospects for the country to finally regain its independence and sovereignty was short-lived as the country was once again struck by political and security uncertainty. Political assassinations, the war with Israel in July–August 2006, the military attacks of pro-Hezbollah militias against political rivals and media outlets in Beirut and Druze strongholds in Mount-Lebanon in May 2008, in addition to terrorist attacks in Beirut and its close suburbs threw the country on the verge of civil war.

3 "Lead judge suspends Beirut blast probe", The Daily Star, 17 December 2020, available on <https://www.dailystar.com.lb/News/Lebanon-News/2020/Dec-17/515459-lead-judge-suspends-beirut-blast-probe.ashx>.

From 2012, the country received an unprecedented wave of Syrian refugees, accounting for a quarter of its population.

Yet, between 2005 and 2020, the SoE was never declared despite continuous turmoil and conflict. Parliamentary and municipal elections were held in May–June 2005, three months after the assassination of former Prime Minister Rafiq Hariri, and they were organised in 2009 despite terrorist activities that fuelled sectarian conflict and deep tensions due to the establishment of the Special Tribunal for Lebanon (STL).<sup>4</sup>

From then onwards, the Lebanese political system was unable to defuse deeply polarising sectarian issues, crippling the country's ability to manage its political plurality, and gravely affecting the national constitutional order. As a result, a presidential vacuum lasted from November 2007 until May 2008, before regional powers stepped in to foster the Doha Agreement.

Lebanese democracy was further weakened as political leaders agreed in 2013 to postpone the legislative elections, despite lacking justification: armed clashes in Tripoli<sup>5</sup> and the incursion of the Islamic State of Iraq and Syria (ISIS/Daesh) in the town of Eرسال in North-Eastern Beqaa<sup>6</sup> do not justify a continuous dismissal of the voting process.<sup>7</sup>

In the meantime, the term of President Michel Suleiman had ended without a successor being elected, as the parliament once again violated constitutional norms to secure a new head of state.<sup>8</sup> This time the presidential vacuum lasted two years and a half, until President Michel Aoun's election in October 2016. The parliamentary electoral process only resumed in May 2018, meaning that officials elected in 2009 remained in office twice as long than the permitted term.

4 Established as per UN Security Council Resolution 1757 of 30 May 2007. The Tribunal launched its activity on 1 March 2009.

5 From June 2011 until January 2015; cf. The Battles for Bab Tabbaneh and Jabal Mohsen, cf. Al Hayat, Arab Reporters for Investigative Journalism, 2 May 2013, available on [bit.ly/3ah3jyz](http://bit.ly/3ah3jyz).

6 Prompting a military response by the LAF; cf. Nidal al Solh, "Lebanon army advances against militants, death toll rises", The Daily Star, 4 August 2014, available on [bit.ly/3gQP8A8](http://bit.ly/3gQP8A8).

7 Parliamentary elections were postponed three times: first in May 2013 with a law pushing elections for 18 months, then in November 2014 postponing the elections for two years and seven months, and lastly in March 2017 until May 2018.

8 As per Articles 73–75 of the Lebanese Constitution.

## Defective Governance: Shrinking Civic Space and Grave Human Rights Violations

Since the 2008 Doha Agreement, Lebanon's political system is governed by stricter power-sharing arrangements and decision-making was pushed outside of formal state institutions through the process of national dialogue conferences. As the decision-making process rigidified, with political parties more likely to resort to nuisance actions, ranging from veto threats to street violence, Lebanon switched from management of pluralism to a tyranny of sectarian pluralism.

This development was conducive to further defective governance, as instruments of political accountability were shut down. The political establishment resorted to repression and grave human rights violations were recorded even before the declaration of the GMP or SoE in 2020. Throughout these years, Lebanon showed little determination in combating torture, with cases being systematically swept "under the rug".<sup>9</sup>

In the wake of the 2019 uprisings, law enforcement agencies resorted to autocratic practices. The brutal crackdown on freedoms of expression and assembly led to the formation of a coalition of 14 human rights organisations in July 2020 to defend freedom of speech in Lebanon.<sup>10</sup>

Fearing to lose its privileges, the Lebanese regime resorted to exceptional powers in the form of the GMP, following the covid-19 outbreak, and the SoE in the aftermath of the Beirut explosion. During the first lockdown in March 2020, police destroyed the remaining tents of protesters in Martyrs' square, the main site of activists, in a punitive gesture against opposition groups.<sup>11</sup> On 8 August, protesters demanding responsibility and accountability of the regime for the Beirut explosion were met with excessive violence by the riot police and the LAF, with more than 700 demonstrators reportedly injured. No investigation was conducted by oversight institutions.<sup>12</sup> At the same time, victims from the Beirut explosion seeking to establish victims' associations struggled to get registered with the Ministry of Interior, despite the latter's legal obligation to ensure freedom of association.

9 Kareem Chehayeb, "Ziad Itani, Lebanon's torture epidemic and its frail courts", Beirut Today, 18 July 2019, available on [bit.ly/382H8cR](https://bit.ly/382H8cR).

10 Centre Libanais des Droits de l'Homme, Lebanon: New Coalition to Defend Free Speech, 13 July 2020, available on [bit.ly/3oQsV9y](https://bit.ly/3oQsV9y).

11 Souad Lazkani, "Gov't Used Coronavirus Curfew in Lebanon To Remove the Revolution's Tents From Martyrs' Square", The 961, 27 March 2020, available on [bit.ly/2WdFNuh](https://bit.ly/2WdFNuh).

12 Aya Majzoub, "Les forces de sécurité doivent rendre des comptes sur les violences du 8 août", L'Orient-Le Jour, 14 November 2020, available on [bit.ly/3gOgatc](https://bit.ly/3gOgatc).

More recently, the Internal Security Forces resumed the practice of administrative detention, despite it contradicting national regulations.<sup>13</sup> These actions severely shrink the civic space for citizens to call for accountability and essential reforms.

The regression of human rights in the country is compounded by continued gender discrimination "both in law and in practice, stem[ming] from the personal status laws of religious communities and the prevailing male-oriented mentality", as expressed by the National Commission for Lebanese Women (NCLW).<sup>14</sup> Furthermore, the recent year has proven harsh for women, the regular lockdowns and the economic slowdown putting them at greater risk of domestic violence.<sup>15</sup> Despite having female ministers, such as the Minister of Justice and the Minister of Defence (the latter sitting at the Supreme Defence Council), little was achieved to alleviate gender inequality and gender violence. In December, the Parliament passed a law to criminalise sexual harassment and amend the controversial domestic violence law, yet the measures came short of the civil rights groups' expectations.<sup>16</sup>

The shrinking civic space further increased the discrimination of minorities, such as against the LGBTQ community. Predatory and homophobic practices are employed by the security sector, despite some improvement from the judiciary offering encouraging acquittals for such practices. Yet, many members of this community continue to face torture, ill-treatment, discrimination, and deprivation of their civic rights.<sup>17</sup>

In addition, the financial crisis, coupled with the kafala (sponsorship) system for Migrant Domestic Workers (MDWs) was exacerbated with the outbreak of covid-19 throughout the country. With the appreciation of the US Dollar, thousands of Lebanese families could no longer afford domestic helpers in their household and abandoned them at their respective embassies without pay or passports and return tickets home.<sup>18</sup>

13 Radwan Mortada, "Imad Othman to his men in a 'militia-like' memo: accuse who you like and arrest them without a warrant", Al-Akhbar, 1 December 2020, available on [bit.ly/3nyGpqt](https://bit.ly/3nyGpqt).

14 Sixth periodic report submitted by Lebanon under Article 18 of the Convention, due in 2019, Committee on the Elimination of Discrimination against Women, CEDAW/C/LBN/6, 27 July 2020, §204.

15 DW News, "Lebanon: Curfew, economic crisis worsen domestic abuse", 7 May 2020, available on <https://www.dw.com/en/lebanon-curfew-economic-crisis-worsen-domestic-abuse/av-53366244>.

16 Timour Azhari, "Lebanon passes landmark sexual harassment law", Al-Jazeera, 21 December 2020, available on <https://www.aljazeera.com/news/2020/12/21/lebanons-parliament-approves-landmark-sexual-harassment-law>.

17 Proud Lebanon. The LGBTIQ+ community in Lebanon, Universal Periodic Review, Third Cycle, 2020.

18 Amnesty International – Lebanon: Abandoned migrant domestic workers must be protected, 3 June 2020, available on [bit.ly/2Kr34Gi](https://bit.ly/2Kr34Gi).

### 3. The State of Emergency Amid a State of Collapse

#### The Turning Point of Autumn 2019

In October 2019, the Saad Hariri cabinet intended to implement an austerity plan to reduce levels of public deficits as the country plunged into financial turmoil. The planned “WhatsApp Tax” triggered massive demonstrations, drawing from the same spirit of past protests, such as the waste crisis of 2015. The movement gathered hundreds of thousands across the nation and toppled the Hariri government 12 days later.<sup>19</sup>

October 2019 marked a new phase in emergency-strapped Lebanon, whose political establishment ultimately resorted to repressive tactics to quash the demonstrations. Demonstrators regularly faced violent crackdown by sectarian supporters,<sup>20</sup> police forces and army personnel, while their demands were ignored.<sup>21</sup>

The uprising served as pretext for the struggling Central Bank (BdL) and banking sector to close for a period of two weeks, in an unprecedented move, unseen even during the country’s civil war (1975–1990).<sup>22</sup> As the BdL’s Ponzi scheme crumbled like a house of cards, the Lebanese banking sector introduced discretionary restrictions on access to bank accounts in US dollars. Such capital control measures, unsubstantiated by any legislation accelerated the socio-economic crisis in the country,<sup>23</sup> while maintaining subsidies in foreign currency for wheat, fuel, and medicine.

Neither the Lebanese authorities nor the Banking Control Commission did intervene against these measures by the banks. Recently, the BdL failed to transmit updated accounting sheets to Alvarez & Marsal, the auditing firm leading a forensic audit into BdL’s performance on the account of the government.<sup>24</sup>

With the outbreak of covid-19 in Lebanon in February 2020, the protests receded, failing to build political momentum,<sup>25</sup> as the authorities regained their grip over the country through harsher regulations.

19 André Sleiman, *A Moment for Change: The Lebanese Uprisings of 2019*, Democracy Reporting International – Lebanon, 6 December 2019, available on [bit.ly/3oTgOZj](http://bit.ly/3oTgOZj).  
 20 Mortada Alameen, *Lebanon’s loyalists. The other side of change*, Synaps, 14 October 2020, available on [bit.ly/383n1ep](http://bit.ly/383n1ep).  
 21 André Sleiman, *ibid.*  
 22 Victoria Yan, “After unprecedented shutdown, Lebanon’s banks reopen, mitigate nationwide panic”, *Al Monitor*, 3 November 2019, available on [bit.ly/384Qzse](http://bit.ly/384Qzse).  
 23 Lauren Holtmeier, “How Lebanon’s dollar shortage sparked an economic crisis”, *Al Arabiya*, 7 October 2019, available on [bit.ly/3oRaLoc](http://bit.ly/3oRaLoc).  
 24 Sabine El Hayek, “Forensic Audit in Lebanon: Goodbye to Accountability”, *Democracy Reporting International – Lebanon*, 27 November 2020 available on [bit.ly/3acn9el](http://bit.ly/3acn9el).  
 25 Cf. Karim El Mufti, “Why the Oct. 17 uprising failed to generate political leadership — and how it might yet succeed”, *L’Orient Today*, 17 October 2020, available on [bit.ly/3nyJSoZ](http://bit.ly/3nyJSoZ).

#### Successes and Failures of the General Mobilisation Plan

In December 2020, Lebanon had more than 165,000 covid-19 cases. When the first patient contracted covid-19 in February 2020, the authorities turned to exceptional regulations to deal with the pandemic. The following month, the Council of Ministers announced the GMP<sup>26</sup> upon the recommendation of the Supreme Defence Council, along with the activation of a National Crisis Operations Room. Initially foreseen for two weeks, the GMP was renewed eight times<sup>27</sup> and is still in force until the end of March 2021.<sup>28</sup>

At first, the government managed to keep the situation under control: when the borders were shut in March, Lebanon had 99 covid-19 cases. However, the spread of the disease accelerated due to Lebanon’s “low-resource setting” and the inability to “test, trace and isolate”, as recommended by the World Health Organisation.

Lebanon resorted to several mitigation measures. In March, the Ministry of Public Health issued its covid-19 “Health Strategic Preparedness and Response Plan”.<sup>29</sup> In addition to partial (in October)<sup>30</sup> and full lockdowns (in March, May, followed by a new confinement phase in November), night curfews<sup>31</sup> were imposed and mobility restricted on specific weekdays according to vehicle number plates.<sup>32</sup>

26 Decree No. 6198 dated 15 March 2020 related to “Declaring the State of General Mobilisation to counter the spread of the Coronavirus”, Council of Ministers.  
 27 Decree No. 6209 dated 26 March 2020; Decree No. 6251 dated 9 April 2020; Decree No. 6296 dated 24 April 2020; Decree No. 6329 dated 5 May 2020; Decree No. 6403 dated 28 May 2020; Decree No. 6443 dated 4 June 2020; Decree No. 6665 dated 28 July 2020; Decree No. 6684 dated 26 August 2020.  
 28 The eighth prorogation of the GMP was decided by the Supreme Defence Council, which superseded the decisions of the Council of Ministers, cf. “Exceptional decisions taken by the Supreme Defence Council turning it into a Council of Higher Authority disregarding the Constitution” [in Arabic], *Al Liwaa*, 4 December 2020.  
 29 *Coronavirus Disease 2019 (covid-2019) Health Strategic Preparedness and Response Plan*, Ministry of Public Health, 10 March 2020, available on [bit.ly/3oQz9Gs](http://bit.ly/3oQz9Gs).  
 30 Facing a new growth curve into the second wave, the Ministry of Interior decided partial lockdowns of towns and villages (excluding large cities such as Beirut, Tripoli and Saida) starting 2 October 2020, justifying the restrictions because “the mitigation measures implemented are not respected to avoid transmission of the virus” and based on “public interest and the general safety guidelines”, Decision No. 1205 on “Isolation of villages due to the outbreak of covid-19”.  
 31 Starting 26 March 2020, from 7pm until 5am.  
 32 Decision No. 479, Ministry of Interior and Municipalities, 5 April 2020. The decision was lifted on 14 June 2020.

Despite all this, the Lebanese authorities failed to flatten the curve. In September, the number of daily cases passed for the first time over 1,000 contaminations.<sup>33</sup> It went beyond 4,000 at the end of December 2020.

The sequence of mitigation and preventive measures from the Lebanese authorities puts in question the effectiveness of the covid-19 emergency response in Lebanon.

The regulation and legislation used to justify the GMP is out-dated as the Law on Infectious Diseases dates to 1957 and was only amended with the outbreak of the pandemic.<sup>34</sup> This legislation includes the possibility of quarantining entire areas<sup>35</sup> but does not stipulate any restriction in relation to curfews and full closure of businesses, which falls under SoE regulations, a decision that should be confirmed by the parliament, whereas the GMP does not have to undergo parliamentary scrutiny.

Despite the GMP decree of March 2020 referring to the 1957 Law, it invoked Article 2 of the Legislative Decree on National Defence,<sup>36</sup> clearly making the response to the pandemic a military one. Regulatory prerogatives were handed over to the Supreme Defence Council without the possibility for institutional or civic oversight. This legal setting is deeply flawed, as the pandemic should not be correlated with a danger of military nature and requires a specific regulatory setting based on the 1957 Law on Infectious Diseases. The 1957 law should have been amended, especially as it gives full control for tackling a pandemic to the Ministry of Public Health.<sup>37</sup>

Instead, the Lebanese authorities concentrated power in the executive branch and gave the Ministry of Interior large powers to issue punitive measures to contain the pandemic, while the Lebanese parliament did little to exert its oversight role. An indication on the predominance of the security mindset can be seen in efforts from the Lebanese authorities to consider not wearing a mask a misdemeanour instead of a simple infraction.<sup>38</sup>

33 Latest data on covid-19 situation in Lebanon, available on: [bit.ly/34haanM](https://bit.ly/34haanM).

34 Based on Decree No. 6198 dated 15 March 2020.

35 As per Article 10 of the 1957 Law on Infectious Diseases.

36 Legislative Decree No. 102 dated 16 September 1983 related to National Defence, Article 2:

“In case the homeland, or part of its territory, or any of its public sectors or any segment of its population is endangered, it is possible to declare:  
A – A state of total or partial mobilisation to limit the exposure to danger of the population and vital installations, and to secure mobilisations’ operations and the use of armed forces.  
B – The state of general or partial mobilisation to implement all or some of the established plans.”

37 As per Article 9 of the 1957 Law on Infectious Diseases in Lebanon.

38 “Diab holds a security meeting to explore how to best implement the lockdown decision... and for infractions to be considered misdemeanours” [in Arabic], Al-Akhbar Beirut, 11 November 2020, available on [bit.ly/3mpqklk](https://bit.ly/3mpqklk).

The emergency response also disregarded inclusive policy consultations. Municipalities and experts were not consulted in decisions to lock down their towns.<sup>39</sup> Hospitals and health workers, professional associations, the education sector, civil society organisations, the private sector or regular citizens had limited input in covid-19 response policy. As confirmed by the head of the Rafiq Hariri Public Hospital, “good communication between health authorities and the public is an area that is still lacking”.<sup>40</sup>

Hence, the “securitisation” of the covid-19 response strengthened enforcement agencies and allowed for a wide restriction of liberties without a sound debate over the limitations.

## State of Emergency Following the Beirut Port Explosion

On 4 August 2020, Beirut was shaken by a devastating explosion, a result of corruption and public negligence of staggering proportions. On 10 August, the government resigned following a national protests and international demands, a few days after declaring a SoE on 5 August.<sup>41</sup>

Enacted for the first time since 1973,<sup>42</sup> the SoE declared Beirut a “disaster zone” and granted exceptional prerogatives to a higher military authority, the LAF.<sup>43</sup> Never in the post-civil war era did Lebanon resort to such extreme measures. Even the GMP avoided SoE legislation,<sup>44</sup> even though it included many of its features. This decision qualified the tragedy as an “incident characterised as a disaster”, as stipulated in the national SoE legislation.<sup>45</sup>

39 In a report published in November 2020, Siren Analytics uncovered that 87% of surveyed municipalities were not consulted prior to lockdown decisions, cf. Siren Analytics, Covid-19 in Lebanon, National and Local Crisis Response, Challenges, Shortcomings and Opportunities, November 2020, available on [bit.ly/2Ks5Zi8](https://bit.ly/2Ks5Zi8).

40 Emily Lewis, “How coronavirus is finally breaking Lebanon’s neglected health care system”, L’Orient-Le Jour, 15 October 2020, available on [bit.ly/34dSZDL](https://bit.ly/34dSZDL).

41 The decree was issued on 7 August as per Decree No. 6792 dated 7 August 2020, Council of Ministers.

42 Decree No. 5513 dated 7 May 1973, Council of Ministers.

43 SoE in Lebanon grants the LAF exceptional powers over civilian matters and is responsible for the city’s security matters, thus placing all armed units, whether the Internal Security Forces, General Security, State Security, Customs and armed forces in other formal institutions under its command.

44 As stipulated by Legislative Decree No. 52/1967 on “Declaration of a State of Emergency or Military Zone”.

45 Legislative Decree No. 52/1967, Article 1: “The State of Emergency may be declared in all or part of the Lebanese territory when the country is exposed to an imminent danger resulting from a foreign war, armed revolution, actions or turmoil threatening public order and security, or in the event of incidents characterised as a disaster”.

Initially instated for two weeks, the decree was confirmed by parliament on 13 August, on the last day of the required 8-day deadline for parliament to convene after a state of emergency is declared.<sup>46</sup> Experts criticised a major irregularity in issuing the decree<sup>47</sup>: Article 65 of the Constitution stipulates that the declaration of a State of Emergency and its termination requires the approval of two-thirds of the Council of Ministers. However, the decision was not taken by a two-thirds majority. The extension of the decision until the end of 2020 was, yet again, “illegal”, “unconstitutional” and “unjustified”.<sup>48</sup> The “general mobilisation [...] would have been sufficient to deal with the aftermath of the port blast”.<sup>49</sup>

The SoE bestowed relief efforts to the LAF as enforcer of the emergency regulation, while limiting access to civil society actors.<sup>50</sup> The LAF carried out damage mapping and assessment in the weeks following the explosion to identify victims based on an emergency fund of 100 billion Lebanese Pounds.<sup>51</sup> However, it remains unclear how the Emergency Relief Fund was used to help the most vulnerable, as the SoE prevents applying a transparent process and oversight mechanisms.

## 4. Assessing Lebanon’s SoE

### Compliance of SoE in Lebanon with International Norms

SoE legislation in Lebanon dates to 1967. When activated, a higher military authority, in practice the LAF, is vested with significant powers, as stipulated by Article 4 of the Legislative Decree No. 52/1967. Even if a state is allowed to defer unilaterally and temporarily from a range of rights and obligations ensured by the Constitution and international law, it still needs to comply with a specific regime of safeguards to avoid abuse.

First, the situation that calls for the declaration of the SoE needs to qualify as “public emergency” as defined under the International Covenant on Civil and Political Rights (ICCPR) of 1966.<sup>52</sup> Article 4(§1) of the ICCPR allows derogations to the Covenant “in case of public emergency which threatens the life of the nation”. As stipulated in this Article, “[n]ot every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation”.<sup>53</sup> By declaring Beirut a “disaster zone”, the SoE decree of 7 August was consistent with the content of the Legislative Decree, by including the explosion in the “national disaster” category. However, the decision may be disproportionate as it is unclear how this tragedy, as hurtful as it may be, “threatens the life of the nation”, which is the ICCPR’s defining element for an emergency, under which exceptional derogations to the rule of law may be introduced.

The SoE declaration respected the required formal character by taking the form of a decree, as it was applicable to a limited geographical area (the city of Beirut) and a limited timeline (initially two weeks, before being extended until the end of the year), which are two important requirements in ICCPR’s Article 4. However, it did not comply with additional norms, such as ensuring the principles of necessity and proportionality and instituting a formal recognition of non-derogable rights as stipulated by Article 4(§2) of ICCPR.<sup>54</sup>

<sup>46</sup> Article 2, Legislative Decree 52/1967.

<sup>47</sup> Wissam El-Lahham, The Decree declaring the State of Emergency: Grave legal issues related to enforcement date [in Arabic], Legal Agenda, 12 August 2020, available on bit.ly/3nrMCo4.

<sup>48</sup> Legal Agenda tweet, August 18, 2020, available on bit.ly/3nmynkh; cf. also Siren Associates. The State of Emergency in Lebanon, September 2020, p. ii, available on bit.ly/3oRoVpm.

<sup>49</sup> Sabine El Hayek, “State of Emergency: score of violations for a non-urgent decision” [in Arabic], An-Nahar, 2 November 2020, available on bit.ly/3r8ZwJQ.

<sup>50</sup> “Army’s order for volunteer permits prompts resistance”, The Daily Star, 16 August 2020, available on bit.ly/2WjWPq

<sup>51</sup> According to the LAF mapping, 10,274 households out of 62,087 surveyed would qualify for direct aid, as payment of compensations started on 26 October; cf. “10,274 damaged households from the Port Blast... officially. Date for aid distribution was set” [in Arabic], Lebanon 24, 23 October 2020, available on bit.ly/3gWvhkE.

<sup>52</sup> Lebanon ratified the ICCPR in 1972.

<sup>53</sup> Paragraph 3, ICCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, Adopted at the 72nd Session of the Human Rights Committee, on 31 August 2001.

<sup>54</sup> Non-derogable rights under ICCPR include right to life (Art. 6), freedom from torture, cruel and inhuman treatment (Art. 7), freedom from slavery and servitude (Art. 8 §1–2), no detention due to inability to fulfil contractual obligation (Art. 11), fair trial dispositions (Art. 15), right to legal personality (Art. 16), freedom of thought, conscience, and religion (Art. 18).

The principle of necessity was not apparent, since the tasks commissioned to the LAF under a SoE regime are already stipulated under existing military and security regulations. Similarly, by extending the duration of the SoE until the end of 2020 with little justification, the Lebanese authorities overstepped the principle of proportionality attached to the international regime of safeguards in SoE situations.<sup>55</sup>

Furthermore, the decree does not outline derogations in case it should apply to the “higher military institution”. As such, the risk is great for the LAF to overlook guarantees as to *Jus cogens* norms, which constitute the compelling international dispositions which states may not derogate from.<sup>56</sup>

### The Challenge of Accountability: Prospects for the Rule of Law

Given the flawed legal grounds for enacting the GMP and the SoE in Lebanon, there are concerns that the Lebanese authorities will increase coercion and allow further concentration of powers during exceptional circumstances.

The failure to arrange partial legislative elections after the resignation of several MPs after the explosion is further undermining parliamentary oversight and, yet again, obstructing the democratic voting mechanism.

In addition, little oversight was initiated by the judiciary. The Constitutional Council weakened the rule of law with its 2014 decision condoning the extension of the parliament’s mandate. After failing to convene to address a challenge related to the prorogation law in 2013, the Council ultimately dismissed the plea “to prevent further power vacuums in state institutions”,<sup>57</sup> a concept foreign to international standards for derogating from civic and political rights.

This weak stand from the Constitutional Council has pointed to the Lebanese judiciary’s inability to provide checks on the government, hence jeopardising the democratic system. Moreover, the government’s decision to hand the investigation into the Beirut explosion to the controversial Council of Justice is consistent with the SoE mindset because of the exceptional nature of this judicial body, thus further disregarding transparency. The Council of Justice is an

exceptional penal court that has jurisdiction over cases referred to by the cabinet in matters of external and internal state security. The council has been criticised for being vulnerable to political pressures, even though its activation by the executive power does not necessarily entail its politicisation or a lack of impartiality. Under Article 366 of the Code of Criminal Procedure, its judgments are not open for review, a clear violation of a fair trial, which requires both appeals and review.<sup>58</sup>

Human Rights Watch raised concerns “that politicians suspected of implication in the blast may escape accountability [given] the focus on administrative port and customs officials”.<sup>59</sup> The Beirut Bar Association issued a similar warning, calling upon the judiciary to undertake a “courageous decision to interrogate political and security officials”.<sup>60</sup> Judge Fadi Sawan, who was tasked with the investigation, asked parliament on 25 November to probe ministers over the explosion.<sup>61</sup> Three weeks later, given the lack of response from the legislative branch, the judge indicted outgoing Prime Minister Hassan Diab and three former ministers for “negligence”.<sup>62</sup> But top security officials who also knew about the stock of inflammable material at the port were spared by the recent judicial decision. However, the investigation was suspended on 17 December as the jurisdiction of the Council over prosecuting former ministers was challenged in court by political parties, a move that further undermines the independence of the judiciary.

In parallel to the rise in autocratic practices, the respect for the rule of law is waning in Lebanon. When parliament recently strengthened judicial guarantees for persons deprived of their liberty,<sup>63</sup> judges lobbied the President to strike it down.<sup>64</sup> Despite the decision of President Aoun to ignore this petition, there is fear that the implementation of the new defence system for the defendants will be volatile, especially under a SoE framework.

55 States of Emergency and the Rule of Law: A Primer, Democracy Reporting International, April 2020, available on [bit.ly/3gNWFbB](https://bit.ly/3gNWFbB).

56 *Jus cogens* is an international law concept defined by the 1969 Vienna Convention. *Jus cogens* are peremptory norms accepted and recognised by the international community of states and from which no derogation is permitted. These norms can only be modified by a subsequent norm of general international law having the same character.

57 Decision No. 7 dated 28 November 2014, Constitutional Council, available on

58 ALEF – Act for Human Rights, “The Right to Fair Trial in Lebanon: A Position Paper on Exceptional Courts”, October 2016. Available on [https://alefliban.org/wp-content/uploads/2016/10/PP3\\_v03\\_print.pdf](https://alefliban.org/wp-content/uploads/2016/10/PP3_v03_print.pdf).

Matthieu Karam, “Ce qu’il faut savoir sur la Cour de justice, un tribunal d’exception qui fait polémique”, *L’Orient-Le Jour*, 10 July 2019. Available on <https://www.lorientlejour.com/article/1178141/ce-quil-faut-savoir-sur-la-cour-de-justice-un-tribunal-dexception-qui-fait-polemique.html>.

59 Human Rights Watch, Lebanon: Flawed Domestic Blast Investigation: International Probe Needed for Transparency, Accountability, 22 October 2020, available on [bit.ly/2Ly0crD](https://bit.ly/2Ly0crD).

60 Statement by the President of the Beirut Bar Association, 14 November 2020, available on [bit.ly/3nIH03p](https://bit.ly/3nIH03p).

61 Timour Azhari, “Lebanon judge asks Parliament to probe ministers over port blast”, *Al-Jazeera*, 25 November 2020, available on [bit.ly/3npC48L](https://bit.ly/3npC48L).

62 Youssef Diab, “Judge charges Diab, three ex-ministers of negligence in port blast case”, *The Daily Star*, 10 December 2020, available on [bit.ly/3nobUDj](https://bit.ly/3nobUDj).

63 Law No. 191 dated 16 October 2020, amending Article 47 of the Criminal Code of Procedures.

64 Claude Assaf, “À peine adoptée, la loi sur le droit à l’assistance d’un avocat devant la police est menacée”, *L’Orient-Le Jour*, 2 November 2020, available on [bit.ly/34FUHV1](https://bit.ly/34FUHV1).

Both legislative and judiciary branches are relinquishing their role in providing checks and balances against the securitisation of the emergency responses. Lebanon, like many other countries, faces the danger of “trivialisation of martial law that would legitimise a power transfer from legislative organ to the executive branch” and further falling in a “security-type criminal law”.<sup>65</sup>

By declaring the GMP and the SoE during a troubled year, the Lebanese regime showed its predisposition towards power abuse, while delaying crucial reforms, such as restructuring the financial and banking sectors, strengthening the independence of the judiciary, modernising public procurement legislation,<sup>66</sup> and establishing the Anti-Corruption National Committee.

Finally, the apparent takeover of the Supreme Defence Council as a formal, yet unconstitutional, decision-maker (instead of a consultative body) in lieu of the caretaker Cabinet<sup>67</sup> indicates the impending threats against Lebanon’s fragile democracy.

## ABOUT DEMOCRACY REPORTING INTERNATIONAL

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<sup>65</sup> Mireille Delmas-Marty, “Nous basculons vers un droit pénal de la sécurité, qui traite le suspect en criminel”, *Le Monde*, 23 October 2020, available on [bit.ly/37mWhXn](https://bit.ly/37mWhXn).

<sup>66</sup> Democracy Reporting International, *Reforming Public Procurement in Lebanese Local Authorities: Challenges and Ways Forward*, 3 June 2020, available on [bit.ly/3qYKENV](https://bit.ly/3qYKENV).

<sup>67</sup> Jeanine Jalkh, “Comment le Conseil supérieur de défense est devenu un « mini-cabinet »”, *L’Orient-Le Jour*, 12 December 2020, available at <https://www.lorientlejour.com/article/1244631/comment-le-conseil-superieur-de-defense-est-devenu-un-mini-cabinet-.html>.