



# **LEBANON**

## **Shadow report**

**Report submitted to the Committee against Torture in the  
context of the initial review of Lebanon**

**Alkarama Foundation**

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## Table of contents

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TABLE OF CONTENTS .....	2
1. INTRODUCTION .....	3
2. BACKGROUND .....	3
3. THE PRACTICE OF TORTURE .....	5
3.1 DEFINITION, ABSOLUTE PROHIBITION AND CRIMINALISATION .....	5
3.2 WIDESPREAD AND SYSTEMATIC TORTURE .....	6
3.2.1 <i>Article 20 inquiry and limited implementation of its recommendations</i> .....	7
3.2.2 <i>Widespread and systematic use of torture</i> .....	7
3.3 VIOLATIONS OF THE LEGAL SAFEGUARDS RELATED TO THE DEPRIVATION OF LIBERTY .....	9
3.3.1 <i>Arbitrariness of arrests</i> .....	10
3.3.2 <i>Violations of the right to legal counsel during investigation and the practice of incommunicado detention</i> .....	11
3.3.3 <i>Absence of prompt and independent medical assistance</i> .....	12
3.3.4 <i>Violations of the right to be promptly brought before a judge and the right not to be tried without undue delay</i> .....	13
3.4 EXTRACTION OF CONFESSIONS UNDER TORTURE AND VIOLATION OF THE EXCLUSIONARY RULE .....	14
3.5 ABUSES COMMITTED IN THE FRAMEWORK OF THE FIGHT AGAINST TERRORISM .....	15
3.5.1 <i>Arbitrary arrests, incommunicado detentions and extraction of confessions under torture</i> .....	15
3.5.2 <i>The exceptional justice system</i> .....	16
3.5.2.1 <i>The Military Court</i> .....	16
3.5.2.1 <i>The Judicial Council</i> .....	18
3.5.3 <i>Abuses against refugees</i> .....	19
3.6 EXCESSIVE USE OF FORCE AGAINST PROTESTORS .....	21
3.7 ABSENCE OF EFFECTIVE MEASURES TO PREVENT TORTURE .....	23
3.8 A PREVAILING IMPUNITY FOR ACTS OF TORTURE .....	25
4. CONCLUSION .....	26

## 1. Introduction

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Lebanon's first periodic report (CAT/C/LBN/1)<sup>1</sup> was submitted to the Committee against Torture on 9 March 2016, with a delay of over 14 years, and will be reviewed by the Committee at its 60<sup>th</sup> session. Alkarama regrets that the State party report only contains a compilation of Lebanese laws without providing information on the current practice of torture in Lebanon.

Alkarama hereby submits this shadow report in which it evaluates the implementation of the Convention against Torture in Lebanon (hereinafter "the Convention"), highlighting its main concerns and addressing recommendations to the State party.

This report is based on Alkarama's documentation of human rights violations in Lebanon since 2004, as well as, on a review of the State party's report. Alkarama also wishes to provide the Committee with a detailed follow-up of its recommendations issued in October 2014, following its inquiry under article 20 of the Convention,<sup>2</sup> which established the widespread and systematic character of the use of torture in the country. Since then, torture continues to be practiced in Lebanon; suspects are deprived the most fundamental legal safeguards as they are routinely arrested without warrant, detained for extended periods of time without judicial oversight, often *incommunicado*, and interrogated in order to extract confessions that will be used as a source of evidence in trials. Alkarama notes that such pattern is particularly evident in cases where suspects, even minors, are accused of crimes of terrorism and tried by military courts, before which they are not afforded a fair trial in line with international standards, and often sentenced to heavy penalties.

While acknowledging the challenges faced by Lebanon, Alkarama hopes that the Committee's constructive dialogue with the State party and its recently appointed new government will allow to tackle the issue of torture in the country.

## 2. Background

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Part of the Ottoman Empire from the early 16<sup>th</sup> century, Lebanon came under French mandate after World War I and achieved independence in 1943, when Shia, Sunni, and Maronite leaderships agreed on the National Pact establishing a "confessional democracy", a system of government whereby political and institutional power is distributed proportionally among religious communities.

Since the independence and until the mid-1970s, the country prospered, but the conflicts between the Christian and Muslim communities, the regional instability and the influx of Palestinian refugees, brought Lebanon on the brink of civil war. Beginning in 1975 and lasting for 15 years, the civil war had a heavy toll on the civilian population, with mass politically motivated arrests and detentions, torture and ill-treatments, violations of the rights to fair trials, and executions carried out by the various State and non-State actors.

Broadly opposing Palestinian and pro-Palestinian Muslim militias against Lebanon's Christian militias, the Lebanese civil war was also characterised by the intervention of neighbouring States, Israel and Syria, which both aimed at limiting Palestinian armed factions. As Israel launched a full-scale invasion of southern Lebanon to counter the Palestinian Liberation Organization (PLO) in 1982, Shia militia group Hezbollah was formed against it. While most of Israeli troops withdrew from Beirut by 1985, confrontations between Lebanese military factions and the Israeli army continued in southern Lebanon until 2000, when they withdrew. Syrian armed forces, that had entered Lebanon in 1976, left the country in 2005, following a series of public peaceful demonstrations calling for the Syrian army withdrawal and conveying widespread anger at the assassination of Rafiq Hariri – former Prime Minister of Lebanon – the same year.

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<sup>1</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention, Initial reports of State parties due in 2001, Lebanon*, 14 April 2016, (CAT/C/LBN/1\*); hereinafter "State party report".

<sup>2</sup> UN Committee Against Torture (CAT), *Report of the UN Committee against Torture: Fifty-first session (28 October–22 November 2013) Fifty-second session (28 April–23 May 2014)*, A/69/44.

Hopes of stabilisation brought about by the Syrian retreat were short-lived, as Lebanon was hit by another conflict against Israel in the summer of 2006, following Hezbollah's kidnapping of two Israeli soldiers. After 33 days of fights that left at least 1,287 people, nearly all civilians, dead and 4,054 wounded,<sup>3</sup> mostly Lebanese, and damage to civilian infrastructures, the conflict ended with the deployment of UN peacekeeping forces along the southern border.

While reconstruction of the country unfolded, waves of arrests and interrogations outside the established legal procedures continued, targeting political activists as well as reporters, human rights activists, peaceful demonstrators and trade unionists. Bad conditions of detention and torture continued, eventually leading to a riot in April 2008 in the Roumieh prison, following an incident of police brutality on an inmate during questioning.

In May 2007, clashes erupted at the Palestinian refugee camp Nahr el-Bared between Islamist militants and the military. About 40,000 residents fled before the army gained control of the camp, while more than 300 died, and more than 300 others were arrested, tortured and subjected to unfair trials.

The following years, tensions remained high between the various political factions in the country, leading to long periods of political paralysis within public institutions. In fact, following the resignation of Prime Minister Najib Mikati in March 2013, the parliamentary and presidential elections scheduled for 2013 and 2014 were indefinitely postponed due to the lack of consensus between different political factions.

The security situation remained fragile, violence growing significantly between 2013 and 2014, which witnessed car bombings in the streets of Tripoli and Sidon. Abductions of civilians or even bombardments by the Syrian army on the Lebanese border, in the north-east of the country, marked the clear spill over of the Syrian conflict to Lebanon. The escalation of violence reached its peak in 2015, as the country suffered its deadliest attack since the times of the civil war – a double suicide bombing claimed by the Islamic State (IS) in Beirut's southern district of Bourj el-Barajneh, resulting in 44 deaths and hundreds more injured.

During the same year, a wave of peaceful protests erupted in Beirut, but were violently suppressed. Organised by the group "You Stink" in response to the government inaction vis-à-vis the increasing amount of rubbish left uncollected in the streets due to the closure of the main landfill, the demonstrations denounced the institutional deadlock that resulted from the country's sectarian polarisation and endemic corruption, and called for the government's resignation. The authorities responded by employing excessive force, resulting in numerous protesters wounded and dozens of arrests. No real solution was found to the crisis.

Since the beginning of the Syrian conflict, Lebanon has also become home to an increasing number of Syrian refugees, currently more than one million according to the United Nations High Commissioner for Refugees (UNHCR),<sup>4</sup> the largest concentration of refugees in the world *per capita*. Since January 2015, though, the authorities decided to impose upon refugees the obligation to obtain a visa or a residence permit upon arrival at the border, restricting their access to the country and tightening the procedures for renewal, leaving many unable to renew their permits in a precarious legal situation.

In May 2016, for the first time in the capital's municipal elections' history, the *status quo* was challenged since the dominant political parties' list was opposed to a new list of candidates independent from any political party,<sup>5</sup> which could however not gain any seat, due to the electoral system. Moreover, after a deadlock of more than two years, on 31 October 2016, the Lebanese Parliament elected as new President Michel Aoun, former army chief and founder of the mainly Maronite Christian political party Free Patriotic Movement. On 3 November 2016, he entrusted Saad Hariri, son of Rafiq Hariri, with the role of Prime Minister of Lebanon. On 28 December 2016, Lebanon's Parliament approved a national unity cabinet, which includes a State Minister for Human Rights and a male Minister for Women's Rights.

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<sup>3</sup> CAMERA, Questioning the Number of Civilian Casualties in Lebanon, 7 September 2017, [http://www.camera.org/index.asp?x\\_context=7&x\\_issue=34&x\\_article=1195](http://www.camera.org/index.asp?x_context=7&x_issue=34&x_article=1195) (accessed on 15 March 2017).

<sup>4</sup> Syria Regional Refugee Response, Inter-agency Information Sharing Portal, Lebanon, <http://data.unhcr.org/syrianrefugees/country.php?id=122> (accessed on 7 March 2017).

<sup>5</sup> Civic list called the "Beirut Madinati" or Beirut My City list.

### 3. The practice of torture

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#### 3.1 Definition, absolute prohibition and criminalisation

The Convention requires States parties to include in their domestic legislation a definition of torture which includes at least all the elements enounced in article 1 of the Convention.

However, Lebanese law currently does not define, prohibit nor criminalise torture. Indeed, despite the State party report refers that article 8 of the Constitution<sup>6</sup> safeguarding the protection of personal liberty “plainly include the enshrinement and protection of a person’s right not to be subjected to any act of torture”,<sup>7</sup> as the term torture is not explicitly mentioned in the article, it is not possible to maintain that torture is *per se* prohibited in the Constitution.

At the same time, the Lebanese Penal Code (PC) does not prohibit nor criminalise torture either. This is recognised by the Lebanese authorities in the State party report,<sup>8</sup> although it adds that “acts of torture committed against persons deprived of liberty do, however, fall within the offences that are punishable under the Criminal Code”.<sup>9</sup>

These provisions would include article 401 PC,<sup>10</sup> which prohibits and criminalises “violent practices not permitted by the law against another person with the intention to extract a confession of a crime or information related to it”. The article, however, does not include other purposes listed in article 1 of the Convention that would qualify an act as torture, such as punishment, intimidation, coercion, or discrimination. Furthermore, the article provides as a punishment imprisonment of a length ranging from one month to three years, a sentence that is clearly inadequate to reflect the gravity of the crime of torture, which should carry an equivalent sentence to the most serious crimes as required by article 4(2) of the Convention. As the State party report recognises, “this provision is in itself inadequate for combating torture.”<sup>11</sup>

We note in this regard that in the past few years several draft laws amending article 401 PC and aiming at defining, prohibiting and criminalising torture were presented to the Human Rights Committee and Justice and Administration Committee of the Lebanese Parliament. In particular, the draft law presented by MP Ghassan Moukheiber in 2012 was reviewed and amended by the Justice and Administration Committee of the Lebanese Parliament and is currently finalised and pending approval before the plenary assembly of the Parliament. According to the State party report, the draft law would propose the following definition of torture:

“Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the explicit or implicit consent of a public official or other person acting in an official capacity during inquiries, preliminary investigations, judicial investigations and trials”.<sup>12</sup>

This new definition resembles the Convention’s definition as it includes the element of “severe pain or suffering, whether physical or mental”, the element of intent, the element of the State involvement in various degrees but lacks the purpose element.

In addition, the State party report lists, as provisions punishing offences amounting to acts of torture PC, articles of its section on “Felonies and misdemeanours against persons”, namely general articles

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<sup>6</sup> Article 8, Lebanon’s Constitution: “Personal freedom is guaranteed and protected by the law. No one can be arrested, jailed or suspended except according to the rules of the law. No offense can be determined and no penalty can be imposed except according to the law.”

<sup>7</sup> State party report, para. 44.

<sup>8</sup> State party report, para. 51.

<sup>9</sup> State party report, para. 51.

<sup>10</sup> Article 401 PC: “Anyone who inflicts violent practices not permitted by the law against another person with the intention to extract a confession of a crime or information related to it will be imprisoned from three months to three years. If the violent practices have led to sickness or caused wounds, the minimum period of imprisonment is one year.”

<sup>11</sup> State party report, para. 211.

<sup>12</sup> State party report, para. 217.

related to homicide (articles 547 to 550 PC), felonies and personal injuries (articles 554 to 559) as well as slander and defamation (articles 582 and 584 PC). Even in this case, the required elements to qualify for torture as per article 1 of the Convention are not provided. Indeed, none of these provisions include the cumulative elements of intent and State involvement in various degrees.

Similarly, none of these articles specifically defines, prohibits or criminalises cruel, inhuman or degrading treatment.

Furthermore, there is no legal provision in Lebanese legislation specifying that no exceptional circumstance of any kind can justify the use of torture as required by article 2(2) of the Convention. We recall that the prohibition of torture and cruel, inhuman and degrading treatment is a rule of *ius cogens* and therefore can never be subjected to derogation. It is however extremely concerning to read in the State party report that "justifications [which] might be advanced by the security authorities for derogating from the prohibition of any cruel, inhuman or degrading treatment or punishment",<sup>13</sup> listing exceptional circumstances such as a state of war, a threat of war, internal political instability or any other state of emergency as well as superior orders. In a country where threats to national security and the fight against terrorism are systematically used as a justification for human rights abuses, such a provision should be incorporated into the law as a matter of priority.

In relation to the defence of superior order, article 185 PC<sup>14</sup> provides that subordinates are exonerated from following orders if they are unlawful, "if the law did not permit him to ascertain its legality". This provision is vague and does not constitute an accepted defence under international criminal law. Moreover, a subordinate will not necessarily have the legal knowledge or power to ascertain the legality of his superior's orders, especially when torture and other cruel, inhuman or degrading treatment are not criminalised.

Finally, the crimes that would cover acts of torture according to the State party report are subjected to the general rule for statute of limitations which, according to article 10 of the Code of Criminal Procedure (CCP)<sup>15</sup> are ten years for serious offences and three years for misdemeanours. According to the Lebanese authorities, the draft law criminalising torture would amend this provision so that "the time period does not start to run until after the victim is no longer in prison, detention or temporary custody not followed by imprisonment".<sup>16</sup> Such an amendment would not, however, bring Lebanese legislation in compliance with article 14 of the Convention, since "statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them."<sup>17</sup>

### **Recommendations:**

1. Define and criminalise torture in full compliance with the Convention and ensure that the scope of the definition covers all modes of liability and that penalties are fixed in the law and commensurate with the gravity of the crime;
2. Incorporate into the Lebanese legislation provisions affirming the inderogability of the prohibition of torture, cruel, inhuman or degrading treatment and stating that no exceptional circumstance nor superior orders may be invoked as a defence for the crime of torture;
3. Ensuring the crime of torture is not subject of statutes of limitations.

## **3.2 Widespread and systematic torture**

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<sup>13</sup> State party report, para. 79.

<sup>14</sup> Article 185 PC: "An act undertaken pursuant to a legal provision or in response to a lawful order issued by an authority shall not be regarded as an offence. If the order issued is unlawful, the person who executes it shall be exonerated if the law did not permit him to ascertain its legality".

<sup>15</sup> Article 10 CCP: "The public prosecution shall lapse for one of the following reasons: [...] c. Expiry of a prescription period of ten years in the case of a felony, three years in the case of a misdemeanour, and one year in the case of a petty offence".

<sup>16</sup> State party report, para. 224.

<sup>17</sup> Committee against Torture, *General Comment N°3*, 19 November 2012, CAT/C/GC/3, para. 40.

### 3.2.1 Article 20 inquiry and limited implementation of its recommendations

It is important to recall that in October 2014, this Committee published the conclusions of its inquiry procedure as per article 20 of the Convention, which began in May 2012, included a visit to Lebanon in April 2013 and was concluded by November 2013.<sup>18</sup> We recall that the Committee concluded that "torture in Lebanon is a pervasive practice that is routinely used by the armed forces and law enforcement agencies for the purpose of investigation, for securing confessions to be used in criminal proceedings and, in some cases, for punishing acts that the victim is believed to have committed."<sup>19</sup> The Committee furthermore addressed the Lebanese authorities 34 recommendations, including to amend its legislation to define, criminalise and punish torture as required by the Convention, to ensure information extracted under torture are not used in judicial proceedings, to strengthen fundamental legal safeguards from the onset of the detention, to undertake in-depth investigations into all allegations of torture and ill-treatment, to establish a National Human Rights Institution (NHRI) and a National Preventive Mechanism (NPM) in accordance with the Optional Protocol to the Convention Against Torture (OPCAT).

However, more than two years later, none of the Committee's recommendations have been implemented, with the exception of the adoption of a law establishing a NHRI including an NPM, as this report details (see section 3.7).

### 3.2.2 Widespread and systematic use of torture

Without a major change of policy, torture continues to be practiced in the country, contrarily to what is put forward by the Lebanese authorities, according to which "any incident of torture or ill-treatment that might occur is an isolated event incompatible with their commitment to implement the Convention against Torture."<sup>20</sup>

Indeed, and as reported by this Committee in its findings,<sup>21</sup> individuals accused of involvement in terrorism and other crimes related to security remain at great risk to be subjected to torture. Further vulnerable category still include Syrian nationals (see section 3.6.3) and those held in police custody for alleged drug use, sex work or homosexuality.<sup>22</sup>

The Lebanese security forces responsible for acts of torture are the following:

*Forces under the jurisdiction of the Ministry of Defence:*

- Lebanese Army Intelligence<sup>23</sup> and Military Police<sup>24</sup> are responsible for most acts of torture perpetrated against suspects of involvement in terrorist crimes or in any activity considered to endanger Lebanon's security. They are indeed the forces in control of the Ministry of Defence premises in Al Yarzeh and of military barracks across the country where suspects are taken after arrest. As of today, the Lebanese Army Intelligence remains the force most involved in the practice of torture and thorough investigations must be carried out.

*Forces under the jurisdiction of the Ministry of Interior:*

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<sup>18</sup> UN Committee Against Torture (CAT), *Report of the UN Committee against Torture: Fifty-first session (28 October–22 November 2013) Fifty-second session (28 April–23 May 2014)*, A/69/44.

<sup>19</sup> *Ibid.*, para. 29.

<sup>20</sup> State party report, para. 59.

<sup>21</sup> CAT, *ibid.*, para. 11.

<sup>22</sup> Human Rights Watch, *"It's Part of the Job" Ill-Treatment and Torture of Vulnerable Groups in Lebanese Police Stations*, 26 June 2013, <https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations>, (accessed on 9 March 2017).

<sup>23</sup> No official website available.

<sup>24</sup> Official website: <https://www.lebarmy.gov.lb/en/content/military-police> (accessed on 10 March 2017).

- General Security (GS),<sup>25</sup> is involved in the control of foreigners (especially migrant workers, illegal immigrants) and the preparation of papers for travel (visas, passports, travel permits). It controls the General Security administrative detention centre for irregular migrants in the Adlieh district of Beirut, where conditions of detentions are reported to be deplorable. In 2013, the General Security established a new "Monitoring and intervention" division to combat organised terrorism.
- Internal Security Forces (ISF),<sup>26</sup> are responsible for generally maintaining law and order, investigating crimes and arresting suspects.
- Information Branch of the Internal Security Forces,<sup>27</sup> in charge of maintaining security, fighting crime and terrorism, as well as monitoring the performance of Internal Security Forces officers. Its agents are responsible for the severe acts of torture occurring at its Information Branch premises at the Internal Security Forces Directorate General in Ashrafieh in Beirut.
- Judicial Police,<sup>28</sup> itself part of the Internal Security Forces, is responsible for the investigation of crimes (financial, terrorism, tourist-related, and drugs), carrying out of scientific investigations and dealing with explosives.
- Drug Repression Bureau (DRB), a branch of the Judicial Police. It is responsible for tracking and investigating drug related crimes and responsible for torture and ill-treatment especially at the Hobeich police station.

*Other forces:*

- General Directorate of State Security (GDSS),<sup>29</sup> is responsible for internal security, surveillance of foreigners, counter-espionage, preliminary investigations of matters relating to state security, protection of certain VIPs. It is under the jurisdiction of the Supreme Council of Defence, itself headed by the President of the Republic and the Prime Minister.

The main locations where torture occurs are the following:

- Premises of the Ministry of Defence in Al Yarzeh, Baabda, Beirut: located in the south-eastern suburb of Beirut, this detention centre is infamous for being one of the main detention centres where torture is practiced at present. The basement of the Ministry of Defence has been used as a detention centre for many years; it was officially granted legal status as a "detention centre" in 1995 by the Lebanese Government.<sup>30</sup>
- Roumieh Central Prison, Beirut: situated in east Beirut, Matn district, it is the largest prison in Lebanon. With a designed capacity of 1,500 detainees, it currently hosts more than 3,000 individuals.<sup>31</sup> In addition to the severe overcrowding affecting the conditions of detention, we recall that Nahr el-Bared detainees were severely tortured in these premises. In June 2015, two videos showing Internal Security Forces agents beating prisoners within its walls triggered widespread condemnation for the practice, and people took the streets in sign of protest.<sup>32</sup>
- Military intelligence barracks and military police barracks (in particular the Military Police Barracks in Rihaniyyeh, Baabda district; Saida Military Intelligence barracks; Al Qubba Military

<sup>25</sup> Official website: <http://www.general-security.gov.lb/en> (accessed on 10 March 2017).

<sup>26</sup> Official website: <http://www.isf.gov.lb/en> (accessed on 10 March 2017).

<sup>27</sup> Official website: <http://isf.gov.lb/en/article/183/> (accessed on 15 March 2017).

<sup>28</sup> Official website: <http://www.isf.gov.lb/en/article/149/Judicial-Police> (accessed on 10 March 2017).

<sup>29</sup> Official website: <http://state-security.gov.lb/state/en/about.php?d=9> (accessed on 10 March 2017).

<sup>30</sup> SOLIDA, Lebanese Center for Human Rights, "Lebanon. The Ministry of Defense Detention Center: A Major Obstacle to the Prevention of Torture. Forgotten victims, unpunished executioners", Paris, France, 5 October 2006, p.4.

<sup>31</sup> US Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2016 Lebanon* <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper> (accessed on 9 March 2017).

<sup>32</sup> Human Rights Watch, *Lebanon: Monitor Detention to Combat Torture*, 26 June 2015, <https://www.hrw.org/news/2015/06/26/lebanon-monitor-detention-combat-torture> (accessed on 7 March 2017).



Intelligence barracks in Tripoli), spread all over the territory of Lebanon, military barracks host military personnel and their equipment. They are not, *per se*, facilities designed to host prisoners and carry out investigations, and remain outside of the jurisdiction of the Ministry of Justice and its oversight. Alkarama has witnessed an increasing use of these premises as places of detention and interrogation in the past few years and especially after the clashes in Saida on 23 and 24 June 2013, between the Lebanese Armed Forces and followers of Sunni Muslim cleric Sheikh Ahmed al Asseer, the army detaining and torturing several individuals in the barracks in town.<sup>33</sup>

- Information Branch premises at the Internal Security Forces Directorate General in Ashrafieh in Beirut, where the Committee, during its country visit in 2013, saw interrogation rooms fitted with torture instruments such as interrogation chairs and electrical devices.<sup>34</sup> Alkarama continued to receive consistent information of torture being practiced on this site in the past few years.
- Hobeish police station in Beirut, where the Committee experts attested numerous cases of torture and ill treatment of inmates by Internal Security Forces officers,<sup>35</sup> continues to be a place of torture especially for vulnerable categories such as drug users, sex workers and individuals accused of being LGBT.<sup>36</sup>
- General Security administrative detention centre for irregular migrants in the Adlieh district of Beirut, remains a place where inmates are subjected to ill-treatment and even torture by Internal Security Forces and agents of the General Security.

Methods of torture remain the same as recorded by the Committee during its visit and range from severe beatings, forcing suspects to hold stress positions for long periods of time, food deprivation to electrocution and “balanco” method (holding the inmate hanged by his/her wrists tied behind the back), as well as threats of various nature, such as being burned alive, or to injure or kill relatives. It has also been documented that women are victims of rape and other forms of sexual and gender-based violence. For instance, Loyal Al Kayaje, denounced having been raped by members of the Military Intelligence during her detention at the Military Police barracks in Rihaniyyeh in September 2013.<sup>37</sup>

Torture is generally practiced in the first period of custody following arrest and during interrogations, in order to extract confessions to be later used as source of evidence in proceedings (see section 3.5) or as a form of punishment for crimes individual in custody are suspected of. During this period of time, suspects are in fact often held without allowing them to have any contact with the outside world, including their lawyer, and in secret. The deliberate disregard for fundamental legal safeguards, together with a general climate of impunity, remain the systemic causes that allow torture to take place (see the following section as well as section 3.11).

### **3.3 Violations of the legal safeguards related to the deprivation of liberty**

In its General Comment No. 2 on the implementation of article 2 by States parties, the Committee recommended a non-exhaustive list of guarantees which should be provided to all persons deprived of their liberty in order to prevent torture, in addition to the guarantees provided by the letter of the Convention.<sup>38</sup> These guarantees include, *inter alia*, the right of detainees to be informed of their rights, the right to promptly receive independent legal assistance and to contact relatives, the availability to detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow

<sup>33</sup> Alkarama, *Lebanon: Secret Detentions Following Clashes in Saida*, 5 July 2013, <https://www.alkarama.org/en/articles/lebanon-secret-detentions-following-clashes-saida> (accessed on 9 March 2017).

<sup>34</sup> CAT, *ibid.*, para. 19.

<sup>35</sup> CAT, *ibid.*, para. 13.

<sup>36</sup> Human Rights Watch, *ibid.*

<sup>37</sup> Alkarama, *Lebanon: Loyal Al Kayaje Facing Trial before Military Court for Having Spoken Up About Her Rape by Military Officers*, 16 June 2016, <https://www.alkarama.org/en/articles/lebanon-loyal-al-kayaje-facing-trial-military-court-having-spoken-about-her-rape-military>, Alkarama, *Lebanon: Loyal Al Kayaje Sentenced by the Military Court for Having Denounced Her Rape by Military Officers*, 23 August 2013, <https://www.alkarama.org/en/articles/lebanon-loyal-al-kayaje-sentenced-military-court-having-denounced-her-rape-military> (both accessed on 8 March 2017).

<sup>38</sup> Committee against Torture, *General Comment No. 2*, 23 November 2007, CAT/C/GC/CRP.1/Rev.4, para.13.

them to have their complaints promptly and impartially examined, including to challenge the legality of their detention or report acts of torture.

As Alkarama was informed by witnesses and victims' lawyers, individuals deprived of their liberty are often deprived of these fundamental guarantees. Even when provided by law, these safeguards are disregarded by officers performing arrest and interrogations, as well as by judges. Violations are particularly severe when individuals are arrested by the army and prosecuted before military tribunals.

The absence or disrespect of fundamental legal safeguards in Lebanon creates a breeding ground for the practice of torture and other mistreatments and creates a permissive environment in which fundamental rights are routinely disregarded.

### 3.3.1 Arbitrariness of arrests

In Lebanon, the authorities embodied with the legal power to arrest are law enforcement agents under the jurisdiction of the Ministry of Interior – which includes the General Security, the Internal Security Forces and their Information Branch, the Judicial Police and the Police –, members of the military under the jurisdiction of the Ministry of Defence and agents of the General Directorate of State Security, under the jurisdiction of the Supreme Council of Defence, itself headed by the President of the Republic and the Prime Minister.<sup>39</sup>

Alkarama however notes that parastatal militias such as Hezbollah also perform law enforcement duties without any legal oversight but on behalf of, or with the support, direct or indirect, consent or acquiescence of the government. This increases the arrestee's risk to be subjected to torture, as the arrest is carried out without any judicial oversight and is illegal *per se*. For instance, the case of journalist Rami Aysha, who was arrested and tortured by Hezbollah members clearly shows the collaboration between armed militias and governmental authorities.

**Rami Aysha**,<sup>40</sup> Palestinian journalist living in Beirut, at the time correspondent in Lebanon for major international media including *Time Magazine* and *Spiegel Online*, was arrested on 30 August 2012 by a group of Hezbollah armed agents while researching a story on arms trafficking in Beirut's southern suburbs. Without being given any explanation, Aysha was blindfolded and brought away. He was subsequently severely tortured by Hezbollah agents, while being questioned about his activities as a journalist and forced to confess being part of an arms traffic. He was then handed over to the Lebanese intelligence services and then the Military Police, before being finally placed in prison. Aysha was sentenced by the Lebanese Military court in December 2013 on a charge of purchasing firearms.

We furthermore note that arrests are often conducted without providing an arrest warrant previously issued by a judicial authority nor any explanation on the reasons for the arrest. For the past few years, agents of Internal Security Forces and Military Intelligence have commonly carried out arrests on the base of so-called "portable warrants" (in Arabic: *المحمولة*), namely warrants that are not issued by the Public Prosecutor as required by law<sup>41</sup> but by the security agency itself. Such a practice opens the door to abuses, the security agencies abusing their powers of arrest without being subjected to any judicial oversight. The National Action Plan for Human Rights in Lebanon for 2014-2019,<sup>42</sup> redacted by the Human Rights Committee of the Lebanese Parliament, indeed demands that this practice be abolished and that the CCP should be applied. A decision taken by the Council of Ministers in July 2014

<sup>39</sup> Official website: <http://state-security.gov.lb/state/en/about.php?d=9>

<sup>40</sup> Alkarama, *Liban : Condamnation de Rami Aysha : une Confusion Très Dangereuse pour la Liberté d'Informer*, <https://www.alkarama.org/fr/articles/liban-condamnation-de-rami-aysha-une-confusion-tres-dangereuse-pour-la-liberte-dinformer>, 12 December 2013, (accessed on 3 March 2017).

<sup>41</sup> State party report para. 127 and article 46.1 and 47.1 CCP.

<sup>42</sup> National Action Plan for Human Rights in Lebanon – 2014-2019, [http://www.lb.undp.org/content/lebanon/en/home/library/democratic\\_governance/national-human-rights-action-plan-2014-2019-.html](http://www.lb.undp.org/content/lebanon/en/home/library/democratic_governance/national-human-rights-action-plan-2014-2019-.html) (accessed on 3 March 2017).

nullified all the “portable warrants” issued up until that date,<sup>43</sup> but the practice was not formally abolished and is still ongoing in the country.

Finally, article 47(5) CCP<sup>44</sup> provides that arresting officers must inform detained suspects of their rights promptly upon arrest; however, as several victims informed Alkarama, and especially when arrests are carried out by military forces, suspects are routinely not informed of their rights.<sup>45</sup>

### **3.3.2 Violations of the right to legal counsel during investigation and the practice of *incommunicado* detention**

According to article 47(5) CCP, suspects in custody are furthermore afforded, from the onset of their detention, the right to contact a family member, an acquaintance or a lawyer, and to meet with their counsel.

However, while article 49(1) CCP<sup>46</sup> provides that if the Public Prosecutor decides to carry out the investigation himself, the suspect’s lawyer may be present during his client’s questioning, article 47 CCP is silent on whether a lawyer can attend preliminary interrogations when these are carried out by the Judicial Police. In both cases it is therefore possible for the authorities to hold and interrogate suspects at police stations or other places of custody without allowing him/her the presence of their lawyer. It was even found that a lawyer who goes to the police station often cannot meet with his client until

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<sup>43</sup> Samar Kader, *Abolition of wanted lists not a security obstacle: Machnouk*, “The Daily Star”, 26 July 2014, <http://www.dailystar.com.lb/News/Lebanon-News/2014/Jul-26/265213-abolition-of-wanted-lists-not-a-security-obstacle-machnouk.ashx> (accessed on 3 March 2017).

<sup>44</sup> Article 47 CCP: “Judicial Police officers, acting as assistants to the Public Prosecution Office, shall perform the duties assigned to them by the Public Prosecution Office, investigating offences falling outside the category of in flagrante, collecting information about them, and making inquiries aimed at identifying the perpetrators and participants and gathering evidence against them. They also carry out actions necessitated by these duties, such as the impounding of incriminating items, the conduct of physical searches of crime scenes, the scientific and technical analysis of any traces and signs, and taking statements from witnesses without requiring them to take an oath and from persons complained of or suspects. If they refuse to make a statement or remain silent, this fact shall be mentioned in the record; they may not be coerced to speak or to undergo interrogation, on penalty of nullity of their statements.

Judicial Police officers shall inform the Public Prosecution Office of the procedures they undertake and shall abide by its instructions. They may not search a home or person without obtaining prior permission from the Public Prosecution Office. If permission for a search is granted, they shall comply with the rules applicable by law to the Public Prosecutor in the case of offences discovered in flagrante. Any search conducted in violation of these rules shall be null. However, the nullity shall be applicable only to the invalid procedure and not to other separate procedures.

Judicial Police officers may not detain a suspect in police custody without a decision by the Public Prosecution Office and the period of detention shall not exceed forty-eight hours. This period may be extended by a similar period only with the consent of the Public Prosecution Office.

The period of custody shall be deducted from the period of detention.

The suspect or person complained of shall, from the time of being taken into custody for the purposes of the investigation, enjoy the following rights:

1. To contact a member of his family, his employer, a lawyer of his choosing or an acquaintance;
2. To meet with a lawyer he appoints by a declaration noted in the record, without the need for a duly drafted power of attorney;
3. To ask for the assistance of a sworn interpreter if he is not proficient in the Arabic language;
4. To submit a request for a medical examination to the Public Prosecutor, either directly or through his counsel or a member of his family. The Public Prosecutor shall appoint a physician as soon as the request is submitted. No Judicial Police officer shall be present when the physician carries out the examination. The physician shall submit his report to the Public Prosecutor within a period not exceeding twenty-four hours. A copy of the report shall be provided to the requester by the Public Prosecutor upon receipt thereof. The party being held in custody and any of the above-mentioned persons may request a new examination if the period of custody is extended.

The Judicial Police shall inform the suspect, as soon as he is taken into custody, of the rights set out above and this measure shall be noted in the record.”

<sup>45</sup> Also, Human Rights Watch, *“It’s Not the Right Place for Us” The Trial of Civilians by Military Courts in Lebanon*, 26 January 2017, p. 21, <https://www.hrw.org/report/2017/01/26/its-not-right-place-us/trial-civilians-military-courts-lebanon> (accessed on 24 February 2017).

<sup>46</sup> Article 49 CCP: “The Public Prosecutor may conduct the preliminary investigation himself. If he does, the suspect’s counsel may be present with his client during interrogation.

With the exception of interrogating the suspect or person complained of, if the Public Prosecutor does not carry out the investigation himself, he shall scrutinize the preliminary investigations carried out by the Judicial Police officer. If he finds that the offence is a felony or a misdemeanour necessitating further investigation, he shall bring charges before the Investigating Judge. If the investigation of a misdemeanour proves to be sufficient, he shall bring charges before the competent Single Judge.”

he/she is brought before the Public Prosecutor and formally charged.<sup>47</sup> Moreover, it has been reported that lawyers have to rely on personal connections to locate clients held in military detention centres.<sup>48</sup>

Additionally, when minor suspects are concerned, according to Lebanese Law, a social worker shall be present during the minor's interrogation.<sup>49</sup> However, this is rarely the case in practice, since the military authorities often fail to communicate that the child is detained.<sup>50</sup>

As Alkarama documented in numerous cases, suspects of "terrorist" crimes are routinely detained without any contact with the outside world for the entire length of the interrogation phase and are allowed to contact their families or their lawyers only once they are brought before the Prosecutor. It even occurs that relatives of the suspect are not officially informed of the latter's location, which amounts to enforced disappearance.

In this regard, it is extremely concerning to note that the State party report puts forward that *incommunicado* detention is "an exceptional measure taken at the discretion of the prison warden in the interest of protecting the safety of prisoners or that of the person concerned".<sup>51</sup> We wish to recall that, on the contrary, *incommunicado* detention represents a form of arbitrary detention *per se*, as it puts the victim outside the protection of the law and may facilitate the commission of torture or other abuses. It may even constitute a form of cruel, inhuman or degrading treatment or torture *per se*.

Even minors have been victims of such a practice, as the case presented below shows.

**Walid Diab**,<sup>52</sup> aged 16 at the time, was arrested on 12 September 2014 at a military checkpoint based on information provided by "secret informants" and detained *incommunicado* for three months. He was severely tortured at the premises of the military intelligence in Hanna Ghostine Barracks in Araman, north Lebanon, including through electrocution, hanged with his wrists behind his back, beaten and denied food and water. He was then forced to confess being a "member of a terrorist group", for which he was prosecuted by the Military Court sitting in Beirut, despite him raising his allegations of torture before the judge. His case was then transferred to the Juvenile Court of North of Lebanon sitting in Tripoli, according to the Lebanese Juvenile Law. On 25 October 2016, the Juvenile Justice Court in Tripoli ordered his release upon payment of financial guarantee of 1.600.000 Lebanese Lira (approximately 1060\$) pending trial.

### 3.3.3 Absence of prompt and independent medical assistance

Article 47(5) CCP also provides the suspects in custody with the right to a prompt and independent medical examination.

In practice, however, the current system for appointment of forensic doctors ostracises doctors reporting cases of torture and therefore discourages them from documenting torture injuries. Indeed, forensic doctors are appointed and paid on a case-by-case basis from a list established by the Ministry of the Interior, Ministry of Health and General Prosecutor of the Court of Cassation. Alef, a Lebanese human rights organisation working on detention and torture, reports that forensic doctors informally referred that those who make findings of torture are rarely given further contracts.<sup>53</sup>

Moreover, in contradiction with what the State party report affirms, namely that the judiciary "immediately designates a forensic pathologist to examine any person suspected of having been

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<sup>47</sup> Alef, *Guilty until Proven Innocent*, Lebanon, January 2013, <https://alefliban.org/publications/guilty-until-proven-innocent/> (accessed on 6 March 2017), p. 32,

<sup>48</sup> Human Rights Watch, *ibid.*

<sup>49</sup> State party report, para. 161.

<sup>50</sup> Human Rights Watch, *ibid.*, p. 28.

<sup>51</sup> State party report, para. 128.

<sup>52</sup> Alkarama, *Lebanon: Release on bail of a minor tortured by the military intelligence*, 27 October 2016, <https://www.alkarama.org/en/articles/lebanon-release-bail-minor-tortured-military-intelligence> (accessed on 10 March 2017).

<sup>53</sup> Alef, *Alternative Report, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment*, October 2011, p. 13, <https://alefliban.org/publications/alternative-report-to-the-convention-against-torture/> (accessed on 6 March 2017).

subjected to ill-treatment or violence”,<sup>54</sup> information collected by Alkarama shows that not even when torture is officially denounced to the judge the suspects is granted the right to be visited by an independent doctor. In the Military Court system, for instance, suspects, even when they are minors, are systematically denied visits by a doctor and, even when they are, doctors are internally appointed and do not report injuries resulting from torture, such as the case of Haytham Fatima shows.

**Haytham Fatima**<sup>55</sup> was arrested on 14 January 2016 in his house in Tripoli by agents of the Military Intelligence, and secretly detained at the premises of the Ministry of Defence for ten days during which he was severely beaten, especially on the head and ears, and forced to make confessions. Due to the heavy beatings he received, Fatima lost the hearing of his right ear. Indicted for terrorism, he was subsequently brought before the Military Court.

Fatima’s lawyer informed the judge that he had been tortured but his allegations were not taken into consideration. His lawyer therefore demanded that Fatima be allowed to visit a doctor of his choice to undergo examination, however his request was denied. Instead, Fatima was referred to the military hospital in Beirut, where military doctors affirmed there was “nothing wrong with him”.

Finally, not even in cases where the suspect is brought before the judge still bearing wounds as result of torture, it does not always occur that the judge demands that he/she be visited by an independent forensic doctor, in violation of article 77(3) CCP.<sup>56</sup> In other cases, suspects subjected to torture are not brought before the judge until their wounds have healed, so that the judge would not even be required to demand that the suspect be visited by a doctor.

### **3.3.4 Violations of the right to be promptly brought before a judge and the right not to be tried without undue delay**

Article 47(3) CCP provides that an individual may be held in police custody for the purpose of investigation for a period of 48 hours maximum with a decision by the Public Prosecutor’s Office and that this period of time can be extended by a similar period subject to the consent of the Public Prosecutor’s Office.

Even in this case, however, suspects are routinely held in detention for far longer than the limit set by law, since in almost no cases documented by Alkarama this rule was applied. On the contrary, and as outlined above, suspects are often detained in secret and without any access to the outside world for lengthy periods of time, generally several months. Among other systemic causes of such a practice is the fact that often, suspects subjected to tortured are intentionally not brought before the judge until their injuries have healed, so that the judge would not even be required to demand that the suspect be visited by a doctor, as highlighted above.

Furthermore, article 108(2) CCP<sup>57</sup> restricts pre-trial detention for felonies to six months renewable once. This rule does not apply to those charged with “homicide, felonies involving drugs and attacks against

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<sup>54</sup> State party report, para. 402.

<sup>55</sup> Alkarama, *Lebanon: Another Case of Confessions Made Under Torture*, 11 May 2016, <https://www.alkarama.org/en/articles/lebanon-another-case-confessions-made-under-torture> (accessed on 6 March 2017).

<sup>56</sup> Article 77 CCP: “The Investigating Judge shall respect the principle of the defendant’s exercise of free will during the questioning and shall ascertain that he is making his statement without any outside influence of a moral or material nature.

If the defendant refuses to respond and chooses to remain silent, the Investigating Judge may not compel him to speak.

If the defendant shows signs of physical, psychological or mental illness during the questioning, the assistance of a medical expert may be sought to diagnose his condition.”

<sup>57</sup> Article 108 CCP: “With the exception of a person previously sentenced to at least one year’s imprisonment, the period of detention for a misdemeanour may not exceed two months. This period may be extended by, at a maximum, a similar period where absolutely necessary.

With the exception of homicide, felonies involving drugs and attacks against State security, felonies which represent a global danger and offences of terrorism, and cases of detained persons with a previous criminal conviction, the period of detention may not exceed six months for a felony. This period may be renewed once on the basis of a reasoned decision.

The Investigating Judge may decide to prohibit the defendant from travelling for a period not exceeding two months for a misdemeanour and a year for a felony, from the date of being released or set at liberty.”

the state security, felonies which represent a global danger and offences of terrorism". Therefore, for these crimes, pre-trial detention can be renewed indefinitely.

Such lengthy periods of pre-trial detention also entail that about 60% of the total number of detainees are pre-trial detainees,<sup>58</sup> in violation of international human rights standards according to which anyone held in pre-trial detention is entitled to a trial within a reasonable time or must be released. Violations of the right not to be tried without delay are particularly serious in cases before the Military Court, in which pre-trial detention can, in some cases, even take several years before the first court session is held.<sup>59</sup>

In conclusion, these legal shortcomings pertaining to the deprivation of liberty not only create an environment conducive to torture but also make it difficult for defendants who have been tortured and/or forced to confess a crime to say or prove so. These flaws surrounding the procedures of custody systematically lead to the extraction of the detainees' "confessions" while interrogated, confessions which are later admitted during the trial.

### **Recommendations:**

1. Ensure that all detainees are afforded, by law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty, including the right not to be arrested arbitrarily, the right to be informed of the reasons for the arrest and the nature of any charges against them; the right to communicate with the family and a lawyer and to be assisted by a counsel from the onset of the deprivation of liberty; to promptly inform a close relative or a third party of their arrest; the right to have immediate access to an independent medical doctor of his/her choice; to be brought promptly before a judge and to be tried within a reasonable time;
2. Reduce the number of people placed in pre-trial detention, including by resorting to alternatives to imprisonment, and amend article 108 CCP to ensure that the length of pre-trial detention is strictly regulated by law and is not excessive.

### **3.4 Extraction of confessions under torture and violation of the exclusionary rule**

Lebanese law does not explicitly state that statements obtained under torture are inadmissible in court.

Nevertheless, article 47 CCP provides that suspects may not be coerced to speak and that coerced confessions are to be considered null before national courts. However, it has rightly be pointed out that the article remains silent on the duty to inform the suspect of the right to remain silent, which may be used a laissez-passer for law enforcement officials to create an atmosphere favourable to the suspect's self-incrimination or the confession of guilt.<sup>60</sup>

Similarly, article 77 CCP, stipulates that a judge must make sure the defendant is speaking without external influence but does not make any explicit reference to torture.

In practice, however, confessions extracted under torture are routinely accepted as evidence to sentence suspects in trials. Before civilian courts some judges are keen on excluding this type of evidence, others still accept it, whereas in the Military Court system confessions extracted under torture are commonly relied upon and even used as sole source of evidence in the proceedings. Indeed, in all cases documented by Alkarama in the course of several years, including cases when minor offenders

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<sup>58</sup> National News Agency, *EU Ambassador Angelina Eichhorst visits Roumieh Prison*, 15 May 2015, <http://nna-leb.gov.lb/en/show-news/44214/EU-Ambassador-Angelina-Eichhorst-visits-Roumieh-Prison> (accessed on 6 March 2017).

<sup>59</sup> Alkarama, *Lebanon: the Endless Injustice of "Nahr Al Bared" Case*, 4 June 2014, <https://www.alkarama.org/en/articles/lebanon-endless-injustice-nahr-al-bared-case> (accessed on 15 March 2017).

<sup>60</sup> Alef, *Guilty until Proven Innocent*, Lebanon, January 2013, p. 33, <https://alefliban.org/publications/guilty-until-proven-innocent/> (accessed on 6 March 2017).

are involved, confessions were always relied upon in sentencing, even when the defence explicitly raised the fact that torture was used to obtain the confession. It is also due to this systematic practice that torture keeps being used in Lebanon and struggles to eradicate it.

### **Recommendations:**

1. Amend article 47 CCP in order to integrate expressly that information obtained under torture is inadmissible and ensure that it is declared null and void in judicial proceedings;
2. Review all cases of convictions based solely on confessions obtained under torture, and establish a legal procedure to review all cases of this kind, including final decisions.

## **3.5 Abuses committed in the framework of the fight against terrorism**

A disturbing pattern of human rights violations are committed in cases related to Lebanon's Anti-Terrorism and other laws related to national security. As detailed below, suspects are arbitrarily arrested and detained for lengthy periods of time without being brought before a judicial authority and without any contact with the outside world. During this time, they are tortured to extract confessions to be used as a source of evidence during unfair trials before exceptional courts often handling heavy sentences. The systematic lack of respect of fundamental legal safeguards of suspects of these crimes increases the risk that they are subjected to torture.

### **3.5.1 Arbitrary arrests, *incommunicado* detentions and extraction of confessions under torture**

Most individuals suspected of terrorism or other security crimes are arrested by agents of the Military Intelligence, often at military checkpoints, during routine controls, or in house raids.

Following arrest, the individual is usually brought to Military Intelligence or Military Police barracks and later to the premises of the Ministry of Defence in Al Yarzeh, all places of detention lacking judicial oversight. In most of the cases individuals are held *incommunicado* for a period lasting from some days to even several months before being brought before a judicial authority, leaving them completely outside the protection of the law.

It has been noted that since interrogations are carried out by military personnel, the allegations involved, the absence of a lawyer during interrogations and *incommunicado* detention, torture has a higher incidence within the military justice system than in the civilian one.<sup>61</sup>

Indeed, during this first period of detention in military custody, suspects are routinely subjected to torture by military personnel. Methods of torture mostly used include beatings, electrocution, food and water deprivation, holding stress position as well as psychological torture and threats.

Torture is currently used in the military system in order to secure a confession, forcing suspects to sign documents they could not read beforehand.

Minors suspected of terrorism or other security crimes are no exception:

**Walid Diab**,<sup>62</sup> was arrested on 12 September 2014, at age 16, at a military checkpoint next to his house in Tripoli. He was then taken to an unknown location where he remained for three months without any contact with the outside world. Diab recalls that during his first month of detention in the military intelligence premises in Hanna Ghostine Barracks in Araman, north Lebanon, he was electrocuted, hanged with his wrists behind his back, beaten and denied food

<sup>61</sup> Human Rights Watch, *ibid.*, p. 19.

<sup>62</sup> Alkarama, *Lebanon: A Minor Tortured by the Military Intelligence Prosecuted for "Terrorism"*, 30 August 2016, <https://www.alkarama.org/en/articles/lebanon-minor-tortured-military-intelligence-prosecuted-terrorism>, Alkarama, *Lebanon: Release on Bail of a Minor Tortured by the Military Intelligence*, 27 October 2016, <https://www.alkarama.org/en/articles/lebanon-release-bail-minor-tortured-military-intelligence>, (accessed on 8 March 2017).

and water. It is under torture that he was then forced to confess being a "member of a terrorist group".

On 20 October 2014, Diab was indicted by the judge of the Military Court for being "a member of a terrorist group" on the basis of the statements extracted under torture. Despite the fact that Diab's allegations of torture were raised before the investigating judge on 14 October 2014, the judge simply dismissed them.

First sentenced by the Military Court, Diab's case was referred to the Juvenile Justice Court in Tripoli to determine the appropriate length of his sentence as he was a minor at the time of the alleged facts. On 25 October 2016, that court ordered his release upon payment of financial guarantee of 1,600,000 Lebanese Lira (approximately 1060\$) pending final decision of the Juvenile Court.

### 3.5.2 The exceptional justice system

Crimes of terrorism or undermining national security pertain to the jurisdiction of the Military Court and the Judicial Council, two exceptional courts that do not abide by fair trials standards.

#### 3.5.2.1 The Military Court

The Military Court system is an exceptional judicial system falling under the jurisdiction of the Ministry of Defence, as provided by article 1(2) of the Military Code (MC).<sup>63</sup> It is composed by the Permanent Military Court based in Beirut, the Military Cassation Court and single military judges.<sup>64</sup>

The independence of these bodies is undermined by the following elements. It is composed by a majority of military judges<sup>65</sup> who are not required to have a law degree or any legal training. Judges are

<sup>63</sup> Article 1 MC: "The military judiciary is constituted of:

1-Military cassation court situated in Beirut

2-Permanent military court situated in Beirut

3-Individual Military Judges appointed in the governorates by the Minister of Defence upon a decision of the Secretary of Defence at the suggestion of the Supreme Military Authority.

4. Government Commissioner and his staff.

5. Investigative judges.

The Minister of National Defence is given the same powers in the military courts as the Minister of Justice is given in the courts of justice, in everything that is not contrary to the provisions of this law."

<sup>64</sup> *Ibidem*.

<sup>65</sup> Article 5 MC, modified in accordance with the Decree No. 1460 dated 8/7/1971 "The Military Cassation Court is composed:

1. In criminal proceedings:  
Of a judge from the judicial system of the seventh degree and above, that the First President of the Court of Cassation delegates as president and can be replaced when necessary by another judge of the same degree nominated by the First President of the Court of Cassation as well, in addition to four officers at the rank of lieutenant colonel and above.

2. In misdemeanour proceedings:  
Of a judge from the judicial system of the seventh degree and above, that the First President of the Court of Cassation delegates as president and can be replaced when necessary by another judge of the same degree nominated by the First President of the Court of Cassation as well, in addition to two officers at the rank of lieutenant colonel and above. In time of war and exceptionally the Military Cassation Court may be headed, in criminal and misdemeanour matters, by an officer at the rank of colonel or above, in this case one of the advisers should be a judge from the judicial system of the seventh degree and above delegated by the First President of the Court of Cassation and can be replaced when necessary by another judge of the same degree nominated by the First President of the Court of Cassation for this purpose."

Article 6 MC: "The Military Court is composed of:

1. In criminal proceedings:

Of an officer at the rank of lieutenant colonel or above as President and four other members one of them should be a judge from the judicial system in the thirteenth degree and above and the other three should be officers at a rank below the rank of the president.

2. In misdemeanour proceedings :

Of an officer at the rank of at least a lieutenant colonel or above as president, and two other members: a judge from the thirteenth degree and above, and an officer at a rank below the rank of the president.

3. It is possible, in accordance with the principles above, to establish back-up bodies composed of the judges appointed to the military court to consider the cases referred to it.

It is upon the Head of the original body to distribute the cases and the tasks to the various bodies."

Article 7 MC: "The single military judiciary is composed of judges from the judicial system, of military justice; however they might be officers licensed in law at the rank of lieutenant or above; otherwise they can also be not licensed."

Special provisions.



appointed by the Ministry of Defence and remain directly subordinated to the same Ministry, while a serving military officer holds its presidency. As lawyers have reported to Human Rights Watch, "the political interference at this court is really heavy" and "they [judges] are so closed to the politicians that they cannot be impartial".<sup>66</sup>

The jurisdiction of the Military Court includes a wide spectrum of crimes, among which violent and non-violent acts, even covering acts stemming from the exercise of fundamental rights such as freedom of expression. Article 24 MC, indeed, lists as crimes espionage, treason, draft evasion, unlawful contact with the enemy (Israel), as well as any crime that harm the interest of the military or the Internal Security Forces, or the General Security, including acts such as "defamation of the army".<sup>67</sup> As the law does not restrict the jurisdiction of the Military Court system to security agents, civilians, including minors as highlighted in the case above, suspected of any conflict with military or security personnel or the civilian employees of the Ministry of Defence, army, security services, or Military Courts are referred to the military justice system, where violations of fair trial rights are systematic.<sup>68</sup>

The proceedings before the Military Court system are governed by the CCP and MC, the latter prevailing in case of a conflict of laws, as provided for by article 33 MC.<sup>69</sup> However, even when these bodies of law protect fair trial rights, these guarantees are never applied. Indeed, trials before the Military Court can be held behind closed doors,<sup>70</sup> the presence of a lawyer before single military judges is optional,<sup>71</sup>

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<sup>66</sup> Human Rights Watch, *Ibid.*, p. 11.

<sup>67</sup> Article 24 MC, amended according to law No. 306 dated on 3/4/2001: "Military courts have jurisdiction over:

1. Offences stipulated in the third chapter of this law.
  2. Crimes involving treason, espionage and unlawful contact with the enemy as stipulated in articles 273 to 287, and articles 290 and 291 of the Penal Code, as well as of other special laws criminalizing these offences.
  3. Offenses related to weapons possession and ammunition stipulated in the Arms Act and under the conditions specified therein and in this law.
  4. Crimes committed in the military camps, institutions and barracks.
  5. Crimes against a military person, except for those committed against recruiters and are not function-related.
- \* Text of paragraph (5) before the amendment: 5. Crimes against a military person.
6. Crimes against any of the Internal or General Security Forces.
  7. crimes against the civilian staff at the Ministry of National Defense and the military courts or against the Army and the Internal or General Security Forces in case they are function-related crimes, this power lasts after the demobilization of the persons mentioned in paragraphs 5-6 – 7.
  8. All crimes, of whatever kind, affecting the interests of the Military or Internal Security Forces or General Security forces.
  9. Crimes against any foreign army personnel or crimes affecting its interests unless there is an agreement to the contrary determining the powers of the Lebanese government and the authorities these armies are subject to.
  10. Offenses related to draft evasion. (This provision was added according to the law No. 38 dated 06.12.1975 and then repealed in accordance with the Decree Law No. 102 issued on 16/9/1983)"

<sup>68</sup> Article 27 MC amended according to law No. 306 dated 3/4/2001:

"Shall be tried before a military court, individuals of whatever nationality and for whatever type of crime:

1. Military personnel and whoever similar to them, with the exception of the recruiters when they commit crimes unrelated to the job.

\* Text of paragraph (1) before the amendment: 1. Military personnel and whoever similar to them

2. Internal security forces and public security forces.
3. Prisoners.
4. Military and civilian personnel of foreign armies unless there is an agreement to the contrary determining the powers of the Lebanese government and the authorities these armies are subject to.
5. Civilian personnel at the Ministry of National Defense and the Army and Military Courts or Internal Security Forces or General Security Forces if their crimes were arising out of their job or falling under the jurisdiction of this law.
6. Every perpetrator, co-perpetrator or instigator of a crime referred to the military judiciary regarding any of the persons mentioned in the preceding paragraphs."

<sup>69</sup> Article 33 MC: "Except in case of contrary provisions contained in the present law, prosecutions, investigations, trials and the issuance of decisions and judgments, and appeals are subject to the Code of Criminal Procedure."

<sup>70</sup> Article 55 MC: "Trials shall take place in public before the Military Courts of different instances; however it may be conducted in secret in accordance with the normal law. However, the judgements should be always issued in public. Military court may prohibit the publication of the proceedings or a summary of them if it deems it necessary. It is of incumbent upon the courts to apply the provisions of paragraphs 1, 2, 3 and 6 of Articles 420 and 421 of the Criminal Code when it comes to military trial, or subject to military judiciary offense."

<sup>71</sup> Article 57 MC: "Each defendant when appears before a military court shall have a lawyer to defend him, the lawyer can be hired in the course of a hearing, if the power of attorney is written then there is no need for registration before any authority whatsoever.

The presence of a lawyer in front of the sole military judges is not mandatory.

No one has the right to defend the defendant, who fails to appear in court in person, except in exceptional circumstances set out in the normal law.

verdicts are not motivated and, as in all the cases documented by Alkarama brought before this court, information extracted under torture is used as major, if not sole source of evidence especially in trials for acts of terrorism.<sup>72</sup>

Due to the broad jurisdiction it enjoys, the military justice system has been largely used to intimidate or retaliate against human rights lawyers, activists, individuals expressing their dissent<sup>73</sup> and victims denouncing previous abuses as in the case of Loyal Al Kayaje.

**Loyal Al Kayaje**,<sup>74</sup> 31-year-old Palestinian resident in the port city of Saida, South Lebanon, in an interview published on 4 September 2015 on NOW News<sup>75</sup> denounced having been raped by members of the Military Intelligence during her detention at the Military Police barracks in Rihaniyyeh in September 2013.

In retaliation, on 21 September 2015, she was summoned by the Military Intelligence in Saida and transferred to the premises of the Ministry of Defence in Yarzeh near Baabda in the Mount Lebanon Governorate where she was detained *incommunicado*, interrogated and forced to sign a statement according to which she “invented the rape allegations.”

Brought before the investigative judge of the Military Court on 29 September 2015, he confirmed the charges of “defamation and libel against the Lebanese army,” without considering her torture allegations and opening an investigation. She was released a month later and formally indicted on 24 November 2015 on the basis of article 157 the Military Justice Code.

She was finally sentenced to one month imprisonment on 22 August 2016.

Civil society has been advocating since 2012 for removing civilians from the jurisdiction of the Military Court system, especially in light of serious fair trial concerns.<sup>76</sup> Moreover, at the last Universal Periodic Review of Lebanon, the sole recommendation to amend the jurisdiction of the Military Court and restrict it to the members of the armed forces was simply “noted”, marking the reticence of Lebanon to change the system and abide by international human rights standards.

### 3.5.2.1 The Judicial Council

The Judicial Council (JC) is an exceptional permanent court with jurisdiction for certain criminal cases of a political nature or that threaten the security of the State.

The independence of the court is severely hampered by the extensive interference of the executive at several stages. First, its members, five senior judges from the Court of Cassation, are appointed by

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In the case of flagrante delicto a lawyer can be appointed at the same hearing if the defendant accepts to be immediately tried; otherwise the hearing shall be postponed for at least three days before the court can appoint him a lawyer if he failed to do so.”  
<sup>72</sup> I.e. Alkarama, *Lebanon: Syrian Citizen Sentenced to 5 Years in Prison on the Basis of Confessions Obtained Under Torture*, 24 February 2016, <http://en.alkarama.org/lebanon/2054-lebanon-syrian-citizen-sentenced-to-5-years-in-prison-on-the-basis-of-confessions-obtained-under-torture> (accessed on 8 March 2017), Alkarama, *Lebanon: Syrian national tortured by military intelligence in order to extract confessions*, <http://en.alkarama.org/lebanon/2056-lebanon-syrian-national-tortured-by-military-intelligence-in-order-to-extract-confessions>, (accessed on 8 March 2017), Alkarama, *Lebanon: Another Case of Confessions Made Under Torture*, <http://en.alkarama.org/lebanon/2120-lebanon-another-case-of-confessions-made-under-torture> (accessed on 8 March 2017).

<sup>73</sup> Human Rights Watch, *ibid.*, p. 13.

<sup>74</sup> Alkarama, *Lebanon: Loyal Al Kayaje Facing Trial before Military Court for Having Spoken Up About Her Rape by Military Officers*, 16 June 2016, <https://www.alkarama.org/en/articles/lebanon-loyal-al-kayaje-facing-trial-military-court-having-spoken-about-her-rape-military>, Alkarama, *Lebanon: Loyal Al Kayaje Sentenced by the Military Court for Having Denounced Her Rape by Military Officers*, 23 August 2013, <https://www.alkarama.org/en/articles/lebanon-loyal-al-kayaje-sentenced-military-court-having-denounced-her-rape-military> (both accessed on 8 March 2017).

<sup>75</sup> Myra Abdallah, *Raped in a Lebanese detention center*, 4 September 2015, <https://now.mmedia.me/lb/en/10questions/565858-565858-raped-in-a-lebanese-detention-center> (accessed on 8 March 2017).

<sup>76</sup> Alkarama, *Lebanon: Human Rights Organizations urge the Lebanese authorities to stop referring civilians to the Military Court*, 17 August 2012, <https://www.alkarama.org/en/articles/lebanon-human-rights-organizations-urge-lebanese-authorities-stop-referring-civilians> (accessed on 8 March 2017).

decree of the Council of Ministers.<sup>77</sup> Moreover, cases are referred to the Judicial Council by a Council of Ministers' decree, as per article 355 CCP.<sup>78</sup> An investigating judge with broad powers is then appointed by the Minister of Justice for each case referred.<sup>79</sup>

According to article 366(2) CCP,<sup>80</sup> decisions of the Judicial Council cannot be appealed in any way, therefore denying the right to have his/her sentence reviewed before a higher tribunal, in violation of article 14(5) ICCPR. The non-compliance with international human rights law standards of this procedural rule was already pointed out by the UN Human Rights Committee in its last review of the country in 1997.<sup>81</sup>

### 3.5.3 Abuses against refugees

Moreover, in the course of the past few years, Alkarama has been received numerous and credible testimonies that Syrian asylum seekers are increasingly victims of a well-established pattern of human rights violations including torture.

Often arrested while renewing their residence permit or found without the due legal papers or expired ones during routine controls they are then secretly detained, interrogated at military premises and subjected to unfair trials for terrorism charges after long periods of detention. The complete lack of observance of the most fundamental legal guarantees in their regard allows torture to be heavily used by the authorities as a means to obtain confessions but as well as a form of punishment. Malaz Asaad, for instance, was severely tortured to force him to confess as well as a form of punishment while disappeared before his release. Muawiya and Sultan Harba were sentenced on the sole basis of confessions extracted under torture; they both alleged not having committed the crimes they were accused of, Muawiya alleging he was even hospitalised at that time.

**Malaz Asaad,**<sup>82</sup> 22-year-old Syrian baker, was arrested on 29 October 2014 while renewing his residence permit at the General Security Centre in Beino, north east Lebanon. He was immediately taken to the Rihanyie military barracks where he was detained *incommunicado* for more than ten days during which he was tortured by members of the Military Intelligence who severely beat him up, including while handcuffed, forced him to stand in stress positions for several days and threatened to send him back to Syria. They also poured alcohol on him and threatened to burn his face. Following this ordeal, Malaz was forced to make confessions that were later used to base the charges brought against him.

It is only on 18 January 2016, when Asaad was presented to Beirut's Military Court for trial that he was allowed to have access to a lawyer for the first time. Denouncing the acts of torture he

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<sup>77</sup> Article 357 CCP: "The Judicial Council is composed of the First Presiding Judge of the Court of Cassation as Presiding Judge and four Court of Cassation Judges appointed by a decree of the Council of Ministers based on a proposal of the Minister of Justice and with the consent of the Supreme Council of the Judiciary.

The decree shall designate one or more additional Judges to replace the principal Judge in the event of his death, withdrawal, dismissal or end of service.

The Public Prosecution Office shall be represented before the Judicial Council by the Public Prosecutor at the Court of Cassation or by one of his assistants whom he delegates."

<sup>78</sup> Article 355 CCP: "Cases shall be referred to the Judicial Council pursuant to a decree of the Council of Ministers".

<sup>79</sup> Article 360 CCP: "The Public Prosecutor at the Court of Cassation or an Advocate-General delegated by him from the Public Prosecution Office at the Court of Cassation shall initiate and exercise the public prosecution.

The investigation shall be conducted by an Investigating Judge appointed by the Minister of Justice with the consent of the Supreme Council of the Judiciary.

<sup>80</sup> Article 366 CCP: "The trial shall be held, either adversarial or in absentia, before the Court of Justice in accordance with the rules governing proceedings before the Criminal Court. The Council shall deliver its judgement in accordance with the same rules. The judgements of the Court of Justice are not open to any kind of review of an ordinary or extraordinary nature."

<sup>81</sup> UN Human Rights Committee (HRC), *Concluding observations of the Human Rights Committee: Lebanon*, 5 May 1997, CCPR/C/79/Add.78, para. 9.

<sup>82</sup> Alkarama, *Lebanon: Syrian National Tortured by Military Intelligence in Order to Extract Confessions*, 25 February 2016, <https://www.alkarama.org/en/articles/lebanon-syrian-national-tortured-military-intelligence-order-extract-confessions>, Alkarama, *Lebanon: Disappearance of a Syrian Citizen from the General Security Premises in Beirut*, 21 June 2016, <https://www.alkarama.org/en/articles/lebanon-disappearance-syrian-citizen-general-security-premises-beirut>, Alkarama, *Lebanon: Release of Syrian Citizen Disappeared from the General Security Premises in Beirut*, 28 June 2016, <https://www.alkarama.org/en/articles/lebanon-release-syrian-citizen-disappeared-general-security-premises-beirut> (all accessed on 8 March 2017).

had been subjected to, he retracted his forced confessions. This, however, did not lead the judicial authorities to open any investigation into his allegations of torture.

Sentenced on 11 May 2016 by the Military Court in Beirut, Asaad's case was referred to the Juvenile Court of North Lebanon sitting in Tripoli for it to determine the appropriate punishment, since he was a minor when the alleged facts occurred. On 26 May 2016, this Court issued a release decision, pending a final determination of the length of his sentence.

Therefore, on 27 May 2016, and according to the procedures applying to Syrian nationals, Asaad was handed over to the General Security in Adlieh, Beirut, which had to proceed with his release. However, as days passed and he had not been released, his lawyer inquired about him at the General Security, which refused to provide him with any information on his fate.

Asaad was finally released on 23 June 2016 from the premises of the General Security. He refers that he was held *incommunicado* by the military police, who beat him up in order to force him to make confessions according to which he had "personal links with terrorist groups" and as a form of punishment.

**Muawiya Harba** and **Sultan Harba**,<sup>83</sup> both escaped to Lebanon from Al Qusayr, their hometown in Homs governorate, Syria, after being injured in a bombing of the town. On 11 March 2015, they were in a car leaving Aarsal when they reached a Military Intelligence checkpoint and were arrested.

Brought to the premises of the Ministry of Defence in Yarzeh, Baabda, they were detained without any access to the outside world for eight days and interrogated while severely beaten and hanged by their wrists tied behind the back, a torture method known as "balanco". They were forced to confess to being part of a terrorist armed group and having attacked the Lebanese army in Aarsal on 2 August 2014<sup>84</sup> and Ras Baalbek on 23 January 2015.<sup>85</sup>

On 16 April 2015, Muawiya and Sultan were indicted by the judge of the Military Court under the Anti-Terrorism law and the Lebanese Weapons law for "joining a terrorist organisation" and participating in the attacks against the Lebanese army on the sole basis of the confessions extracted under torture. During their trial, Muawiya and Sultan both denied having participated to the said attacks and in particular, Muawiya refers that, because of his injured leg, at the time of the attack in Aarsal he was not able to walk without the support of crutches while at the time of the attacks in Ras Baalbeck he was undergoing a surgery. Despite having denounced the acts of torture they were subjected to, their allegations were not taken into consideration but simply dismissed by the military judge.

On 3 March 2017, Sultan and Muawiya were sentenced to respectively 15 and 7 years of imprisonment by the Military Court on the sole basis of their confessions extracted under torture.

Finally, many Syrian citizens have been deported to their country of origin, in violation of the principle of non-refoulement (article 3 of the Convention). For example, three individuals – who had been detained since 2006/2007 – were expelled to Syria in May 2012, where they were handed over to the Syrian Military Intelligence services.<sup>86</sup>

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<sup>83</sup> Alkarama, *Lebanon: Two Syrian Asylum Seekers Tortured by the Military to Confess "Joining a Terrorist Organisation"*, 23 November 2016, <https://www.alkarama.org/en/articles/lebanon-two-syrian-asylum-seekers-tortured-military-confess-joining-terrorist-organisation> (accessed on 8 March 2017).

<sup>84</sup> Jean Aziz, *Aarsal clashes a threat to Lebanon's future*, "Al Monitor, Lebanon Pulse", 3 August 2014, <http://www.al-monitor.com/pulse/originals/2014/08/aarsal.html> (accessed on 8 March 2017).

<sup>85</sup> *Clashes Ongoing Between Lebanon's Army, Nusra Front in Ras Baalbek*, "Al Akhbar", 23 January 2015, <http://english.al-akhbar.com/node/23353> (accessed on 8 March 2017).

<sup>86</sup> These individuals are Mr. Moaz Abdelghani Shousha, Mr. Mohammed Aderrazzak Al Wafaei, and Mr. Ahmed Mohammed Asili. See: Alkarama, *Lebanon: Implemented or imminent expulsion from Lebanon of seven men to Syria*, 29 May 2012, <http://en.alkarama.org/lebanon/press-releases/926-lebanon-syria-implemented-or-imminent-expulsion-from-lebanon-of-seven-men-to-syria> (accessed 9 February 2015).

## Recommendations:

1. Ensure that suspects arrested for terrorism or security-related crimes have their fundamental rights respected from the outset of their detention;
2. Restrict the jurisdiction of the Military Court to military personnel only and refer all cases involving civilians to the civilian courts; cease the prosecution of political opponents, peaceful activists and critical voices;
3. Ensure Syrian refugees are not singled and subjected to human rights violations merely because of their nationality and that they are not deported to Syria;
4. Ensure that confessions obtained under torture and the subsequent proceedings are declared null and void and investigate and prosecute all officials who are responsible for extracting such confessions;
5. Abolish the Judicial Council.

### 3.6 Excessive use of force against protestors

Recent peaceful protests were violently repressed by the Lebanese security forces, leaving numerous demonstrators severely injured. The excessive use of force, as well as the absence of investigations and redress for the victims altogether amount to a violation of articles 11, 12, 13, 14 and 16 of the Convention.

In particular, protests erupted in Beirut in July 2015, as a spontaneous movement of activists – known under the “You Stink” movement – took the streets to protest against a trash mismanagement crisis that had resulted in uncollected trash piling up in the streets of Beirut and other major sites in Lebanon.<sup>87</sup> The protests, which started in July 2015, continued and reached a peak in mid-August 2015, gathering about 20,000 people demonstrating in Beirut central Rihad El Sol, where the Parliament and the Government hold their premises.<sup>88</sup>

Between 22 and 23 August 2015, the demonstrations reached a turning point, the law enforcement agencies violently dispersing the demonstrations. They reportedly beat unarmed protesters up, turned water cannons on, and fired rubber bullets towards fleeing crowds and even live bullets in the air.<sup>89</sup> Accounts of the facts strongly indicate that excessive use of force was employed to shut the protests down, in violation of the United Nations Basic Principles on the Use of Force and Firearms.

The security agents deployed included members of the Police, the Riot Police, Internal Security Forces units and the Army. The latter, which is not trained for law enforcement tasks such as crowd control, was deployed with their standard equipment, which include standard machine guns they used to shoot live bullets in the air, who fortunately did not kill anyone. However, Principle 9 of the United Nations Basic Principles on the Use of Force and Firearms prohibits the use of firearms unless in exceptional circumstances, such as in self-defence or defence of others against the imminent threat of death or serious injury.

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<sup>87</sup> Nour Samaha, *Lebanon's capital drowning in an ocean of trash*, “Al Jazeera”, 26 July 2015, <http://www.aljazeera.com/news/2015/07/lebanon-capital-drowning-ocean-trash-150726083036505.html> (accessed on 10 March 2017).

<sup>88</sup> Sarah El Deeb and Zeina Karam, *Thousands of Lebanese protesters stage largest anti-government protest yet over trash crisis*, “U.S. News”, 29 August 2015, <http://www.usnews.com/news/world/articles/2015/08/29/rights-group-urges-inquiry-into-lebanon-protest-dispersal?page=2> (accessed on 10 March).

<sup>89</sup> Nadim Houry, *Police Brutality in Lebanon, Between a Rock and a Bullet*, 10 September 2015, <https://www.hrw.org/news/2015/09/10/police-brutality-lebanon>; Alef, *Waste Management Demonstrations Documentation of main human rights violations committed, 22-23 August 2015*, [https://alefiban.org/wp-content/uploads/2016/10/ALEF\\_Garbage-Protest-Human-Rights-Documentation.pdf](https://alefiban.org/wp-content/uploads/2016/10/ALEF_Garbage-Protest-Human-Rights-Documentation.pdf) (both accessed on 10 March 2017).

Witness accounts refer that security forces used rubber bullets and teargas excessively, with wounded protesters reported being shot at with rubber bullets as they were helping other wounded protesters or as they were running away.<sup>90</sup> Moreover, it was reported that law enforced officials did not issue any warning before resorting to violent means, which runs contrary to the United Nations Basic Principles on the Use of Force and Firearms.<sup>91</sup>

As the protest continued the following days with a similar level of violence, Alkarama documented a case of police brutality amounting to cruel, inhuman or degrading treatment, if not torture, on activist Lucien Bourjeily.

**Lucien Bourjeily**<sup>92</sup> a 37 year-old well-known Lebanese actor and director, was participating to the peaceful protests in downtown Beirut on 25 August 2015. At 1 pm, together with other protesters, he entered the Ministry of Environment to demand the resignation of Minister Mohammad Machnouk. After a few hours, the security forces started evacuating all journalists and media representatives from the building, as well as confiscating all communication and image recording devices.

After forcing the journalists outside, the police asked protesters to evacuate the Ministry and all those who refused to do so were beaten up. In this context, Bourjeily was strongly beaten when he refused to leave, in particular on the face, neck and shoulders and was violently kicked down the stairs. Another protester, Hasan Sliq, who tried to defend him, was also severely beaten up by the police. Due to the violence used by the security forces, Bourjeily was injured and evacuated by the Red Cross to the American University Hospital, where he received medical care. He later gave a testimony to the Ministry of Interior, in which he mentioned that "the security forces were also insulting and attacking us with black iron sticks."

Despite the authorities affirming that they would investigate the violence and Lebanon's State Prosecutor tasking the military prosecutor with the investigation,<sup>93</sup> as of today, none of the security officers involved in the excessive use of force has been brought to trial or even subjected to administrative sanctions, leaving victims' right to redress and compensation unfulfilled. On the contrary, 14 peaceful protesters are currently facing trial before the military court for simply participating in the protests.<sup>94</sup>

### Recommendations:

1. Investigate promptly all instances of police brutality and excessive use of force by law enforcement officers;
2. Prosecute those responsible for the excessive use of force leading to deaths and injuries, and, if found guilty, ensure that they are punished according to the gravity of their acts;
3. Provide effective remedies and rehabilitation to the victims;
4. Drop all charges against peaceful protests.

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<sup>90</sup> Nadim Houry, *ibid.*

<sup>91</sup> Principle 10, The United Nations Basic Principles on the Use of Force and Firearms.

<sup>92</sup> Alkarama, *Lebanon: Activist Lucien Bourjeily Injured by Security Forces Using Excessive Force During Peaceful Manifestation* <https://www.alkarama.org/en/articles/lebanon-activist-lucien-bourjeily-injured-security-forces-using-excessive-force-during> (accessed on 10 March 2017).

<sup>93</sup> Human Rights Watch, *Lebanon: Witnesses Detail Police Violence*, 27 August 2015, <https://www.hrw.org/news/2015/08/27/lebanon-witnesses-detail-police-violence> (accessed on 10 March 2017).

<sup>94</sup> Kareem Chehayeb, *Lebanon YouStink trial: Anger, protests and no answers*, Middle East Eye, 31 January 2017, <http://www.middleeasteye.net/news/military-trial-14-lebanese-demonstrators-postponed-amid-protests-83510087> (accessed on 10 March 2017).

### 3.7 Absence of effective measures to prevent torture

The absence of effective measures to prevent torture stems both from the fact that, independent authorities visits to prisons and other places of detention are inexistent in practice, and that internal mechanisms established to prevent torture are inefficient and opaque in their work.

Article 402 CCP<sup>95</sup> states that every month, remand centres and prisons should be visited by the Prosecutor of the Court of Appeal, the Financial Prosecutor, the Investigative Judge and the single criminal judge to examine the situation. If adequately implemented, this mechanism would be extremely useful, as it would allow authorities to ascertain conditions of detention and inmates to raise their concerns, including cases of torture and mistreatment.

It has however been reported that in Lebanon, visits to detention centres have been seemingly non-existent, at least until 2012 when officials from the Ministry of Justice and Ministry of Interior finally visited prisons in Roumieh, Zahle, Sour, Baalbek and Rachaya.<sup>96</sup> Nevertheless, the monitoring of places of detention has not been implemented consistently over the years, due to neglect and lack of resources to such an extent that even the National Action Plan for Human Rights in Lebanon recognises that “no system has been developed to prevent torture through regular visits to prisons and detention facilities in the country”.<sup>97</sup>

Moreover, it is problematic to note that detention centres under the jurisdiction of the Ministry of Defence, including military barracks, where acts of torture occur the most, are left completely outside the scope of this monitoring mechanism.

The creation of a NHRI, including a NPM mandated to carry out periodic or unannounced visits to all places of deprivation of liberty without a prior permission from the authorities and to carry out interviews with detainees in private, in compliance with the OPCAT requirements, would definitely remedy this situation.

On 19 October 2016, the Lebanese Parliament approved a law creating an independent National Commission for Human Rights, Lebanon's NHRI. The Commission also includes a Committee for the Prevention of Torture, a NPM – an independent body mandated to improve the conditions of those deprived of liberty by visiting places of detention – thereby bringing Lebanon into compliance with its obligations stemming from the OPCAT, to which it is party since 2008. With the creation of the two human rights mechanisms, Lebanon is also implementing recommendations issued by this Committee<sup>98</sup> and those accepted during its second Universal Periodic Review.<sup>99</sup>

The new law provides that the Lebanese National Commission for Human Rights will have a total of ten members, five of whom will sit in the NPM. They are to be appointed among individuals from the judiciary, academics, medical doctors, lawyers and members of civil society, and will be granted immunity from prosecution. This, in addition with the provision according to which the Commission will

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<sup>95</sup> Article 402 CCP: “The Appeal Court Prosecutor or the Public Financial Prosecutor, the Investigating Judge and the Single Criminal Judge shall examine the situation of persons held in detention centers and prisons in their respective areas of jurisdiction once a month.

Each of the aforementioned persons may order those responsible for detention centers and prisons in their respective areas of jurisdiction to undertake such measures as are required by the investigation and the trial.”

<sup>96</sup> Alef, *Guilty until Proven Innocent*, Lebanon, January 2013, <https://alefliban.org/publications/guilty-until-proven-innocent/> (accessed on 6 March 2017), p. 50.

<sup>97</sup> *National Action Plan for Human Rights in Lebanon – 2014-2019*, p.44, [http://www.lb.undp.org/content/lebanon/en/home/library/democratic\\_governance/national-human-rights-action-plan--2014-2019--.html](http://www.lb.undp.org/content/lebanon/en/home/library/democratic_governance/national-human-rights-action-plan--2014-2019--.html) (accessed on 3 March 2017).

<sup>98</sup> CAT, *ibid.*, para. 38.

<sup>99</sup> UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Lebanon*, 22 December 2015, A/HRC/31/5 and UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Lebanon, Addendum Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, 25 February 2016, A/HRC/31/5/Add.1, Recommendations No. 132.49 (Egypt), 132.50 (Indonesia), 132.51 (Nigeria), 132.52 (Oman), 132.53 (Portugal), 132.54 (Jordan) calling for the establishment of a NHRI and 132.56 (United Kingdom of Great Britain and Northern Ireland), 132.57 (Costa Rica), 132.58 (Danemark), 132.59 (Czech Republic), 132.60 (Canada), 132.61 (Brazil) concerning the institution of a National Preventive Mechanism (NPM).

be provided with its own staff and funding, aims at ensuring the independence and pluralism of the institution, as the Paris Principles require.<sup>100</sup>

According to the establishing law, the Commission is vested with the role of monitoring Lebanon's compliance with international human rights law and drafting human rights reports, to advise and advocate with the relevant authorities on the implementation of human rights obligations, to disseminate human rights in the public opinion as well as to receive and investigate individual cases of violations and eventually refer them to the General Prosecution. The NPM is mandated to carry out periodic or unannounced visits to all places of deprivation of liberty without a prior permission from the authorities and to carry out interviews with detainees in private, in compliance with the OPCAT requirements.

If effective, this mechanism could be instrumental for victims of abuses to raise violations that remain largely underreported and not investigated such as torture, providing for redress mechanisms.

Other monitoring mechanisms, endowed with the function to receive, review and sanction cases of torture have recently been created within the Internal Security Forces and the Lebanese Army.

In 2008, the Internal Security Forces established an internal human rights department and, in 2010, a committee to receive complaints on cases of torture and cruel treatment committed at Internal Security Forces controlled premises by victims, their representatives and NGOs. According to the State party's report, since 2014 a unified system for filing complaints against Internal Security Forces officers was established based on, among others, the principles that "complaints are dealt with promptly", "proceedings are undertaken expeditiously and efficiently", "investigations are impartial", and "statistics on the numbers and types of complaints, their outcome and the steps taken to address failings are published regularly".<sup>101</sup>

This stated engagement, however, has not translated into reality, since, at the time of writing, this mechanism remains completely opaque. It is in fact impossible to obtain information on the investigations, as no information is made public. Similarly, there is no publicly available statistics on numbers of cases submitted and their results, which demonstrates a complete lack of transparency in the work of this commission.

In a similar move, the Army has established an international law and human rights office to disseminate and enhance the implementation of international humanitarian law standards, which was recently expanded to consider individual complaints relating to human rights violations occurring within the military institution.<sup>102</sup> Even in this case, it is impossible to ascertain the number of cases submitted to this mechanism, and their outcome, as, again, all information is kept confidential.

This total lack of transparency, coupled with the fact that these internal mechanisms are not *per se* independent, seriously hampers their effectiveness and efficacy.

### **Recommendations:**

1. Ensure article 402 CCP is consistently implemented and judicial authorities carry out regular visits to prisons and detention centres;
2. Ensure that members of the National Commission for Human Rights are appointed through a transparent process;
3. Guarantee the financial and operational independence of the National Commission for Human Rights;
4. Ensure that the Committee for the Prevention of Torture is able to visit all places of detention including those falling under jurisdiction of the Military Intelligence without prior authorisation by the authorities, in the manner and frequency it decides and without fear of retaliation;

<sup>100</sup> Paris Principles relating to the status of National Institutions, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>, (accessed on 7 March 2017).

<sup>101</sup> State party report para. 63.

<sup>102</sup> State party report para. 428.



5. Ensure that internal monitoring and complaint mechanisms operate in full transparency and officially public statistics about the number of cases treated and their outcome;
6. Ensure that the NPM is able to effectively carry out its mandate in full compliance with the OPCAT requirements and without interference of any kind.

### 3.8 A prevailing impunity for acts of torture

Article 12 of the Convention requires State parties to investigate thoroughly, promptly and impartially any allegation of torture, even in the absence of the victim's complaint. Such investigations should be followed by the prosecution of those who committed the acts and other agents who participated in the commission of the crime (i.e. through acquiescence or complicity).

However, the dozens of testimonies gathered by Alkarama have shown that judges, both in civil courts and in the Military Courts system, systematically reject the torture allegations brought to their attention and subsequently refuse to open an investigation, as the following cases show.

In January 2015, a **Lebanese national**<sup>103</sup> was arrested and subsequently tortured by agents of the Internal Security Forces to extract a confession. He was subsequently brought to trial and sentenced in April 2016 by the Baabda Court on the sole basis of the coerced confession. Despite the fact that he raised allegations of torture before the judge, no investigation was opened.

**Yaroub Al Faraj**,<sup>104</sup> a Syrian national, was arrested on 18 May 2015 by members of the Military Intelligence at a military checkpoint in the Bekaa Valley in eastern Lebanon and taken to Ablah Military Barrack, where he was detained *incommunicado* for 25 days. Following severe acts of torture, he was forced to sign confessions that he was not allowed to read.

Indicted for terrorism charges, on 28 December 2015, Al Faraj was sentenced by the Military Court to five years of imprisonment and a fine of 100,000 Lebanese pounds after the confessions he made under torture were admitted as the sole evidence in the course of his trial. His lawyer repeatedly raised Al Faraj's torture during his trial and filed an appeal before the Military Court of Cassation, but no investigation was opened into his allegations and the appeal was rejected.

Human Rights Watch furthermore reports that even in the only case in which the Military Court dismissed a coerced confession, no steps were taken to investigate and punish the perpetrators.<sup>105</sup> Similarly, even when victims show the judge marks they still bear on their bodies as a result of torture, no investigation is ever opened. The systematic denial to open an investigation by military judges when confronted with allegations of torture is even more concerning when victims are minors.<sup>106</sup>

Alkarama is particularly concerned that no proper investigations were opened into serious allegations of military abuse against detainees in connection with the fighting between the Lebanese army and the armed Fatah Al Islam group in 2007, in the Nahr Al Bared refugee camp, despite the fact that the State party report states the opposite.<sup>107</sup> Alkarama documented more than 300 cases of torture of Nahr Al Bared detainees and works in close contact with their lawyers, but could not receive any substantial information that investigations were carried out and the perpetrators punished.

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<sup>103</sup> Identity and further details of the case are not disclosed at the request of the victim for privacy and security reasons.

<sup>104</sup> Alkarama, *Lebanon: Syrian citizen sentenced to 5 years in prison on the basis of confessions obtained under torture*, 24 February 2016, <https://www.alkarama.org/en/articles/lebanon-syrian-citizen-sentenced-5-years-prison-basis-confessions-obtained-under-torture>, (accessed on 23 February 2017).

<sup>105</sup> Human Rights Watch, *"It's Not the Right Place for Us" The Trial of Civilians by Military Courts in Lebanon*, 26 January 2017, p. 21, <https://www.hrw.org/report/2017/01/26/its-not-right-place-us/trial-civilians-military-courts-lebanon>, (accessed on 24 February 2017).

<sup>106</sup> *Ibid.*, p. 26, Alkarama, *A Minor Tortured by the Military Intelligence Prosecuted for Terrorism*, 30 August 2016, <https://www.alkarama.org/en/articles/lebanon-minor-tortured-military-intelligence-prosecuted-terrorism> (accessed on 24 February 2017).

<sup>107</sup> State party report, para. 352.

Similarly, not even perpetrators of publicly exposed acts of torture were adequately prosecuted and sanctioned. In June 2015, two videos showing several Internal Security Forces agents beating prisoners following a riot in Roumieh prison, in April of the same year, triggered widespread condemnation for the practice, and people took the streets in sign of protest.<sup>108</sup> Instead of launching a comprehensive investigation into the use of torture in Roumieh, the Military Court decided to inquire only on the filming episode. Only five Internal Security Forces agents were finally indicted to three years of imprisonment, but two of them were eventually released after paying a fine.<sup>109</sup>

Prosecution of State agents responsible of torture is jeopardised by the fact that according to article 27 MC, crimes committed by members of the army and other security officers can be investigated, prosecuted and punished by the Military Court only. However, as described above, since the Military Court falls itself, as well, under the jurisdiction of the same Ministry of Defence and the majority of its judges are appointed by and remain subordinate to the same Ministry. Such a mechanism providing for investigation by peers hinders any proper accountability, and cannot be qualified as an “independent” mechanism.

Moreover, as far as administrative sanctions are concerned, article 119 of the Internal Security Forces Regulation Act No. 17 of 1990 provides that no punishment may be imposed on security personnel other than by their hierarchical superiors. Therefore, even in this case, accountability and punishment of perpetrators of torture is undermined. Not only the officer responsible can benefit from his/her supervisor’s protection, but at the same time, superiors responsible of acts of torture for acquiescence or complicity would avoid any sanction.

Additionally, impunity for acts of torture is permitted by the fact that crimes that would cover torture are subject to the general rules on statutes of limitations (see section 3.1).

Finally, the complete lack of any official statistical data<sup>110</sup> on complaints of torture and results of investigations contributes to the lack of accountability of security forces.

#### **Recommendations:**

1. Investigate promptly all allegations of torture and ill-treatment;
2. Ensure that those responsible for abuses are held to account, including superiors as per international legal standards;
3. Abrogate all domestic legislation that favours impunity, in particular article 27 MC and article 119 of the Internal Security Forces Regulation Act and ensure that prosecution for acts of torture committed by security services, including the army, is carried out by the ordinary courts;
4. Provide statistics and examples of prosecution and punishment of perpetrators of torture.

## **4. Conclusion**

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More than three years after this Committee denounced the systematic and widespread use of torture in Lebanon, torture remains practiced. Suspects, who are deprived of their most fundamental legal safeguards, are subjected to torture to be compelled to provide information that will be later used as source of evidence during judicial proceedings. The lack of effective preventive measures, coupled with a climate of impunity, contributes to the persistence of this practice.

Alkarama is particularly concerned that this pattern of violations is most worrisome within the military system, in which suspects accused of crimes of terrorism are tortured in premises which are not subjected to any judicial oversight and subsequently tried within the military court system, where they

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<sup>108</sup> Human Rights Watch, *Lebanon: Monitor Detention to Combat Torture*, 26 June 2015, <https://www.hrw.org/news/2015/06/26/lebanon-monitor-detention-combat-torture> (accessed on 7 March 2017).

<sup>109</sup> <http://www.annahar.com/article/250203-بالقاصيل-القرار-الظني-في-قضية-تعذيب-السجاء-في-رومية> (accessed on 7 March 2017).

<sup>110</sup> State party report, para. 367.

are not afforded a trial respecting international standards of fairness, and sentenced to heavy penalties on the basis of information extracted under torture.

However, the passing of a law creating a NHRI and a NPM marks a positive step towards ensuring acts of torture are reported and investigated. Other signs of encouragement were given by Lebanon at its last Universal Periodic Review,<sup>111</sup> during which the authorities showed their willingness to amend their legislation to bring it in compliance with the Convention against Torture, to make efforts to eradicate torture in the country and hold perpetrators accountable.<sup>112</sup> However, it is worrisome to observe that the Lebanese authorities are not ready to engage in reforming the military court system.<sup>113</sup> This, we believe, shows a limited willingness to comprehensively tackle the problem of torture in the country, since major violations happen within this very military system.

Alkarama therefore hopes that the concerns raised in this report will be addressed constructively during the dialogue between the Committee against Torture and the representatives of the State party in order to put an end to torture and other violations of human dignity and miscarriages of justice.

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<sup>111</sup> Alkarama, *Lebanon shows limited willingness to improve human rights situation*, 11 March 2016, <https://www.alkarama.org/en/articles/lebanon-shows-limited-willingness-improve-human-rights-situation> (accessed on 13 March 2017)

<sup>112</sup> *Ibidem*.

<sup>113</sup> *Ibidem*.