



Lebanon's Quest for Justice

THE STATE OF THE INVESTIGATION INTO THE BEIRUT PORT EXPLOSION

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I. ABSTRACT

As impunity prevails in Lebanon, the local investigation into the deadly explosion at Beirut port has been repeatedly delayed and halted by the extensive obstruction and political interference from Lebanese officials suspected and summoned for negligence by the Chief Investigator.

Despite substantial evidence implicating these officials in the explosion, some of them have obstructed the domestic investigation, shielding themselves and others responsible for human rights violations from accountability. The families of the victims, the rights groups, and many Lebanese parliamentarians are looking for other ways to obtain justice as there are no more room left for justice and the rule of law to govern.

This paper will elaborate on the investigation process for the Beirut port explosion which was described as the third worst explosion in the world. It will provide important data and details on the occurrences, will explain the previous and current status of investigation at all levels, starting from the appointment of Judge Sawan to lead the investigation in 2020 until termination of his work and then the appointment of judge Bitar in 2021 until the present day.

Judge Bitar has faced several obstacles and threats putting his work on hold twice because of rampant political interference by summoned officials. This caused a Judicial Fiasco early 2023 with the internal division of the judicial branch, political interference in the investigation process and abuse of national Lebanese law along with the violation of international law.

With the efforts of the families' victims, the rights groups and Lebanese parliamentarians including the largest parliamentary group "the Strong Republic" SR block affiliated to the Lebanese Forces Party, thirty-eight countries at the UN Human Rights Council in March 2023 have demanded justice in a joint statement delivered by Australia. Nevertheless, the same parliamentarians and groups continue looking for other avenues to obtain justice through UN independent fact-finding mission or a commission of enquiry to achieve transparency, accountability, and justice because Victims' families, survivors and the people of Lebanon deserve justice, truth, and reparations.

II. INTRODUCTION

On August 4, 2020, a massive chemical detonation occurred in the Port of Beirut, Lebanon. An uncontrolled fire in a nearby warehouse ignited 2,750 tons of Ammonium Nitrate (AN), resulting in one of the most devastating explosions in recent history (Beirut Blast Probe, 2020; Beirut Explosion 2020). The blast's supersonic pressure and heat wave killed 220 people and injured over 6,500 in an instant, causing serious damages to the neighboring crowded residential and commercial areas (Alsharif, 2021, Beirut Explosion, 2020). The newest AN blast in Beirut was named the third most lethal urban explosion in history, following the nuclear bombings of Hiroshima and Nagasaki at the close of World War II (Harb, 2023).

The port of Beirut is a critical component of Lebanon's fragile economy with two-thirds of Lebanon's total external trade passing via the port, 90% of cargo being imported commodities needed to meet local demands (Lebanon Flawed Investigation, 2020). The average yearly revenue for 2017 was USD 313 million with a net profit of USD 124 million (Alsharif, 2021, Beirut Blast Probe, 2020; Beirut Explosion, 2020).

How did the Lebanese state so far, after two years and seven months, manage to investigate the issue properly, hold the responsible accountable and take proper action? This paper will discuss the humanitarian aspect of the explosion on the people and environment, analyze the previous and current investigation process that is taking place, state the political and legal constraints and will call for an international and independent investigation to take place.

III. STATUS OF INVESTIGATION

The cargo of ammonium nitrate landed in Beirut's port in November 2013 on a Moldovan-flagged ship, the *Rhosus*, and was unloaded on October 23 and 24, 2014 (Azhari, 2020; Alsharif, 2021). As it stands, the data raises questions about whether the ammonium nitrate was intended for Mozambique, as reported in the *Rhosus*' shipping documents, or for Beirut. Through an examination of dozens of official documents and reports sent from and to officials working under the Ministry of Finance, including customs officials; the Ministry of Public Works and Transport, including port officials; members of the judiciary; the Case Authority (a body within the Ministry of Justice that functions as the legal representative of the Lebanese state in judicial processes); members of the Higher Defense Council, including the president and prime minister; the Ministry of Interior; General Security; and State Security, among others, these reports provide insights into which government officials knew about the ammonium nitrate and what actions they took or failed to take to safeguard the population from its dangerous long-term presence there (Investigating Committee, 2020; DelGrande, 2022). Interviews with government, security, and judicial officials, defense counsel for charged officials, investigative journalists, and others revealed more insights on the steps government officials took or did not take despite being told of the risks.

On August 10, 2020, the case of the explosion was brought to the Higher Judicial Council. On August 13, Judge Fadi Sawan was assigned to lead the probe; he served until February 18, 2021, when he was replaced by Judge Tarek Bitar (Sunniva, 2021; Sabaghi, 2023). Bitar's fate is currently in doubt, considering the tragic riots that erupted on October 14, 2021 following a violent protest organized against him by the Amal Movement and Hezbollah, accusing him of politicizing the probe, and in view of the magnitude of the political attacks against him led by Hezbollah, namely deputy leader Naim Qassem who blamed Bitar for bringing "crises and divisions" to Lebanon and for the deaths and injuries caused by the above mentioned October 14 violent attacks (Sherlock, 2021).

A. APPOINTMENT OF JUDGE SAWAN

Fadi Sawan was not the first name suggested to conduct inquiries into Lebanon's most devastating explosion. He wasn't even the second. Back then, Caretaker Justice Minister Marie-Claude Najem (FPM appointee) had first suggested Samer Younes, who was rejected by the Higher Judicial Council (HJC) because of his political views (affiliated with the Free Patriotic Movement) (Diab, 2022; Harb, 2023). HJC is a 10-judge council appointed by the government, which decisions are not subject to appeal, and to which Prime Minister Hassan Diab's government, a few hours before resigning, has referred the probe of the Beirut blast. Also, the decision to be issued by the appointed Judge is not subject to appeal, which emphasizes the importance of his work.

Tarek Bitar was the second choice of Najem but "had to quit out early," issuing a brief statement declining the post without providing any explanation (Cornish, 2021; DelGrande, 2022)

Najem finally proposed Sawan, a 60-year-old military investigative judge, a choice which HJC did not welcome as it "does not correspond to reality," but HJC provided no alternative explanation, claiming its discussions were private: "Keeping public opinion and the media updated of the course of the Beirut Port explosion issue is natural, but the Council urges on everyone not to question the investigations that have taken place and are taking place, and to give the courts complete trust," as stated by HJC (Sabaghi, 2023; Lebanese Court Removes Sawan, 2021). Najem did not respond to multiple requests for comment on the selection process for Sawan (Cornish, 2021, DelGrande, 2022). Sawan was unreachable for comment. As per Legal Expert Nizar Saghieh, Founder of "Legal Agenda": "There is no appeal in this case, so political authorities didn't want to be tied down with someone independent who could carry out a brave decision." (Legal Action Worldwide, 2021). This could explain the choice of Sawan, expected to work within the lines set by the ruling majority to protect themselves against any accusation.

Oueidat, Lebanon's top prosecutor, led the investigation into the blast until the appointment of Sawan on 13 August 2020, and he has continued to play a key role. Yet, there are questions about Oueidat's role in the case: he was told of the location of the highly explosive substance months before the accident, and he allegedly ordered before the blast in August 2020 maintenance of the port

hangar where the explosive material was stored (Report Investigation, 2020; Statement on Beirut Explosion, 2020). The repair, which included welding, is accused of igniting the fire that led to the explosion. It is important to note that Oueidat's sister is married to the accused Public Works Minister Ghazi Zaeiter (Amal movement), who served from February 2014 to December 2016 and was officially in charge of monitoring the port (Diab 2022; Harb 2023).

B. COURSE OF INVESTIGATION

In the investigation conducted by Sawan, it appeared that dozens of security officials, administrative, and political authorities were aware of the existence of approximately 2,750 tons highly explosive ammonium nitrate in Beirut's port for more than seven years yet, they did nothing to remove it (State Prosecutor Steps Down, 2020; Investigative Judge, 2021) Several of these officials are either directly or indirectly linked mostly to 8 March political parties ruling the country.

According to the investigation process, evidence indicated that many of Lebanon's senior leaders, including then-President Michel Aoun, then-Prime Minister Hassan Diab, former Prime Minister Saad El Hariri, the Director General of State Security Major General Tony Saliba, former Lebanese Army Commander General Jean Kahwaji, former Minister of Finance Ali Hassan Khalil, former Ministers of Public Works and Transport Ghazi Zeaitar and Youssef Fenianos, Former Minister of Interior Nouhad El Mashnouk among others, were informed of risks posed by the ammonium nitrate and failed to take the necessary actions to protect the public (Authorities Must Lift Immunity, 2021; Yvonne, 2021). Once the ship arrived in Beirut, officials from the Ministry of Finance and the Ministry of Public Works and Transport failed to properly communicate or investigate the potentially explosive and combustible nature of the ship's cargo, as well as the danger it posed (Yvonne, 2021). Ministry of Public Works and Transport officials incorrectly assessed the cargo's risks in their requests to the judiciary to offload the merchandise and knowingly stored the ammonium nitrate in Beirut's port alongside flammable or explosive materials for nearly six years in a poorly secured and ventilated warehouse in the middle of a densely populated commercial and residential area (Beirut Port Blast, 2021; DelGrande, 2022). Their practices contravened international ammonium nitrate safe storage and handling guidance. Neither they, nor any security agency operating in the port, took adequate steps to secure the material nor establish an adequate emergency response plan or precautionary measures, should a fire break out in the port. They also failed to adequately supervise the repair work undertaken on hangar 12 that may have triggered the explosion on August 4, 2020. Official correspondence also indicates that port, customs, and army officials ignored steps they could have taken to secure or destroy the material (Report: Investigation, 2020; Military Investigation, 2020).

It also appeared to Judge Sawan that Customs officials repeatedly took steps to sell or re-export the ammonium nitrate which was procedurally incorrect. Instead of remedying their procedural error, they persisted with the same incorrect interventions despite repeatedly being told of the procedural problems by the judiciary (Azhari, 2020; Investigating Committee, 2020). Legal experts even state that customs officials could have acted unilaterally to remove the ammonium nitrate and that they could have sold it at public auction or disposed of it without a judicial order, which they never did.

The Lebanese Armed Forces were also aware of the ammonium nitrate in hangar 12, and when asked if they needed the AN for any use, they declined any need for the material (Beirut Explosion, 2020; Report: Investigation, 2020). It is to be noted that the AN with its nitrogen grade classified under the law as material used to manufacture explosives, requires army approval for import and inspection. Despite being responsible for all security matters related to munitions at the port and being informed of the ammonium nitrate in warehouse 12, Military Intelligence took no apparent steps to secure the material or establish an appropriate emergency response plan or precautionary measures (Military Investigation, 2020). All of this was kept in the store despite repeated warnings by some security officials which highlighted the dangerous nature of ammonium nitrate and the devastating consequences that could follow from its presence in the port (Military Investigation, 2020). Even after security officials from the Lebanese General Directorate of State Security, the executive agency of the Higher Defense Council chaired by the president, completed an investigation into the ammonium nitrate at the port in 2020 (before the blast), there was an unconscionable delay in reporting the threat to senior government officials, and the information they provided about the threats posed by the material was inaccurate (Beirut Blast, 2020; Hubbard, 2020). Both the Minister of Interior and the

Director General of General Security have acknowledged that they knew about the ammonium nitrate aboard the Rhosus ship but have said that they did not act because it was not within their jurisdiction to do so (Lebanon Flawed Investigation, 2020). When they were informed by State Security, other senior officials on Lebanon's Higher Defense Council, including President Aoun and Prime minister Diab, they also failed to act in a timely way to remove the threat (Aoun Admits About Ammonium, 2020).

Judge Sawan summoned Prime Minister Hassan Diab, former Finance Minister Ali Hassan Khalil, former Public Works Ministers Yousef Fenianos and Ghazi Zeaiter for negligence on December 10, 2020 (Lebanon Flawed Investigation, 2020).

The four officials all refused to be questioned and did not attend. Khalil and Zeaiter both presented a request to remove Judge Sawan from the investigation, arguing that he was biased and politicized (Sunniva, 20221). According to Akram Maalouf, a lawyer who represents one of the 25 people arrested following the explosion, they based their argument in part on the fact that Sawan did not indict all past ministers and prime ministers in power since 2013 (Legal Action Worldwide, 2021). Furthermore, they stated in their letter that under Lebanese law, Judge Sawan cannot indict ministers or MPs without the consent of the parliament since they are protected by parliamentary immunity (The Lebanese Constitution, 1926, article 40). Yet, another interpretation of Lebanese law states that parliamentarians can be arrested for crimes unrelated to their position as legislators, such as the port explosion or any other common crime, according to Mr. Maalouf (Legal Action Worldwide, 2021). Ministers Khalil and Zeaiter, who did not attend the investigation, are both members of the Amal movement of Berri, a Hezbollah affiliate.

On the 18th of February 2021, Lebanon's Court of Cassation headed by Judge Oueidat (acting outside of its jurisdiction) removed judge Sawan. The court was judging on a request submitted by former ministers Ali Hassan Khalil and Ghazi Zeaiter, both indicted by Judge Fadi Sawan in connection with the blast (Cornish, 2021; Diab 2022).

After the request, the court agreed "to remove Judge Fadi Sawan from the Beirut port explosion probe and assign the case to another judge to be appointed in accordance with Article 360 of the Criminal Code," according to the NNA (Legal Action Worldwide, 2021).

C. FROM THE APPOINTMENT OF JUDGE BITAR TO DATE

Since August 2020, Judge Bitar's name has been considered for the case's leadership as suggested by then-minister of Justice Najem. According to the source, he was hesitant and was putting conditions on accepting the position (Cornish, 2021; Harb 2023). He had apparently expressly requested, among other things, that laws be amended to allow him to surpass "immunities" and "authorizations" for state personnel (Beirut Port Blast, 2021; DelGrande, 2022). Bitar's major goal was clear from the start: he did not want immunity to impede the probe (Sabaghi, 2023). It also appears plausible to conclude that those who agreed to his appointment were aware of his conviction and that any real investigation would certainly have to target high-level politicians, including those who are protected by immunities or who require authorization from their superiors (Sabaghi, 2023)

Judge Tarek Bitar was at work in his office in Beirut's Court Palace on Saturday, less than two days after his predecessor Sawan was abruptly removed from the Beirut port explosion case.

Bitar, the 46-year-old head of Beirut's criminal court, was the second judge to investigate the blast (Sabaghi, 2023). Many expected a long wait for a replacement, but Bitar was immediately appointed by HJC as proposed by then-Justice Minister Najem (Sherlock, 2021; Sabaghi, 2023). Bitar accepted the position despite having declined it months before, before Sawan was appointed (Sunniva, 2021).

Notwithstanding Bitar's fast appointment, attorneys and right groups consider the court's decision to remove Sawan as a significant setback to an already slow-moving probe and symbolic of Lebanon's ingrained corruption in the judicial and political elite (Beirut Port Blast, 2021; DelGrande 2022).

Directly after his assignment, Bitar took the decision to question then-PM Hassan Diab, top security official Major-General Abbas Ibrahim, as well as ministers Ali Hassan Khalil and Ghazi Zeaiter

(Sunniva, 2021; Legal Action Worldwide, 2021). All of them refused to attend court and denied their responsibility in the explosion, and several have claimed immunity from prosecution. Bitar's search for accountability has been hampered further by the interior ministry's failure to carry out arrest warrants issued by him (Beirut Port Blast, 2021; Sherlock, 2021).

On October 14, 2021, Hezbollah and Amal Movement led a protest against Judge Bitar's decisions and callings, serving not only as a means of pressure on Bitar but also for other political interests (Legal Action Worldwide, 2021). The demonstration was supposed to take place in front of the Palace of Justice in Beirut, but everyone was surprised that day by Hezbollah and Amal movement efforts to deviate from the protest route and invade Ain al-Rummaneh district (Christian district known for its popular support for the Lebanese Forces Party, which continues to support the investigation) (Farran, 2021). Severe armed clashes erupted when Hezbollah and Amal partisans attacked the area and were confronted by the Lebanese Armed Forces and behind them the inhabitants of the district. This resulted in 7 deaths and over 25 injuries from Amal and Hezbollah sides (Farran, 2021). Consequently, Hezbollah and Amal blamed Judge Bitar and the Lebanese Forces Party for what happened, thus giving Bitar an incentive to stop the investigation (Farran, 2021). The message was obvious to all of Judge Bitar's supporters: "stop supporting him or face the dire consequences" (Farran, 2021).

Moreover, Judge Tarek Bitar opted to discontinue the probe on November 4, 2021, due to a new lawsuit filed against him by former Public Works Minister Yousef Fenianos from March 8 camp, who added that the probe must be postponed until a resolution is reached (Sunniva, 2021). (The resolution proposed by the March 8 parties was underlined based on the following: either Bitar chooses to step out of the investigation process, or the total process is put on hold).

On 23 January 2023, a year later, Judge Bitar took action to resume the probe (DelGrande, 2022). He claimed, based on a legal analysis he made, that the criteria regulating the dismissal of judges established in Article 357 of Law 328 did not apply to his function, and that attempts to dismiss him constituted a violation of the constitutional principle of separation of powers (Harb, 2023). Bitar authorized the release of five people who had been kept between August 2020 and September 2021, in return he charged others (Legal Action Worldwide, 2021; Diab 2022) According to LAW (2021), he called up for the interrogation of:

- › Judge Ghassan Oueidat, Top prosecutor who allegedly ordered back then the maintenance and welding works at the port.
- › Abbas Ibrahim, director general of general security and Tony Saliba, director general of state security.
- › Jean Kahwaji, former Army Chief; Jawdat Oueidat and Kamil Daher, former Army intelligence officers.
- › Asaad Tufayli, head of the Higher Customs Council; Gracia Al-Azzi, a Customs Council member.
- › Judges Ghassan Khoury, Carla Shawah, and Jad Maalouf.

In response, Ghassan Oueidat, the Court of Cassation's public prosecutor who had recused himself from the case as one of the named defendants in 2020, abruptly changed his mind and ordered the release of the individuals, again, not falling under his jurisdiction, that Bitar detained as part of the investigation process and filed charges against Bitar for "going against the judiciary" (Mroue, 2021). He immediately barred Bitar from leaving the country and ordered all security services to abide by this action. The fact that all detainees were placed under travel prohibitions upon their release didn't stop one of the inmates released by Oueidat, former head of port security Mohamed Ziad al-Ouf, a dual US-Lebanese national from immediately fleeing to the US via Beirut's international airport upon the request of US ambassador to Lebanon (Mroue, 2021).

Bitar stopped all interrogation sessions again after realizing that he would not be able to call any official for questioning without Oueidat's interference and blockage. He also weighed the fact that

continuing with interrogations would necessitate the judiciary dropping the "usurping power" allegations made against him by Oueidat (Beirut Port Blast, 2021; Diab, 2022).

IV. POLITICAL CONSTRAINS & LEGAL PROSPECTS

It is important to remember that both judges Sawan and Bitar were chosen by the then-justice minister Najem after the approval of the Higher Judicial Council HJC, according to Article 360 of the Code of Criminal Process: "The investigation shall be performed by an Investigating Judge chosen by the Minister of Justice with the permission of the High Judicial Council" (Legal Action Worldwide, 2021). March 8 Political parties who are today leading the opposition against Bitar were and continue to hold full majority power in the government and did not raise any concern about judge Bitar's independence or integrity at the time of his appointment. Their government in August 2020, decided to refer the explosion case to the Higher Judicial Council, a state body with a history of failing to meet international criteria for fair trial guarantees.

HJC is a "special court whose verdicts are not subject to appeal, breaking fundamental fair trial standards," according to local and international rights organizations (Karam, 2020). The selection of judges, particularly to the (HJC), a group of 10 judges tasked with ensuring the effective operation of the judiciary, has been politicized, heavily influenced by the Free Patriotic Movement (FPM) and their allies (Shebaya, 2021; Yvonne, 2021).

In the same context, the Lebanese judiciary still suffers from violations of the fundamental principle of separation of powers resulting in the lack of independence of the judiciary and undermining the rule of law. The minister for Justice has always been the stumbling block in cabinet formation due to President Aoun's limitless thirst for power claiming that the Justice portfolio is the prerogative of the president. Having the Ministry of Justice and key judicial appointments in Hezbollah sphere of influence via its alliance with Aoun helped Hezbollah circumvent US sanctions, derail, and dilute the effects of the verdict for the Tribunal of Hariri assassination, and blocked the probe into Beirut port explosion.

To pressure Bitar even more and leave him out of the investigation process, the parliamentarians and Ministers who were called for questioning by Bitar himself, and their parliamentary groups behind them, refused to remove immunity by a majority vote in the parliament and decided to convey the probe to a court called the Special Tribunal for Presidents and Ministers, knowing that this is a special court, politicized and has never investigated any case before (Jalkh, 2021).

Both judges Sawan and Bitar were concerned about political immunity when they went after ministers, members of parliament, heads of security agencies, and prime ministers (Legal Action Worldwide, 2021; Sunniva, 2021). The biggest institutional barrier to identifying and prosecuting individuals accountable for the criminal carelessness that caused the explosion may be Lebanon's constitution's guarantee of political immunity (Jalkh, 2021). According to Article 40 of the Lebanese Constitution, a member of parliament "may not, during the sessions, be prosecuted or jailed for a criminal offense, unless when caught in the act." Parliament must explicitly end this political protection in order for lawmakers to face charges. Also, the consent of the public servant's superiors is required before even questioning them (The Lebanese Constitution, 1926, article 40). However, president of Free Patriotic Movement Gebran Bassil refused to amend the part of the constitution related to lifting immunity from the Lebanese President Aoun. In the same context, in an attempt to escape from the investigation by Bitar, ex-PM Saad Hariri with his parliamentary group, along with parliamentarians of Amal movement, Hezbollah and other March 8 allies, gathered signatures for a petition asking to revert the explosion case exclusively to the so-called Tribunal for Presidents and Ministers, a court that never gathered or taken any case before. In such circumstances, and failure to remove immunity from parliamentarians, any court will find it extremely difficult to conduct an effective inquiry especially when even the smallest step, like questioning a civil servant, needs to be approved by the administration official who is the subject of the investigation.

The security forces as well constitute a hurdle to Judge Bitar's work as they are not put at his service when needed to progress in the investigation.

The way the campaign against Bitar has evolved raises reasonable fears that the problem is not actually about him, but about any attempt by a judge to go after the untouchable "ruling politicians"

at the top of the power echelon in Lebanon. Even summoning them for questioning or issuing an arrest warrant for one of them has become a declaration of war worthy of being opposed in the streets (as happened on October 14, 2021) or by obstructing government function, as Hezbollah and Amal did. (It should be noted that others from Lebanon's political and religious establishments have also denounced Bitar but have not coordinated protests against him.)

A. INTERNAL DIVISION OF THE JUDICIAL BRANCH

Since November 2021, Judge Tarek Al-Bitar has been forcibly interrupted from performing his duties in the investigation as a result of the ruling majority political class continuously opposing his decisions. Official requests were made by MPs and Ministers whom he subpoenaed to leave him out of the investigation process, requests that were rejected by the general assembly of the Court of Cassation. The summoned ministers and MPs did not refrain from submitting over again requests for removing Bitar but these were not processed due to the resignation of some judges at the general assembly blocking its work and thus, in addition to political pressure, forcing Bitar to withhold the probe (Yvonne, 2021; Sunniva, 2021).

On January 2022, both Finance minister Youssef Khalil (Amal Movement appointee) and Justice minister Henry Khoury (FPM appointee) blocked HJC decision of partial judicial formations, aimed at establishing the general body of the Court of Cassation, which has the competence to arbitrate requests for litigation with judges, after blocking all methods for editing the investigation and transferring the file (DelGrande, 2022; Diab, 2022). Failure to appoint the general body, has deliberately left Oueidat the sole decision maker at the Cassation Court, all upon the will of the ruling majority.

In January 2023, over a year of stoppage, Judge Bitar concluded that he was not subject to the provisions of the steps of withdrawal of a judge, as stipulated by the Lebanese Law, restoring his authority over the investigation file, thus issuing the release decisions in favor of five detainees, as well as invitations to appear before him for the defendants as mentioned before, as well as the Top Prosecutor Judge Oueidat and three other judges, in addition to the Director General of General Security Abbas Ibrahim, the Director General of the State Security Antoine Saliba, and other officers, including the former army chief, Jean Kahwaji (Harb, 2023; Sabaghi, 2023).

In response to Bitar's decision, the Top Prosecutor of the Court of Cassation Oueidat, who had initially surrendered the file due to his kinship with one of the defendants, Ghazi Zeaiter, and who did not attend later to the questioning invitation by Bitar, he again interfered in the file and, in violation of the law, issued a decision to release all the detainees in the case, which essentially goes outside his qualitative competence, since the exclusive jurisdiction to arrest and release is for the investigating judges and not for the public prosecutor (Harb, 2023; Sabaghi, 2023).

The next day, in an attempt to ease the situation, the President of HJC Suhail Abboud called for a meeting of the Council to discuss the latest developments, but six of the seven members of the Council (i.e. all members except the President) refused to attend the session under the pretext of their abstention from meeting under popular pressure, which was represented by a manifestation in front of the Palace of Justice in Beirut by the families of the victims and over 19 deputies belonging to the sovereign parliamentary blocs, coinciding with the date of the supposed session of the Judicial Council. The good will of Abboud couldn't reach any positive outcome (Harb, 2023).

In addition to the violations he committed, Oueidat accused the judicial investigator Bitar with impersonation and usurpation of authority. The Minister of Justice Henry Khoury (FPM appointee) and the president of the Court of Cassation Judge Oueidat are leading the efforts to appoint a backup judge who would assist Bitar at the very least or replace him at the very most (Judiciary in Beirut blast, 2023). Lately, the most intense pressure is coming from the biased indictment of Oueidat against Bitar for usurpation of authority, as well as the decision to restrict him from traveling. The potential of reporting him for evaluation by the majority of HJC members for his suspension as a judge has also been raised (Sabaghi, 2023).

Consequently, after all the filed charges against Bitar and the release of detainees by Oueidat, a protest brokered in front of the Palace of Justice on January 23rd 2023, showing support for Judge Bitar's decisions. Family members of victims and demonstrators gathered to send the world a

message and show what is actually happening (Husseini, 2023). As has often happened, tensions reached a breaking point between some protestors and the security personnel. This incident also witnessed an attack by the security personnel of the Minister of Justice Henri Khoury (affiliated to FPM) on 3 MPs from the opposition, including Ghassan Hasbani (Lebanese Forces Party), Waddah Sadek and Adib Abdel Massih, when they were at the Justice Minister's office trying to question him on the act of the Court of Cassation (Shebaya, 2023).

B. POLITICAL INTERFERENCE IN THE INVESTIGATION PROCESS

This anti-Bitar campaign and probe is not new. In September 2021, Hezbollah Security Chief Wafiq Safa threatened the judge in his own office, and then armed clashes occurred on October 14, 2021 between Hezbollah and the Lebanese army when Hezbollah tried to invade Ain El Rummaneh district (Farran, 2021). These clashes were planned by Hezbollah and their allies Amal Movement to terrorize the parties opposing the dismissal of Judge Bitar, mainly the Lebanese Forces Party strongly present in Ain El Rummaneh.

Afterwards, Finance Minister Youssef Khalil (Amal appointee) and Justice Minister Khoury (FPM appointee) refused to sign an order appointing new judges to the general assembly at the court of cassation leaving Oueidat the sole decision maker which in fact, obstructed Bitar's investigation. This general assembly decides on the claims against Judge Bitar presented by accused ministers and MPs Fenianos, Khalil and Zeaiter. Should the judges of the general assembly be truly independent, then this would be the most appropriate court to unblock the process and let Bitar carry on his investigation without any political obstruction or interference in the court's decisions (Farran, 2021). But this was not the case as the above-mentioned ministers from March 8 camp blocked the appointments.

Lebanon's state institutions have always revolved around the judiciary. When the occupying Syrian regime and, later, Hezbollah sought to take over Lebanon following its civil war, they first targeted the judicial system, ensuring that the Lebanese political parties supporting them (8th of March Bloc) would not be held accountable for their various crimes. Hezbollah and his allies including FPM have developed a serious attempt to remove Bitar from the port investigation by assigning a substitute judge to work alongside with him or an alternative to replace him (Lebanon: Undue Interference, 2023; Harb, 2023). Around forty requests for recusal and relinquishment were submitted to stop Bitar from investigation, and that was the policy of all the defendants. But, because the political authorities did not designate judges to replace the vacancies in the cassation chambers, it was impossible for the Cassation court to decide on requests for responses, which also obstructed Bitar's job (Lebanon: Undue Interference, 2023; Harb, 2023).

The fact that Bitar is under the direct protection of an entire battalion of the Lebanese army and takes precautions while going out of his house (which is very rarely), demonstrates the gravity of his personal threat. According to reports, he requested that his office be transferred to a new court in Al-Matn district for security concerns, but his request was denied (Faour, 2023).

In addition to the above pressure, three public threats were made against Judge Bitar, the most notable of which are two speeches by Hezbollah leader Hassan Nasrallah, the first on August 8, 2021, and the second on October 11, 2021, threatening the judge openly in a serious tone warning him. One of the speeches that he publicly announced is as follows: "We've had it up to our noses with you. We will stay with you until the end of this legal path, but if it doesn't work out, we will usurp you," (Nasrallah, 2021).

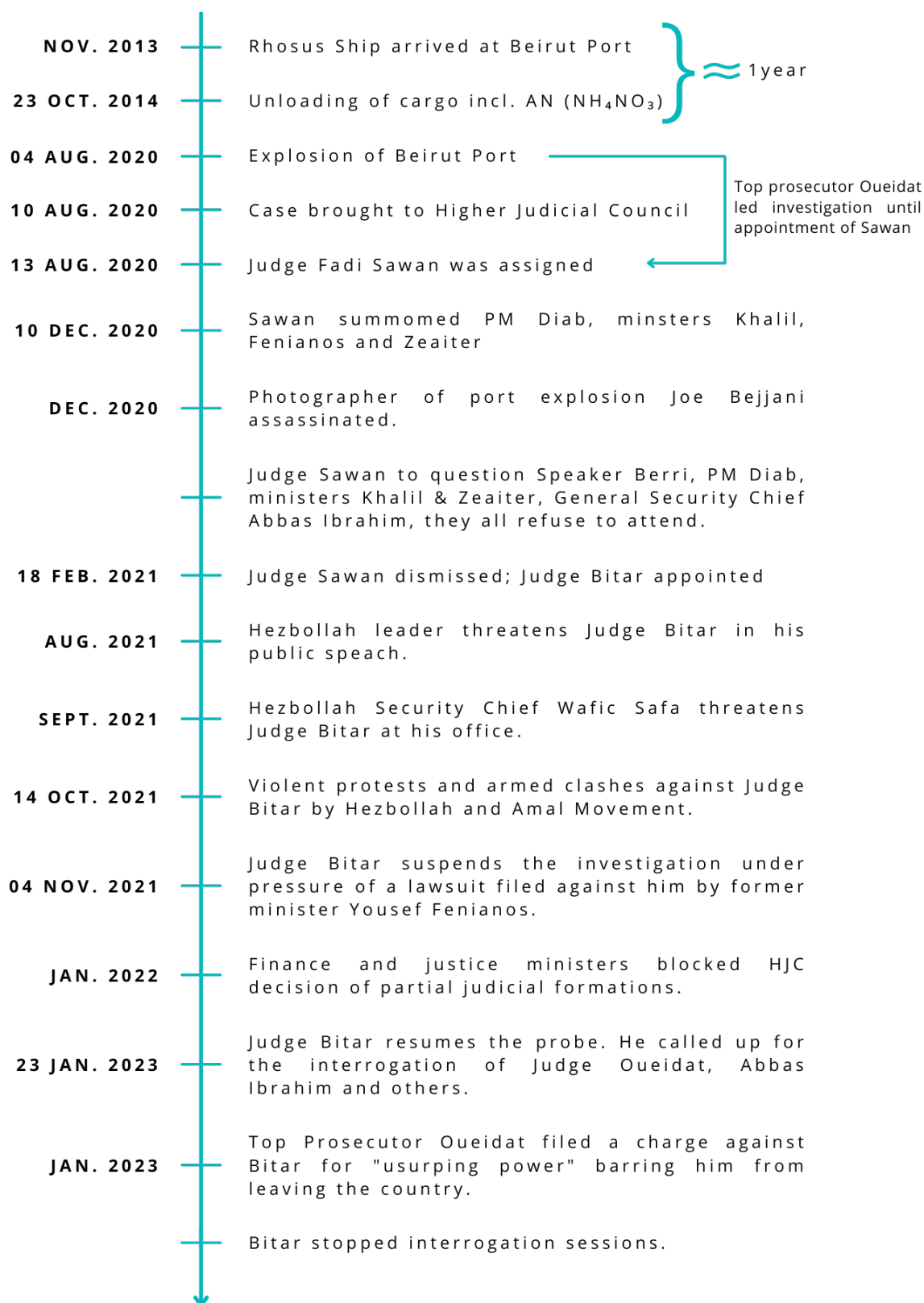
In between these two statements, Hajj Wafiq Safa, Hezbollah's Security Chief, threatened Judge Bitar in his office in September 2021. Hezbollah and his allies accused Bitar of being a prejudiced judge who was laying the road for civil war (Alsharif, 2021). A question emerges here: What is meant by civil war, and to whom is it waged against? Moreover, why does Hezbollah continuously threaten by a civil war, every time there's a decision that goes against their will? Indeed, if Hezbollah and his allies are innocent of the port explosion, why don't they confront the judge in court and demonstrate to the people that they are truly innocent without using threats and resonant slogans?

Notwithstanding the threats and intimidation that Judge Fadi Sawan faced, particularly when a decapitated cat was placed in front of his house door as a warning message, the pressure he lived pushed him to accept this dismissal by the Court of Cassation from the port case without any attempt to fight it (Lazkani, 2021).

Judge Sawan's threat came at a time when former Customs Officer Brigadier General Mounir Abu Rjaili was assassinated and discovered dead in the Qartaba area (northern Lebanon) (Lazkani, 2021). A forensic evidence team who investigated the crime, raised numerous doubts, particularly since a completely similar crime occurred three years before with Colonel Joseph Skaf from the Customs at the Beirut port. Its inquiry yielded no findings. Pictures of Colonel Mounir Abu Rjaili with Colonel Joseph Skaf appeared online shortly after his assassination (Lazkani, 2021).

Moreover, Joe Bejani, a freelance photographer for the Lebanese Army, was one of the first people to arrive at the port following the deadly explosion, and he was hired by the Lebanese Army and international organizations investigating the port blast to take forensic photos, which was the cause of his assassination (Politically Sensitive Murders, 2022). Surveillance cameras from his apartment building captured the hit on Bejani, which plainly showed a professional squad carrying out a planned hit. The team kept their backs to the camera, but they wore no gloves and appeared unafraid of leaving their fingerprints on the crime scene, but they spent 15 seconds searching Bejani's car for his cell phone before disappearing into an adjacent secluded road where they were met by their getaway vehicle (Politically Sensitive Murders, 2022).

C. TIMELINE OF EVENTS



D. ABUSE OF NATIONAL LAW AND VIOLATIONS OF INTERNATIONAL LAW

Cases of abuse and violations of the Lebanese law occurred in the course of the investigation. The Court of Cassation president Oueidat violated the law when he ordered last January, the release of detainees accused by Judge Bitar. Since 2020, State officials, including caretaker Prime Minister Hassan Diab, have refused to appear for questioning, and the authorities have refused to lift immunity or allow for the prosecution of parliamentarians and senior security officials have attempted to cast doubt on Judge Bitar's impartiality, accusing him of being politicized. (Faour, 2023). Neither the rule of law nor the democratic principles of the country were respected when ruling politicians involved in the case attempted repeatedly on several occasions to block the investigation and bury the truth. This presents a direct abruption of the separation of powers and independence of judiciary in a Democratic State, as the Lebanese Constitution stipulates (Shebaya, 2023).

Further, on at least three occasions, Lebanese security forces responded to relatives of the Beirut blast victims, who had peacefully mobilized against these obstructions, with violence (Hourany, 2022). This violent response sent a chilling message about the authorities' unwillingness to grant the victims and their relatives' effective access to the investigative process and respect their right to be informed and to participate. Under the International Covenant for Civil and Political Rights, which Lebanon ratified, defendants have the right to a timely hearing, and delays in the trial process could result in a violation of the rights of an accused person to be brought promptly before a judge to review the necessity and legality of a decision to detain them, and the right to a trial within a reasonable time or to release (ICCPR, 1966, article 14).

The investigation should be protected from any undue influence and be given a strong and broad mandate to effectively probe any systemic failures of the Lebanese authorities and institutions to protect human rights. Any such investigation should integrate a gender-lens and must grant victims and their relatives effective access to the investigative process, respecting their right to be informed and to participate. The investigation, as well as other actions linked to the disaster, must also protect the privacy as well as the confidentiality of the identities and testimony of victims, witnesses, associates, colleagues and their families. The findings and recommendations of the investigation should be made public.

Further, the investigation has failed in meeting the benchmarks, based on international standards that were laid out by the UN Special Procedures (Lebanon: Judiciary farce, 2023). Human Rights Watch, Amnesty International, Legal Action Worldwide, Legal Agenda, and the International Commission of Jurists have documented a range of procedural and systemic flaws in the domestic investigation that render it incapable of credibly delivering justice, including flagrant political interference, immunity for high-level political officials, and lack of respect for fair trial and due process standards (UN Rights Experts, 2020).

Lebanon's international obligations governing the handling of dangerous substances and the right of everyone to information on risks to life and health should be respected (Boyle, 1982, p. 337). In addition to human rights and criminal law, the investigation should also examine Lebanon's obligations under international commercial and shipping law which stipulates that all UN Member States are required by Security Council Resolution 1540 to implement specific procedures and measures to secure chemicals that pose a proliferation concern (Cupitt, Albon and Vecellio, 2022). Under international environmental and human rights law, States and businesses have a duty to take action to confront the risks posed by hazardous substances (Boyle 1982, p. 338) In the face of such risks, governments cannot simply sit back. They must act rapidly and comprehensively to prevent the loss of lives and disastrous health and environmental consequences.

The case of Beirut's explosion falls under the following International Law breaches:

Articles related to the violation of International Human Rights:

Under International Covenant on Civil and Political Rights (ICCPR) of 1966,

- › Article 4 (In the case where the life of the Nation is threatened)
- › Article 6 (Right to life)

- › Article 9 (Right of liberty and Security)
- › Article 14 (Right to fair trial by an independent judge)
- › Article 20 (Any propaganda for war shall be prohibited by law)

Under International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966,

- › Article 12 (Right to health and healthy environment)
- › Article 19 (Right to information)

V. A CALL FOR AN INDEPENDENT AND INTERNATIONAL INVESTIGATION

Two years after the explosion that damaged half the city of Beirut and killed over 220 people, including nationals of Lebanon, Syria, Egypt, Ethiopia, Bangladesh, Philippines, Pakistan, Palestine, the Netherlands, Canada, Germany, France, Australia, and the United States, no one has been held accountable (Husseini, 2023, Shebaya, 2023).

Human Rights Watch found that the evidence strongly suggests that a number of high-level military, security, and government officials foresaw the significant threat to life posed by the presence of the stockpile of ammonium nitrate at the port and tacitly accepted the risk of deaths occurring (Report: Investigation, 2020). Given the significant loss of life and threats to the right to life and health engendered by the destruction of much of the city as a result of the blast, the Lebanese government has an obligation, pursuant to article 6 of the ICCPR of 1966, to investigate the causes of the explosion and hold accountable those responsible.

The government initiated an investigation into the Beirut blast, but the ensuing domestic investigation has been repeatedly obstructed, including through arbitrary legal challenges that the politicians accused in the case have filed against the judge.

The UN Special Procedures' experts issued a statement in August 2020 laying out benchmarks, based on international human rights standards, for a credible inquiry into the explosion, noting that it should be "protected from undue influence," "integrate a gender lens," "grant victims and their relatives effective access to the investigative process," and "be given a strong and broad mandate to effectively probe any systemic failures of the Lebanese authorities" (UN Rights Experts, 2020). This was not the case. As the domestic investigation was repeatedly obstructed and lately blocked, an international investigation became vital, not to impede, but rather assist the domestic process. The findings of an international investigation, conducted in accordance with the highest international standards and best practices, may be useful to the Lebanese authorities investigating the explosion and, domestically to bring to justice anyone reasonably suspected of criminal responsibility. Further, the investigation would make recommendations to Lebanon and the international community on steps that are needed both to remedy the violations and to ensure that these do not occur in the future.

It is now time for the Human Rights Council to step in, heeding the calls of the survivors, families of the victims, and the Lebanese people for accountability, the rule of law, and protection of human rights, and establish an investigative mission that would identify human rights violations arising from the Lebanese state's failure to protect the right to life, in particular whether there were:

- › Failures in the obligation to protect the right to life that led to the explosion at Beirut's port on August 4, 2020, including failures to ensure the safe storage or removal of a large quantity of highly combustible and potentially explosive material;
- › Failures in the investigation of the blast that would constitute a violation of the right to remedy pursuant to the rights to life.

With the pressure exerted by the Strong Republic parliamentary block along with the families of the victims and international organizations, a joint statement was issued at UN Human Rights Council on March 7, 2023.

Human Rights Watch and Legal Agenda reported that 38 nations denounced the widespread meddling and obstruction with Lebanon's internal inquiry into the explosion at Beirut's port. Authorities in Lebanon should take immediate action to implement urgently needed judicial changes and remove other barriers impeding the internal probe into the incident (Lebanon: Condemn Interference, 2023). The 38 nations urged Lebanon to "take all necessary measures to safeguard, in law and in practice, the full independence and impartiality of the Lebanese judiciary" in a joint statement read before the UN Human Rights Council. They also demanded that a "swift, independent, impartial, credible, and transparent investigation into the explosion" be conducted (Lebanon: Condemn Interference, 2023). But this is not enough, for the investigation to progress a resolution should be passed at the UNHRC calling for an independent fact-finding mission or a commission of enquiry to assist the local investigation. Such a resolution would be sponsored and supported by a leading European State that would raise the issue in their national statements at HRC upcoming meeting in June 2023, particularly under Item 4 of the HRC agenda "Human rights situations that require the Council's attention".

VI. PRESSURE FOR ACCOUNTABILITY

The "Independence of the Judiciary Coalition," a combination of several human rights groups created in early 2021, has called for Oueidat's dismissal, claiming that his decision to free all detainees in the case constituted a coup against legal and judicial authority (Lebanon: Undue Interference, 2023). The coalition then advised against tampering with evidence in the investigation file and requested that safeguards be put in place to protect Judge Bitar. "In parallel, thirty-three Lebanese diaspora groups, Members of Parliament, local organizations, and the Association of Families of the Port Explosion Victims issued a joint statement calling on the international community to impose financial sanctions and travel bans on all those obstructing the investigation," according to the statement. They also advocated for the establishment of a fact-finding mission linked with the United Nations Human Rights Council to aid the probe" (Strong Republic Bloc, 2021; Lebanon: Undue Interference, 2023).

According to Legal Action Worldwide (2021); Hussein (2023); Shebaya (2023), among those accused of hindering the probe were many current and former government officials, most of them are directly affiliated to Political Parties:

- › Judge Ghassan Oueidat
- › Two former works ministers: Youssef Fenianos (Al Marada Movement) and Ghazi Zeaiter (Amal Movement)
- › Former interior minister Nouhad Mashnouk (former member of the Future Movement)
- › Former Prime Minister Hassan Diab
- › Director-General of State Security Tony Saliba (Free Patriotic Movement)
- › Director-General of General Security Abbas Ibrahim (Amal Movement)
- › Judge Ghassan Khoury
- › Former finance minister Ali Hassan Khalil (Amal Movement)
- › Justice Minister Henry Khoury
- › Former Army Chief General Jean Kahwaji
- › Former Intelligence officers, Jawdat Oueidat and Kamal Daher

- › Head of the Higher Customs Council, Asaad Tufayli (Amal Movement)
- › Higher Customs Council member, Gracia Al-Azzi (Free Patriotic Movement)
- › Judge Carla Shawah and Judge Jad Maalouf

A joint statement published by one-third of parliament restated the coalition's demand. The judiciary maneuvers were described as a coup aimed at "consolidating the power of the police regime" by lawmakers from the "Opposition" and "Change" blocs (Harb, 2023; Husseini, 2023). They also urged that Oueidat be held accountable for any infractions he committed while interfering with the port investigation, indicating their support for Judge Bitar, rejecting any attempt to limit his powers by appointing a replacement judge in the case (Lebanon; Judiciary Farce, 2023, Shebaya, 2023).

These calls and appeals are unrelated to Bitar or the port probe. Rather, the probe and the judge overseeing it represent Lebanon's final hope for accountability, and the fight to protect them is a fight to safeguard Lebanon's civil and administrative judiciary's broader independence. Supporters claim that by doing so, they can protect public monies, hold corrupt officials accountable, and protect citizens' rights. Given Lebanon's precarious security situation, a lack of accountability implies less safety, less stability, and less prospect for transformation.

Bitar, earlier in February 2023, again stopped the investigation. The question is: How much can he actually do with all the political and legal obstacles facing him? No doubt, he needs more help to achieve a result, and the International Community can assist by doing the following:

- › Sanction those who are impeding the probe, beginning with those accused of hindering the probe.
- › Put the pressure on the government to resolve assassination cases and other investigations involving criminal responsibility and judicial independence. Most notably, no one has been held accountable for the 2021 death of prominent activist and Hezbollah critic Lokman Slim, or the three subsequent high-profile assassinations (Politically Sensitive Murders, 2022). It is critical that the killers be brought to justice; otherwise, additional assassinations are likely. As long as impunity reigns in Lebanon, the culture of violence will persist.
- › Support the calls for an international investigation. Even if Judge Bitar is permitted to stay on the case, his investigation will be perpetually obstructed by the political and security class. Hence, an international investigation may be the only way to move forward with the process.
- › Demand that the security forces protect Judge Bitar, the victims, and the activists. If the international community continues to assist the Lebanese Armed Forces and other security institutions, it should ensure that they are safeguarding victims and advocates, not aggressors. Families of the port victims and political activists will require additional protection as governmental institutions crumble.

In parallel, the Strong Republic parliamentary bloc, the families of the victims and behind them civil society movements and international lawyers have put a lot of efforts and attempts to ensure international investigation. The Strong Republic (SR) parliamentary Bloc (affiliated with the Lebanese Forces Party), has prepared petitions and laws for the same:

- › A draft law to freeze the transfer of property in the affected areas of the Explosion and stop the sale of Property of the affected individuals, since the sale of properties aims at changing the demographical and cultural aspects of Beirut area. The law which passed at the parliament remained in effect until the end of 2022 when the Constitutional court rejected the law. (Strong Republic Bloc, 2022).

- › A petition with more than 10,000 signatures, including the families of the victims, supporters of the investigation, former ministers, and deputies, calling for an International Independent Investigation. (Strong Republic Bloc, 2022).
- › (SR) Bloc took action some months earlier by visiting many foreign ambassadors in Lebanon, asking for a country Member in the UN Human Rights Council to sponsor a resolution for a fact-finding mission or commission of inquiry to Lebanon (Strong Republic Bloc, 2022). As such, on March 7th 2023, and with the help and pressure exerted by the SR Bloc, families of the victims and international organizations, a joint statement delivered by Australia at UNHRC was issued denouncing the widespread meddling and obstruction with Lebanon's internal inquiry into the August 4, 2020 explosion at Beirut's port.

VII. CONCLUSION

The government of Lebanon initiated an investigation into the Beirut blast, but the ensuing domestic investigation has been repeatedly obstructed, including through arbitrary legal challenges that the politicians accused in the case have filed against the judge. Since September 22, 2021, no less than 21 legal cases have been filed against Judge Bitar and the other judges looking into the cases.

The domestic investigation has been suspended from December 23, 2021 till January 2023, after two of the politicians charged in the case filed yet another complaint against Judge Bitar, as well as Lebanon's highest court (HJC) which had previously examined and refused their earlier request to remove Judge Bitar from the post. However, the Court of Cassation's General Assembly, which now has jurisdiction, is unable to rule on these cases, as it currently lacks quorum because one of its members retired in late 2021. The case cannot resume until new judicial appointments are made, but caretaker Finance Minister Youssef Khalil refused to sign the decree on the judicial appointments. This was the second time Bitar had to halt the investigation because of legal actions. The domestic probe will not be allowed to proceed and cannot provide justice, making the establishment of an international fact-finding mission authorized by the UN Human Rights Council all the more imperative. The Human Rights Council should enact a resolution establishing and dispatching an independent and impartial fact-finding mission for the Beirut explosion under Agenda item 4 as soon as possible. The mission shall determine the facts and circumstances of the explosion, including the root causes, in order to establish state and individual culpability and promote justice and restitution for the victims.

More than 162 Lebanese and international rights organizations, survivors, and victims' families have urged Human Rights Council members to introduce such a resolution. Scores of independent Lebanese parliamentarians and two political parties (Lebanese Forces and Kataeb Party) have backed calls for a probe from victims' relatives and civil society. The Lebanese authorities have blatantly ignored an ongoing criminal investigation and retaliated against a judge who was only doing his duty. It is very evident that the Lebanese authorities are hell-bent on obstructing justice. They have consistently obstructed the domestic inquiry since the explosion, protecting themselves from accountability at the expense of the victims' rights to truth, justice, and redress.

The Beirut blast was a tragedy of historic proportions, arising from failure to protect the most basic of rights —the right to life— and its impact will be felt for far longer than it takes to physically rebuild the city. Establishing the truth of what happened on August 4, 2020 is a cornerstone to redress and rebuilding after the devastation of that day. Thousands of individuals who have had their lives upended and the hundreds of thousands of individuals who have seen their capital city disfigured in an irrevocable way deserve nothing less.

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