Executive
www.executive-magazine.com
July - August 2020

SPECIAL REPORT

ANTI-CORRUPTION

> Corruption from a historical perspective
> Attempts at reforms and improved transparency
> Improving the independence of the judiciary system

By Executive editors

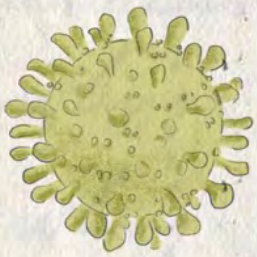


Fig.1

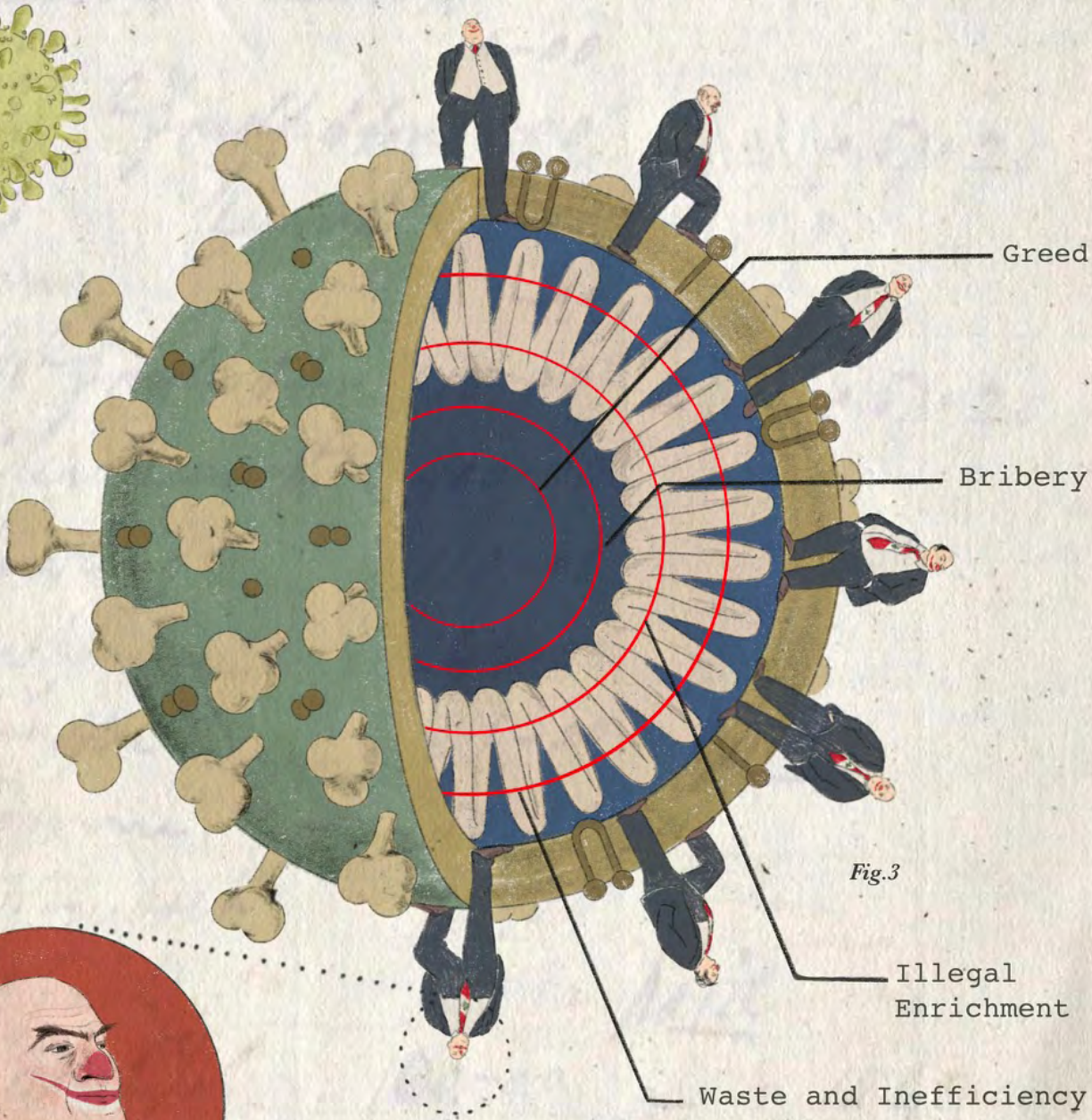


Fig.3

Fig.2

A MOMENT TO REFLECT

Anti-corruption in Lebanon

Throughout June and July, the Executive team, in partnership with the United Nations Development Programme (UNDP) and experts both in and outside the country, was working on a special report on anti-corruption in Lebanon.

It was to be the main focus of the magazine; we had a cover commissioned and executed perfectly by illustrator Sasha Haddad, that compared our politicians and the corruption in the country to the true virus that threatened the health of the nation (see page 10).

We were due to publish this special report in our July/August issue at the start of this month, but as we waited for the last stragglers to come through, the unthinkable happened. On August 4, an explosion at the port of Beirut ripped through the city, killing at least 180 people and wounding more than 6,000. More than a hundred thousand were left homeless, as the damage pushed out from the port in the form of a blast wave that shattered homes, hospitals, schools, and businesses in Karantina, Gemmayze, Mar Mikhael, Geitawi, and other areas of the city. It was an explosion of such magnitude that it was felt as far away as Cyprus.

It took only seconds to destroy half the city and shatter the lives of those who lived here and those who care for them. Our own team was spared serious injury, but several of us who live close to the port saw our homes wrecked by the blast wave. In the days that followed, our focus was inward, on our own lives, as we cleared out the glass and the broken doors in a state of shock.

The scale of the trauma, the destruction, even two weeks out, is still hard to comprehend. We can't yet know its true impacts.

But what we do know, is that the words written in these next pages, even though they were penned before this deadly and devastating explosion, retain every bit of their relevancy. Because this wasn't an accident. This was gross criminal negligence.

The corruption that has eaten at the core of life in this country was the same corruption that saw 2,750 tons of ammonium nitrate sit, half in ripped bags, at the port for six years, as port authorities, the judiciary, and successive governments passed around responsibility and those with a duty of care did nothing to protect us.

Corruption has killed and maimed so many of us, and broken the hearts of those who survived.

Speaking to a Norweign foreign affairs magazine, Arkan el-Seblani, head of UNDP's regional anti-corruption and integrity team in the Middle East and North Africa, and co-author of the first of the articles in this special report, said that it was not just poor control procedures at the port that resulted in this deadly blast, but that port operations are divided between many and often rival agencies, diluting responsibility between them. The port in this sense can be seen as a microcosm for successive Lebanese governments, and the ultimate example of a statist pattern of criminal negligence where responsibility was shared by all and so taken by none.

As international donors bring in emergency aid, thoughts turn by necessity to long-term reconstruction needs. The risk for corruption to take hold is real. We need accountability on the ground to ensure there is no misuse of funds, and that those responsible for this disaster do not siphon the aid coming in to act as benefactors to their particular groups.

Lebanon is in mourning, for those lost, for those left behind. There can be no more business as usual after this. This is the point where we say in collective voice: no more. No more evading responsibility. No more delaying reform. No more indignities foisted upon the people.

It is our hope that the articles in this special anti-corruption report can help begin necessary conversations, on the anti-corruption movement in Lebanon (see page 12), on access to information (see page 16), on asset recovery (see stories, pages 19, 22, and 26), on specialized anti-corruption courts (see page 24), and on judicial capacities (see Q&A page 28).

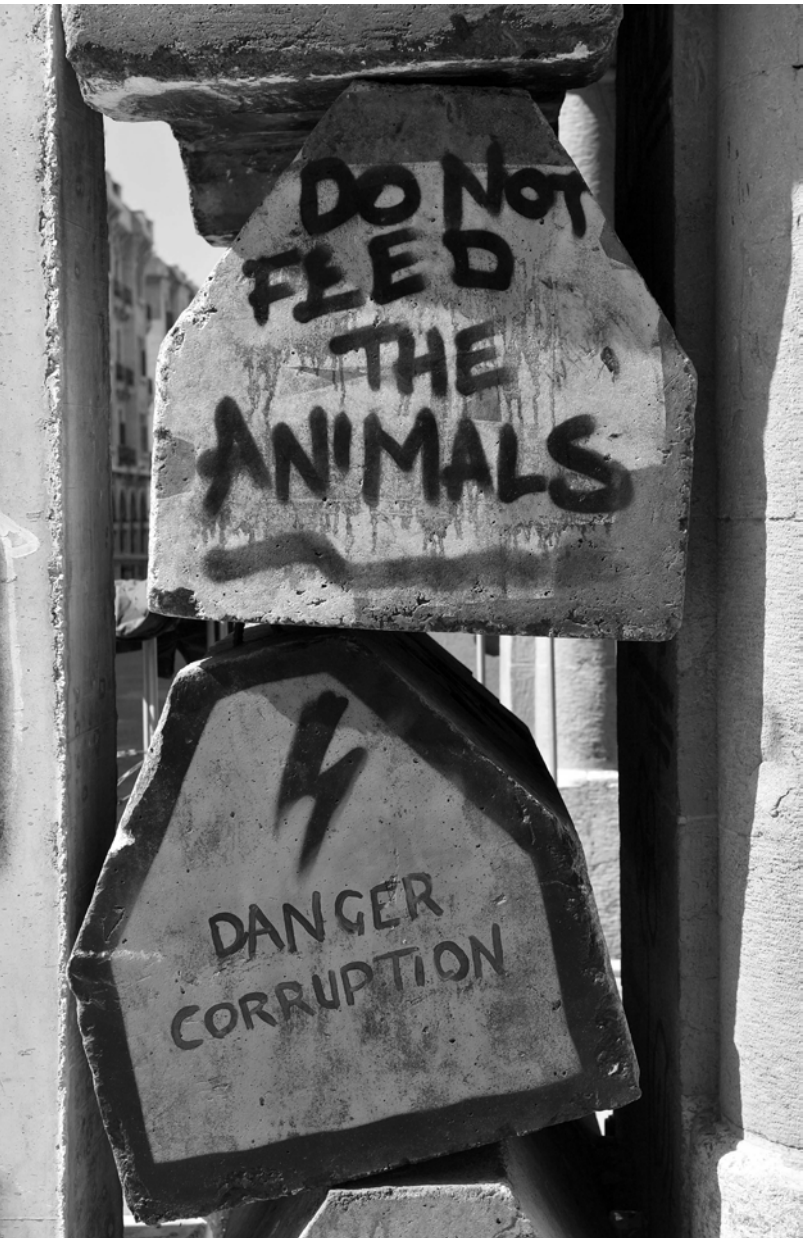
Corruption is a virus that Lebanon has suffered from for far too long.

By Arkan el-Seblani & Ghassan Moukheiber

LEARNING FROM THE PAST FOR A BETTER FUTURE

Lebanon's anti-corruption movement

Editor's note: This piece was slightly modified after the Beirut Port explosion. It was, however, largely written prior to August 4 along with the other contributions to the anti-corruption special report.



There has not been a time in Lebanon when anti-corruption was a nationwide demand and a necessity for the preservation and development of the country as is the case today, especially in the aftermath of the calamitous Beirut Port explosion on August 4. The journey from denial to recognition to action has taken the country more than thirty years, but it is yet to materialize into concrete results that ordinary citizens feel in their daily lives. The milestones achieved so far, as limited as they may be, and lessons learned from previous experiences, offer valuable stepping stones for additional progress, only if stakeholders, including decision-makers, social activists, and international development partners are willing to stay the course and avoid the pitfalls of earlier endeavors.

BREAKING THE VICIOUS CYCLE

Since the conclusion of the Taif Accord in 1989, successive Lebanese governments have not articulated and pursued a comprehensive plan to tackle corruption. Most of them did not even try. This does not come as a surprise, because corruption has become deeply intertwined with the foundations of the political establishment and indispensable for its survival. Adopting meaningful anti-corruption reforms meant nothing less than a total overhaul of the state's *modus operandi* and a direct threat to the vast networks of vested interests created over the years.

For nearly three decades, the country oscillated between outright denial of the problem and simplistic solutions that sought out quick fixes in security-based and judicial actions. Both viewpoints had their arguments. The first purported that tackling corruption head on is too problematic and that the technical modernization of public administration is the more suitable approach, while the second alleged that Lebanon has all the required laws on the books to ensure accountability and simply needs the political will to enforce them through the judiciary and oversight bodies. Needless to say,

both approaches have repeatedly failed, with Lebanon consistently performing poorly on all related international indicators, such as the Global Integrity Report, the Global Competitiveness Index, the Open Budget Index, and governance indicators published by the World Bank.

With many government officials, politicians on all sides, the media, and social activists still making the same mistakes (by adopting the approaches above and ignoring the systemic nature of the problem), the vicious cycles of expectations, failure, and disappointment will continue as politician after politician promises reform and accountability, and fails to deliver. It is increasingly evident that the country needs a different approach that addresses systemic problems with systemic solutions. The new approach will have to be more inclusive and comprehensive; be adapted to the complex national context, including public demands and political sensitivities; and be in line with successful practices from comparative experiences and relevant international standards, such the UN Convention against Corruption (UNCAC) to which Lebanon became a state party in 2009.

The good news is that this new approach has been in the making for many years thanks to the cumulative efforts of various stakeholders that have continued their work despite frequent changes in government.

LEBANESE LAWS ARE NOT GOOD ENOUGH

A cornerstone of the new anti-corruption approach is to temper the commonly accepted paradigm, which blames the whole problem on the lack of law enforcement alone. In fact, a big part of that problem begins with major gaps in legislation itself. Those gaps create opportunities for corruption and coverups, including in areas such as public procurement, judicial organizations, conflict of interest management, the use of public spaces, and recruitment into civil service.

Even Law 154/1999 law on illicit enrichment, which has often been championed by media campaigns and legal activists as a solution to fight impunity, is a major legislative gaffe. It offers the deceiving appearance of a legal anti-corruption instrument but could hardly hold any senior public official to account with its archaic system for asset declaration and flawed approach to criminalization and prosecution.

Comparing existing Lebanese legislation to UNCAC provisions as well as other related international standards on judicial independence and supreme audit institutions, for example, demonstrates the critical need for thorough legislative reforms. It also unveils how this need is yet to be met despite repeated promises and declaration of political intents to fight corruption.

Sobered by the realization that Lebanese laws suffer from major gaps that render aspirations to achieve transparency and accountability virtually obsolete, a small group of stakeholders embarked, as early as 2006, on what seemed to be the impossible feat of identifying and bridging those gaps. The group was composed of parliamentarians, organized as "Parliamentarians against Corruption," civil society experts, specialized judges, and public officials, supported by comparative expertise provided through the United Nations and other international organizations.

To the surprise of many, Parliament passed Law 28/2017 on access to information (see story page 16). This was the first fruit of eleven years of hard work and savvy manoeuvring inside and outside Parliament. Soon after, Law 83/2018 on whistleblower protection was voted in, followed by Law 175/2020, which established the National Anti-Corruption Institution (NACI). The interesting observation is that these bills were adopted without explicit international pressure, compared to other important legal reforms that were adopted earlier (such as Law 44/2015 on combating money laundering and terrorism). They rather emanated from a nationally owned and driven process that was inclusive of key stakeholders, which shows that there is room in Lebanon for impactful reforms to be adopted without international pressure or interference.

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The challenge of bridging the legislative gap, however, is still far from over. Other than the importance of seeing through the full implementation of the adopted laws, it is important to note that many other bills that have been carefully developed over the years are still pending adoption, including the amendment of the infamous illicit enrichment law and the introduction of specialized provisions to facilitate asset recovery (see stories, pages 19, 22, 24, and 26). Also, there are bills that are being revised in Parliament without adequate participation from civil society, such as the one on judicial independence. This is in addition to bills that were adopted, but only after being amended in ways that voided them of their initial value, such as the amendment of the banking secrecy law.

GOOD LAWS ARE NOT GOOD ENOUGH

Another cornerstone of the new anti-corruption approach in Lebanon is to go beyond the purely legalistic approach. Even with good laws on the books, which is not yet the case in Lebanon as discussed above, the effort to ensure proper implementation requires a host of other specific interventions that should be inter-connected, achievable, and measurable.

This is what the National Anti-Corruption Strategy (2020-2025) offers. The document, which was officially adopted by the Council of Ministers on May 12, is cognizant of the importance of revamping the legal frameworks. However, it does not stop at that. It offers an integrated framework for action that recognizes the need for processes and initiatives, which also enhance institutional capacities to implement related laws, influence the behavior of individuals, and expand the anti-corruption agenda beyond generalities to the specifities of each sector, including health, customs, energy, and others.

The strategy, which has been well-received by the international development community in Lebanon, was developed through an institutionalized interministerial and interagency process that was set up in 2011, surviving five governments and enabling the participation of more than one hundred public officials, social activists, and independent experts. It targets the achievement of seven outcomes with related details included such as key activities, timeframes, and responsible parties. The outcomes include completing and activating specialized legislation; enhancing the integrity of public officials; tackling corruption risks in public procurement; strengthening the independence and the capacity of the judiciary as well as those of oversight bodies including the Central Inspection, the Audit Bureau, and others; engaging with society including citizens, civil society organizations, educational institutions, and the media; and preventing corruption at the sector-specific level, from education and healthcare to energy and public services.

The ministerial-level anti-corruption committee, which oversaw the strategy's development, was expanded under the current government to oversee implementation. It is still headed by the prime minister, but now includes 10 ministers instead of four. It will also continue to be supported by the technical anti-corruption committee, headed by the Minister of State for Administrative Reform, and inclusive of senior representatives of key ministries and concerned judicial, regulatory, oversight, and law enforcement bodies.

The United Nations Development Programme (UNDP), as well as other international partners, have committed to support implementation efforts, which were officially kickstarted in June with the establishment of specific task forces responsible for key priorities (e.g. operationalization of the NACI) and the organization of meetings with civil society and the international community to coordinate efforts and explore avenues for collaboration and mutual reinforcement.

WHAT ABOUT POLITICAL WILL?

Central to the success of the new anti-corruption approach, which has evolved over the years and is embodied in the National Anti-Corruption Strategy, is strong and sustained political will. The latter manifests itself in many ways including but not limited to the quality of policies and laws adopted, the resources made available for their implementation, and the willingness of those in power to respect the rule of law.

In 1999, when representatives of the then-budding Lebanese Transparency Association, including one of the authors, wanted to deposit the founding documents with the Ministry of Interior according to the law, they were rejected. The responsible civil servant in the Department of Political Affairs, Parties, and Associations at the time, explained that that there is no corruption in Lebanon, so there is no need to set up such an association, and that, in any case, this is not the business of civil society. This attitude, which is telling on its own, may have changed over the years, but not sufficiently. Senior government officials in 2020 still wonder why civil society is requesting and publishing information on public funds—in reference to the work of the Gherbal Initiative and other similar organizations under the access to information law (see story page 16).

Uncertainty about political will continues to loom over anti-corruption efforts in Lebanon, and subsequently impact the chances for the new approach to take root and succeed. So far, many of the milestones outlined above can be said to have been achieved under the radar, with minimal involvement from political players and the public opinion alike; but the way forward will have to be different. It will offer real tests for the new government that will be formed and for political will more broadly, but also for the public will that emerged in the aftermath of the uprising on October 17, 2019.

MOVING FORWARD

In moving forward, it would be important to study factors that have enabled the progress achieved so far, despite political instability and relatively limited national and international support, and distil recommendations that may accelerate the pace of reform and guide future efforts for the remainder of what may be a long journey ahead. Among those, a few stand out:

Identify reform drivers in Parliament, government, the judiciary, and the public administrations, and establish appropriate formal and informal collaborative arrangements with them—alliances with people on the inside are indispensable.

Engage with different stakeholder groups and non-governmental organizations and support them to enhance their technical capacity and build trust among them—a well-informed and tightly-knit demand side is key.

Set up meaningful collaboration with international experts who have practical experience and understand the national context—benefit from those who have done it before.

Anchor the anti-corruption reform discourse in UNCAC, relevant international standards as well as concrete practical experiences from comparable contexts—anti-corruption is no longer an internal matter, it is a global agenda.

Reinforce the broadest possible ownership of every milestone achieved, and anchor it in formal and informal networks at the national and local levels—the more, the stronger.

Capitalize on the platform created by the National Anti-Corruption Strategy and support its implementation and eventual development as needed—put promises to the test.

> It is very difficult, even impossible, to envision financial and economic recovery in Lebanon without the introduction of deep governance reforms.

It is very difficult, even impossible, to envision financial and economic recovery in Lebanon without the introduction of deep governance reforms, with anti-corruption being front and center, especially in the aftermath of the Beirut Port explosion. However, the effort against corruption will be ill-advised to fall back into the vicious cycle that has dominated this topic for the last thirty years. The new approach that has evolved, slowly but surely, offers a way out of this cycle and a way forward for Lebanon, and provides stakeholders with many lessons learned to sustain and increase the momentum for anti-corruption reforms that impact the lives of citizens and the future for new generations.

Arkan el-Seblani is the chief technical advisor and head of UNDP's regional anti-corruption and integrity team in the Middle East and North Africa. Ghassan Moukheiber is a lawyer, a former Member of Parliament in Lebanon (2002-2018), and a human rights and anti-corruption activist.

By Assaad Thebian & Celine Merhej

PUTTING THE PROMISE OF TRANSPARENCY TO THE TEST

Lebanon's struggle for the right to information

In the three and a half years since Parliament passed Law 28/2017 on access to information (A2I) some progress has been made but there remain barriers to full implementation. Calls for greater transparency and accountability were a major component of the demands of the Lebanese who took to the streets in October last year, seen as key in the fight against and the prevention of corrupt practices. Improving on the currently opaque structure of the Lebanese state would act as a barrier to corruption and the A2I law, in theory, can be used as a supporting tool if the Lebanese want to hold their officials to account and help foster a more open culture within government institutions—if it is implemented in full and a proposed amendment that would weaken the law is prevented through continued stakeholder pressure.

IMPLEMENTATION BY DECREE?

Although adopting A2I was a milestone by itself, it cannot be called a full success until it is implemented and enforced by all public administrations—and progress on this front has been slow. One of the biggest barriers so far has been the lack of an implementation decree for A2I. Several administrations, championed by the Directorates General of the Presidency of the Lebanese Republic and the Presidency of the Council of Ministers, have insisted that the law is not applicable before the issuance of an implementation decree—a stance they have maintained despite three separate opinions issued by the Committee of Legislation and Consultation at the Ministry of Justice that have stated the law was applicable regardless. Very few administrative bodies, when challenged on this

assumption, have relented and provided the information requested of them.

It is also imperative to note that the government and the presidency who have refused to implement A2I, with the excuse that the law requires an implementation decree to come into effect, are those whose job is to issue this decree—a continuation of a civil war era tradition that was intended as a way to facilitate, not limit, laws when Parliament was unable to convene—and who have failed in that duty for three and a half years. The message this sends is clear: Those responsible for issuing the decree have failed to do so while simultaneously insisting the law cannot be enforced without this decree, with the logical conclusion being that the desire to fully implement A2I is low.

MIXED SUCCESS

This reluctance to abide by A2I has not been universal, however. While some administrations still refuse to implement the law when approached, others, such as the Office of Minister of State for Administrative Development (OMSAR) and the Directorate General of the Ministry of Industry, have taken a proactive approach by publishing most of what is required by A2I—laws, regulations, ministerial decisions, annual reports, the administration's yearly expenditures and revenues, and all expenses that exceed LL5 million—on their official websites. There seems to be a notable rift between those public administrations that are abiding by A2I and an old guard who continues to operate without implementing these legal measures, as if the law is being interpreted differently within the same state—that is, if the administration is even aware of the law to begin with.

While monitoring the implementation of the law, our organization, the Gherbal Initiative, a nonprofit that seeks to act as a bridge between citizens and public institutions, found that several administrations—as well as many Lebanese citizens—were unaware that the law even existed. Our most recent report on the commitment of Lebanese administrations to the provisions of A2I, released in September 2019, garnered responses from just 68 out of 133 contacted administrations, and of these, only 33 complied with requests to view their fiscal budgets. This was, however, an improvement on our initial report, released in September 2018, a year and a half after the law was first published, for which only 34 of the 133 admissions had responded, only 18 of which had an information officer as per the law—15 of whom were appointed at our request. Despite this slow initial implementation of the law, there were and are hopeful signals. Those 18 administrations who were responsive all did so within the legal deadline of 15 working days and showed no hesitation moving toward a more transparent environment.

POSITIVE SIGNALS

These initial successes have been made due to the continuous pressure of stakeholders (civil society, lawyers, INGOs, and some public administrations such as OMSAR) over the past three and half years, amplified by the demands for transparency and accountability of Lebanese citizens in the October uprising. More recently, there have been further positive signals regarding anti-corruption measures in Lebanon with implications for A2I.

At the end of April, Parliament adopted an anti-corruption decree (published in the Official Gazette in May as Law 175/2020), which established the long-awaited National Anti-Corruption Institute (NACI). Also in May, the cabinet adopted the first National Anti-Corruption Strategy. Working groups will be formed in accordance with this strategy, with the first group specifically dedicated to the implementation of Law 175 by enforcing the national action plan developed by OMSAR in consultation with various civil society organizations working in this field and with the support of the United Nations Development Program (UNDP) and Organization for Economic Co-operation and Development (OECD).

> The government and the presidency who have refused to implement A2I, with the excuse that it requires an implementation decree, are those whose job it is to issue one.

The NACI, which must be established within three months as stipulated by the new anti-corruption law (and at the time of writing was on track to be completed by end July), has implications for A2I as well as Law 83/2018 on whistleblower protection, Law 84/2018 on transparency in oil and gas, and Law 154/2009 against illicit enrichment. Regarding A2I, the NACI is supposed to receive complaints against non-complying entities, raise awareness among the public on the importance of this law, and monitor the law's implementation. In its absence, the latter two roles have been left to civil society groups, while the first was adopted by the

State Council, which issued a decision in December 2019 taking responsibility as the valid court to look into access to information disputes in the absence of the NACI. This June, there was a ministerial meeting aimed at accelerating the appointment of the six independent NACI members.

KEEPING UP THE PRESSURE

Moving forward, A2I still faces many challenges that will require continued pressure from stakeholders to overcome. A new A2I law amendment has been submitted to the Parliament and is currently being discussed by the Legislative and Administrative Committee, this offers opportunity for improvements but also can be used to undermine the power of the law.

The Lebanese Transparency Association (LTA), which has been among the civil society groups pushing for A2I and its implementation, submitted a legal review of A2I to lawmakers to positively influence the draft amendment of the law. Among its nine recommendations to improve A2I and ensure it complies with international standards was to amend the law so that administrations would no longer be able to unilaterally reject information requests, which can currently be done through the "misuse of the right" clause in article 1 of the A2I law. Instead, the proposed amendment would require a judgement from the NACI on whether the "misuse" clause is applicable in any given case. Another amendment suggested by the LTA is to change article 5 of the law, which currently prevents access through information requests to documents listed under that article, to instead mandate that if any of the listed documents are requested under A2I then the administration must apply a public interest test to them and release them if it falls in the public interest to do so—any disputes regarding what fell under the public interest would be settled by the NACI.

Not all proposed changes are positive, however. A major challenge to the effectiveness of A2I is the insistence of several political powers to limit the law by amending it to include a need to establish a clear "capacity and interest" to use it. What is being proposed is that any requests for information could be blocked by administrations unless the person making the information request is able to establish their capacity—meaning those requesting information relating to a specific municipality or village would have to be a resident of, or originally be from, that village, or have work with the administration related to that area—and interest—meaning the data is necessary for their work. This proposed amendment would severely limit those able to use the law to a point that would render the law completely ineffectual.

Outside of the text of the law, other challenges to A2I's full implementation can be attributed to the lack of online platforms or data collection tools, which public entities are stating as a reason for their inability to give proper responses or disseminate law-enforced public data. Once again, it is civil society groups that are stepping up to address the scarcity of available data. Public-space focused NGO Nahnoo has launched a municipal portal to ease information sharing, Democracy Reporting International has significantly raised awareness on the importance of A2I for sustainable local governance, Gherbal has built ten municipal websites in collaboration with UNDP to facilitate public data circulation and has launched an online portal (Ellira.org) that crunches, visualizes, and eases the search for public figures from the national budget to customs data. Several other projects such as ShinMimLam and Open Data Lebanon have also emerged in the last few months to help citizens reach public statistics, numbers, and figures, and put more combined pressure to aid Lebanon administrations' transformation into digitally ready and transparent bodies.

> Access to information is a fundamental right, one that will help shape Lebanese political discourse and hold politicians and other persons in power accountable.

It has been slow progress from the state's end, and there are still many obstacles and challenges ahead of the A2I law, but honest progress has been made through concrete steps taken by individuals and organizations. Ultimately, full implementation of the law requires political will among the government, MPs, political parties, and public servants to abide by drafted laws and, most importantly, to implement the decades-long promises of reform and accountability. Civil society has brought the law this far, we will not sit on the sidelines but will continue to monitor and pressure the government to ensure Lebanon will adapt to the new challenges that lie ahead. Access to information is a fundamental right, one that will help shape Lebanese political discourse and hold politicians and other persons in power accountable—it is a necessary step in the fight against corruption.

Assaad Thebian is the executive director and Celine Merhej is a project manager at the Gherbal Initiative.

By Carine Tohme

THE LEGAL FRAMEWORK

How could asset recovery work for Lebanon?

Each year, developing countries lose between $20 to $40 billion due to bribery, misappropriation of funds, and other corrupt practices. These criminal acts drain economic development initiatives, contribute to further impoverishment, and come with other societal costs, such as the negative impact on education and public health services. One way of combating these practices is through recovering assets siphoned from the public sector by public servants—elected, or nominated—and their accomplices. How does this process work, and could it work in the Lebanese context?

An asset recovery process begins by collecting information and tracing the assets of the concerned persons with the first objective of determining whether the value of their assets is compatible with their regular income or not and then determining where these assets are located. This first phase could be as simple as looking at public records, such as the property register and the commercial registry in Lebanon, or could involve a more in-depth search that would require experts to use forensics to trace the assets, notably when they are hidden in complex structures in the country or abroad.

In addition to the public records in Lebanon, valuable sources of information can be reports and documentaries published by NGOs or journalists, information provided by whistleblowers to the soon to be formed National Anti-Corruption Institution (NACI), oversight public bodies such as the Central Inspection and the Audit Bureau, and, most importantly, a serious forensic audit of all public accounts.

It is very important to highlight the importance of international cooperation in collecting information and tracing assets at this initial fact-finding stage. The Ministry of Finance, for instance, is vested with special powers to acquire tax-based information from foreign financial and fiscal entities and administrations by virtue of Law 55/2016 on the exchange of information for tax purposes (though these powers have not been used to date). Also, the Special Commission of Investigation (SIC) at the central bank can directly address all Lebanese and foreign authorities in order to ask for needed information and access details of investigations in other countries, by virtue of Law 44/2015 on combating money laundering and terrorism (it had similar powers under Law 318/2001 but these powers were improved upon). This phase of the asset recovery process must be strictly confidential.

Once the needed information is collected and the assets traced and located, the initial fact-finding phase is followed by the four other phases of asset recovery—securing the assets, the court process, enforcement of judgements, and the return of assets (see box right)—as detailed in the asset recovery handbook of the World Bank and the United Nations Office on Drugs and Crime's Stolen Asset Recovery Initiative (StAR). Notably, all phases of asset recovery involve international cooperation.

PHASES OF ASSET RECOVERY, AFTER INITIAL INVESTIGATION

- **Securing the assets** by taking all necessary precautionary and preventive measures, such as freezing, seizing, and confiscating assets up until the issuance of a relevant judgment or decision. Such measures can be taken in Lebanon either through the common judiciary proceedings by referral to the competent courts, or by referring to the SIC, which is entitled by Law 44 to lead investigations with regards to suspicious transactions, to lift the bank secrecy from suspicious accounts, and to seize or freeze these accounts. The SIC can also address its foreign correspondents (the SICs or similar bodies in other countries) to take precautionary measures related to assets located abroad.
- **The court process** in Lebanon and/or abroad. The judicial proceedings relating to asset recovery are generally criminal, but they can also be civil. Civil proceedings can lead to the nullity of contracts and the payments of indemnities (contractual obligations).
- The **enforcement** of the judgments and decisions issued according to the procedures of enforcement of each country and the **return of assets** to the country of origin are the last two phases of asset recovery. Generally, the return of assets requires international or bilateral conventions between the country of origin and other countries where the assets are situated.

USING TOOLS AT HAND

Lebanon has all the needed legislative tools internally and internationally to seek and secure the return of assets, though some require improvement and all require the political will to implement. Thus far there has been no major case of asset recovery using any of the below cited laws, raising serious questions as to the levels of corruption in Lebanon and the lack of independence of the judiciary.

From the outset, the 1943 Criminal Code outlaws bribery, embezzlement, misappropriation of public funds, trading of influence, and abuse of function. Lebanon also has Law 154/1999 on illicit enrichment, updated once already in 2009. This law has loopholes that made its enforcement impossible (such as a bank warranty of LL25 million as a prerequisite to submit a complaint and the risk of a LL200 million fine and three months to one year imprisonment for the person who filed the complaint if the charges are dropped), and is currently subject to new amendments. Law 44/ 2015 on combatting money laundering and terrorism can also serve, along with the special powers given to the SIC by virtue of the law (detailed above), as a powerful legislative tool for asset recovery.

Moreover, Lebanon has recently adopted a series of laws aiming at increasing transparency and preventing and fighting corruption: Law 55/2016 on the exchange of information for tax purposes (and its implementing decree 1022/2017), Law 60/2016 on tax residence, Law 75/2016 on bearer shares (shares that can be transferred anonymously), Law 28/2017 on access to information, Law 83/2018 on the protection of whistleblowers, Law 106/2018 on defining beneficial ownership, Law 175/2020 against corruption in the public sector (which also established the NACI), and the National Anti-Corruption Strategy approved by the Council of Ministers on May 12, 2020. It is worth noting that in addition to updates to the illicit enrichment law, amendments to the 1956 banking secrecy law is also being discussed in Parliament committees.

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These legislative measures, among others not listed above, have been adopted by Lebanon as part of the execution of the country's obligations toward the international community, since Lebanon is party to the UN Convention against Corruption in addition to other international conventions relating to the international cooperation in tax matters, such as the Multilateral Convention on Mutual Assistance in Tax Matters (MAC) and the Multilateral Competent Authority Agreement (MCAA) on automatic exchange of financial account information.

Given all the above, the legislative tools that already exist within Lebanon and the agreements with other nations, why is asset recovery still challenging in the Lebanese context?

ROADBLOCKS AHEAD

In addition to the challenges inherent to asset recovery, Lebanon has demons of its own. The Lebanese judicial system is known for its lack of independence. This is one of the main obstacles to asset recovery in Lebanon. Lebanon's General Prosecution, judicial police, investigative judges, and criminal judges have a primary role in investigating crimes of corruption and in conviction, confiscation, compensation, and cooperation with their peers abroad. The independence of the judiciary is a necessity to recover the international community's trust in Lebanon and to begin an efficient asset recovery process.

The other main obstacles inherent to the Lebanese environment are the absence of an effective national strategy for asset recovery, the constitutional immunities from prosecution afforded to the President of the Republic, the deputies and the ministers, and most importantly, the lack of will shown thus far by the Lebanese state with regard to asset recovery.

Beyond these Lebanon specifics, a common obstacle faced by states seeking to launch the asset recovery process is funding. Asset recovery is a long and complex process that involves cross-border cooperation; therefore, it is very expensive. The funding issue is aggravated amid the current economic crisis in Lebanon, nevertheless, this is an obstacle that can be overcome, through, for example, creating a national fund for asset recovery that would auto-finance the process out of the asset recovered. A draft of an asset recovery bill is currently being discussed in a Parliament sub-committee, foreseeing the creation of such a fund. Others could also participate in funding the process of asset recovery, such as the Lebanese diaspora and the international community, but only if the process is promising and the government behind it has proven its commitment to the process.

Haiti, Nigeria, Kenya, Ukraine, Brazil, among others, were able to recover assets with the support of foreign countries such as Switzerland. Yet, the four main elements that were present every time a recovery was successful were: a change in political regime, the political will translated into a reinforcement of anti-corruption legislation and bodies, the combination of formal and informal international co-operation tools, and finally settlements and plea agreements whereby corrupt officials would repatriate a substantial part of the stolen funds and would resign, in exchange of partial or a total amnesty.

> Lebanon has demons of its own. The Lebanese judicial system is known for its lack of independence. This is one of the main obstacles to asset recovery.

International conventions along with the legislative efforts of foreign countries such as the United Kingdom, France, and Switzerland have made it more feasible to return assets through international cooperation. Yet so far, there has been no serious attempt by any Lebanese government, current or previous, to embark on asset recovery. Regardless of the challenges, asset recovery is a necessary step on the path to a more transparent, more accountable Lebanese state—one that will abide by practices that discourage rather than enable corruption.

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By Richard Messick

LEARN FROM OTHERS

How Lebanon can recover stolen assets

Recovering assets corrupt officials have stolen while in government service is a critical part of a government's fight against corruption. First of all, it deters corruption. If those who would steal from the public while ostensibly serving it know they have little chance of keeping what they take, they will be less tempted to steal it in the first place. Second, a vigorous, forceful asset recovery effort demonstrates a government's commitment to combating corruption and thus helps bolster citizens' confidence in its officials.

Lebanon is one of 187 nations that have ratified the United Nations Convention Against Corruption. The recovery of stolen assets is a "fundamental principle" of the convention, and states that parties are obliged to offer one another the "widest measure of cooperation" in the search for and confiscation of stolen assets. In 2007, the World Bank and the United Nations Office on Drugs and Crime created the Stolen Asset Recovery Initiative or StAR to help low- and medium-income countries with asset recovery. StAR's "Asset Recovery Watch Database," the most authoritative source of information on nations' efforts to recoup stolen assets, shows that from 1990 until today Lebanon has not yet initiated a single case to recover assets stolen by a corrupt public official.

STEPS IN THE RIGHT DIRECTION

The current government took an important step to curb corruption with passage of the anti-corruption law that was published in the Official Gazette early May. It should take a second, equally important one: the launch of a determined effort to recover assets officials of previous governments have stolen and hidden abroad.

The way to begin is with the creation of an office within the newly created National Anti-Corruption Institution (NACI) devoted solely to locating and recovering stolen assets. A handful of professionals, no more than say five to begin, could be hired to focus solely on the recovery of stolen assets. The cost would be modest—salaries plus office support—when compared with the potential benefits.

Member states of the European Union (EU) have been required to have a specialized asset recovery office for over a decade. Some of the larger asset returns since these offices were created are shown in the table below. In addition to these, two non-EU countries with asset recovery specialists, Switzerland and the United States, have between them returned in excess of $3 billion over the past decade plus. The StAR database shows in addition dozens of recoveries in the several hundred thousand dollar to $1 million range. Even one such recovery would more than pay the costs of operating a Lebanese asset recovery office.

ASSET RETURNS

Returned to	*Returned by*	*Amount (USD millions)*
Libya	The Netherlands	143.5
Macao SAR	Hong Kong SAR	56.0
Macau	United Kingdom	44.0
Nigeria	Liechtenstein	233.8
Nigeria	United Kingdom	17.7
Pakistan	United Kingdom	248.0
Uzbekistan	France	10.0
Zambia	United Kingdom	46.0

There are important advantages to centralizing responsibility for asset recovery. It is firstly a way to build expertise on a complex area of law and international finance. Asset recovery requires an in-depth knowledge of the asset recovery procedures in the UN Convention, the international legal principles governing receipt of information from other nations, methods for tracking cross-border financial flows, and forensic accounting techniques. Assigning responsibility for this work to a small, dedicated team of professionals is the surest way to build expertise in these disciplines.

A dedicated asset recovery office also helps develop the personal relationships with counterparts in other nations. The European experience and elsewhere shows that such relationships are crucial. Key to almost every successful return has

been information gleaned through informal channels: telephone calls, emails, and visits with police, prosecutors, or investigating magistrates in other states. Information about stolen assets can be quite sensitive, however, and will only be shared if these sources are sure they can trust it will be handled appropriately. As personnel in a Lebanese asset recovery office meet and interact with asset recovery specialists in other nations, a natural outgrowth should be the trust and confidence that facilitates information sharing.

As relationships between Lebanese authorities and those in countries where assets may be hidden develop, authorities in these asset "holding states" will become more willing to devote time and effort to help recover the assets. A corrupt official who hides money in a foreign jurisdiction inevitably runs afoul of the jurisdiction's anti-money laundering laws. In the best of circumstances, prosecutors in a holding state will, when alerted by colleagues in an asset recovery office, open a money laundering investigation. Most of the returns by the United Kingdom, the United States, and Switzerland were realized in this way. Working with personnel from the victim state, prosecutors in these countries used the confiscation procedures in their domestic anti-money laundering laws to seize and then return the assets.

MENTORSHIP FROM OUTSIDE

The skills required for a successful asset recovery effort are not taught in school. Creation of a specialized asset recovery unit should be accompanied by a plan for training the lawyers, accountants, financial professionals, and other personnel that will staff it. StAR, the UN Office on Drugs and Crime, and the Basel Institute's International Centre for Asset Recovery (ICAR) all offer asset recovery training. An important complement to a training program is embedding an experienced asset recovery specialist in the new office, a mentor who can bring his or her expertise and contacts to bear on cases the office is pursuing. ICAR has a mentoring program and the U.S. Justice Department has also provided mentors.

The training provided by StAR, the UN Office of Drugs and Crime, and ICAR is usually delivered on-site, but in these days of the pandemic the courses have moved online. They are usually offered at no cost to the recipient country. At most, if participants must travel to another country the sponsoring government may be asked to pay their expenses. The mentoring programs run by ICAR and the U.S. Department of Justice are funded by their governments. The European Union, the U.S. Agency for International Development, and other bi- and multilateral donors also support asset recovery training and mentoring programs.

Between the hands-on assistance prosecutors in holding states can provide to locate and confiscate assets stolen from Lebanon and the training opportunities donor organizations provide, Lebanon need not spend scarce resources on the many law and accounting firms and private detective agencies that can be expected to "pitch" their services. These firms do indeed have a great deal of experience recovering assets siphoned from corporations by fraud, but they are expensive. Moreover, once a holding state's authorities open a case, they have powers no private firm has to obtain information.

> Key to almost every successful return has been information gleaned through informal channels: telephone calls, emails, and visits with police and prosecutors.

Some private firms have offered to help countries recover assets on a no or low-cost basis by agreeing to work for a percentage of any amount recovered. A return of tens if not hundreds of millions of dollars means the firm will realize an enormous sum, far exceeding a reasonable fee for its work even accounting for the risk it takes that it will receive nothing if no assets are recovered. A Swiss law firm was paid $24 million, 4 percent of the $600 million Nigeria recovered from Switzerland, for little work, and a Nigerian firm with no international experience will receive 5 percent for any recovery on another case. The amount paid to the Swiss firm and the potential amount the Nigerian firm could receive have raised questions in Nigeria about the size of the fees and fuelled citizens' suspicions that the process itself has been corrupted.

The Lebanese government should create an asset recovery office and launch an asset recovery process without delay. With a strong commitment from it and assistance from the international community, there is no reason why assets stolen from the Lebanese people cannot be found and returned.

Richard Messick is a senior contributor to the Global Anticorruption Blog and a consultant on asset recovery to the UN panel preparing recommendations to be submitted to the UN General Assembly at its April 2021 Special Session on Corruption.

By Sofie A. Schuette

THE SOLUTION TO WHAT PROBLEM?

Does Lebanon need a special anti-corruption court?

In June, Parliament's Anti-Corruption Subcommittee began discussing the establishment of a special court on financial crimes. Its proposed jurisdiction ranges from counterfeit and forgery of money and documents to bribery and abuse of power by public officials on active and former duty. Such a scope of offenses would fall under what we at the U4 Anti-Corruption Resource Centre, a knowledge hub on corruption and anti-corruption policies worldwide, have called a "specialized anti-corruption court."

Over the last two decades, the number of countries that chose to have a special judicial body, division, or set of judges with a substantial or exclusive focus on corruption-related cases has grown. In a 2015 mapping exercise, U4 found around 20 existing anti-corruption courts and we know of at least five more that have been set up since. More countries, such as Armenia and now Lebanon are debating their establishment.

Different degrees of institutional separation and specialization come with different costs and benefits. Anti-corruption courts are latecomers to a trend toward more judicial specialization, following special juvenile and family courts, or commercial courts, among others. A World Bank paper on developing specialized court services found that, as a rule of thumb, a greater degree of institutional separation will be more appropriate when the caseload is higher, when the need for

efficiency is greater, and when the need for specialized expertise is more acute.

In our research on anti-corruption courts, U4 found that the most common argument made for special anti-corruption courts is indeed the need for efficient resolution of corruption cases. Reformers want to signal to domestic and international audiences that their country is serious about anti-corruption efforts. In Indonesia and Ukraine, concerns about the integrity of the regular courts were the main reason for setting up special courts with distinct features to insulate them from malpractices and undue influence. In these two countries, anti-corruption court judges are selected from not only within the judiciary but also from among qualified non-career judges, such as law professors and other legal practitioners (accountants have been appointed in Indonesia, for example). In Ukraine, the selection process even includes a panel of international experts with the aim to render the selection process more independent. In Slovakia, concerns about the integrity of the judiciary led to the initial security screening of the candidates for the special court by the National Security Agency. This was later revoked, then extended to all judges by the Constitutional Court. This is an example of how special courts can pilot and lead on new standards for the whole judiciary.

Setting up a special system comes with costs and a new court may compete for resources needed for more general court reforms. Even the appointment of just a handful of specialized judges can constitute a substantial brain drain from the general court system if the pool of judges in a country is not large to begin with. Due to the limited baseline data available in the jurisdictions that have set up anti-corruption courts, it is impossible to make a scientifically sound assessment regarding any improved effectiveness and efficiency of the new courts. This is also because their performance cannot be seen in isolation as it depends on the quality of the evidence and charges brought forward by the investigating and prosecuting bodies.

When discussing whether to establish a specialized anti-corruption court, it is therefore critical to first carefully evaluate what problem specialization is meant to overcome. Is it something that can only be addressed through specialization, or are reforms to the general court system, law enforcement agencies, or the criminal procedure code, or a combination of these, a better alternative?

Such thorough analysis should precede decisions on the institutional design of a specialized court. The models U4 studied range from individual judges with special certification to hear corruption cases, to special branches or divisions and separate, stand-alone units within the judicial hierarchy. There is no one correct approach or clear best practices that can be copied and pasted from one country to another, but there are some common, fundamental questions that reformers should keep in mind when elaborating the design of a specialised court (as detailed on U4's website):

- Where to place the anti-corruption court in the judicial hierarchy, i.e. whether specialization should extend to the appeals level.
- How large the court should be—the number of judges.
- The substantive scope of the anti-corruption court's jurisdiction.
- The relationship between the specialized anti-corruption court and the specialized anti-corruption prosecutor—such as the country's anti-corruption agency, if one exists.

Reformers also need to consider whether to make any special provision for the selection, removal, or working conditions of the anti-corruption court judges, and adopt substantially different procedures for the anti-corruption courts compared to similar criminal cases in regular courts. Special procedures may be necessary if inadequate procedures in the general court system are part of the reason for specialization, and if those procedures cannot or should not be changed generally.

> The most common argument made for special anti-corruption courts is indeed the need for efficient resolution of corruption cases.

All this needs to be well-thought through, because the high-profile defendants in large-scale corruption cases are typically well-resourced and their legal defense team will likely use their full legal arsenal and seek out any loopholes and legislative and regulatory lapses.

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By Riwa Zoghaib

KICKSTART THE PROCESS

Lebanon could utilize unexplained wealth orders to recover stolen assets

Asset recovery requires global cooperation. According to the Stolen Asset Recovery (StAR) Initiative database, in 2018 the approximate amount of stolen funds that have been frozen, confiscated, or returned to affected countries since 1980 equals $8.2 billion, involving over 50 requesting and over 40 requested jurisdictions. These numbers, however, pale in comparison to the estimates of annual asset theft—given the nature of the activity, stolen assets are calculated based on estimates of laundered money—that range from $800 billion to $3.4 trillion.

Asset recovery has been in the Lebanese discourse as part of the greater calls for accountability and transparency since the October 2019 uprisings. This July, Alain Bifani, the former director-general of the Ministry of Finance (who resigned his position and his place as part of Lebanon's negotiations with the International Monetary Fund in June in protest of the handling of the country's economic crisis) alleged in an interview with *The Financial Times* that $5.5 to 6 billion had been transferred out of Lebanon at a time when banks were imposing informal capital controls on the majority of depositors—limiting dollar cash withdrawals to as little as $100 per week. Though there are no official estimates on the country level, Charbel Nahas, a former labor minister and head of the political party Citizens in a State has estimated that as much as $22 billion has been moved out of Lebanon in the past ten years.

In January this year, a petition from a group of Lebanese MPs requesting mutual legal assistance from Switzerland regarding assets moved out of Lebanon to Switzerland after the October 2019 revolt was rejected by the Swiss Federal Department of Foreign Affairs (FDFA), which stated that the cooperation conditions between the two countries had not been fulfilled. The Swiss Federal Office of Justice needed further information on the alleged origin of the unlawfully obtained assets and the placement of these assets in Switzerland. This experience suggests that investigations must be conducted on the Lebanese national level before reaching out to other countries for legal assistance. But the current Lebanese legal system does not meet some technical requirements, and there is a lack of genuine will to effectively prosecute public officials accused of looting public assets. To date, there has not been a single case prosecuted before courts on matters related to corruption. Local media also cited an anonymous source close to the International Monetary Fund who alleged that the Lebanese "political-financial system" had used "all means possible" to thwart asset recovery efforts.

A POSSIBLE GAME CHANGER?

There is one small technical step however, if adopted and effectively implemented (through Law 154/1999 on illicit enrichment, currently under review at Parliament) that could act as a short-cut and game changer in the lengthy and costly course of the investigations and prosecutions of the illegally-gained assets on the national level.

Unexplained Wealth Orders (UWO) are a practical investigative power that have been available to UK law enforcement since February 2018. The UWO revolutionized efforts in fighting corruption, as it allows the prosecutor, law enforcement agency, or any other relevant entity responsible for prosecuting corruption cases, to file these orders if there is reasonable grounds to suspect that the income of the accused is insufficient to enable them to obtain their owned asset(s), whether in cash or in properties. Reasonable grounds for suspicion is enough in this case to qualify reversing the burden of proof on the defendant, who needs to provide all the necessary evidence proving that the assets were not illicitly obtained. A presumption of illegality rises in case the accused fails to reply to the UWO and, consequently, the property is subject to recovery by civil forfeiture. The value of the property that is subject to an order needs to be greater than £50,000 (approx $65,800) according to the act. (It should be underlined that while the presumption of guilt is developed only after failure of the recipient of the order to respond to

the UNO, like all legal and investigative tools, UWO's must be carefully guarded against abuse).

In a country like Lebanon, where accessing information, data, and public records on Politically Exposed Persons (PEPs), their families, and individuals involved in serious crime can be highly challenging and complex, UWOs could be the solution to foil money laundering schemes. It is a powerful tool to accessing evidence in juridical cases of large-scale illicit enrichment gained through corrupt acts. The UWO can be issued in two essential circumstances: 1) a suspicion on the part of the investigative authorities carrying out financial audits that a person (PEPs included) is involved in criminal corrupt activity, and 2) if the assets acquired by that person are disproportionate to their income.

Countries, victims of large-scale political corruption, money laundering, and economic crimes, usually refrain from initiating asset recovery requests due to the great costs spent during criminal proceedings. Studies found that the cost of tracing only $10 million to $100 million of illicit wealth ranges between $250,000 and $2.5 million. The discovery phase requires the hiring of auditors, lawyers, and experts, and so UWOs can ease the financial burden of this process by switching the burden of proof on the defendant.

The competitive edge of the UWO is that reasonable grounds for suspicion outweighs concrete and persuasive proof, which allows courts to file an interim freezing order preventing the owner from selling or transferring their properties. It facilitates the process of investigations and obliges the accused to provide the necessary evidence refuting the alleged offence.

Investigation complexities are encountered in large-scale political corruption cases and therefore, a careful consideration should be given to the alleviating toolkits for the countless challenges experienced throughout the process. The UWO can be a crucial entry point for the Lebanese justice system to expedite investigations related to corruption cases, which would help overcome the cost challenges of securing evidence.

Countries, victims of large scale political corruption, money laundering, and economic crimes, usually refrain from initiating asset recovery requests due to costs.

Riwa Zoghaib is a governance and anti-corruption expert, currently employed as a project coordinator/researcher at the Lebanese Transparency Association (LTA). The views cited in this piece are her own and do not necessarily reflect those of the LTA.

By Thomas Schellen

JUDICIARY MUST MAKE ITS OWN MOVES

Q&A with legal expert Paul Morcos on judicial capacity and accountability

They are somewhat remote issues from the perspective of daily survival in the summer of 2020. But the questions of financial accountability and judicial processing of the complex aspects of the corrupted system and adequate prosecution of corruption are pregnant with implications for Lebanon's systemic networks of fiefdoms, sublime tribal rulers, and previously extra-judicial interest mongers. Moreover, the judicial issues relating to corruption are innumerable. Seeing the different types of corruption questions that have been raised—from the need to prosecute politically shielded tax evasion to illegal enrichment of officials, and private sector graft and bribery, to the urgent need of changing the cultures of petty corruption of minor administrative officials, falsification of property contract values, and citizen's complicity in corruption by way of dodging financial and civic obligations—EXECUTIVE wondered who will handle the judicial complexities and help cleaning up all the untold nuances of the nation-encompassing Lebanese corruption mural. Asking these questions, EXECUTIVE sat at the virtual table with legal expert Paul Morcos of law firm Justitia.

E How ready is Lebanon from the side of the judiciary and legal professions to deal with corruption?

Lebanon has now a strategy for anti-corruption. This strategy has been completed and great efforts have been made to this end by Minister [for Environment and Administrative Development] Damianos Kattar. As for legislation, I think we have also improved, since we have voted at least two specific laws with regard [to corruption]. One was [adopted] in 2018 with regard to whistleblowing [Law 83] and the second was passed this year in [late April and published in the Official Gazette in] May, [Law 175/2020 on anti-corruption, which also established] the National Anti-Corruption Institution. Before these two laws, we had the law [28/2017] on access to information already in place. As to the fourth law with relevance for the prosecution of corruption, which is the Law [154/2009, an update on the original Law 154/1999] on illicit enrichment: This law has been reviewed and is almost ready for issuance, in its new[est] version. We need a few weeks to get it done completely.

But the main problem is not about legislation nor about strategies. We have an inflation in laws and strategies. Those laws have, of course, been elaborated on and improved. This is natural. This is normal. But the problem is that we don't have a central decision by state actors—those who really run the country—to sacrifice their supporters.

When it comes to fighting corruption you have to take severe and serious measures to, for example, get rid of certain employees and functionaries within the state and public administration. You also must take steps to enable the judiciary to arrest corrupted persons, and to enable the specific commissions for anti-corruption and anti-money-laundering and terrorist financing to investigate illicit funds and transfers that are made abroad. This kind of decision and this kind of sacrifice has not been initiated yet. We are now watching steps [taken] in terms of legislation improvement and of focus groups, as per the anti-corruption strategy—this is good work, but not in face of anti-corruption. Sacrificing and lifting protection on supporters and political clients is what matters now—and I am not talking about protection by law. The protection by law that enabled instances of corruption has been lifted at least partially, through the law on establishment of the anti-corruption commission that has been issued in May. But practically, the protection for political clients, for corrupted people, are still the same.

E ***It seemed that implementation of the earlier laws that you mentioned, whistleblower protection and access to information, has not been very smooth or rapid. For media, activists, and civil society, getting access to information was a hit-and-miss game for quite some time, depending on which ministry or administrative unit you asked. From this experience, how long could it take to see the May 2020 law fully implemented and operational?***

Theoretically you need three months from the publication of the law to establish the commission. There are six persons to be nominated and the nominations are now in process. There are different bodies who have to nominate their representatives. This process is ongoing and should be done within those three months. But I am afraid that even if you nominate such persons, if you do not have the political will and if you don't have the people and the media pressing for this, you will not see the results that you are aiming for.

E ***In terms of the capacity of the judiciary, the implementation of anti-corruption usually needs a lot of specialized judicial skills for supervising and dealing with forensic investigations to prove that someone has stolen public funds or taken bribes or illicitly enriched themselves while in public office. How ready is Lebanon in terms of the number of judges and the judiciary system and prosecution to deal with such cases?***

There is the lack of the law to grant the judiciary its independence. This is not right. The judiciary in this situation should act by itself because the legislative power, the Parliament, which is comprised of mostly political figures, will never enable the judiciary to work. It will never grant the judiciary what it needs. It will never issue the perfect law. Thus the judiciary should act [by] itself, like it did in Italy through Mani Pulite (a judicial investigation of political corruption structures in Italy in the 1990s). Additionally, [the judiciary] have to generate their own good practices. For instance, similar to what the members of the high council for magistracy have done in terms of lifting banking secrecy, other judges should also do—this

"The legislative power, the Parliament, which is comprised of mostly political figures, will never enable the judiciary to work."

is one example. Another example is that members of the Higher [Judicial] Council (HJC) should sign a code of conduct and ethics. By adopting such a code they, for instance, have to undertake not to run for any other political, administrative, or even judicial position [while serving on the HJC]. This is needed because some of them used to take this [council function] as a vehicle to jump either over to membership of the Constitutional Council or to the Ministry of Justice, to become a minister of justice. I mean altogether that [the members of the judiciary] can take internal measures in order not to wait for the Parliament to grant them independence.

But do you agree that affirmation of judicial independence by a new law will be a major turning point for the ability to prosecute corruption cases in Lebanon?

Why? Why do you think so? I say that it is a good factor to have a good law but you don't have to have a good law [on judiciary independence] to have a good judiciary. You can take other measures. I mentioned two of them but I [will] give you another example. We are now waiting for the circulations of judiciary figures. These are not nominations but rather circulations (the movement of judges between roles) within the judiciary.

Lebanon's judiciary system is not reputed to be lightning fast. If we were to see a high-profile case about bribery or corruption, how long would such a case take to wind its way through the judicial system?

The judicial system is not fast anywhere, not just in Lebanon. But in Lebanon it is even less fast than in other places. This should of course be accelerated but the judiciary does not have to wait for any third party to grant it autonomy. This will not happen easily and the only solution is the judiciary—I don't think the solution might be the army or any other means. The judiciary is the solution in this country. They have to act and not wait. They have enough texts of law, [and] they suffer enough, like other citizens. I think each and every judge should act. I believe that there are many good judges—only a few are bad judges.

One of the principles of having a good judiciary is that everybody has to have the right to a fair trial. Are there many good, specialized defense lawyers in this country who know how to deal with graft and bribery cases, auditing and institutional tax evasion cases, and very complex financial crimes?

Yes. There are many competent lawyers in this field. Also, if someone cannot afford [legal representation] then the bar will nominate the lawyer. Even the court can help with this process.

Do you feel confident that one year from now there will be in Lebanon a much better functioning judicial process for dealing with cases of corruption and illicit enrichment of public officials?

Yes.

When it comes to the issues between banks and their depositors, and possible judicial confrontations, how is the situation there? Is the situation on the legal front going to improve or worsen?

We are now working on the capital control law and this law should soon be enacted. Having a capital control law is amongst the prerequisites for [a deal with] the International Monetary Fund. It will help in unifying the [exchange] rate of the dollars. It should be done soon. Meanwhile, there are lawsuits against the banks—because their practices are illegal. Transfers should be free, [in the sense that] they should be executed freely. So there are illegal banking practices in place. But these are for a good reason, because if [banks] transfer all the money [as they are requested by depositors], they will no longer have any funds and reserves at their correspondents. Also, the central bank is refraining from giving them any of their reserves—there is a retention against giving them such funds. I think that lawsuits which were submitted before the capital control law is issued, will be settled. Afterwards, there will be exemptions for those having necessities to transfer small amounts for education [and] health issues, for example.

> "The judicial system is not fast anywhere, not just in Lebanon. But in Lebanon it is even less fast than in other places."

What, from your perspective as a legal expert, is the best thing that Lebanon can do in this situation?

There should be a political move to take serious measures—serious measures have not been taken yet. We have been playing for time. I don't know why. And I do not believe that there is a good reason behind this. Even if this buying of time were for reason of a political gamble, this is not good for the country. What is happening is buying of time, plus working on new legislation and building some strategies. Drafting some plans. We have enough legislation and strategies. We need measures. We need what we call "quick wins."