

# UNTIL FURTHER NOTICE...

## Snapshots of Lebanon's Military Court

[1945 - 2015]



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[1945 - 2015]





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Spring 2016

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On an almost daily basis, Lebanese media outlets publish stories which refer to the Government Commissioner at the Military Court (i.e., the prosecutor) having leveled an accusation against someone, that the Military Court has sentenced someone after a trial or that the Military Court of Cassation has approved the release of someone already sentenced. To the everyday citizen, the “Military Court” likely seems to be the centerpiece of Lebanon's judicial system.

Unfortunately, that perception is approaching reality. In fact, the Military Court (MC) flaunts a great deal of latitude in terms of social and political immunity. That relative independence serves to mute most of the essential questions being asked

about the centrality of the roles the MC plays in Lebanon and the reach it has into public Lebanese life. Assuming we accept the notion that the (civil) judiciary should be responsible for (among other things) interacting with members of a society as a third party conceived to mitigate disagreements and other contentious issues, and if we accept that it should operate autonomously according to the highest standards of objectivity and equity, then the seemingly ubiquitous presence of military justice—by definition the kind of justice administered across a very limited segment of the Lebanese population—is indeed something to be worried about. Yet the situation surrounding the MC assumes even more troublesome dimensions when

one considers that Lebanon, for instance, is not exactly stable. Rather, the country is experiencing a host of internal and external security threats. And the entire situation becomes even more complicated. While it may appear that these threats (generally and often far too easily tossed into the catchall category of “terrorism”) have overtly political overtones or are somehow associated with a given set of political circumstances and politics, prevailing conditions in Lebanon have a deep and intimate association with the country's exceptionally fragile balance of sectarian power. In this sense, the mandate of Lebanon's MC not only greatly surpasses its original jurisdiction (thanks to the inexactness of applicable regulatory literature, it becomes involved in all kinds of cases), but its status, makeup and broad interpretation of the decisions it renders certainly outstrip the scope of responsibility any of us might expect.

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The flagrant expansion of the mandate of Lebanon's MC (not to mention the flawed procedures and quasi-judiciary practices it follows) long ago placed that court in the cross hairs of local human rights

organizations and international bodies. The criteria used by these organizations are based on the MC's conformity to the standards of human rights and fair trials, and year after year, that court has demonstrated that it is consistently at odds with those standards. Clearly, actions taken to advocate the need for change within the MC are made far easier by that repeatedly abysmal performance. However, the issue is not restricted to urging Lebanese authorities to respect those standards. Instead, it includes understanding why these standards are not being respected and the context that facilitates such disrespect. In other words, we must have a specific understanding of how the local context and the historical framework have made the MC what it is today.

While it is true (at least in part) that UMAM Documentation and Research (D&R) focuses primarily on Lebanon's past and its conflict-loaded memory, that specific involvement also taught the organization that any advocacy program it might conceive to review the status of the MC could not be advanced without a detailed exploration of the associated historical context. Accordingly—and thanks to EU funding—UMAM D&R collaborated with

other Lebanese civil society organizations to commence work on “Martial Justice for All? Lebanon’s Military Court: A State of Martial Law?” The most important aspects of that initiative included documentation, research and raising awareness about Lebanon’s MC.

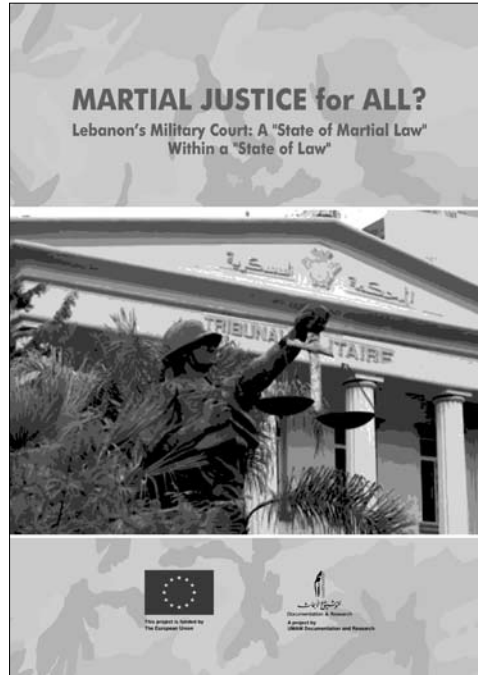
As should be evident from the title and these preliminary remarks, the “Martial Justice for All” program never intentionally sought to address the topic of military justice in Lebanon from legal and/or juristic perspectives. After all, those areas already boast a substantial depth of literature that is available to the public. Instead, we approached it from a citizen’s perspective. After all, many Lebanese wonder why the “exceptional” scope of military justice seems to have eclipsed the dispensation of “ordinary,” nonmilitary-related justice in the country. Did this outcome really stem from “exceptional circumstances” (such as the “Civil War”), or is it related to factors, policies and decisions that actually enable circumstances in the country to be seen as “exceptional?” Stated otherwise, is this sliding “state of exception” part of a shared political agenda that attempts to impede the transition to the “state of law” envisioned

and still sought by a number of political actors?

In Lebanon, “exceptional circumstances” dominate most other official pursuits, including the judiciary. So why is it that those conditions are viewed as the magic elixir that can heal all of the State’s afflictions? Simply because the country has never been able to move beyond its 15-year Civil War, a conflict that has evolved into a persistent state of mind (when not an actual state of shooting) that continues to hold the country hostage. In short, it condemns the Lebanese to endure these exceptional conditions *ad infinitum*.

Certainly, the exceptional conditions just mentioned are responsible for having influenced more State organizations than the MC alone. Nevertheless, the widespread application of military justice and the steady expansion of the MC’s mandate mean that the military “version” of justice is being applied to a wide range of cases—particularly those that are politically charged. Additionally, the steadily broadening “militarization” of justice in Lebanon means that all other “civilian” forms of jurisprudence have suffered terribly, to the point that equitability in the

Lebanese application of "justice" simply does not exist. More to the point, in the "rivalry" between military and civilian justice in Lebanon, the MC has always come out on top, due largely to its organic affiliation with the Lebanese military institution.



Cover of the booklet published by UAMAM D&R in parallel with its first working session held on November 1, 2014.

Similar to other UMAM D&R projects, this initiative sought to address the problematic MC from three different angles: documentation, research and awareness raising/advocacy. The program intended to influence the discussion on military justice, assess the place it holds in Lebanese politics and examine its widespread application in the Lebanese judiciary and society.

Notably, the documentation component of this program is already available (and is being updated continually) on the Memory At Work online database ([www.memoryatwork.org](http://www.memoryatwork.org)). The section created to address the overall topic,

"Field Justice – Military Justice in Lebanon," consists of 10 chapters that cover almost all MC-related issues from the 1990s and before. As of the date of this introduction, the number of documents available in this section is approaching 5,000.

The research and awareness raising/advocacy portions of the project were virtually intertwined. Work conducted in these areas included interviews with a variety of stakeholders (such as lawyers, individuals with MC-specific judicial experience, affected family members, former members of the military who served within the MC), organizing several different types of meetings and producing a documentary film that bears the same title as this publication. In addition to numerous small-scale brainstorming and updating meetings with other civil society activists, UMAM D&R and its partners organized two large working sessions and a capstone





Two pictures taken during the first working session held on December 1, 2014.

conference. The first of the two working sessions, held November 1, 2014, was titled “Martial Justice for All? Lebanon’s Military Court: A State of Martial Law?” The engagement was meant to take stock of the MC situation, including examining advocacy efforts to review its mandate and assessing the state of the broader political debate. To publicize the meeting and outline the capabilities of the project’s documentation component, UMAM D&R delivered a brief presentation of the issue and the overall program. The second working session, held June 6, 2015, went a step further as it tried to meet the current politico-judicial debate. This working session, titled “Placing ‘Terrorism’ on Trial – Lebanon’s Courts of Exception and the

Risks of ‘Exceptional Justice,’” became an opportunity to revisit the historical record of Lebanon’s MC relative to judging cases related to “terrorism.” Additionally, it was a chance to learn from several experts schooled in other countries’ terror jurisdictions and the role played by military justice, if any. The third element of that working session focused on the Lebanese situation per se and the challenges caused by entrusting the MC with the responsibility to judge terror-related cases.

The capstone conference, held March 12, 2016 and titled “70 Years of Military Court in Lebanon [1945-2015] – and now what?” was the planned finale of the project. Yet between the final working session and



Two pictures taken during the second working session held on June 6, 2015.

that conference, much more was added to the debate over the MC. Of particular note was the "Samaha case," the government's dealings with the "Garbage Movement" and a new draft law that had been shaped to address specific challenges related not only to the resistance faced by all MC-related recommendations, but also the challenges the entire Lebanese judicial system faces today.

In parallel with the documentation and outreach activities, UMAM D&R produced a 60-minute documentary film. Since the capstone conference, the film has been shown several times and is available for

download on the Memory At Work ([www.memoryatwork.org](http://www.memoryatwork.org)) portal.

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Despite whatever success we have achieved in the program itself, we must still address an important, underlying question. Considering the turmoil Lebanon is experiencing of late, is now the right time to highlight its MC issue, which lies at the intersection of "justice" and "security?" This is certainly not the first time UMAM D&R has had to answer such a loaded question. Indeed, in the numerous projects the organization has undertaken related to the roles played by "the war" and its "legacy"

Final conference held on March 12, 2016.



in everyday life in Lebanon, the organization has already responded to essentially the same question: "Is now the right time to talk about this issue?" After all, tangential to those projects, we have often been asked whether a debate over this or that matter would impose harmful side effects. Regardless, our replies to such questions have always been consistent: since there will never be a "right time," there is no reason to postpone the inevitable. For instance, since the "war" ended, the Lebanese have periodically experienced abrupt (and often unpleasant) reminders of issues they neglected to address. Unfortunately, ignoring such vital matters has never



made them any less important. In fact, our experience indicates that the opposite is usually the case: the vital issues we seek to ignore ultimately burn even hotter....

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With regard to the Lebanese system of military justice, one might

wonder if Antara, a pre-Islamic Arab poet, was accurate when he wrote, "Have the poets not already said everything?" But when we ask candidly if everything has already been said about the MC issue in Lebanon, the answer is a resounding "No!" Clearly, UMAM D&R does not profess to have cutting-edge knowledge about Lebanon's MC. And indeed, that very consideration should be considered moot in view of the research that has already been conducted by professionals skilled in the area of jurisprudence. After contemplating the issue of the Lebanese MC, however, and the vaunted space it occupies in the State and among the Lebanese, it is insufficient to evaluate this "brand" of justice using a scale calibrated only according to "human rights" or the need for "fair trials." In reality, the ongoing Lebanese approach to military justice is rooted deeply in the country's modern history. Compared to the traditional purveyors of civilian justice in Lebanon, the constant broadening and expanded jurisdiction of the MC has made it the superior competitor, one that has remained relatively unaffected by Lebanon's different eras (e.g., the Civil War, Taif/Syrian tutelage and post-tutelage). In true Lebanese fashion, the MC owes its durability to the complexities inherent in Lebanon's "political culture," which reigns

supreme over concepts such as justice, security and the rule of law. At best, the country's legislators simply digest the edicts given to them by politicians and then translate them into the appropriate legal texts. At worst, those same legislators—individuals responsible for the development and advancement of Lebanon's system of jurisprudence from 1943 onward—have generally remained idle and silent as the grave. Again, *à la libanaise*. In this sense, we believe that "Martial Justice for All? Lebanon's Military Court: A State of Martial Law" was anything but a repeat of efforts already focused on this matter. And despite any overlap it may have had with previous efforts, every effort was necessary to produce an effective framework for the historical review.

Finally, the following pages do not attempt to serve as an exhaustive treatment of such a complex topic. Instead, as should be evident by the title of this publication, they provide snapshots of the deeper history of Lebanon—one that does not always make for enjoyable storytelling....



The military court in 60 audiovisual minutes.