



LEBANON

Shadow report

Report submitted to the Human Rights Committee in the context of the review of the third periodic report of Lebanon

Alkarama Foundation – 12 February 2018

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INTRODUCTION

The third periodic report of Lebanon (CCPR/C/LBN/3), overdue since 2001, was submitted to the Human Rights Committee in November 2016. The Committee will review Lebanon during its 122st session on 15 and 16 March 2018. Alkarama regrets that the State Party's report only contains a compilation of Lebanese laws without addressing the main human rights challenges in Lebanon mirrored in the Committee's List of Issues.¹

Alkarama submits this shadow report in which it evaluates the implementation of the International Covenant on Civil and Political Rights (ICCPR), which Lebanon ratified in 1972, highlighting its main concerns and addressing recommendations to the State Party. This report is based on first-hand testimonies gathered by Alkarama, and provided by the victims themselves, their families and lawyers, as well as by local non-governmental organisations with which Alkarama collaborates.

Lebanon is a confessional state, a system instituted during the French mandate, where positions in cabinet, parliament, the civil service and other institutions are apportioned according to estimates of the religious populations' distribution.² After its independence in 1943, the modern Lebanese political system was founded by an unwritten agreement known as the National Pact, which paved the way for an even distribution of power between Christians and Muslims. It functioned relatively well until its collapse in 1975 with the outbreak of the civil war. The conflict ended in 1990, when the Taef agreement was signed, an agreement which ultimately perpetuated Lebanon's confessional system.

In this post-war context, Lebanon's implementation of the ICCPR was hampered by the presence of foreign troops throughout its territory. Israel, which occupied Lebanon's southern region during the 1982 Lebanon War, withdrew in 2000, while Syrian troops stationed in the country during the civil war maintained a military presence in the country until 2005. The withdrawal of Syrian troops coincided with the end of Syrian involvement in Lebanese politics in the aftermath of Prime Minister Rafiq Hariri's assassination on 14 February 2005. Hariri's supporters accused Syria of ordering the assassination, setting off a wave of demonstrations called the "Cedar Revolution", which resulted in the withdrawal of Syrian troops on 26 April 2005.

Political polarisation remains high in Lebanon, and the political parties are broadly divided into two camps: the "March 8" coalition and the "March 14" alliance. While the March 8 coalition, composed of the main Shiite parties – namely the Hezbollah and Amal Movement – and the Christian Free Patriotic Movement, maintains close ties to the Syrian regime, the "March 14" alliance, composed of the Future Movement, the Kataeb and Lebanese Forces, is closely tied to Saudi Arabia, Western countries, and Syrian opposition groups. Since 2011, these political alliances have held diametrically opposed positions

¹ UN Human Rights Committee, List of issues in relation to the third periodic report of Lebanon, 31 August 2017, CCPR/C/LBN/Q/3.

² Canadians for Justice and Peace in the Middle East, *Understanding Lebanese Confessionalism*, May 2007, http://www.cjpme.org/fs_026 (accessed on 30 January 2018).

on the Syrian conflict. Not only did the spill over of the conflict into Lebanon lead to the arrival of refugees, cross-border movements of combatants, and increased incidents of sectarian violence, it has also exacerbated the political stalemate in the country.³

As a result, Lebanon has experienced long periods of political paralysis within public institutions. Following the resignation of Prime Minister Najib Mikati on 22 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.

After a deadlock of more than two years, on 31 October 2016, the parliament elected Michel Aoun as the new president. The following month, he entrusted Rafiq Hariri with the role of prime minister. On 28 December 2016, the parliament approved a national unity cabinet, which includes a State Minister for Human Rights and a male Minister for Women's Rights.

In June 2017, the parliament approved a new electoral law, and, on 22 January 2018, President Michel Aoun signed a decree officially setting the upcoming parliamentary elections for 6 May 2018. Lebanon has not held parliamentary elections since 2009 as they have been repeatedly postponed.

In the field of human rights, the parliament approved a law establishing a National Human Rights Institute on 19 October 2016. The enabling law provides for the creation of a National Preventive Mechanism against torture (NPM), in line with Lebanon's obligations under the Optional Protocol to the Convention against Torture (OPCAT), ratified in 2008.⁴

The Institute is vested with the role of monitoring Lebanon's compliance with international human rights law and drafting human rights reports, advising and advocating with the relevant authorities on the implementation of human rights obligations, increasing public awareness of human rights issues, as well as receiving and investigating individual cases of violations and eventually referring them to the General Prosecution.⁵

As for the NPM, it is mandated to carry out periodic or unannounced visits to all places of deprivation of liberty without prior permission from the authorities, and to carry out interviews with detainees in private, in compliance with the OPCAT. However, the Institute is not yet operational as its members are yet to be appointed by the government and no budget has been allocated.

³ Melani Cammett, *The Syrian Conflict's Impact on Lebanese Politics*, <https://www.usip.org/sites/default/files/PB158.pdf> (accessed on 29 January 2018).

⁴ Alkarama, *Lebanon: Parliament Approves Law Instituting a National Human Rights Institution and a National Preventive Mechanism Against Torture*, 26 October 2016, <https://www.alkarama.org/en/articles/lebanon-parliament-approves-law-instituting-national-human-rights-institution-and-national> (accessed on 30 January 2018).

⁵ *Ibidem*.

2. PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT (ARTICLE 7)

2.1 Incomplete anti-torture legislation (issue No. 11⁶)

On 26 October 2017, Lebanon adopted the Law aimed at punishing torture and other cruel, inhuman or degrading treatment or punishment No. 65/2017 (hereinafter "Anti-Torture Law"). In adopting the new law, the Lebanese authorities have ignored the recommendations issued in the Concluding Observations of the UN Committee against Torture (CAT) in 2017 with regard to the definition of the offence, the appropriate punishments, and statutes of limitations.⁷

Under the former article 401 of the Penal Code, only the use of violence to extract confessions was criminalised. In the new law, the definition of torture includes acts that lead to severe physical or mental pain or suffering, however, restrictive elements to the definition of torture were introduced, which do not comply with the UN Convention against torture (UNCAT).⁸ In fact, the definition of torture is limited to acts performed "during the investigation, preliminary investigation, judicial investigation, trials and executions of sentences".⁹

This provision goes against the principle of the absolute prohibition of torture, and creates a loophole in which acts of torture committed during the arrest and before the preliminary investigation would not fall within the scope of this legislation.

⁶ We are referring to the List of issues in relation to the third periodic report of Lebanon.

⁷ UN Committee against Torture (CAT), *Concluding observations on the initial report of Lebanon*, 30 May 2017, CAT/C/LBN/CO/1, paras 12 and 13.

⁸ Article 401 of the Penal Code shall be amended to read:

"(A) Torture in this law means any act which is performed, instigated or expressly approved by a public official, or any person acting in an official capacity during the investigation, preliminary investigation, judicial investigation, trials and execution of sentences, resulting in severe pain or severe suffering, intentionally inflicted to a person, in particular:

- To obtain from him or a third person, information or a confession.
- Punish any person for an act he or a suspect has committed, he or a third person.
- To intimidate or force any person or person to do or refrain from doing any act.
- To expose any person to such severe pain or severe suffering for any reason based on discrimination of any kind.

The definition above does not include severe pain or severe suffering arising from or associated with, or incidental to, the penalties prescribed by law."

⁹ Law aimed at punishing torture and other cruel, inhuman or degrading treatment or punishment adopted by the parliament on 19 September 2017, article 1.

Furthermore, the criminalisation of cruel, inhuman or degrading treatment or punishment as defined in article 16 UNCAT was withdrawn during the deliberations in parliament, further reducing the scope of the bill.

Moreover, the Anti-Torture Law establishes a range of penalties that do not reflect the CAT's recommendations on appropriate punishments: one to three years in prison for cases that do not result in physical or psychological harm; three to seven years if it leads to temporary disability, harm, or physical or psychological impairment; five to ten years if the harm is permanent; and 10 to 20 years if it leads to death. Such penalties of less than five years, normally attached to misdemeanours, do not have a deterrent effect, thus fostering a climate of impunity (see section 2.3).¹⁰ In its Concluding Observations, the CAT found that the sentences did not adequately reflect the grave nature of the crime of torture.¹¹ In general, it recommended sentences ranging from six to twenty years.¹²

Lastly, the Anti-Torture Law provides that the statute of limitations of three to ten years commences upon the victim's release from detention or custody, ignoring another recommendation expressed by the CAT stipulating that torture should be a crime that is not subject to a statute of limitations. This situation *de facto* ensures impunity for perpetrators.

2.2 Widespread use of torture

Following a confidential inquiry under article 20 UNCAT initiated by Alkarama in 2008, whose findings were published in October 2014, the CAT 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."¹³

¹⁰ Article 401 of the Penal Code shall be amended to read:

"(B) Anyone who perpetrates torture shall be liable to imprisonment from one to three years, if torture does not result in death or permanent or temporary physical or mental disability.

If torture leads to malfunction, injury, or temporary physical or mental impairment, it shall be punishable by imprisonment from three to seven years.

If torture leads to permanent physical or mental disorder, it is punishable by imprisonment from five years to ten years.

If torture leads to death, it is punishable by imprisonment from 10 to 20 years."

¹¹ UN Committee against Torture (CAT), Concluding observations on the initial report of Lebanon, 30 May 2017, CAT/C/LBN/CO/1, para. 13.

¹² UN Committee against Torture (CAT), Summary Report of the 93rd Meeting of the Committee, UN Doc. CAT/C/SR.93

¹³ Alkarama, *UN Committee against Torture Calls Torture in Lebanon a "Pervasive Practice" and Paves the Way Forward*, 10 October 2014, <https://www.alkarama.org/en/articles/un-committee-against-torture-calls-torture-lebanon-pervasive-practice-and-paves-way> (accessed on 5 February 2018).

However, during Lebanon's review by the CAT, the Lebanese authorities contested the Committee's findings, affirming that "acts of torture had been carried out in only a few, isolated cases that did not correspond to any kind of state policy. Those who perpetrated such acts were held to account and punished under Lebanese law."¹⁴ On the contrary, CAT experts highlighted that it has been reported that more than 60 per cent of detainees were subjected to torture during arrest, particularly those arrested for crimes against national security.¹⁵

Cases documented by Alkarama show that torture is generally practised 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 or as a form of punishment for crimes for which arrestees are suspected of perpetrating. During this period of time, suspects are often held without being allowed to have any contact with the outside world, including their lawyer.

Although the new Anti-Torture Law stipulates that statements obtained under torture must be declared inadmissible in court,¹⁶ it is too early to measure the impact of this amendment. To date, confessions extracted under torture have been routinely accepted as evidence. While before civilian courts, few judges are willing to exclude this type of evidence, in the military court system, confessions extracted under torture are commonly relied upon and even used as the sole source of evidence in proceedings. In fact, in all cases documented by Alkarama, including cases of minors, confessions were always relied upon in sentencing, even when the defence explicitly raised the fact that torture was used to obtain the confession.

Techniques of torture include severe beatings, holding stress positions for long periods, food deprivation, electrocution, "ballanco" method (holding the inmate hanged by his/her wrists tied behind the back), as well as threats, including threats of being burned alive, or to injure or kill relatives. It has also been documented that women have been subjected to 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 2013.¹⁷

¹⁴ UN Committee against Torture (CAT), *Summary record of the 1509th meeting*, 25 April 2017, CAT /C/SR.1509, para. 7.

¹⁵ UN Committee against Torture (CAT), *Committee against Torture considers initial report of Lebanon*, 21 April 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21521&LangID=E> (accessed on 6 February 2018).

¹⁶ Article 10 of the Code of Criminal Procedure shall be amended to read:

"All statements made as a result of any of the acts set out in article 401 shall be nullified in any proceedings, unless against a person accused of torture as evidence of such statements."

¹⁷ Alkarama, *Lebanon: Loyal Al Kayaje Sentenced by the Military Court for Having Denounced Her Rape by Military Officers*, 23 August 2016, <https://www.alkarama.org/en/articles/lebanon-loyal-al-kayaie-sentenced-military-court-having-denounced-her-rape-military> (accessed on 31 January 2018).

2.3 Absence of investigations and effective measures to prevent torture (issue No. 12)

Due to a prevailing climate of impunity when it comes to investigating and prosecuting credible allegations of torture, Lebanon has failed to uphold its obligation to carry out immediate, prompt and impartial investigations into allegations of torture. Cases documented by Alkarama indicate that when victims of torture and/or ill-treatment raise abusive behaviour by law enforcement officials or members of the military before the judge, allegations are seldom examined and perpetrators rarely interrogated. Such allegations have never resulted in legal action against the alleged perpetrators. The following cases illustrate such a pattern:

In January 2015, **a Lebanese national**¹⁸ 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,¹⁹ a Syrian national, was arrested on 18 May 2015 by members of the Military Intelligence at a military checkpoint in the Bekaa Valley 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 his trial. His lawyer repeatedly stated that his client was subjected to torture and filed an appeal before the Military Court of Cassation, but no investigation was opened into his allegations and the appeal was rejected.

It is concerning that the Anti-Torture Law leaves the possibility for perpetrators to be referred to military courts, which lack independence and impartiality considering their judges are appointed directly by the Minister of Defence. As illustrated above, this is highly problematic as the investigation and prosecution by peers seriously hinders any proper accountability.

For instance, when reports of the death of four Syrians under torture emerged following raids conducted by the Lebanese army on two unofficial refugee camps in the north-eastern border town of Aarsal on 30

¹⁸ Identity and further details of the case are not disclosed at the request of the victim for security reasons.

¹⁹ 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 5 February 2018).

June 2017, the investigation was handed over to the military tribunal.²⁰ Despite visible signs of torture on their bodies, the military prosecutor issued a statement saying that a forensic report had concluded they "suffered from chronic health issues that were aggravated due to the climate condition".²¹ To date, the full investigation file has been neither published nor provided to the families, casting serious doubts over the causes of death as well as the independence, impartiality and thoroughness of the investigation.²²

Furthermore, Lebanon has failed to uphold its obligation to prevent torture, including through the establishment of control mechanisms. Under article 402 of the Code of Criminal Procedure (CCP),²³ judges must visit prisons at least once a month. However, there is no information available on the matter.

In 2009, the Lebanese army established its own human rights office, which later became a directorate in September 2016. It is tasked with disseminating and enhancing the implementation of international humanitarian law standards. It is also competent to consider individual complaints relating to human rights violations occurring within the military institution.²⁴ However, it is impossible to ascertain the number of cases submitted to this mechanism and their outcome, as all information is kept confidential.

In 2008, the Internal Security Forces (ISF) established an internal human rights department and, in 2010, a committee to receive complaints on cases of torture and cruel treatment committed by its officers. The complaints can be made by the victims themselves, their representatives and NGOs. Abuses committed by members of the ISF can be reported via a hotline, the ISF website, the inspectorate general and the human rights department.

However, the committee's working methodologies and degree of oversight remain opaque.²⁵ The ISF General Director is mandated to follow up on recommendations made by the committee, but it is

²⁰ Josephine Deeb, "Despite probe, questions remain after Syrians die in Lebanese custody", *Al-Monitor*, 1 August 2017 <https://www.al-monitor.com/pulse/originals/2017/08/lebanon-army-detain-syrian-refugees-die-torture.html> (accessed on 24 January 2018).

²¹ Lebanese Army, *The death of arrested individuals as a result of chronic health issues*, 4 July 2017, <https://www.lebarmy.gov.lb/en/content/death-arrested-individuals-result-chronic-health-issues> (accessed on 29 January 2018).

²² Human Rights Watch, *Lebanon: Deaths, Alleged Torture of Syrians in Army Custody*, 20 July 2017, <https://www.hrw.org/news/2017/07/20/lebanon-deaths-alleged-torture-syrians-army-custody> (accessed on 29 January 2018).

²³ 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."

²⁴ Alef, *Establishing the Primacy of Human Rights in Security Sector Reform in Lebanon*, 25 March 2017, <https://alefliban.org/wp-content/uploads/2017/03/Establishing-the-primacy-of-HR-in-SSR-Lebanon.pdf> (accessed on 29 January 2018).

²⁵ *Ibidem*.

unclear what measures can be taken when recommendations are not implemented.²⁶ Some judicial investigations have been conducted, but the process or outcomes are not transparent and the state report does not provide information in that regard.

This total lack of transparency, coupled with the fact that these internal mechanisms are not independent, seriously hampers their effectiveness and efficiency. In general, internal control mechanisms are *per se* insufficient as they lack independence and have a mere administrative monitoring function. They must be complemented by independent mechanisms to visit places of detention, which are currently lacking in the absence of a functioning NPM.²⁷

2.4 Violation of the right of non-refoulement (issue No. 17)

Although Lebanon has not ratified the 1951 Convention Relating to the Status of Refugees nor its Additional Protocol, it is bound by the customary international law principle of *non-refoulement*, and, under international human rights law, not to return anyone to a place where they would face a real risk of persecution, torture or other ill-treatment.

Though Lebanon lacks a legal framework to protect refugees, the country hosts 997,905 registered Syrian refugees according to the latest data provided by the UNHCR.²⁸ Since January 2015, 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. This limbo put refugees at risk of harassment, arbitrary arrest, detention and deportation by the Lebanese authorities.²⁹

Since the beginning of the Syrian conflict, Alkarama has received several cases of Syrian nationals who were expelled to their country by the Lebanese authorities in spite of well-established information that they would be at high risk of torture or death. For example, three Syrians who had served sentences in Lebanese prisons were expelled to Syria in May 2012, where they were handed over to the Syrian Military Intelligence services.³⁰ Some of them were then detained in the Syrian Military Intelligence's Palestine Branch, infamous for the torture and ill-treatment of detainees. Similarly, in January 2016, NGOs

²⁶ *Ibidem*.

²⁷ APF, APT and OHCHR, *Preventing Torture*, May 2010, <http://www.ohchr.org/Documents/Publications/PreventingTorture.pdf> (accessed on 6 February 2018).

²⁸ Syria Regional Refugee Response, <http://data.unhcr.org/syrianrefugees/regional.php> (accessed on 18 January 2018).

²⁹ UNHCR, Syrian refugees in Lebanon Quarterly snapshot, January-March 2015.

³⁰ For more information about these cases, please see: Alkarama, *Lebanon/Syria: Implemented or imminent expulsion from Lebanon of seven men to Syria*, 29 May 2012, <https://www.alkarama.org/en/articles/lebanonsyria-implemented-or-imminent-expulsion-lebanon-seven-men-syria> (accessed on 1 February 2018).

reported that Lebanon had forcibly returned around 400 Syrians to Syria, in violation of the principle of *non-refoulement*.³¹

Syrian refugees are not the only ones subjected to violations of the principle of *non-refoulement*. In 2017, Lebanon extradited an Iraqi refugee to his home country which he had fled in 2010 fearing persecution. Zeyad Al Dolae had been arrested in Lebanon on 23 January 2016 for the purpose of extradition and, on 7 October 2016, sentenced to one year of imprisonment by the Military Court for allegedly "joining a terrorist group" on the sole basis of information provided by Iraq.³² On 13 April 2017, the Working Group on Arbitrary Detention and the Special Rapporteur on torture addressed an Urgent Appeal to the Lebanese authorities to "stop any measure of extradition to a location where he is at high risk of being tortured."³³ Despite this, he was extradited to Iraq on 3 May 2017.

2.5 Detention conditions (issues No. 12, 14, 15)

Following the review of Lebanon by the CAT, the latter highlighted the "high number of persons held in pre-trial detention, many of them in prolonged pre-trial detention, and the fact that pre-trial detainees are not separated from convicted prisoners."³⁴ According to the latest statistics, 6,500 prisoners are detained in a total of 30 prisons and detention centres,³⁵ with an occupation rate of 185.8% as of August 2016.³⁶ The prison of Roumieh, Lebanon's largest detention facility, illustrates this widespread issue: with a capacity of 1,500 detainees, it currently hosts more than 3,000 individuals.³⁷ Such overcrowding is not only due to a lack of adequate and sufficient infrastructure, but also to lengthy periods of pre-trial detention.

³¹ Amnesty International, *Lebanon: Amnesty International regrets Lebanon's decision to overturn its open border policy towards refugees and refusal to address discrimination against women and migrants*, 17 March 2016, <https://www.amnesty.org/en/documents/mde18/3658/2016/en/> (accessed on 6 February 2018).

³² Alkarama, *Lebanon: Iraqi Refugee Extradited to his Home Country Despite Risk of Torture and Death Sentence*, 8 May 2017, <https://www.alkarama.org/en/articles/lebanon-iraqi-refugee-extradited-his-home-country-despite-risk-torture-and-death-0> (accessed on 1 February 2018).

³³ OHCHR, *Mandates of the Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 13 April 2017, UA LBN 1/2017, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23084> (accessed on 7 February 2018).

³⁴ UN Committee against Torture (CAT), *Concluding observations on the initial report of Lebanon*, 30 May 2017, CAT/C/LBN/CO/1, para. 20.

³⁵ World Prison Brief, Lebanon, August 2016, <http://www.prisonstudies.org/country/lebanon> (accessed on 6 February 2018).

³⁶ *Ibidem*.

³⁷ 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 6 February 2018).

In fact, article 108 CCP³⁸ sets the duration of pre-trial detention to two months for misdemeanours and six months renewable for criminal matters, but it does not specify that the judge should order the release of an individual upon expiry of the pre-trial detention period. It must be noted that these delays are not always respected, in particular when it comes to foreign prisoners.³⁹ This provision also allows unlimited pre-trial detention for certain crimes, such as state security offences, in contradiction with article 9(3) ICCPR and the right of the accused to be tried without undue delay.

Moreover, prison conditions remain poor in Lebanon and amount to inhumane and degrading treatment. According to the ICRC, detention facilities nationwide are old and run-down, which makes conditions very difficult for detainees.⁴⁰ The cells are overcrowded, poorly ventilated and poorly lit. In addition, drinking water is limited and medical care is lacking.

Lastly, abuses are widespread across the country's prisons. 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.⁴¹

RECOMMENDATIONS:

1. Bring a definitive end to the practice of torture and reject any statements obtained thereof;
2. Ensure that the definition and the criminalisation of the offense of torture is in line with Lebanon's international obligations;
3. Operationalise the NPM and ensure it is able to effectively carry out its mandate in full compliance with the OPCAT and without interference of any kind;
4. Respect at all times the principle of *non-refoulement* regardless of the person's nationality or judicial status;
5. Ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol;
6. Address the issue of overcrowding in prisons by limiting the duration of pre-trial detention and improving conditions of detention.

³⁸ Article 108 CCP reads as follow:

"Except for persons already sentenced to at least one year imprisonment, the length of preventive detention for misdemeanours shall not exceed two months. In case of extreme necessity, it is possible to extend this period to a period of similar duration at most. Except for murder and drug crimes and attacks on state security and crimes presenting a global threat and for persons already sentenced to a criminal penalty, the period of preventive detention for crimes shall not exceed six months and may be renewed once for a similar length following a reasoned decision."

³⁹ Emma Humphris, *Speaking Out for Foreigners in Lebanese Prisons*, 23 March 2016, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/03/speaking-out-0> (accessed on 6 February 2018).

⁴⁰ ICRC, *Lebanon: Improving ageing infrastructure in places of detention*, 26 February 2016, <https://www.icrc.org/en/document/lebanon-improving-ageing-infrastructure-places-detention> (accessed on 30 January 2018).

⁴¹ 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 6 February 2018).

3. LIBERTY AND SECURITY OF PERSONS (ARTICLE 9)

3.1 Incomplete legal safeguards related to the deprivation of liberty (issue No. 14)

In its General Comment No. 35, the Human Rights Committee provides a non-exhaustive list of legal safeguards essential for the protection of the security of the person.⁴² Those include, *inter alia*, that any person deprived of her or his liberty shall be informed, at the time of arrest, of the reasons for the arrest, and that detainees should be promptly informed of their rights. They should also be granted the right to communicate with a counsel and with their relatives. Article 14(3)(g) of the ICCPR also guarantees the right of everyone "not to be compelled to testify against himself or to confess guilt." Furthermore, any person arrested or detained on a criminal charge shall be brought promptly – i.e. within 48 hours – before a judge or other officer authorised by law to exercise judicial power.

Article 32 of the CCP does not specify that the reasons for the arrest must be given, even in cases not involving *flagrante delicto*. There is no provision providing that the judicial police officer must inform the arrestee of the charges against her/him.

The State Party's report states that the arrest warrant issued by the investigating judge must be reasoned and must establish the factual and material grounds for arrest (article 107 CCP).⁴³ Moreover, article 368 of the Penal Code punishes directors and guardians of penitentiaries, disciplinary institutions or re-education centres to one to three years of imprisonment should they admit an individual without a warrant or judicial decision, or detain her/him beyond the time prescribed by law.

However, in practice, we note that arrests are often conducted without providing any warrant previously issued by a judicial authority nor any explanation on the reasons for the arrest. For the past few years, agents of General Security and Military Intelligence have commonly carried out arrests on the basis of internal documents (in Arabic: "مذكرة الاخضاع ووثيقة الاتصال"), namely warrants that are not issued by the Public Prosecutor – as required by law – but by the security agency itself. Such a practice opens the door to abuses, since these security agencies can carry out arrests without any judicial oversight. In this regard, the National Action Plan for Human Rights in Lebanon for 2014-2019, prepared by the Human Rights Committee of the parliament, demands that this practice be abolished. A decision

⁴² UN Human Rights Committee (HRC), *General comment no. 35, Article 9 (Liberty and security of person)*, 16 December 2014, CCPR/C/GC/3.

⁴³ National report, para. 71.

taken by the Council of Ministers in July 2014 nullified the aforementioned documents issued up until that date,⁴⁴ but the practice was not formally abolished and is still ongoing in the country.⁴⁵

Furthermore, although article 47 CCP clearly states that the Judicial Police shall inform the suspect upon arrest of her/his rights,⁴⁶ it is not done in a systematic manner, especially when arrests are carried out by military forces, in which case suspects are routinely not informed of their rights.⁴⁷

In addition, there is no provision in the CCP which imposes a duty on law enforcement officials to inform individuals that they have the right to remain silent and that, if the suspect refuses to make a statement or remains silent, it should be recorded, and that the detainee cannot be coerced to speak or to undergo questioning. The lack of an obligation to inform a suspect of the right to remain silent potentially creates an atmosphere favourable to the individual's self-incrimination.⁴⁸

Moreover, Lebanon's domestic law stipulates that a suspect or a person who is the subject of a complaint has the following rights from the moment of the arrest for investigation purposes: "[t]o contact a member of his family, his employer, an advocate of his choosing or an acquaintance" (article 47 CCP). The wording is problematic as the suspect has to choose between contacting a lawyer or a relative, implying that they are mutually exclusive.

Article 49(1) CCP also 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; however, this provision does not specify 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 the presence of the suspect's lawyer. In numerous cases, lawyers who went to the police station could not meet with their clients until he/she

⁴⁴ Samar Kader, *The Daily Star*, *Abolition of wanted lists not a security obstacle: Machnouk*, 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 30 January 2018).

⁴⁵ Al Modon, "توقيفات غير قانونية: وناثق الاتصال لم تُلغ؟" 8 January 2018, <http://www.almodon.com/politics/2018/1/8/%D8%AA%D9%88%D9%82%D9%8A%D9%81%D8%A7%D8%AA-%D8%BA%D9%8A%D8%B1-%D9%82%D8%A7%D9%86%D9%88%D9%86%D9%8A%D8%A9-%D9%88%D8%AB%D8%A7%D8%A6%D9%82-%D8%A7%D9%84%D8%A7%D8%AA%D8%B5%D8%A7%D9%84-%D9%84%D9%85-%D8%AA%D9%84%D8%BA> (accessed on 7 February 2018).

⁴⁶ Article 47 of the Criminal Code of Procedure states that: "The suspect or person complained of shall enjoy the following rights from the time of his arrest for the purposes of the investigation:

1. To contact a member of his family, his employer, an advocate of his choosing or an acquaintance;
2. To meet with the advocate he appoints by a declaration noted in the record; the official authorization to act prescribed by the rules shall not be required;
3. To request 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 advocate or a member of his family."

⁴⁷ Human Rights Watch, *"It's Not the Right Place for Us" The Trial of Civilians by Military Courts in Lebanon*, 26 January 2017, <https://www.hrw.org/report/2017/01/26/its-not-right-place-us/trial-civilians-military-courts-lebanon> (accessed on 5 February 2018), p.21.

⁴⁸ Alef, *Guilty until Proven Innocent*, Lebanon, January 2013, <https://alefiban.org/publications/guilty-until-proven-innocent/> (accessed on 30 January 2018), p. 33.

was brought before the Public Prosecutor and formally charged. Moreover, it has been reported that lawyers have to rely on personal connections to locate clients held in military detention centres.⁴⁹ When suspects who are minors are concerned, according to Juvenile Law, a social worker shall be present during the minor's interrogation.⁵⁰ However, this is rarely the case in practice, since the military authorities often fail to communicate that the child is detained.⁵¹

With regards to the period of custody, under article 32 CCP, an individual may be held in police custody for the purposes of the investigation for a period of 48 hours, "unless the investigation requires additional time", in which case the period of custody may be renewable for another 48 hours. However, this provision does not require the Public Prosecutor to justify the reasons for extending the custody period. Furthermore, cases documented by Alkarama have shown that suspects are routinely held in detention past the maximum legal period of 96 hours before appearing before a judge.

Furthermore, article 403 CCP states that if there is "knowledge [of] unlawful detention of any person, [the judicial authority] shall release the person after verifying whether the detention is unlawful." However, past internal audits conducted by the Ministry of Interior have shown that visits to correctional institutions have been seemingly non-existent.⁵²

Lastly, article 47(5) CCP also provides the suspects in custody with the right to a prompt and independent medical examination. In addition, article 77 CCP states that "[i]f 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." However, very few individuals are aware of their right to request a medical examination.⁵³

What is more, the current system for the appointment of forensic doctors ostracises those reporting cases of torture and therefore discourages them from documenting injuries sustained during torture. 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. NGOs have reported that forensic doctors who find evidence of torture are rarely given further contracts.⁵⁴

⁴⁹ Human Rights Watch, "It's Not the Right Place for Us" *The Trial of Civilians by Military Courts in Lebanon*, 26 January 2017, <https://www.hrw.org/report/2017/01/26/its-not-right-place-us/trial-civilians-military-courts-lebanon> (accessed on 5 February 2018), p.21.

⁵⁰ Juvenile Law No. 422 of 2002, article 34.

⁵¹ Human Rights Watch, "It's Not the Right Place for Us" *The Trial of Civilians by Military Courts in Lebanon*, 26 January 2017, <https://www.hrw.org/report/2017/01/26/its-not-right-place-us/trial-civilians-military-courts-lebanon> (accessed on 5 February 2018), p.21.

⁵² Office of the Minister of Interior & Municipalities, *The Comprehensive National Report on Prison Conditions in Lebanon Conclusions and Recommendations*, (The Lebanese Republic: 2011), p. 59.

⁵³ 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, para. 15.

⁵⁴ Alef, *Guilty until Proven Innocent*, Lebanon, January 2013, <https://alefiliban.org/publications/guilty-until-proven-innocent/> (accessed on 30 January 2018).

When the suspect is brought before the judge with visible signs of injuries sustained during torture, the judge rarely requests that he/she be visited by an independent forensic doctor. In several 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. Testimonies collected by Alkarama show that even when acts of torture are denounced to the judge, the latter does not grant suspects the right to be visited by an independent doctor. In the Military Court system in particular, suspects – even minors – are systematically denied visits by a doctor and, in the rare cases in which they are granted this right, doctors are appointed internally and do not report injuries resulting from torture, as shown in the case of Haytham Fatima.

Haytham Fatima⁵⁵ was arrested on 14 January 2016 in his house in Tripoli by officers 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, Haytham Fatima lost his hearing in his right ear. Indicted for terrorism, he was subsequently brought before the Military Court.

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

3.2 Unresolved cases of enforced disappearances and incommunicado detention

3.2.1 ENFORCED DISAPPEARANCE: A LEGACY OF THE CIVIL WAR (ISSUE NO. 10)

It is estimated that there are 17,000 cases of unresolved enforced disappearance in Lebanon. There are currently 313 cases that remain pending before the UN Working Group on Enforced Disappearances.⁵⁶ The great majority of these individuals went missing during the Lebanese war (1975-1990) at the hands of Lebanese militias as well as local and foreign armed groups. These kidnappings were practised by all armed groups (militias and armies) and often in coordination between groups (for instance, Lebanese militias, or members of the Lebanese army, handing over victims to Syrian or to Israeli forces). This

⁵⁵ 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 5 February 2018).

⁵⁶ UN Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, 31 July 2017, A/HRC/36/39, p. 14.

practice persisted after 1990, but on a smaller scale, in the context of the presence of Syrian and Israeli troops.

This is the case of **Ammar Al Suttof**,⁵⁷ who, on 14 October 1993, was abducted from his house in Beirut by agents of the Syrian intelligence services. His family and friends contacted the Syrian intelligence services, the Lebanese police, as well as the headquarters of the Syrian intelligence services in Anjar, all without success. His family subsequently learnt that he had been transferred to Syria, and between 1998 and 1999, his sister could visit him at Branch 235 of the Military Intelligence Division in Damascus. After 1999, his family was no longer allowed to visit him and remains without any information on his fate and whereabouts. Indeed, the actions undertaken by his family before the Lebanese authorities did not yield any result.

In addition to the fact that being victim of enforced disappearance constitutes a form of torture, the Committee stressed in its jurisprudence that such practice amounts to a violation of article 7 of the Covenant considering the “anguish and distress” caused to the victim's relatives.⁵⁸

Consequently, the Lebanese state has the obligation to take appropriate measures to ensure that that families of missing persons have the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of their relatives. To date, no serious measure has been taken to address the violations committed during the civil war and in its aftermath. Not only has no one ever been prosecuted for these abuses, but a comprehensive amnesty law was passed in 1991, creating a climate of impunity for perpetrators.

Lebanon also suffers from a lack of a broad governmental legal and social strategy to address the issue of enforced disappearances during the civil war, although some administrative steps have been taken in order to assist families. Several measures were proposed in the National Action Plan for Human Rights in Lebanon for 2014-2019 to address this issue, but none have been implemented so far.

3.2.2 INCOMMUNICADO DETENTION, AN OPEN DOOR TO ABUSES (ISSUE NO. 14)

⁵⁷ Alkarama, *Syria: Disappearance Ammar Al-Suttof since 1993*, 17 June 2009, <https://www.alkarama.org/en/articles/syria-disappearance-amm-al-suttof-1993> (accessed on 29 January 2018).

⁵⁸ Communication No. 540/1993, *Celis Laureano v. Peru*, para. 8.5; Communication No. 542/1993, *Katombe L. Tshishimbi v. Zaire*, para. 5.5; Communication No. 440/1990, *Youssef El-Megreisi v. the Libyan Arab Jamahiriya*, para. 5.4; Communication No. 449/1991, *Mojica v. Dominican Republic*, para. 5.7.

In numerous cases documented by Alkarama, arrestees, particularly those suspected of terrorism or other security crimes, were detained *incommunicado* following their arrest by the Military Intelligence.

Following their arrest, the suspect is usually brought to Military Intelligence or Military Police barracks and subsequently to the premises of the Ministry of Defence in Al Yarzeh, all places of detention that are not subject to any judicial oversight. In most cases, individuals are held *incommunicado* for a period lasting from several days to several months before being brought before a judicial authority, leaving them completely outside the protection of the law. This practice increases the risk of being subjected to torture. This is all the more concerning considering that in cases of terrorism or state security, torture is systematically practiced in order to extract a confession. Self-incriminating statements are later admitted as evidence during unfair trials before exceptional courts and often lead to the imposition of heavy sentences (see section 4). Minors suspected of terrorism or other security crimes are no exception to the aforementioned pattern of violations.

Walid Diab,⁵⁹ 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 and water. It was 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 his confessions 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 a final decision of the Juvenile Court.

Lastly, under international law, the Lebanese state can be held accountable for failing to prevent human rights abuses committed by non-state actors. Most notably, Lebanon should address the allegations of unlawful arrests and *incommunicado* detention by armed militias carried out on its territory, all the more since they act either on behalf of the Lebanese government, or with its direct support and/or acquiescence. On 19 May 2016, Alkarama documented the case of Diaa Ayouche, a Syrian refugee who was abducted in the Hermel region by Hezbollah militants in February 2014, and has

⁵⁹ 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 5 February 2018).

remained enforcedly disappeared since. Given the level of interdependence and cooperation between the Lebanese State and the Hezbollah, the latter should and can be held accountable for the violations committed.

RECOMMENDATIONS:

1. Ensure, in law and in practice, that all detainees are afforded all fundamental safeguards from the moment of their arrest, including the right to access a lawyer in private and without delay, and the rights to an independent medical examination, to notify a relative, as well as to appear promptly before a judge;
2. Hold accountable non-state armed groups bearing responsibility for human rights violations;
3. Establish an independent national commission for the missing and the disappeared.

4. RIGHT TO A FAIR TRIAL AND DUE PROCESS (ARTICLE 14)

Article 14(1) ICCPR states that "all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

While the Covenant does not prohibit the trial of civilians before military or special courts, it requires that such trials be in conformity with the requirements of the Covenant and that the guarantees enshrined therein cannot be limited because of the military or special character of the court. The trial of civilians before exceptional jurisdiction courts raises serious issues as far as the equitable, impartial and independent administration of justice is concerned.⁶⁰ In fact, 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.

4.1 Military courts (issue No. 19)

⁶⁰ UN Human Rights Committee (HRC), *General comment No. 32, Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, para. 22.

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). It is composed by the Permanent Military Court based in Beirut, the Military Cassation Court and single military judges.

Military judges are not required to have a law degree or any legal training and are appointed by the Ministry of Defence, which means they remain directly subordinated to that ministry. Moreover, the court is presided by a serving military officer. This clearly undermines the competence, independence, and impartiality of the courts.⁶¹

The jurisdiction of the Military Court, as defined in article 24 of the Code of Military Justice, covers 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.

More precisely, the Court has jurisdiction over crimes of espionage, treason, draft evasion, unlawful contact with the enemy (i.e. Israel), as well as any crime that harms the interest of the military or the Internal Security Forces, or the General Security, including acts such as "defamation of the army".⁶²

As the law does not restrict the jurisdiction of the Military Court to military personnel, civilians – including minors as highlighted by the case of Walid Diab – 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, before which violations of fair trial rights are systematic.

In fact, the proceedings before the Military Court are governed by the CCP and MC; however, the latter prevails in cases of a conflict of laws (article 33 MC). Even when these bodies of law protect fair trial rights, these guarantees are never enforced. Trials before the Military Court can be held behind closed doors,⁶³ the presence of a lawyer before single military judges is optional,⁶⁴ verdicts are not

⁶¹ Myriam Mehanna, "Marshalling Justice in Lebanon: How Military Courts Violate the Conditions of a Fair Trial", *The Legal Agenda*, 26 June 2015, <http://legal-agenda.com/en/article.php?id=713&folder=articles&lang=en> (accessed on 8 February 2018).

⁶² Code of Military Justice, article 24.

⁶³ Article 55 MC: reads as follow "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."

⁶⁴ Article 57 MC reads as follow: "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. 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."

motivated and, as in all the cases documented by Alkarama, confessions extracted under torture is used as major, if not the sole source of evidence, especially in trials for acts of terrorism.⁶⁵

Lastly, due to the broad jurisdiction it exercises, the military justice system has been largely used to intimidate or retaliate against human rights lawyers, activists, individuals expressing their dissent and victims denouncing previous abuses, as in the case of Loyal Al Kayaje.

Loyal Al Kayaje,⁶⁶ a Palestinian resident from Saida, denounced in an interview published on 4 September 2015 on NOW News 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.

Thus far, three draft laws aiming to reform the military court system have been presented before the Council of Ministers, most recently by the Ministry of Justice on 22 December 2015.⁶⁷ However, these drafts never reached the parliament. This inertia is due to the fact that the army has always opposed any moves to curtail its powers, invoking the conflict with Israel.⁶⁸

In this regard, we wish to highlight that during the second Universal Periodic Review of Lebanon in 2015, the sole recommendation to amend the jurisdiction of the Military Court and restrict it to the members

⁶⁵ 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 5 February 2018), Alkarama, *Lebanon: Syrian national tortured by military intelligence in order to extract confessions*, 25 February 2016, <http://en.alkarama.org/lebanon/2056-lebanon-syrian-national-tortured-by-military-intelligence-in-order-to-extract-confessions>, (accessed on 5 February 2018), Alkarama, *Lebanon: Another Case of Confessions Made Under Torture*, 11 May 2016, <http://en.alkarama.org/lebanon/2120-lebanon-another-case-of-confessions-made-under-torture> (accessed on 5 February 2018).

⁶⁶ Alkarama, *Lebanon: Loyal Al Kayaje Sentenced by the Military Court for Having Denounced Her Rape by Military Officers*, 23 August 2016, <https://www.alkarama.org/en/articles/lebanon-loyal-al-kayaie-sentenced-military-court-having-denounced-her-rape-military> (accessed on 31 January 2018).

⁶⁷ Legal Agenda, “مقترح قانون لإنشاء محاكم متخصصة بجرائم الإرهاب في لبنان: وعود لا تجاريها النصوص”, 2 March 2016, www.legal-agenda.com/article.php?id=1440 (accessed on 31 January 2018).

⁶⁸ Middle East Eye, *ANALYSIS: Can growing pressure make Lebanon's army reform its military courts?*, <http://www.middleeasteye.net/news/analysis-can-growing-pressure-make-lebanon-s-army-reform-its-military-courts-1889516685> (accessed on 31 January 2018).

of the armed forces was simply "noted", marking the reticence of Lebanon to change the system and abide by international human rights standards.⁶⁹

4.2 The Judicial Council

Created by Resolution No. 1905 of 12 May 1923, 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. It deals with any matters concerning the internal or external security of the state such as treason, espionage and breaches of security or national unity. The JC does not have its own investigative structures: as a result, its decisions are based on preliminary investigations conducted by other security services, particularly the military intelligence. This means that confessions extracted under torture are often used as evidence against the accused.

The independence of the court is severely hampered by the extensive interference of the executive at different levels. First, its members, five senior judges from the Court of Cassation, are appointed by decree of the Council of Ministers.⁷⁰ Moreover, cases are referred to the Judicial Council by a Council of Ministers' decree (article 355 CCP).⁷¹ An investigating judge with broad powers is then appointed by the Minister of Justice for each case referred.⁷²

Furthermore, the JC's decisions cannot be appealed,⁷³ therefore denying the right to have one's sentence reviewed before a higher tribunal, in violation of article 14(5) ICCPR. This was already pointed

⁶⁹ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Lebanon*, 22 December 2015, A/HRC/31/5, paras 132.149.

⁷⁰ Article 357 CCP reads as follow: "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."

⁷¹ Article 355 CCP reads as follow: "Cases shall be referred to the Judicial Council pursuant to a decree of the Council of Ministers".

⁷² Article 360 CCP reads as follow: "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.

⁷³ Article 366 CCP reads as follow: "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."

out by the Human Rights Committee in its last review of Lebanon in 1997;⁷⁴ however, this situation was not remedied by the Lebanese authorities.

⁷⁴ UN Human Rights Committee (HRC), *UN Human Rights Committee: Concluding Observations: Lebanon*, 5 May 1997, CCPR/C/79/Add.78, para. 9.

The Nahr Al Bared cases

In May 2007, clashes erupted at the Palestinian refugee camp Nahr Al Bared between Fatah al Islam and the military. About 40,000 residents fled before the army gained control of the camp, while more than 300 individuals were killed, and more than 300 others were arrested, tortured and subjected to unfair trials.

Alkarama submitted the cases of 72 people to the UN human rights mechanisms. While some were arrested during the evacuation of the camp, either at the army checkpoint or in their homes, others were arrested after these events, in some cases as late as 2009. The arrests were carried out by members of the military intelligence without any warrant and with no reasons provided.

The suspects were all taken to the premises of the Ministry of Defence and held *incommunicado* for several days or weeks before being transferred to Roumieh prison. They all reported having been subjected to serious acts of torture to force them to confess that they were members of Fatah al Islam or had direct or indirect ties with that group. All said that they had been forced into signing self-incriminating statements that they had been directly involved in the clashes.

It was only when they were first brought before the investigating judge – after several months of detention without any legal basis – that they were informed of the charges against them and the investigating judge retroactively regularised their arrest by issuing arrest warrants. On 7 June 2007, the Council of Ministers ordered those arrested to be brought before the Judicial Council. Most of them remained in pre-trial detention for several years since it was only in September 2013 that a group of accused was for the first time brought before the Judicial Council.

Following unfair trials during which their confessions extracted under torture were admitted as evidence, they were sentenced to prison sentences ranging from two to fifteen years. No proper investigations were opened into the serious allegations of abuses committed by the military.

On 21 November 2014, the Working Group on Arbitrary Detention (WGAD) issued an Opinion characterising their detention as arbitrary. The WGAD established that the right of the victims to be tried without undue delay and the right not to be compelled to testify against oneself or to confess guilt were violated. It recommended that the Lebanese authorities “take all the necessary measures to remedy the situation,” and in particular “the immediate release of the detainees and the granting of reasonable and appropriate reparation.” However, more than three years after the issuance of the Opinion, the authorities have not implemented it, showing the lack of willingness to collaborate effectively with the UN Special Procedures.

RECOMMENDATIONS:

1. Limit the jurisdiction of the Military Court to military personnel only and for military offences;
2. Abolish the Judicial Council;
3. Remedy the situation of all individuals arbitrarily detained following unfair trials before these exceptional jurisdictions, and implement without delay the Opinions of the Working Group on Arbitrary Detention.

5. RIGHT TO PRIVACY AND FREEDOM OF EXPRESSION (ARTICLES 17 AND 19)

5.1 Internet freedom at the time of mass-surveillance (issue No. 21)

According to the standards set out by the Human Rights Committee, “[i]nterference [with the right to privacy] authorized by States can only take place on the basis of law, which itself must comply with the provisions, aims and objectives of the Covenant”.⁷⁵ The limitation must be necessary for reaching a legitimate aim, such as protecting national security, as well as in proportion to the aim and the least intrusive option available.

The Lebanese Constitution does not explicitly protect the right to privacy. The legal framework for the interception of communications is regulated under the Telecommunication Interception Law No. 140/1999. The text provides that “the right to secrecy of communications, both internal and external, by all means wired or wireless (landlines and mobile of all types including mobile telephone, fax, electronic mails) is guaranteed and protected by law and cannot be subjected to any forms of tapping, surveillance, interception or violation except in the cases, and by the means and procedures, prescribed by law.” Article 98 of the Code of Civil Procedure regulates the regime applicable to search and seizures. In particular, it authorises the Minister of Interior, who oversees the General Security Directorate, to order the interception of specific communications based on a written decision approved by the prime minister, for the purpose of combatting terrorism, crimes against state security, and organised crime.

On 18 January 2018, the US-based NGO Electronic Frontier Foundation (EFF) and mobile security company Lookout released a report establishing a link between a highly advanced spying platform

⁷⁵ UN Human Rights Committee (HRC), *CCPR General Comment No. 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation*, 8 April 1988.

"Dark Caracal" – which was stealing extensive amounts of data from mobiles and desktops – and the Lebanese General Security Directorate in Beirut.⁷⁶

According to the report, the espionage campaign has been running since 2012 and was still ongoing at the time of publication. According to the researchers, hundreds of gigabytes of data have been stolen from thousands of victims, spanning dozens of countries in North America, Europe, the Middle East, and Asia. More precisely, the research has found that Dark Caracal "successfully compromised the devices of military personnel, enterprises, medical professionals, activists, journalists, lawyers, and educational institutions." Types of data captured include documents, call records, audio recordings, secure messaging client content, contact information, text messages, photos, and account data.

The report contains technical evidence linking servers used to control the attacks to a General Security Directorate building in Beirut by locating Wi-Fi networks and internet protocol addresses in or near the building.

NGOs, including Alkarama, have found that the scope of the surveillance program and the broad range of people targeted demonstrate that the legitimate aims of the protection of national security and/or the prevention of crime could not have been pursued. Furthermore, the level of intrusiveness, which characterises the cyber-espionage campaign, indicates that it constituted a disproportionate interference with the right to privacy. In view of the above, an urgent appeal was sent to the Special Rapporteur on the right to privacy on 26 January 2018.⁷⁷

For a long time, Lebanon's diverse media environment was considered free and uncensored.⁷⁸ However, censorship and control of internet activities are on the rise in the country. For example, in August 2014, the Lebanese authorities ordered a permanent shutdown on mobile networks in the north-eastern border town of Arsal that has deprived its 160,000 residents of affordable internet access for two years. Although it was ordered for security reasons after Al Nusra Front, the Islamic State in Iraq, and Syrian militants raided the city and kidnapped 27 Lebanese soldiers, the measure as such is disproportionate and has a negative impact on freedom of expression. The three-year shutdown of the mobile Internet in Arsal left 160,000 residents unable to access 3G and 4G services. The mobile internet was restored in Arsal in September 2017.⁷⁹

⁷⁶ For more information see: Electronic Frontier Foundation and Lookout, *Dark Caracal Cyber-espionage at a Global Scale*, 18 January 2018, https://info.lookout.com/rs/051-ESQ-475/images/Lookout_Dark-Caracal_srr_20180118_us_v.1.0.pdf (accessed on 22 January 2018).

⁷⁷ Alkarama, *Lebanon: Investigate Large-Scale Surveillance Reports*, 24 January 2018, <https://www.alkarama.org/en/articles/lebanon-investigate-large-scale-surveillance-reports> (accessed on 19 January 2018).

⁷⁸ March, *Report: freedom of Expression Online in Lebanon* https://www.marchlebanon.org/media/document/MARCH_Report1P_censorshipA4.pdf (accessed on 19 January 2018).

⁷⁹ SEMX, *Two Years of Collective Punishment: Mobile Data Remains Inaccessible to Arsal Residents*, 31 March 2017, <https://smex.org/two-years-of-collective-punishment-mobile-data-remains-inaccessible-to-arsal-residents/> (accessed on 31 January 2018).

Such practices of censorship are due to a lack of regulation and accountability: although Lebanon does not yet have a law regulating cyberspace, the Internal Security Forces established a Cyber Crime Office in 2006 – also known as the Cybercrime and Intellectual Property Rights Bureau – under the jurisdiction of the judicial police. The bureau, which relies on the Audio-visual Media Law, is tasked with combating cybercrime such as child pornography, fraud and electronic money theft. However, in practice, the bureau oversteps its responsibilities and curtails freedom of speech (see section 5.2).⁸⁰

5.2 Freedom of expression (issues No. 22 and 23)

Although freedom of expression and freedom of the press are guaranteed by law and the Constitution in its article 13, these rights are often impaired in practice. In fact, the Penal Code, the Press Law, the 1994 Audio-visual Media Law, and the Military Justice Code all contain provisions restricting freedom of expression.

Indeed, article 384 of the Penal Code punishes with imprisonment from six months to two years anyone who insults the president, the flag, or the national emblem.⁸¹ Article 157 MC criminalises insulting the flag or army, a crime punishable with three months to three years in prison.⁸² This is contrary to the jurisprudence of the Human Rights Committee, which has made clear that “in circumstances of public debate concerning public figures in the political domain and public institutions, the value placed by the covenant upon uninhibited expression is particularly high.”⁸³

As for print media, it is regulated by the 1962 Press Law, while TV and radio fall under the 1994 Audio-visual Media Law. Article 75 of the Press Law includes a provision open to interpretation that prohibits the publishing of news which “contradict public ethics or are inimical to national or religious sentiments

⁸⁰ Middle East Eye, *Lebanon's cybercrime arrests threaten state's credibility*, 13 January 2018, <http://www.middleeasteye.net/columns/lebanons-cybercrime-arrests-threaten-states-credibility-625803839> (accessed on 1 February 2018).

⁸¹ Article 384 of the Criminal Code reads as follow: “Whoever humiliates the President of the State shall be punished from six months to two years of imprisonment. The same penalty shall be imposed on anyone who humiliates the flag or national emblem in public by one of the means mentioned in article 209.”

⁸² Article 157 of the Military Justice Code reads as follow: “Anyone who- by one of the means mentioned in article 209 of the Penal Code- humiliates the flag or the national army, or harms its dignity, reputation or morals, or execute any action which would weaken the army's military order or obedience to the heads and their due respect, shall be punished from three months to three years of imprisonment. Anyone who-in time of peace- publishes, reports or discloses anything related to the army, the military incidents inside or outside the barracks, the actions taken by the military authority against any of its members, the orders or decisions issued by that authority (military authority); or anything related to the movement of units and divisions, the military formations and promotions, the arrest of suspects or the tracking of rebels, or any operations carried out by the State forces, except for the communications and circulars allowed to be published by the competent authority, shall be punished from two months to two years of imprisonment. Shall be punished by the maximum penalty if the offense occurred during the war. It shall also apply to allied armies and armies acceding to the Charter of the League of Arab States provided that its laws or the conventions signed with them include similar provisions. The provisions of this article shall not apply to the publications concerned with Law No. 2/71 of 22/1/2001.”

⁸³ See Communication No. 1180/2003, *Bodrozic v. Serbia and Montenegro*, 31 October 2005.

or national unity". Journalists are also prohibited from insulting the head of state or foreign leaders, and those charged with press offenses may be prosecuted in a special publications court.⁸⁴

Moreover, the Audio-visual Media Law prohibits the broadcasting of unauthorised political or religious gatherings, and bans "commentary seeking to affect directly or indirectly the well-being of the nation's economy and finances, material that is propagandistic or promotional, or promotes a relationship with Israel."⁸⁵ Lastly, foreign publications require a licence prior to import and distribution in Lebanon. In particular, the Minister of Information may prohibit the entry of a foreign publication and confiscate copies of it if the publication is perceived to endanger security, upset national sentiment, damage public morals or incite sectarian tensions. The General Security (GS) also exercises prior censorship on imported publications.⁸⁶

In fact, the GS is also vested with broad censorship powers. According to certain laws and decrees, some of which date as far back as the French Mandate, it has been entrusted with the task of licensing, monitoring and censoring creative works. In doing so, the GS enjoys a certain degree of autonomy and discretionary powers, allowing it to control when and how much freedom will be permitted, heightening or reducing restrictions according to the prevailing political circumstances and the dictates of the various political and religious powers and parties.⁸⁷ The GS is authorised to censor all foreign magazines, books and films before they are distributed, as well political or religious material that is deemed a threat to the national security of either Lebanon or Syria.⁸⁸

It is in this context that the authorities are increasingly exercising pressure on online activists, journalists, bloggers, and regular internet users, restricting their right to freedom of expression.

For example, on 10 July 2017, freelance journalist Fidaa Itani was summoned by the Internal Security Forces' Cybercrime Bureau after publishing a blog post criticising Foreign Minister Gebran Bassil, the Lebanese army and President Michel Aoun in relation to the treatment of Syrian refugees. The journalist was also outspoken over the case of the four Syrian refugees who died in military custody following a military raid on refugee camps in Aarsal.⁸⁹ He was compelled by the Internal Security Forces Cybercrimes Bureau to remove a Facebook post that was dated 30 June 2017.

⁸⁴ Freedom House, *Lebanon, Freedom of the Press*, 2011, <https://freedomhouse.org/report/freedom-press/2011/lebanon#.U8YtPL61dg> (accessed on 7 February 2018).

⁸⁵ Freedom House, *Lebanon, Freedom of the Press*, 2016, <https://freedomhouse.org/report/freedom-press/2016/lebanon> (accessed on 6 February 2018).

⁸⁶ Nizar Saghieh, Rana Saghieh, Nayla Geagea, *Censorship in Lebanon: Law and Practice*, Heinrich Böll Stiftung, Middle East, 2010, p. 10.

⁸⁷ Ibidem, preface.

⁸⁸ MEDMEDIA, *Assessment of Media Legislation in Lebanon*, October 2014, http://www.med-media.eu/wp-content/uploads/2015/09/MEDMEDIA_LEBANON.pdf (accessed on 7 February 2018).

⁸⁹ Kareem Chehayeb, "Cybercrime Bureau interrogates journalist", *The Daily Star*, 11 July 2017, <http://www.dailystar.com.lb/News/Lebanon-News/2017/Jul-11/412330-cybercrime-bureau-interrogates-journalist.ashx> (accessed on 22 January 2018).

In another case, in November 2017, local media reported that a prominent television host, Marcel Ghanem, was charged with obstruction of justice after he protested charges brought against two of his guests for criticising the president.⁹⁰

Most recently, on 10 January 2018, Lebanon's military court sentenced a Lebanese journalist and researcher, Hanin Ghaddar, *in absentia* to six months in prison for allegedly defaming the Lebanese army during a 2014 conference in the United States.⁹¹ On 20 January 2018, Lebanon's military intelligence summoned an activist, Obada Yousef, for questioning over Facebook posts concerning leading Lebanese politicians. He was detained by the military and police for four days.⁹²

RECOMMENDATIONS:

1. Entrust an independent and impartial authority to investigate reports of secret large-scale surveillance tied to Lebanon's security agencies;
2. Define and limit by law the jurisdiction of the Internal Security Forces' Cybercrimes bureau;
3. Repeal provisions criminalising freedom of speech;
4. Refrain from prosecuting individuals exercising their right to freedom of expression.

6. RIGHT OF PEACEFUL ASSEMBLY AND FREEDOM OF ASSOCIATION (ARTICLES 21 AND 22)

6.1 Right to peaceful assembly (issue No. 24)

The Constitution guarantees freedom of assembly in its article 13. To date, the primary law governing the right to peaceful assembly is the Ottoman Public Assemblies Law of 1911, which was amended in 1931 and 1932. Subsequent government directives, such as Ministry of Interior Decree No. 4082 of 2000, as well as the Lebanese Penal Code also contain provisions relevant to the conduct of public assemblies.⁹³

Article 3 of the Public Assemblies Law provides that the government may prevent a public assembly that would disturb public security or public order or public morality, and would go against the regular

⁹⁰ Human Rights Watch, *Lebanon: Pattern of Prosecutions for Free Speech*, 31 January 2018, <https://www.hrw.org/news/2018/01/31/lebanon-pattern-prosecutions-free-speech> (accessed on 31 January 2018).

⁹¹ *Ibidem*.

⁹² *Ibidem*.

⁹³ ICNL, *Civic Freedom Monitor: Lebanon*, 19 December 2017, <http://www.icnl.org/research/monitor/lebanon.html> (7 February 2018).

and normal course of public interests. In recent years, the government has banned a number of peaceful assemblies on grounds that they posed a threat to or would otherwise disturb public security.⁹⁴

Furthermore, peaceful demonstrations were often met with an excessive use of force, as illustrated by the violent suppression of peaceful protests in 2015. Organised by the group "You Stink" in response to the government's 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 protestors wounded and dozens of arrests.

In this regard, on 14 September 2015, Alkarama and the Lebanese NGO March sent a communication to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, regarding the case of Lebanese writer, director and one of the "You Stink" co-organisers, Lucien Bourjeily, who was injured by the security forces during a peaceful protest in Beirut on 25 August 2015.⁹⁵ On that day, protesters, including Bourjeily, entered the Ministry of Environment to demand the resignation of Minister Mohammad Machnouk. After a few hours, the security forces started to violently evacuate all journalists and media representatives from the building, as well as confiscating all communications and image recording devices. There has also been reports of journalists who were physically attacked by security forces while reporting on the "You Stink" movement.⁹⁶

6.2 Freedom of association (issue No. 25)

Freedom of association in Lebanon is governed by the anachronistic 1909 Ottoman Law on Associations, which still remains in force. Under the present statute, an "association" (defined as "a group composed of several individuals who unite their information and efforts in a permanent fashion and the goal of which is not to divide profit") is required to inform the Ministry of the Interior of its existence. No permits or licences are needed to form the association.⁹⁷ In general, the Lebanese authorities adopted a *laissez-faire* approach to NGO regulation and have ignored most provisions of the 1909 Law.

In 2006, a Ministerial circular was issued, stipulating that the Ministry of Interior is required to issue notification receipts within 30 days of receiving the notification; this receipt serving as proof of an

⁹⁴ Ibidem.

⁹⁵ Alkarama, *Lebanon: Activist Lucien Bourjeily Injured by Security Forces Using Excessive Force During Peaceful Manifestation*, 16 September 2015, <https://www.alkarama.org/en/articles/lebanon-activist-lucien-bourjeily-injured-security-forces-using-excessive-force-during> (accessed on 8 February 2018).

⁹⁶ Freedom House, *Lebanon, 2016*, <https://freedomhouse.org/report/freedom-press/2016/lebanon> (accessed on 19 January 2018).

⁹⁷ Ottoman Law on Associations of 1909, articles 1 and 2.

association's legality. However, in practice, the 30-day delay is not always respected, and the notification receipt may be delayed by several months or more.⁹⁸ The receipt is important for NGOs' functioning, as it is necessary for an NGO to carry out a number of essential activities, such as opening a bank account or receiving foreign funding. Accordingly, a delay in the issuing of the notification receipt has a negative impact on the right to freedom of association.

RECOMMENDATIONS:

1. Abstain from resorting to unlawful use of force against demonstrators in the context of peaceful rallies and ensure that regulations governing the use of force and weapons by police conform fully with the UN Basic Principles on the Use of Force and Firearms;
2. Uphold the right to freedom of association and ensure that new associations are promptly provided with notification receipts of their registration.

⁹⁸ ICNL, *Civic Freedom Monitor: Lebanon*, 19 December 2017, <http://www.icnl.org/research/monitor/lebanon.html> (7 February 2018).