



LEBANON: THE PAINFUL WHEREABOUTS OF DETENTION

february 2008

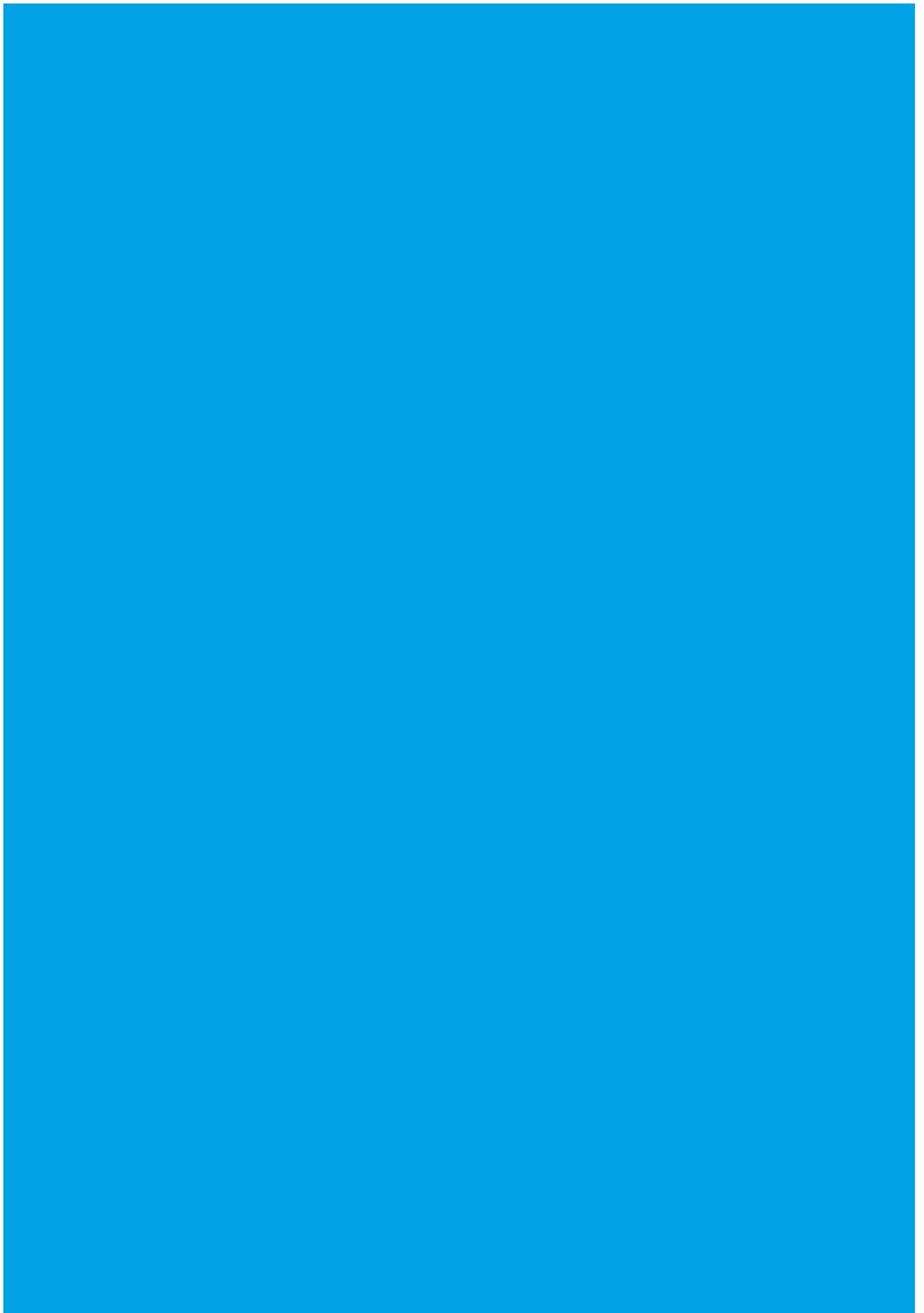


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L'ASSOCIATION LIBANAISE POUR L'ÉDUCATION^{5/} ET LA FORMATION



operational since 1996 (under the name of nouveaux droits de l'homme-international) and officially registered in 2004, "**L'Association Libanaise pour l'Éducation et la Formation** (Lebanese Association for Education and training) **ALEF**" is a non-governmental organization, which works on monitoring, protecting and promoting human rights in Lebanon through education, training, advocacy and lobbying activities.

Mission

ALEF believes in the absolute value of human beings. thus the ultimate "raison d'être" of any community structure is to reflect this belief in attitudes and actions. **ALEF's** mission is to trigger and contribute to a cumulative process of change in values and attitudes incompatible with the universal values of human rights.

since 1997, ALEF has worked for the promotion and protection of human rights situation in Lebanon through several programs:

- > **Advocacy program** through concerted actions based on tools such as reports on human rights situation, studies, and other publications on various human rights-related issues.
- > **Education and outreach program** through formal education on human rights courses delivered by **ALEF** resource persons in 3 faculties of 2 major universities and in 2 vocational schools and through non-formal education consisting of customized courses to interested groups (political, social, cultural, religious...etc.), school clubs. The program also entails the production or co-production of human rights education training materials.
- > **youth program:** it is through youth civic activism on human rights issues in Lebanon that youth participation in democratization of the society and empowerment of the rule of law is enhanced. while several tens of volunteers participate in the organization's activities, youth are considered one of the primary target groups of human rights work, where we provide opportunities of civic engagement and further spread the culture of human rights.
ALEF regularly adopts a community-based approach in its work, especially so in the youth program to build the youth's capacity, but also in other programs and projects, to reflect and mainstream the key principle of participation.



How could we be so SILENT...?



ACKNOWLEDGMENTS

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ALEF gratefully acknowledges the support of the European Commission without whom this report would have been difficult to produce. ALEF also acknowledges the support of the Embassy of the Kingdom of the Netherlands and the partnership of IKV-Pax Christi Netherlands and Pax Christi International.

ALEF is grateful to all the victims who have been interviewed, especially individual Palestinians at Beddawi camp who showed willingness to share what they have been through during and after evacuation despite their ordeals. Special thanks also goes to journalists and civic activists with whom ALEF conducted joint investigations and shared information during the conflict of Nahr el-Bared. Many thanks also to non-governmental organizations and Lebanese associations who agreed to cooperate for this report and thus made revealing the torture trend in Lebanon possible.

We would like also to thank the Working Group on Torture Prevention, headed by ALEF and Restart, who demonstrate a commitment in dealing with the torture trend in Lebanon.

Khalil Mechantaf, research officer at ALEF, conducted the legal review, researched and wrote this report. Lala Arabian and Rima Ishak provided assistance during ALEF meetings with civil organizations and UN agencies and summarized the guidelines of ALEF's main investigations.

Many other individuals, journalists and activists provided continuous assistance to this project/report as a result of their own personal beliefs about and out of respect for their obligation to prohibit torture and ill-treatment internationally.

It may be possible to set down on paper a description of all the horrors of torture in such a way that a multitude of researchers may read it and bear witness. What seems impossible, on the other hand, is to refrain from revealing the pain that I saw in the eyes of the victims that I have interviewed. Yes, there exists a duty to declare how much desolation and despair haunts the eyes of the teenagers, the young Lebanese and the foreigners who were subjected to these abhorrent acts at the hands of state officials.

Torture is the most widespread crime against human rights in the modern world, practiced in more than one hundred countries, including Lebanon. How could something so brutal that it is almost unthinkable be so prevalent? How can the Lebanese state abstain from opening an independent investigation into these crimes and fail to compensate its torture victims, including those who were tortured during the Syrian occupation? How could the Lebanese public be unaware of the practices of its institutions which are meant to protect citizens and preserve their safety? How can we dare to justify the erroneous and illegitimate excuses offered to explain these despicable acts?

HOW COULD WE BE SO SILENT...?

This is why we decided to draft this report in response to the shocking revelations coming out of Lebanese prisons and detention centers. This is why we decided to denounce the vicious but all too common practices of torture in Lebanon. This is why we decided to reveal a crime that is not yet been categorized as a "crime." This is why we decided to speak on behalf of all the victims who have not yet even asked for recognition of their pain as they know they will not get any from their state officials.

This report is first and foremost dedicated to the victims who decided to share with us their pain in the blackout of the state. It is a report in which we ask for the termination of torture and ill-treatment in prisons and detention centers; to render justice to the victims and end impunity; and above all to respect the dignity of the Lebanese in their home country.

The end product of this project is a report that might be too painful for many people to read, but is essential in uncovering the truth in a country that desperately seeks to reestablish the rule of law amongst people who still live with a mindset of war.

IT IS OUR RESPONSIBILITY!

EXECUTIVE SUMMARY

This report presents the findings of **ALEF**'s research on the state of torture in Lebanon, within the framework of the project "Torture prevention and monitoring in Lebanon" funded by the European Union and implemented in partnership with IKV Pax Christi (Netherlands) and Pax Christi International, and which ran from 1st of April 2007 till the end of September 2008.

ALEF is implementing the project owing to funding by the European Union EIDHR's program and co funded by the Dutch embassy and in partnership with IKV Pax Christi Netherlands and Pax Christi International. The project consists of three complementary actions:

- > A **community mobilization** component that encourages the involvement and commitment of the community in Lebanon by holding trainings, on detecting, addressing and reporting torture cases, as well as promoting the prevention from torture among the population.
- > A **monitoring & reporting** component that consists of a centralized system to process and analyse the compiled information on reported cases of torture and produce a report on torture in Lebanon.
- > An **advocacy** component on the national and international level. It includes on the international level, a visit to Europe to present the report on torture and a lobbying plan of action to urge the government to act on the basis of issues of concern and findings of the torture report, on the national level, the project aims to set up a constructive dialogue between the local authorities, policy makers, government officials and the national network to elaborate the appropriate reforms on the legislative level.

The project achieved the following outcomes:

- > mobilization of civil society's actors towards detecting, addressing and reporting torture cases
- > Promotion of torture prevention among the general population.
- > Advocacy at the national and international level for the implementation of international norms and procedures related to the prevention of torture and decreasing of impunity.

The aim of this research was to assess the extent of torture in Lebanon, to understand its causes, and to identify the main traits of the victims' profile as well as the perpetrators of torture in the country. The study includes a review of the legal framework and an analysis of the practices over the year 2007.

The methodology consisted of a combination of desk-based research aimed at analyzing the legal framework and a field research component (interviews in various locations including refugee camps, drug addicts...etc).

The political crisis through which the country has been passing since 2005 posed a challenge to the implementation of some reforms. The current window of political opportunity should be used to implement legal reforms; prevent and repress torture practices on the ground.

Lebanon has ratified the United Nations Convention Against Torture and other cruel, inhuman or degrading treatment or punishment (1984) in 2000. It has also signed, but not yet ratified, the optional protocol to this convention, a positive step few states have taken.

Lebanon is also a party to the Geneva Conventions (1949) and their two additional protocols (1977) which prohibit torture. These instruments also recognize the principle of "command responsibility" according to which a superior can be held responsible for the acts of his subordinate. This means that responsibility for acts of torture reaches up until the highest level of the state, including the head of the army and the president of the republic for acts perpetrated under their command.

Despite all relevant instruments having been signed by the state of Lebanon at the international level, national laws still fail to prohibit it.

neither the constitution, nor the criminal Procedures Law, nor Criminal Law adequately reflect the international definition of torture.

other laws, such as drug-related laws and laws regulating prisons and detention centers, also fall short of explicitly prohibiting torture.

despite the framework of legal obligations Lebanon is part of, torture has been practiced by the the internal security forces (ISF) against the majority of arrested persons, including but not limited to illegal migrants, drug addicts, sex workers; the military intelligence has also practiced torture against suspects of crimes against national security and against dozens of Palestinian refugees during and after the conflict in Nahr el-Bared refugee camp in northern Lebanon in May – September 2007.

According to interviews conducted by ALEF, some of the victims detained in Varzeh and Kobbeh were electrocuted; tortured by *balanco*, a method in which the detainee is hanged by wrists, tied behind his back and “balanced” back and forth; raped; hit on genitals and weak or injured areas of the body; beaten and hit with various tools and in various positions. other forms of ill-treatment included humiliation, sleep-deprivation, blindfolding detainees, having them stand up for hours, and beating them. some did not survive such a treatment and died in prison.

Drug-addicts are also regular victims of torture and ill-treatment, with Hobeich’s detention center in western Beirut particularly renowned in this regard. At that detention centre, detainees are subject to torture such as being beaten by hoses or sticks; and being hoisted to a stick until collapsing, with brutal interrogations until the suspect cannot answer anymore. such practices also take place in other places in Lebanon, such as Zahle prison, in the Bekaa valley.

It is evident that torture has allegedly been routinely practiced by the military intelligence against Fatah el-Islam detainees and the general Palestinian refugee population over the year 2007 and by members of the drug repression bureau against some groups, such as drug-addicts. torture against these groups is initially used as a way to extract information but sometimes turn out becoming a tool for deterrence and collective punishment, in all impunity for the perpetrators, and with at least the implicit consent of the relevant authorities.

very poor conditions of prisons, most of which are under-staffed, under-resources, and over-crowded, are also conducive to abuses and mismanagement. besides, the failure to implement the 1964 decree transferring the control of prisons from the ministry of interior to the ministry of justice reflects the lack of civilian oversight, which is a cause for the continuation of torture practices.

this reveals a pattern of systematic and gross violation of human rights by the state of Lebanon and a failure to abide by their *erga omnes* obligation to prevent and repress torture by other states.

ALEF calls on the following stakeholders in Lebanon to take action:

to the Lebanese government

As to its obligation to report periodically to the CAT committee under article 19 of the CAT convention:

1. send its overdue reports to the committee and present its next periodic report due in 2009.

As to its relations with the United Nations special procedures:

2. Invite the special rapporteur on torture and other cruel, inhuman, degrading treatment or punishment to visit Varzeh prison and any other prison or detention centre under its control.

to the Lebanese parliament

3. Ensure consistency of national laws with the UNCAT, through undertaking the following measures:

3.1. The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, and in respect of the norms and principles of detention and imprisonment as agreed by the Congress on the Prevention of Crime and the Treatment of Offenders (1955) and UN General Assembly resolution A/RES/43/173 (1988).

3.2. Adopt the principles embodied in the Code of Conduct for Law Enforcement Officials, UNGA resolution 34/169 of 17 December 1979, especially articles 5 and 6 of the code¹, and reflect these principles in national legislation and establish effective mechanisms to ensure the internal discipline, external control and supervision of law enforcement officials.

3.3. Define torture by including all its elements of crime, mental and material, in line with its definition in the UNCAT.

3.4. Consider torture a criminal offence – currently petty crime – after raising the penalty to temporary detention, as a minimum, according to article 179 of the criminal code².

3.5. Amend article 401 of the criminal code in order to enclose all violent practices that constitute the elements of crime of torture, as follows:

"For the purposes of this article, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

For such an offence, the minimum period of imprisonment is of five years and includes the immediate suspension of the authorities of the instigator or the perpetrator.

A superior who knew or had reasons to know that torture was being perpetrated by individuals acting under his authority or responsibility and failed to take all necessary and reasonable measures in their power to prevent their commission, will be sentenced by minimum period of imprisonment of five years

Anyone found guilty of instigating or having knowledge that torture was being perpetrated by a public official or other person acting in an official capacity who failed to inform the competent authorities will be sentenced to a minimum of one year of imprisonment"

3.6. Prohibit the use of information obtained under duress before courts of law.

3.7. Grant medical doctors a prominent and independent role in checking individuals in detention centers.

4. Ratify the optional protocol of the UN CAT.

5. Access to the Rome Statute of the International Criminal Court.

¹ Article 5 stipulates that no law enforcement official may inflict any act of torture and ill-treatment or invoke superior orders or exceptional circumstances. Article 6 follows that law enforcement officials should fully protect the health of persons in their custody and take immediate action to secure medical attention when required.

² Death penalty should definitely not be considered as the highest sentence. ALEF has called on the Lebanese government on several occasions to abolish the death penalty. See ALEF's press release in this regard, ALEF calls on the Lebanese state to immediately abolish death penalty, *L'Orient le Jour*, 11 October 2007.

to the ministry of justice:

6. include in the criminal procedures law the following data for registration and sentence individuals convicted of not having respected such procedures:

- 6.1. the identity of the detainee
- 6.2. the date, time and place of detention
- 6.3. the detaining authority the individual
- 6.4. the ground for detention
- 6.5. the state of health of the detainee upon admission and any changes thereto
- 6.6. the time and place of interrogations, with the names of all interrogators present
- 6.7. the date and time of release or transfer to another detention facility

7. offer a medical examiner as a routine practice, as follows:

- 7.1. Allow for a medical check during the day of arrest and immediately after each interrogation, with no need for a specific request from the detainee.
- 7.2. Ensure that the medical examiner is not a regular visitor to the detention center and/or in relation (parental or others) with the general prosecutor in charge and/or the detectives conducting the interrogation.
- 7.3. Ensure that the examination takes place in private and without the presence of any officer or public official.

8. establish a monitoring unit within the ministry of justice whose members are in charge of conducting visits to detention centers to ensure respect of Lebanese laws and rights of detainees by the ISF officers and detectives, as follows:

- 8.1. the unit should include observers from the civil society and NGOs to ensure its transparency.
- 8.2. members of the monitoring unit should be able to attend interrogations at any detention center or penal institution to ensure that the conduct of the interrogators is strictly in conformity with the requirements of the CAT convention.
- 8.3. the unit should directly report to the head of the judiciary police, the head of the ISF and the ministers of justice and interior.
- 8.4. its reports should be also submitted to the UN committee on torture and be made accessible and public to the civil society.

9. take appropriate judicial measures to close the detention center of Hobeich and bring to justice those who were and/or are still in charge of interrogations in its premises. Provide detailed statistical data, disaggregated by sex, ethnicity and conduct, on complaints related to torture and ill-treatment allegedly committed by law-enforcement officials, along with investigations, prosecutions, penalties and disciplinary action relative to such complaints.

to the Lebanese judiciary

10. refuse taking up any evidence obtained under torture.

11. investigate any breach of the CAT convention along with any alleged torture case that come to its knowledge promptly and impartially.

12. In addition, and after establishing the aforementioned monitoring unit, the judicial authority when being informed by the unit's reports via the minister of justice, should file when necessary any criminal proceedings against alleged torture cases mentioned in the unit's report.

13. present and make public in a formal fashion any proceeding evidence where there is knowledge or belief that it has been obtained under torture.

14. provide, according to legislative incorporations in the criminal procedures law and the criminal law, means whereby an individual can challenge the legality of any evidence suspected of having been obtained by torture in any proceeding.

15. take effective judicial measures not only to repress but also to prevent acts of torture according to article 2 of the CAT convention.

16. make public the result of investigations into alleged acts of torture and ill-treatment by the Lebanese Army at varzeh and kobbeh prisons during and after the armed conflict in Nahr el-Bared refugee camp, particularly those revealed in this report and provide for independent review of the conclusions where appropriate.

to the ministry of interior:

as to the management of prisons and detention centers:

17. immediately transfer the management of prisons from the ministry of interior to the ministry of justice pursuant of the 1964 law decree n°17315.

18. immediately close the varzeh prison under the control of the ministry of defense and transfer its detainees to other prisons.

19. upgrade the prison conditions, especially Roumieh and Zahle prisons, for them to meet international standards, abolish discriminatory practices in their management and set up external monitoring mechanisms.

20. Ban all interrogations by military intelligence officers, investigate each death case that occurs in prisons and detention centers and have results made public.

21. Prohibit any acts of discrimination in prisons and abolishing the culture of the shawish.

As to the capacity of its armed forces:

22. Train detectives from the general criminal investigation unit and special criminal investigation unit in the ISF on forensic science, investigating crime scenes and techniques of interrogation in respect of human rights norms and treaties.

23. Train eligible inspectors on inspection mechanisms in prisons and detention centers on the prohibition of torture and minimum rules relative to the treatment of prisoners according to international standards.

As to the treatment and status of foreigners

24. Apply article 3 of the UNCAT, as appropriate, in transferring detainees in the Lebanese state's custody to the custody whether de facto or de jure of any other state and immediately stop extraditing refugees to countries where they are at risk of being tortured.

25. Review, as a matter of urgency, the alternatives available to indefinite detention of foreigners by opening the doors for temporary settlement or any other appropriate mean in respect of human dignity, especially refugees from war torn regions³.

26. In the meanwhile, undertake all measures aimed at ensuring human rights of migrant workers, refugees, and other foreigners, in particular through accessing the international convention on the protection of the rights of all migrant workers and members of their families (1990) and the convention relating to the status of refugees (1951) and its optional protocol (1967).

ALEF calls on the following European union's stakeholders to take action:

Members of the European Parliament

1. Debate the issue of torture in Lebanon and send the machreq delegation to a fact-finding mission on this issue at the earliest possible.

2. Address torture in Lebanon through calling a hearing on this issue

3. Lead a constructive dialogue with the GoL to ensure implementation of CAT provisions into the domestic legal framework and to address the practice of torture by state agents

4. Work collaboratively with the GoL to ensure ratification of the OP-CAT

5. If the GoL fails to respond favorably to the dialogue through taking the necessary legal and monitoring measures within a defined time-frame, pass a resolution addressing the situation.

Members of the European Commission

To dialogue constructively with the GoL for it to undertake the following:

1. Implement its human rights obligations under the 2002 Association Agreement

2. Strengthen the effective enforcement of legal provisions against torture as set forth in the 2007 European Neighborhood Policy's (ENP) Action Plan.

4. Explore the possibility of accessing to the OP-CAT as per the 2007 European Neighborhood Policy's Action Plan

Members of the European Council

To dialogue constructively with the GoL for it to implement the council guidelines on torture as part of the common foreign and security policy.

³ ALEF welcomes the government's decision in its meeting on 10 November 2007 in extraditing foreigners in Lebanese prisons who served their sentence; thus putting an end to their indefinite detention.

issues concerning torture have come before a number of human rights organs, such as the human rights committee on torture, the European court of human rights and the international criminal tribunal on the former Yugoslavia⁴.

Lebanon ratified the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵, hereafter UNCAT, the Geneva Conventions of 1949 and both additional protocols of 1977. In addition, Lebanon ratified the ICCPR⁶, CERD⁷, CRC⁸, and UDHR⁹. These conventions which explicitly prohibit torture are applicable as minimum fundamental guarantees of treaty law in the territory of Lebanon.

According to the UNCAT, Lebanon has a duty inter alia to take measures to prevent such activities in territories under its jurisdiction (Article 2), not to return a person to a country where he may be subjected to torture (Article 3), to make torture a criminal offence and establish jurisdiction over it (Article 4 and 5), to prosecute or extradite persons charged with torture (Article 7) and to provide a remedy for persons tortured (Article 14).

In addition to treaties, resolutions of international organizations that sets up mechanisms designed to ensure that the prohibition is implemented and to prevent individuals from resorting to torture¹⁰ are also effective tools for the eradication of torture.

⁴ <http://www.un.org/icty/furundzija/trialc2/judgement/index.htm>

⁵ CAT, 5 October 2000

⁶ International Covenant on Civil and Political Rights, 3 November 1972

⁷ Convention on the Elimination of all forms of Racial Discrimination, 12 November 1971

⁸ Convention on the Rights of the Child, 14 May 1991

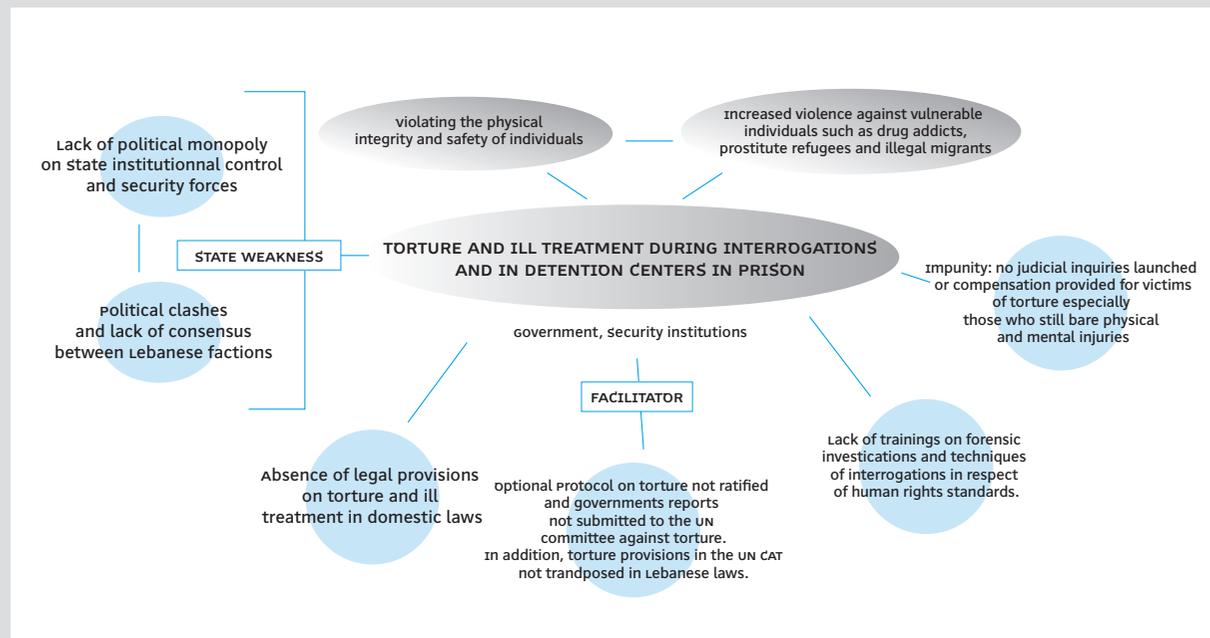
⁹ Universal Declaration of Human Rights, 10 December 1948

¹⁰ Reference can be made to such mechanisms as the United Nations Special Rapporteur on Torture; and the United Nations Committee against Torture, set up under the Torture Convention.

SITUATIONAL ASSESSMENT TORTURE MAPPING IN LEBANON

detention centers and police stations are the most common places where torture and ill-treatment are practiced in Lebanon. such centers are widespread in the capital Beirut, northern Lebanon and the Bekaa valley. most government security institutions are suspected of committing crimes of torture and ill-treatment against vulnerable groups such as drug addicts, homosexuals, prostitutes, and against perpetrators of disgraceful crimes. most arrested individuals who end up in detention centers suffer prolonged incommunicado detention which facilitates the perpetration of torture, cruel, inhuman or degrading treatment.

prisons are also common places for the ill-treatment of prisoners and detainees. there are approximately thirty prisons in Lebanon, some of them have been recently declared as official facilities, such as the Yarzeh prison at the ministry of defense. most prisons are overcrowded and conditions are appalling.



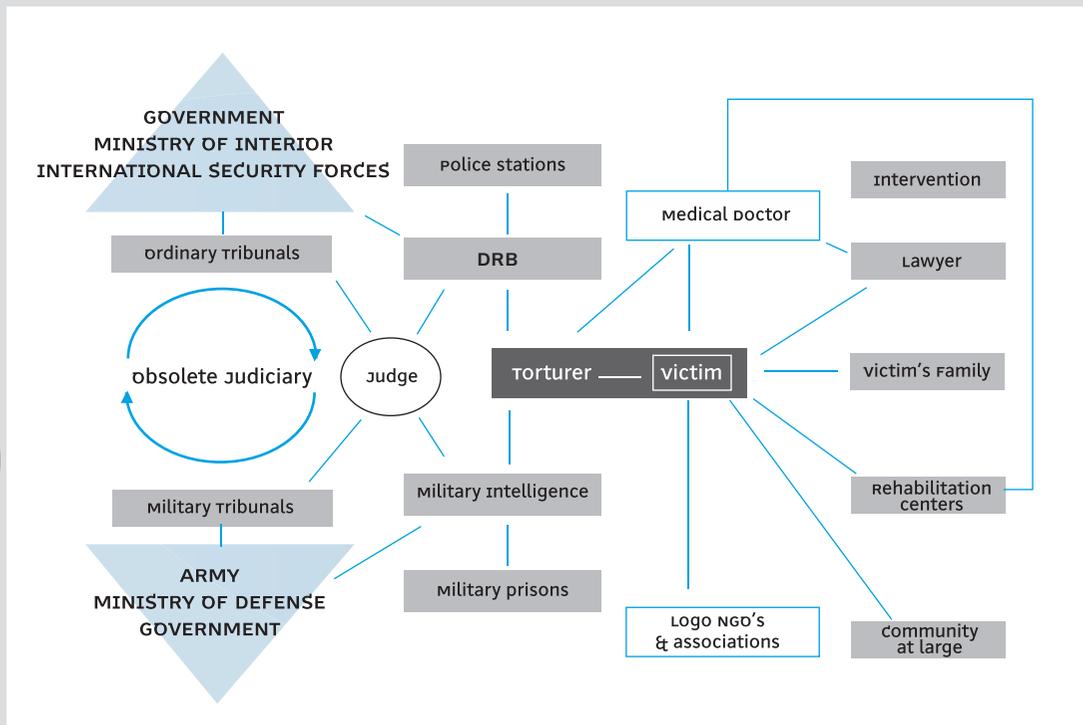
situational map

Figure 1: A situational map on the situation and reasons of torture in Lebanon

so rare are the inquiries launched by the judiciary that they are almost non-existent. The total absence of legal provisions on torture and ill-treatment in domestic laws have resulted in the spread of impunity and the practice of torture and ill-treatment by the very hands of state officials. state weakness and the lack of political monopoly on the control of state's institutions fuels the spread of these crimes and undermines the efforts made by state's committees and civil organizations for the eradication of torture.

criminal investigation bureaus of the internal security forces (ISF), particularly the drug repression bureau, are the major suspects in committing crimes of torture and ill-treatment, perhaps violating the physical integrity and safety of individuals on an almost daily basis. The ISF and other government security institutions, particularly the military intelligence, lack training on how to conduct forensic investigations and the techniques of interrogation which respect human rights standards. huge public funds are allocated to security departments, such as the information department at the ISF, depending on the government's policy towards each institution, or at least towards institutions over which the government preserves a certain monopoly. there are however no funds allocated for the training of security institutions on how to conduct forensic investigations and how to respect human rights.

military intelligence is renowned for its violent practices in prisons under the Army's authority, particularly infamous is the varzeh prison at the ministry of defense. At varzeh, previous anti-syrian opposition leaders and supporters as well as perpetrators of crimes of terrorism and crimes threatening the national security have been subjected to extreme conditions and close confinement for prolonged periods.



Actors involved

Figure 2: A map showing different actors involved in the situational assessment of torture

no national prevention mechanism has yet been established and the optional protocol of the united nations conventions against torture has not been ratified. Local NGOs and associations forced to sign confidentiality agreements to access prisons are unable to identify and detect all torture and ill-treatment cases on their own. detainees do not have easy access to medical doctors or lawyers, especially detainees who can be classified as belonging to a vulnerable group. In many cases, a detainee's family may be the only voice attempting to make reports about specific instances of violence against its family member or about particular conditions of their detention. on the community level, awareness raising for the prohibition of the crime of torture is absent. Alarming trends reveal that many individuals view torture as a needed interrogation tool whose use can be justified by reasons of national emergency and ridding the streets of criminals.



// STATES ARE OBLIGED NOT ONLY TO PROHIBIT AND PUNISH TORTURE BUT ALSO TO FORESTALL ITS OCCURRENCE: IT IS INSUFFICIENT TO INTERVENE AFTER THE INFLICTION OF TORTURE, WHEN THE PHYSICAL OR MORAL INTEGRITY OF HUMAN BEINGS HAS ALREADY BEEN IRREDEMIABLY HARMED //

the international treaties containing provisions about torture¹¹, already ratified by Lebanon, impose upon the Lebanese government the obligation to prohibit torture and punish any perpetrators of torture, as well as to prevent its officials from engaging in acts of torture.

In international human rights law which deals with state responsibility rather than individual criminal responsibility, torture is prohibited as a criminal offence to be punished under national law. In addition, all state parties to the relevant treaties have been granted, and are obliged to exercise, jurisdiction to investigate, prosecute and punish offenders¹². Thus, in human rights law, the prohibition of torture extends to and has a direct bearing on the criminal liability of individuals.

I. status of the prohibition of torture in international law

As important as the UN mechanisms are for facilitating the process of eradicating torture on a global basis, courts play an equally important role in defending the rule of law. In the age of globalism, law offers a more aggressive role for domestic courts in making and applying international law¹³. Where UN mechanisms have been symbolic in establishing the principles of international law against torture, the legal system, through domestic courts, regional courts, ad hoc tribunals, and the international criminal court, must apply these principles firmly and consistently.

The case of *Filartiga vs. Peña-Irala* was a landmark case in the United States and in the arena of international law¹⁴. It set the precedent for U.S. courts to punish non-U.S. citizens for tortuous acts committed outside the U.S. that were in violation of the law of nations or any treaties to which the United States is a party. It thus extends the jurisdiction of United States courts to tortuous acts committed around the world and reflects the universal repulsion against torture: "The torturer has become, like the pirate and the slave trader before him, hostis humani generis, and enemy of all mankind"¹⁵.

This repulsion, as well as the importance states attach to the eradication of torture, has led to the cluster of treaty and customary rules on torture acquiring a particularly high status in the international normative system, a status similar to that of principles such as those prohibiting genocide, slavery, racial discrimination, aggression, the acquisition of territory by force and the forcible suppression of the right of peoples to self-determination. The prohibition against torture exhibits three important features, most likely features also common to other general principles protecting fundamental human rights.

II. The prohibition even covers potential breaches

Given the importance that the international community attaches to the protection of individuals from torture, torture prevention must be particularly stringent and sweeping. // **states are obliged not only to prohibit and**

¹¹ This protection can be found in Article 7 of the International Covenant on Civil and Political Rights (ICCPR); article 1 of the Convention on the Elimination of Racial Discrimination (CERD); articles 19 and 37 of the Convention on the Rights of the Child (CRC); article 5 of the Universal Declaration on Human Rights (UDHR) also prohibits torture, cruel, inhuman and degrading treatment. It appears in almost every human rights treaty.

¹² United Nations Convention Against Torture (UNCAT), Art. 5

¹³ Harvard Human Rights Journal, The International Law of Torture: From Universal Proscription to Effective Application and Enforcement – volume 14, Spring 2001

¹⁴ *Filartiga vs. Peña-Irala*, 630 F.2d 876 (2d Cir.1980). The case was decided by a panel of judges from the United States Court of Appeals for the Second Circuit consisting of Judges Feinberg, Kaufman and KeARSE.

¹⁵ *Idem*

punish torture but also to forestall its occurrence: it is insufficient to intervene after the infliction of torture, when the physical or moral integrity of human beings has already been irremediably harmed¹⁶. consequently, Lebanon is bound to put in place all measures that may pre-empt the perpetration of torture. international law intends to bar not only actual breaches but also potential breaches of the prohibition against torture, as well as any inhuman or degrading treatment¹⁶. it follows that international rules prohibit not only torture but also the failure to adopt the national measures necessary for implementing the prohibition and the maintenance in force or passage of laws which are contrary to the prohibition.

III.

The jus cogens nature of the prohibition and its consequences: the obligation to enforce it erga omnes

ius cogens is defined by article 53 of the vienna convention as “a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”¹⁷.

the jus cogens nature of the prohibition against torture articulates the notion that the prohibition has now become one of the most fundamental standards of the international community. this prohibition is designed to produce a deterrent effect, in that it signals to all members of the international community and the individuals over whom they wield authority that the prohibition of torture is an absolute value from which nobody may deviate.

the fact that torture is prohibited by a peremptory norm of international law has other effects at the inter-state and individual levels.

At the inter-state level, it serves to internationally de-legitimize any legislative, administrative or judicial act authorizing torture.

states are bound by the same obligation when taking national measures authorizing or condoning torture or absolving its perpetrators through an amnesty law¹⁸.

At the individual level, the perpetrators of torture acting upon or benefiting from those national measures may nevertheless be held criminally responsible for those acts of torture committed, in their own state under a subsequent regime, or in a foreign state, flowing from a breach of obligations erga omnes.

in spite of possible failure to condemn torture at the national level, individuals remain bound to comply with that principle at the international level¹⁹.

moreover, at the individual level, one of the consequences of the jus cogens character bestowed by the international community upon the prohibition of torture is that every state is entitled to investigate, prosecute and punish or extradite individuals accused of torture, who are present in a territory under its jurisdiction. the rights of torture victims are hence universal and can be claimed at any time for past violations.

As stated in general terms by a USA court in *Demjanjuk*, “the universality principle is based on the assumption that some crimes are so universally condemned that the perpetrators are the enemies of all people”²⁰.

the prohibition of torture imposes upon states erga omnes obligations, those are obligations towards all the members of the international community, each of which then has a correlative right.

article 53 of the vienna convention on the Law of treaties of 1969, provides that a treaty will be void “if, at the time of its conclusion, it conflicts with a peremptory norm of general international law”. this rule is also applied in the context of customary rules so that no derogation would be permitted to such norms by way of local or

¹⁶ ECHR, *Soering vs. the UK*, judgment of 7 July 1989, series A no. 161

¹⁷ Vienna Convention on the Law of Treaties (1969).

¹⁸ “states may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.” (Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/REV. 1 at 30 (1994)).

¹⁹ As the International Military Tribunal at Nuremberg put it: “individuals have international duties which transcend the national obligations of obedience imposed by the individual state”. IMT, vol. 1, p. 223

²⁰ *John Demjanjuk v. Joseph Petrovsky*, US Court of Appeals, 776 F. 2d 571 (6th Cir. Ohio 1985)

special custom²¹. Article 41 (2) of the UN International Law Commission (ILC), Articles on State Responsibility, 2001, provides that no state shall recognize as lawful a serious breach of a peremptory norm²².

The violation of such an obligation simultaneously constitutes a breach of the correlative right of all members of the international community and gives rise to a claim for compliance accruing to each and every member, which then has the right to insist on fulfillment of the obligation or in any case for the breach to be discontinued.

Where there exist international bodies charged with impartially monitoring compliance with treaty provisions on torture, these bodies enjoy priority over individual states in establishing whether a certain state has taken all the necessary measures to prevent and punish torture and, if they have not, in calling upon that state to fulfill its international obligations. The existence of such international mechanisms makes it possible for compliance with international law to be ensured in a neutral and impartial manner.

It should be noted that the prohibition of torture laid down in human rights treaties enshrines an absolute right, which can never be derogated from, not even in time of emergency²³.

This is linked to the fact, discussed above, that the prohibition of torture is a peremptory norm or *jus cogens*. This prohibition is so extensive that states, including Lebanon, are even barred by international law from expelling, returning or extraditing any person to another state where there are substantial grounds for believing that the person would be in danger of being subjected to torture²⁴.

²¹ see further enforcing obligations erga omnes in international law – Cambridge Studies in International and Comparative Law, series 44, December 2005

²² one that involves a gross or systematic failure by the responsible state to fulfill the obligation, article 40 (2). see also article 50 (d).

²³ on this ground, the prohibition also applies to situation of armed conflicts. we will get back to this during our study of the *Nahr el-Bared* armed conflict.

²⁴ ICTY, *Furundžija* case – 144



// SOME OF THOSE ARRESTED WERE DETAINED FOR
NO REASON OTHER THAN TO ENSURE THAT EVIDENCE OF
TORTURE ON THEIR BODIES HEALED //

THE CONFLICT OF NAHR EL-BARED

international humanitarian law governs the conduct of both internal and international armed conflicts. For there to be a violation of this body of law, the violation must occur within the context of an armed conflict.

torture in times of armed conflict is specifically prohibited by international treaty law, in particular by the Geneva Conventions of 1949 and the two additional protocols of 1977²⁵.

these treaty provisions are of particular importance due to the conflict in the Nahr el-Bared Palestinian refugee camp in northern Lebanon, between the armed group of Fateh el-Islam and the Lebanese Army.

It is important first to check which international legal norms of those relating to torture are applicable in the context of the conflict in Nahr el-Bared and also to distinguish between situations of non-international armed conflict and other types of conflict situations.

I. Distinguishing different types of conflicts

international law recognizes at least four different types of tense situations, each of which is governed by a different set of legal norms: (a) situations of tensions and disturbances²⁶; (b) international armed conflicts; (c) wars of national liberation; and (d) non-international armed conflicts.

while international human rights law (IHRL) applies in situations of internal tensions and disturbances, core human rights guarantees, along with the provisions of international humanitarian law (IHL), are operative in armed conflicts and wars of national liberation.

there are several situations that can qualify as non-international – or internal – armed conflicts and several instruments apply accordingly.

The minimal provisions applying to an internal armed conflict are those of common Article 3, which refers to “[...] an armed conflict not of an international character occurring in the territory of one of the high contracting parties”²⁷. Within this definition, any conflict “not of an international character” qualifies as an internal armed conflict, as the jurisprudence has confirmed that the reference to the “territory of one of the high contracting parties” is not relevant anymore to disqualify a conflict as internal²⁸.

criteria set forth by Additional Protocol II (hereinafter AP II), on the other hand, set a higher threshold for a conflict to qualify under the terms of the Protocol.

Indeed, according to its Article 1 (1), the term “non-international armed conflict” refers to all armed conflicts that cannot be characterized as either international armed conflicts or wars of national liberation, provided it “[...] take[s] place in the territory of a high contracting party between its armed forces and dissident armed forces or other organized armed groups, which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations”²⁹.

The jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY) Appeals Chamber has

²⁵ Lebanon ratified all four Geneva Conventions on April 10, 1951 and both additional protocols on 23 July 1997

²⁶ A non-exhaustive list of examples of situations of tensions and internal disturbances are provided in Article 1(2) of Additional Protocol II to the Geneva Conventions, and include “riots, isolated and sporadic acts of violence and other acts of a similar nature.” Article 1(2) expressly provides that Protocol II does not apply to situations of tensions and disturbances.

²⁷ Emphasis added.

²⁸ See especially US Supreme Court, *Hamdan v. Rumsfeld*, 548 U.S., 2006, which held that every armed conflict that “does not involve a clash between nations” is not of an international character, and that the latter phrase “bears its literal meaning.”

²⁹ *Id.* In contrast to Protocol II, common Article 3 to the Geneva Conventions does not provide a definition of internal armed conflicts, but simply refers to them as “armed conflict(s) not of an international character occurring in the territory of one of the high contracting parties”. For an analysis of the conditions of application of common Article 3, see paragraphs 215–220 of the ICJ decision in *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986 (June 27), p. 14.

further refined the definition of internal armed conflicts, inter alia, in its landmark decision, *Prosecutor v. Dusko Tadić* in which it held that “an armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state”^{30,31}.

on the basis of the above, the conflict of Nahr el-Bared, in northern Lebanon between the Lebanese Army and the armed group Fateh el Islam, can be qualified as an internal armed conflict under the terms of Article 3 common and those of AP II for the following reasons:

- > It took place in the territory of a high contracting party
- > It was a conflict between the armed forces of the state of Lebanon and an organized armed group
- > The armed group was under responsible command
- > And it exercised such control over a part of Lebanon’s territory as to enable it to carry out sustained and concerted military operations.

the Nahr el-Bared conflict qualifies as “protracted”³², as defined in the *Tadić* case-law, in being an armed conflict that lasted for more than three months.

the conflict of Nahr el-Bared certainly exceeded the level of internal tensions and disturbances to reach the level of an internal armed conflict.

II.

The conflict of Nahr el-Bared and the Lebanese state’s obligations

1. Principal norms of international human rights law and international humanitarian law applicable to torture in internal armed conflicts

the principles governing internal armed conflicts in humanitarian law are becoming more extensive, while the principles of international human rights law are also rapidly evolving, particularly with regard to the fundamental non-derogable rights which cannot be breached even in times of public emergency³³.

// under some IHRL treaties, and in the context of armed conflicts, governments are entitled to derogate from several rights, provided they respect certain conditions. torture and the right to life however, are not included in these rights and shall not be derogated from under any circumstances. //

moreover, other IHRL treaties such as the torture convention, do not permit derogations at all and are applicable at any time and in any place whatsoever.

under IHL, on the other hand, there are two main sources of protection against torture in treaty law: (a) common Article 3 of the Geneva Conventions of 1949 and (b) Article 4 of Additional Protocol II, both of which explicitly prohibit torture and offer minimum fundamental guarantees of treaty law in the territory of Lebanon.

common Article 3 builds upon the Martens clause³⁴ and provides that parties to “armed conflict[s] not of an international character” must apply certain minimum standards to “persons taking no active part in the hostilities”³⁵. In particular, common Article 3 expressly prohibits the following acts, viz., “(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) outrages upon personal dignity, in particular, humiliating and degrading treatment”.

Additional Protocol II improves upon the admittedly “minimum” protections afforded by common Article 3. for the purposes of this report, the most important components of Additional Protocol II are part II, Article 4

³⁰ NO. IT 94-1 AR 72, Appeal on jurisdiction, paras. 70 (October 2, 1995).

³¹ For further studies on the different types of conflicts, see International Law, chapter 21, 1068 – 1076, Malcolm N. Shaw, fifth edition, Cambridge, 2003.

³² The conflict erupted on May 20 and lasted till 2 of September 2007 when the army managed to control the camp and arrest several “Fateh el Islam” militants.

³³ Inter alia, see e.g. article 4 of the ICCPR, 1966.

³⁴ First appeared in the preamble of the 1899 Hague Convention and provides that “the parties to an armed conflict must act in accordance with the principles of law of nations derived from the usages established among civilized peoples, from the laws of humanity and the dictates of public conscience”.

³⁵ common Article 3 provides that such persons include “members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause”. It also provides that such persons must in all circumstances be treated humanely “without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.”

(provisions concerning humane treatment). Regarding part II, Article 4(2) (a) reinforces the provisions on torture contained in common Article 3 and prohibits, inter alia, "violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment"; (b) "collective punishments" both of them "at any time and in any place whatsoever".

2. customary rules on torture in internal Armed conflicts

It must be noted that some treaty rules on torture have gradually become part of customary law. This holds true for common Article 3 of the 1949 Geneva Conventions which was authoritatively upheld by the International Court of Justice (ICJ)³⁶, and also to the core provisions of Additional Protocol II of 1977. The ICJ has confirmed that these rules reflect "elementary considerations of humanity" applicable under customary international law to any armed conflict, whether it is of an internal or international character³⁷.

III.

Torture and other brutal practices detected outside the camp during the conflict

In the worst internal violence since the end of Lebanon's bloody civil war 17 years ago, fighting between the Lebanese army and the shadowy militant group Fateh el Islam has claimed more than 200 lives as of September 2007, including both combatants and civilians. On 20 May, Lebanese security forces raided a building in the northern city of Tripoli to arrest bank robbery suspects, which was followed by an attack by Fateh el Islam militants on the Lebanese army installations in other parts of northern Lebanon and at the entrance of Nahr el-Bared camp.

The 30,000 residents of the camp (who mostly originate from the northern Galilee region of historic Palestine and were forced out or fled during the establishment of the State of Israel) had been under siege and caught in the cross-fire as Lebanese forces, pledged to flush out Fateh el Islam, attempted to do so.

Emergency and humanitarian workers reported difficulties in reaching affected civilians, and have been fired upon by Fateh el Islam combatants. As a shaky ceasefire mostly held the night of 22 May, thousands of camp residents fled, telling of the deaths of many civilians who had not yet been recovered. Many of them found refuge in Beddawi camp, located 10 km away from Nahr el-Bared. Protests have erupted at Palestinian refugee camps across Lebanon, where 400,000 Palestinian refugees make up 10 percent of the country's population – over half of whom live in impoverished, overcrowded refugee camps.

Three days after the start of the hostilities, humanitarian organizations managed to disseminate goods and evacuate the wounded and the sick. Concurrently, an American Air Force plane landed on 25 May at Rafik Hariri International Airport of Beirut carrying military aid to the Lebanese army who finally managed to penetrate the camp of Nahr el-Bared for the first time on 15 July.

Many local and regional actors urged both parties to end the conflict through peace talks. These organizations included the Palestine Liberation Organization (PLO) who asked Fateh el Islam to put down their arms. Calls for peace talks, however, started to lose their impact particularly after the Army killed Abu Houreira, leader number 2 in Fateh el Islam, on 24 August.

On 24 August, the army evacuated the families, women and children of Fateh el Islam; a move widely considered to signal the imminent seizure of the camp. One week later on 2 September, the camp fell to the hands of the Army after a failed attempt by the militants of Fateh el Islam to escape the army's stronghold³⁸.

Since the beginning of the hostilities, there were ongoing negotiations to evacuate some 40,000 civilians trapped in the midst of the fighting. For security reasons, the evacuation was only allowed under the supervision of the Army. Checkpoints were set up to closely monitor all egress from the camp and severe procedures were put in place for the evacuation process.

During the evacuation, there were many reports of ill-treatment of civilians who went through harsh conditions before being allowed to leave the camp. Some were arrested for further investigations. Of those arrested, a portion were even beaten and tortured by the military intelligence.

³⁶ Nicaragua case, at para. 218.

³⁷ idem

³⁸ Few of them, however, have ever managed to escape including the leader of the group, Shaker el Abssi.

A witness who was interviewed by ALEF, M. G., tells about his experiences when he evacuated the nahr el-bared camp in early July 2007, one month after the start of the hostilities. "we ran to the Army's checkpoint under heavy shelling. we were separated into groups; men and children of 15 years old and over were forced to stay at the checkpoint for around three hours. An officer started to insult all of us, saying that we were the cause of this conflict. This all happened on the exit from the camp under fire".

The Army reportedly had a list of names of persons allegedly involved with Fateh el-Islam. This list was gathered by the military intelligence during interrogations or from other sources and was used in checking the identities of those who were evacuating the camp; "Palestinians or individuals from Arab countries whose names were on that list were immediately arrested, handcuffed and taken to unknown destination(s); the rest of us, who were not on the list, were taken to the Kobbeh prison near the Beddawi camp; women and children were released", M.G. added.

Another Palestinian who was arrested and sent to Kobbeh prison stated that he was surprised to find that some Palestinians who fled nahr el-bared many days before his evacuation, were still detained in Kobbeh's cells. "most of us were detained for several days, some of us for a week, without being informed of our (alleged) crime", he stated. Kobbeh prison was overcrowded. Most of the detainees were sleeping on the floor without any mattresses or blankets. "There was no place for all of us to rest so some groups slept while the others waited their turn to rest", he continued. According to information gathered during the interviews, detainees used to stay at Kobbeh prison for a period ranging between 24 hours to one week before being released or transferred to Yarzeh prison at the Ministry of Defense or to Roumieh central prison.

The Army was also tracking Palestinians at military checkpoints in the north or arresting some of them during tours of duty. An eighteen year old Palestinian, Abu Yasser³⁹, was arrested a few days after the end of the hostilities on 2 September 2007 by an Army patrol while he was in a taxi leaving the Beddawi camp to go to work at "Bourj el Arab". He was blindfolded and taken to an unknown destination⁴⁰. Abu Yasser was cursed, beaten, electrocuted, and threatened. His case was reported by some news agencies⁴¹; however, most of the media outlets in Lebanon, if not all of them, did not investigate nor report on this or similar cases of torture and/or the practices of the military intelligence during interrogations. When he was finally spared further injury, Abu Yasser was told by his torturers to "tell his fellow Palestinians what had happened to him and that the Army rules here", he stated.

These stories, and many other similar ones, have spread among the refugees and the displaced at the Beddawi camp. Many feared to leave the camp, especially those who evacuated nahr el-bared without any identification papers and are now relying on the United Nations Relief and Working Agency (UNRWA) to provide them with temporary IDs⁴². Many of the displaced have expressed their concerns with regard to leaving the camp for work or even to visit their families for fear of being arrested at military checkpoints, especially the one at "Madfoun" in northern Lebanon. Some were arbitrarily arrested because one of their family members had been detained or imprisoned on allegations of involvement with Fateh el-Islam.

After he was released from the Kobbeh prison, M. G. volunteered as a nurse in a dispensary in the Beddawi camp known as the "dispensary of recovery" مستشفى الشفاء. M. G. stated that he had treated around 11 people who were severely beaten during their detention, one of them was Abu Yasser. M. G. said that most of those who were tortured in the Yarzeh prison at the Ministry of Defense refuse to talk about what they have been through during the interrogations. "They just want to go on with their lives", he said.

Another Palestinian, F. W., who was detained for interrogation by the Army during evacuation, was held for two days at the Kobbeh prison and then transferred, along with other young and middle-aged prisoners to what he believes was the Ministry of Defense at Yarzeh.

There, F.W.'s long ordeal began. Prison officials accused him of belonging to Fateh el-Islam, and kept him blindfolded in a crowded cell for eight days with scores of others similarly accused. When he insisted on his innocence, they began torturing him. "It was really hard for most of us to go through the investigation. The investigators didn't spare any method of torture. Balango, electrical chair, rape, some were beaten with bare hands, electrocuted, hit on the back with a hose. The psychological toll was extreme." he added. F. W. was sent back to Kobbeh prison and managed to reach a nearby hospital after his release.

³⁹ Abu Yasser, his nick name, was interviewed by ALEF on 5 September 2007.

⁴⁰ Abu Yasser could not tell the exact location of his detention; he said that the journey there took around five minutes from the Beddawi camp. The place of detention may have been the Kobbeh prison, which is located fifteen minutes from the Beddawi camp, but we were not able to confirm the exact place of detention.

⁴¹ See, Electronic Lebanon, Ready to return with nothing, Mathew Cassel, September 11, 2007.

⁴² UNRWA can only provide IDs valid for two months at most, than the refugees have to ask for an official one from the office of personnel.

some detainees did not even survive the interrogations or the prisons and died because of torture and/or ill-treatment. Fawzi el Saeidi, a fifty-nine year old Palestinian, passed away at Roumieh prison on 18 August 2007. On 29 June 2007, his brother had revealed to the Palestinian Human Rights Organization (PHRO) medical reports confirming the poor health condition of Fawzi⁴³.

On 3 June 2007, Fawzi was shot in the stomach during the fighting in Nahr el-Bared. Two days later, he was transferred out of the camp first by an ambulance from the Red Crescent and then by another one from the Red Cross to the Islamic hospital in Tripoli. Before receiving any treatment, he was taken to an unknown destination on a military ambulance according to a worker in the Islamic hospital.

PHRO interviewed Fawzi at Roumieh prison on 10 August 2007. During the interview, Fawzi was lying on a mattress in a corridor separating the cells where the detainees of the conflict of Nahr el-Bared were being held. The smell of feces was very noticeable, especially to outside visitors. Fawzi revealed to PHRO his poor state of health and the ill-treatment that he had been subjected to during interrogation. This interrogation took place only two days after Fawzi underwent surgery to attach a colostomy bag required after the stomach injuries he suffered in the fighting in Nahr el-Bared.

When Fawzi was asked by PHRO whether he was subjected to torture, he said that officers would purposefully put pressure on his wound which caused him to bleed and be transferred to the hospital several times. PHRO said that Fawzi was crying because of the pain during their interview with him and they had to stop at one point because he was not able to continue.

According to some statements collected by PHRO from other detainees who were in cells near Fawzi, some of them said that he (Fawzi) used to scream all night and he was not able to stand up, eat or even sleep; often his colostomy bag would burst and they had to clean his body and the floor. When Fawzi's two daughters visited their father at Roumieh, he told them that he was too tired and asked them to do whatever was necessary to get him out of there, Fawzi's son stated⁴⁴. Fawzi was arrested because of his alleged involvement with Fateh el-Islam; he however was not told the reasons for his detention until days after he had been arrested.

Few torture allegations have been made public, unlike the case of the Australian detainees (Muhammad Bassel, Ahmed el-Omar, Ibrahim Sabbough and Omar el-Hadba) who were accused of carrying weapons, undermining the state's authority and participating in the killing of civilians and military personnel in the conflict of Nahr el-Bared. The first two who were picked up on the streets of Tripoli on 21 June 2007 were freed without charges after frequent brutal interrogations inside a grim government building in Beirut. They both said they were handcuffed, blindfolded and beaten during an extended period of interrogation and were left in a corridor over the course of a week.

Ahmed el-Omar, the Australian boxer, who made a statement upon his arrival to Sydney on 1 August 2007 soon after his release, alleged he was physically tortured by Lebanese military intelligence and deprived of sleep since his arrest. Speaking to News Corp, el-Omar said his imprisonment was the, "worst thing that has ever happened to me. The conditions are the worst you could think of... they hit you, they interrogate you," he said. "I didn't see anything. I was 24 hours a day blindfolded... I never slept - probably half an hour to an hour, max"⁴⁵. When they arrested me, "I was pulled by my beard; hit with a - I don't know if it was a stick, obliged to stand for nearly 8 hours to 10 hours straight and every time I would go down because my legs couldn't hold me no more, they would just start belting into me"⁴⁶. el-Omar was constantly asked questions about an Islamic center in Australia and about links to the fugitive Al-Qaeda leader Osama bin Laden⁴⁷.

The detention of Ahmad el-Omar and Muhammad Bassel was tame compared with that of their compatriots (Ibrahim Sabbough and Omar el-Hadba) who have been sent to Lebanon's Council of Justice, which deals with crimes against the state and the charges of sedition and treason. Ibrahim Sabbough was arrested because he had in his possession a 20-year-old rifle. Speaking about Sabbough, Ahmad el-Omar said "ala'ou" in Lebanese; it means they've "hanged him. I don't know. I think they were hanging him from his hands. His hands were backwards, hanging him, lifting him up in the air. And he was screaming and yelling. And on top of it they

⁴³ PHRO met with Fawzi el Saeidi at Roumieh prison on 10 August 2007, one week before he passed away, and informed ALEF about his condition during an exchange of e-mails on 27 and 29 August 2007 and a meeting on 18 September 2007.

⁴⁴ Al Akhbar newspaper, وفاة موقوف في سجن رومية...وفاء الثانية خلال أسبوع...، للمرة الثانية خلال أسبوع...، 21 August 2007.

⁴⁵ All Head Lines ANH, Global News for the Digital World - Champion Australian Boxer Alleges Torture during Detention in Lebanon, August 1, 2007.

⁴⁶ World News Australia, Torture Claims from Aussies Arrested in Lebanon, Sophie McNeill, <http://www.worldnewsaustralia.com.au/trans.php?transcript=45034>

⁴⁷ idem

kept on punching him, kicking him"⁴⁸. sabbough's defense lawyer, mahmud el-masri, stated that sabbough revealed to Australian diplomats who visited him that he was tortured and showed them his wounds. El-masri added that there are signs of torture on sabbough's body and his arm is damaged⁴⁹.

In addition to sabbough, omar el-hadba, a taxi driver, has been accused of storing a half ton of weapons in his Tripoli work shed. Both men have been referred to the chief military investigating magistrate, Rashid Mezher, for further investigation.

Australian consular officers in Lebanon have requested access to both men and have also asked for a thorough investigation into allegations other Australian men have been mistreated while in custody⁵⁰. The Australian Department for Foreign Affairs and Trade said two of the four men, including one still in custody, had complained of their treatment by the Lebanese authorities⁵¹. "we take these claims very seriously and have raised allegations of mistreatment at senior levels of government, military and judiciary who assured us the men were in good health," a department spokesman told Agence France Presse (AFP). The spokesman, who did not elaborate on the mistreatment, said Australia will press for an investigation and will support the families' request for an independent medical examination of the man in custody. He finally urged the Lebanese government that the men be well cared for and detained in accordance with international humanitarian standards⁵².

IV.

The conditions in and around nahr el-bared after the end of the conflict

The conflict ended on 2 September 2007. The Army considered the nahr el-bared camp a security zone and many were not given access to enter including Palestinians themselves, journalists and human rights organizations⁵³.

Despite the harsh monitoring measures implemented by the Army to prohibit any access to the camp many Palestinians and human rights activists have tried to enter. Many have failed in their attempts to enter, though a few have succeeded. The Army divided the camp into sectors and demarcation lines and allowed temporary access to some zones in the camp on 10 October 2007. On the third day of giving such permission, 35 individuals including Palestinians and human rights activists tried to enter. Some of them were holding permissions while others had none. They were all arrested by the Army who forced them to lay face down in a line in the middle of the camp. Many were beaten and forced to lick and kiss the boots of Army members. Others had their hair cut forcibly; some officers cut the hair in the name of a parent or a close friend who died in the conflict. Other human rights activists from Najdah el Ijtima'ia and Agel were also arrested and brutally beaten for crossing the demarcation line in sector C of the camp.

Stories are widespread of video recordings showing individuals who got beaten and tortured. It was alleged that they were recorded by military officers during and after the conflict in the camp of nahr el-bared. ALEF gathered some of these videos as evidence even though their authenticity could not be proven. One of those shows a naked man laying on the ground surrounded by individuals beating him and kicking him in the stomach and the head⁵⁴. The video did not allow for identification of the perpetrators, not even to see if they were civilians or military personnel. ALEF's torture prevention team investigated why these videos were made public if they were allegedly recorded by the military. We concluded that they were intended to terrorize the Palestinian population and show the army's pride in their cruel handiwork.

⁴⁸ idem

⁴⁹ Al Akhbar newspaper, أستراليا تطالب بتحقيق في تعذيب موقوفين، 4 July 2007.

⁵⁰ media release - Australian Ministry of Foreign Affairs - Australians in Lebanon to face charges, 4 July 2007. http://www.foreignminister.gov.au/releases/2007/fa083_07.html

⁵¹ daily star by AFP, Two Australians charged with terror in Lebanon, 5 July 2007, http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=2&article_id=83545.

⁵² idem

⁵³ ALEF team has tried to enter on 19 October 2007. After several tentative agreements with the Army, permission was never given to enter the camp.

⁵⁴ ALEF could not confirm from the video if the perpetrators were officers from the Lebanese Army.

when parts of the new camp were re-opened and the first thousand families returned to nahr el-bared, they found their houses burnt, looted and vandalized. witnesses attested to what appears to be a systematic pattern of burning and looting. racist graffiti and discriminatory comments of a religious nature were reportedly found on the walls of many homes, several of which were signed with the names of a Lebanese army commando group.

despite persistent rumours holding the Lebanese army responsible for such acts, it was not possible to independently assess such claims, due to the constant denial of access to the camp for journalists and human rights organizations up until the completion of the present report.

other possible perpetrators include Lebanese civilians who could have sneaked into the camp.

In any event, **// no independent investigation has been carried out into these allegations, despite requests by human rights activists. //** The Lebanese army launched an internal investigation conducted by the ministry of defence of which the results will not be made public.

1. The facts: evidence of occurrence of ill-treatment and torture

a. Lebanese citizens allegedly involved in ill-treatment of Fateh el Islam suspects

when the conflict ended, around twenty Fateh el Islam members succeeded in fleeing the camp. many of them were later arrested by the Army, sometimes with the help of Lebanese citizens in surrounding villages. ALEF could not confirm whether those arrested by the villagers were beaten and/or mistreated. there was no investigation opened by the judiciary into this particular matter and it is believed that the villagers were taking advantage of an acquiescence of the Army to allow the report and arrest of any suspicious individuals that were found nearby their residences in northern Lebanon.

b. Harsh conditions at Roumieh prison

At the time of reporting, there were around 167 suspects detained in Roumieh prison, some of whom were detained since the outbreak of the nahr el-bared conflict⁵⁵.

on 4 October 2007, the ISF's task force "Fouhoud" (tigers) searched the cells of Fateh el Islam suspects in the convicts' building at Roumieh prison as part of a security measure implemented by the prison's administration. **//it was allegedly reported that some of the prisoners were beaten and had their beards shaved in the prison yard and that most of them were never allowed to see their families.//** consequently, a number of detainees started a hunger strike, that lasted for 22 days, asking for compensation and sentencing of whomever was responsible for what they had been through.

The general directorate of the ISF automatically opened an inquiry into the incident under the supervision of the general prosecutor, Judge Said Mirza, to investigate the allegations following the search campaign. on 19 October Judge Mirza stated that the investigators had gathered testimony from prisoners and officers from the prison. The primary inquiry had showed that there was no judicial decision to shave the beards and heads of detainees, but one of the lieutenants decided to do so in respect of the prison's internal law⁵⁶.

Following the incident, the general directorate of the ISF decided to replace the detainee's buildings administrator. The individuals detained were somewhat relieved but decided to continue their hunger strike until their rights were respected, or at least equal to those of other prisoners whom, for example, were allowed to sit in the prison yard and were allowed 30 minute visitations.

c. Ill-treatment and torture by the Lebanese army

ALEF's torture prevention unit procured a lot of information about Palestinian refugees being arrested by the Army, and conducted visits to the families of detainees in Beddawi camp in order to assess the circumstances of their detention. most of them are accused of being involved with Fateh el Islam and Jund el Cham⁵⁷; while others were arrested because of crimes committed before the outbreak of the conflict.

⁵⁵ There are no official numbers yet. To date, there are currently 17 prisoners who died and were not officially counted by the Red Cross.

⁵⁶ On 6 October 2007, the ISF released a statement in which it considered that the hunger strike of Islamists in Roumieh prison is a personnel matter. The statement added that searching cells and shaving beards are an application of prisons law and hygiene provisions.

⁵⁷ Another organization similar to Fateh el Islam mainly present at Ain el Helweh, the largest Palestinian camp in Lebanon.

most of those who were interviewed, released palestinians and families of detainees, stated that they were subject to the most severe forms of physical and mental torture. In this respect, torture methods cataloged by ALEF included drinking pee, sexual harassment, rape, hitting of sexual organs or weak and/or injured areas of the body with a stick, and being forced to stand blindfolded with hands bound behind the body. detainees were also cursed, shamed and threatened. Investigators used these methods to extract information or confessions about the Islamist group of Fateh el Islam. Such methods led some detainees to sign interrogation reports without being informed of the content of the report.

ALEF has chronicled a number of torture cases related to the conflict in Nahr el-Bared by gathering testimonies from individuals who were tortured and ill-treated. It is important to note that **//some of those arrested were subject to prolonged detention for no reason other than to ensure that evidence of torture on their bodies healed. //** It must also be noted that other victims were in poor health condition during these events and some even needed urgent medical attention.

Among all the testimonies gathered from civilians who were spared injury and later released, several gave accounts of quite appalling savagery. All their stories mirror the situation of, at the very least, dozens of palestinians, most of whom are too terrified to speak on the record. They have all been victims of abuses by the Army who systematically ignored international human rights conventions and international humanitarian law provisions, specifically those related to torture, in the conduct of its military operations in the battle with Fateh el Islam and the subsequent treatment of prisoners and detainees.

2. principles of criminal liability

The practically universal ratification of the Geneva Conventions shows that all states accept among other things the prohibition of torture. In other words, this participation is highly indicative of the attitude of states regarding the prohibition of torture. In addition, no state, specifically Lebanon, has ever claimed that it was authorized to practice torture in times of armed conflict.

Common Article 3 of the Geneva Conventions, which inter alia prohibits torture against persons taking no active part in hostilities, meaning civilians and those who have laid down their arms, is applicable, as referred to above, both in international and internal armed conflicts. Furthermore, such a prohibition is laid down in IHL and International Criminal Law, which, in contrast to IHL, engages the individual criminal responsibility.

These rules and conventions signed and ratified by Lebanon impose obligations upon the Lebanese government in an armed conflict, but first and foremost address themselves to the acts of individuals acting as de jure or de facto state agents, such as state officials and officials of the Army in charge of the command in the conflict of Nahr el-Bared, or else to individuals acting at the instigation of or with the consent or acquiescence of the Army in the conflict.

ALEF will demonstrate in the following the state's responsibility and the individual criminal liability under international law in acts of individuals who are or have been engaged in acts of torture, other cruel, inhuman or degrading treatment or punishment. This requires a further critique of leadership responsibility and the failure to act.

3. command responsibility – individual criminal liability

Since members of the Army operated under a commander responsible for the conduct of its subordinates, it is essential to examine the principle of the 'command responsibility'. This principle evolved out of the Nuremberg trials and is now incorporated in Article 86 (2) of Protocol I of the Geneva Conventions⁵⁸. It entails the individual responsibility of hierarchical superiors, whether civilian or military and regardless of rank, when they fail to take proper measures to prevent their subordinates from committing violations of international humanitarian law⁵⁹.

⁵⁸ Article 86 (2) of Protocol I stipulates: 'The fact that a breach of the conventions or of this protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach'.

⁵⁹ See ICRC Advisory Service on International Humanitarian Law: 'command responsibility and failure to act'. A 'superior' is to be understood as someone personally responsible for the acts committed by subordinates placed under his control.

Article 87 of Protocol I lays down the duties and obligations of military commanders with respect to their subordinates. The superiors must prevent, suppress, and where necessary report to competent authorities, violations committed by their subordinates. Only when the superior fails in these duties, does he/she risk being held criminally responsible for not taking any action. The ICTY emphasizes this in the Celebici case where the following reasoning was adopted⁶⁰:

"(...) those persons effectively in command of such more informal structures, with power to prevent and punish the crimes of persons who are in fact under their control, may under certain circumstances be held responsible for their failure to do so."

In the present case, AP I does not apply, as we are faced with an internal armed conflict. However, according to the aforementioned 2005 International Committee of the Red Cross (ICRC) study on customary law, the application of the rule of "command responsibility" in international armed conflict also applies in non-international armed conflict.

As the study reads: "commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible"⁶¹.

In the conflict of Nahr el-Bared, the individual criminal liability can only be engaged in regard to those for whom there are no apparent doubts as to their responsibility⁶². All of the actions of the members of the Lebanese Army were based on superior orders. The military officers are under a legal obligation to obey orders as they operate through a command structure, unless these orders are manifestly unlawful. During the conflict, military commanders were individually responsible for the crimes committed by their subordinates when they failed to prevent, suppress or report the commission of these crimes. It can be concluded that they have failed in preventing, suppressing or reporting the crimes of torture that were perpetrated by the military in the prisons of Yarzeh and Kobbeh. Therefore, it follows that they are criminally responsible for torture crimes committed by their subordinates.

As the International Military Tribunal at Nuremberg stated in general terms: "crimes against international law are committed by men, not by abstract entity", and only by punishing individuals who commit such crimes can the provisions of national and international law be enforced. These officials must be held personally responsible, particularly officials who undertook the investigations in the conflict of Nahr el-Bared and officers in charge of the Kobbeh military base in the north and Yarzeh prison at the Ministry of Defense. Their criminal liability includes acts of torture, cruel, inhuman, degrading treatment and punishment. Their criminal liability also involves their criminal intent *dolus* to torture and ill-treat prisoners and former detainees.

4. state's responsibility

// **under international humanitarian law, in addition to individual criminal liability, torture is prosecuted as a serious violation of humanitarian law and a grave breach of the Geneva Conventions.**// It also constitutes a category of genocide and a crime against humanity. Therefore, the state is to be held responsible when state officials engage in torture or fail to prevent torture or to punish torturers.

Besides, under IHL terms, "[a] state is responsible for violations of international humanitarian law attributable to it, including:

- (a) violations committed by its organs, including its armed forces;
- (b) violations committed by persons or entities it empowered to exercise elements of governmental authority;
- (c) violations committed by persons or groups acting in fact on its instructions, or under its direction or control; and
- (d) violations committed by private persons or groups which it acknowledges and adopts as its own conduct"⁶³.

Article 49 of the Lebanese Constitution stipulates: "(...) The President of the Republic is the supreme leader of the military forces that submit to the authority of the Lebanese government." The Presidency of the Republic and the Government were the institutions acting as civilian commanders during the conflict. According to Article 49 of the Constitution, they all bear the supreme and the comprehensive responsibility for the operations of the Lebanese Army in northern Lebanon. The Government of Lebanon and the Presidency were

⁶⁰ Judgement, Prosecutor v. Zejnil Delalic, Zdravko Mucic, Hazim Delic, Esad Landzo, case no.: IT-96-21-T, Trial Chamber, 16 November 1998.

⁶¹ Jean-Marie Henckaerts, ICRC, Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict, 2005.

⁶² In international criminal law, the burden of proof does not rest on the individual's shoulders and (s)he cannot be held responsible for a crime if any doubts exist as to his/her guilt.

⁶³ Jean-Marie Henckaerts, op. cit.

required to respect and ensure respect of international human rights law by their armed forces at all times during the conflict. since members of the Army have allegedly perpetrated torture and violated rules of international humanitarian law, these institutions who failed to exercise the proper control over the Army, the control which was necessary to prevent these crimes of torture, are responsible for each crime that was committed.

ALEF will leave it to the Lebanese judiciary to judge the perpetrators of torture in the nahr el-bared case. we hope that legal measures will be taken to punish those who were involved in these abhorrent phenomena. However, if the Lebanese government fails to take such measures, it will engage the state's responsibility at the international level for acts of torture, cruel, inhuman or degrading treatment or punishment. At the time of completion of this report, the authorities have failed, as of yet, to take appropriate action to bring the culprits to justice.



// THE SUSPECT IS INTERROGATED ON THE CONDITION THAT HE/SHE BE ALLOWED TO CONFESS FREELY AND CONSCIOUSLY WITHOUT THE USE OF ANY KIND OF FORCE OR SUBMISSION AGAINST HIM/HER. IF THE SUSPECT DECIDES TO REMAIN SILENT, IT IS NOT ACCEPTABLE TO FORCE HIM/HER TO SPEAK //



I. The Lebanese constitution

The Lebanese constitution was drafted in 1926 and stipulates in section 1, chapter 2, the rights of Lebanese citizens and their liberties.

Law n°18 of 21 September 1990 added a preamble to the constitution which contains stipulations related to rights and referrals to important charters that protect human rights in general. Indent B of the preamble stipulates that "Lebanon [...] is a founding and active member in the United Nations Organization and abides by its covenants and by the universal declaration of human rights. The government shall embody these principles in all rights and fields without exception."

Article 8, chapter 2, stipulates that "[i]ndividual liberty is guaranteed and protected by law. No one may be arrested, imprisoned, or kept in custody except according to the provisions of the law. No offense may be established or penalty imposed except by law."

The constitution, thus, refrains from guaranteeing these liberties and rights and delegates this task to ordinary laws. Subject to constant and easy amendments with minimal constitutional supervision, these laws do not adequately protect individual liberties that guarantee the physical safety of a person, such as the prohibition of torture, arbitrary arrest and imprisonment.

Further, the Lebanese constitution falls short of explicitly protecting the right to life and to physical integrity, of setting forth conditions defining the legality of detention and arrest, and of prohibiting torture and ill-treatment.

The difference in the level of guarantees and protection is obvious when comparing provisions of the Lebanese constitution regarding the right to life and to physical integrity with those of some other European constitutions.

II. The criminal procedures law

The process of defining whether provisions regarding international torture and ill-treatment are guaranteed in Lebanese law requires checking the criminal procedures law, hereinafter CPL, which is meant to protect the rights of detainees and guarantee a standard of conduct during investigations. These provisions should protect the physical integrity of detainees during the interrogations; standardize the ongoing investigations and safeguard the right to a fair trial; and create a judicial watchdog system to prohibit torture and/or ill-treatment. These requirements, however, are not fulfilled due to legal gaps in protecting the right to physical integrity during interrogations.

Article 38 of the CPL lists the persons and entities that assist and work under the supervision of the general prosecution (النيابة العامة) according to their tasks as defined by law, including, among other persons/entities, the head, lieutenants and judicial police (الشرطة القضائية) of the Internal Security Forces (ISF), and the head, lieutenants and detectives of the general security and security of state. They are all called the judiciary officers (ضابط عدلي).

The CPL has clearly defined the measures to be respected by the ISF and the general security in assisting the general prosecution during (1) a red-handed crime or (2) ordinary crimes whether they be criminal offenses (جانية) or petty crimes (جانحة).

1. Procedures during a red-handed crime

Article 41 stipulates that if a red-handed crime occurs, the judiciary officer proceeds to the crime scene, informs the general prosecutor, preserves the evidence, confiscates any weapon that has been used, arrests the suspect, searches the suspect's residence for any criminal tools or materials, and interrogates the suspect on the condition that he/she be allowed to confess freely and consciously without the use of any kind of force or submission against him/her. If the suspect decides to remain silent, it is not acceptable to force him/her to speak⁶⁴.

The suspect may be held in custody for 48 hours, a time period which can be extended if approved in a written decision made by the general prosecutor of Appeals (النائب العام الاستئنافي) after review of the suspect's files (Article 32). The suspect may hire a lawyer to attend the interrogations and may ask for a doctor to check him/her during his/her detention (Article 32). The suspect may also ask for a doctor to visit him/her during any extended period of detention, and the general prosecutor must nominate a doctor as soon as the suspect's demand is presented to him by the judicial officer.

At first glance, it seems that the CPL has guaranteed the right for the suspect to remain silent during interrogations, to hire a lawyer and to see a doctor. The provisions, however, are vague, particularly about the disallowance of force in making a suspect speak. It seems that the legislator is still more concerned with getting accurate information than prohibiting the use of force in order to get it. The stipulation for the latter in Article 41 seems to be wishful/ethical: the legislator used the word not acceptable rather than forbidden, which would have ensured maximum prohibition.

As for the right to see a doctor, the law does not mention a definite time frame within which a doctor must be assigned, leaving to the judiciary officer the liberty to choose the appropriate time to present the demand to the general prosecutor. Article 42 stipulates that the doctor must present his report to the general prosecutor within 24 hours of the starting date of his assignment, but does not force the judiciary officer or the general prosecutor to abide by a time frame during which the former should present the demand to the general prosecutor, and the latter should approve it.

Testimonies have revealed that if there is any trace of violence or injury, the suspect is left for some time so that any injury is allowed the necessary time to heal before a doctor is assigned. This is a direct result of the fact that the law does not impose a definite time frame within which a doctor must be assigned.

2. Procedures during ordinary crimes

The right of a suspect to remain silent during interrogation in the event of an ordinary crime is also stipulated in Article 47 of the criminal procedures. This article expresses the concerns of the legislator to extract accurate confessions: "...if the suspect remains silent, the officer notes it on his report and has no right to force the suspect to speak; otherwise the testimony will be considered nulled...."

If the suspect is tortured and beaten during the interrogation, the maximum punishment with which the torture perpetrator is threatened is seeing the victim's testimony considered null in front of the court. Hence, the crime of torture is not criminalized per se and the sanction, if torture occurs, is the mere deletion of the testimony.

This article guarantees the impunity of the judiciary officer in a case where torture is inflicted upon the suspect and does not prohibit using violence, nor prevent abuses during interrogations.

Under Article 48, an officer can be accused of depriving the victim of his/her liberty. However, Article 48 falls short of directly referring to torture and ill-treatment, reinforcing the ambiguity of Lebanese law regarding these particular crimes.

Article 77 of the CPL does not refer to torture either, limiting its provision to: "[T]he judge must make sure that the detainee is speaking without external influence. If he remains silent, the judge has no right to force him to speak".

The right to hire a lawyer and to see a doctor are also stipulated for ordinary crimes under Article 47, but no time frame within which these provisions can be done is provided in the article, as explained above for red-handed crimes.

⁶⁴ Article 41, translation by the author.

III.

Lebanese criminal law

The criminal code was issued by a decree of 1 March 1943 and it includes two parts. The general part includes the common rules of crimes regarding their types, elements and perpetrators. The special part defines the rules of each crime regarding its nature, elements, and liability of perpetrators.

The criminal code does not explicitly stipulate in any of its articles "torture" or "ill-treatment"⁶⁵. There is a vague reference to torture provisions that cannot be considered as amounting to the prohibition of torture and/or ill-treatment.

1. Article 401 of the criminal code

Article 401 of the criminal code is the main source of ambiguity regarding torture. Torture is mentioned under section 4, crimes violating the administration of the judiciary, chapter 1, crimes violating the proceedings of justice, part 2, extracting information or a confession by force.

Article 401 states –"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"⁶⁶.

According to Article 401, therefore, Lebanese criminal law considers the extraction of information or confession of a crime by force to be violating the proceedings of justice.

It is of utmost importance, before analyzing the essence of Article 401 and its relation to torture, to draw attention to other crimes considered by the criminal code as violating the proceedings of justice and listed in the same line as Article 401, in chapter 1.

Article 398 sentences any Lebanese who knew about a crime related to the security of the state, and did not immediately inform the public authority, with imprisonment of one to three years. Article 399 sentences with imprisonment of one to three years every employee who is in charge of tracking crimes but did not report or postponed reporting a crime after he was aware of it. Article 400 fines health service providers (hospitals, dispensaries, and private medical centers) that provide medical treatment to a victim of any crime that could be investigated regardless of whether a complaint is made by the victim or not, but did not report that crime to the police. Article 402 sentences with imprisonment any person who reports to the judicial authorities crimes that were not committed (false/untrue crimes).

Accordingly, crimes listed in chapter 1, section 4 of the criminal code are those that violate the proceeding of justice, such as reporting false crimes (Articles 402, 403 and 404), refraining from reporting ordinary crimes or crimes against the security of the state (Articles 398 to 400), providing unreliable and inaccurate confessions and information that was extracted by force (Article 401), false identity (Articles 405, 406), false reports and false translations (412 to 414).

// many scholars and lawyers have adopted Article 401 as an article prohibiting torture and ill-treatment and as a basis for developing laws regarding torture in Lebanon. // ALEF considers, however, that Article 401 lacks what is needed as a minimum legal guarantee to prohibit torture. The following details the ways in which Article 401 is not related to torture or at least shows that its provisions do not prohibit torture in all its aspects as stipulated in the UNCAT.

a. The form of Article 401

Clearly, the type of crime presented in Article 401, as it is listed in the criminal code, is one that breaches the normal proceedings of justice and the administration of the judiciary. Usually and traditionally, information related to a crime and extracted by force is considered inaccurate and can, to a certain degree, obstruct or hinder the work of justice.

⁶⁵ except in article 569, the essence of which will be revealed later

⁶⁶ translation by the author

thus, the legislature has taken this type of crime into consideration and referred to it in Article 401, chapter 1, section 4. consequently, the legislature criminalized the act of providing inaccurate and unreliable information that may obstruct the work of justice and the ongoing investigation, but did not criminalize torture itself.

As referred to in Part I of this report, torture and ill-treatment are not only prohibited as international crimes when they are part of a widespread or systematic practice amounting to crimes against humanity. torture is also criminalized when it is perpetrated as a single act, outside any large scale practice and may be classified as a discrete international crime violating the core principles, inter alia, of physical liberties and integrity. not only did the Lebanese legislature not consider this classification, he also did not explicitly criminalize torture in Article 401.

In addition to listing Article 401 under crimes related to the proceedings of the judiciary and affecting its work, the legislature considered this article under part 2 of chapter 1, section 4, entitled extracting information and confession by force⁶⁷. If there was an intention to criminalize torture, perhaps the legislature should have named part 2 "prohibiting torture and ill-treatment." torture is a crime violating the core principles of human dignity. the legislature, however, has considered the crimes detailed in article 401 as violating the proceedings of justice.

b. the content of Article 401

In order to reveal the essence of Article 401, we will divide the analysis of its contents into (1) the type of violence stipulated, (2) what is legalized and criminalized by law, (3) intention of the perpetrator, and (4) type of crime and sentence inflicted.

i. type of violence

The general principles of law that can be extracted from the jurisprudence can be used in giving the legal labeling for each type of aggression whether it is violence, beating, hurting or wounding.

violence is the physical manifestation of aggression. the following acts are considered to be violent⁶⁸:

- > Throwing a stone at a person, even if this does not lead to any wound or trace
- > Pointing one's gun at someone or shooting at night in the vicinity of another person
- > Inciting a dog against another person with an intent to frighten that person

beating is every act that leaves a trace on the human body by pushing, punching, or kicking, even if this does not lead to a wound. beating also refers to every trace caused by using a weapon or a cutting edge (rifle, gun, knife, blade, scissor, hammer, hose, rope, etc.), as long as the act does not break the skin. once the skin is broken, the act becomes wounding.

wounding is every act that breaks the skin, whether breaking is internal or external, including breaking the skin with a knife, cutting an organ of the body, breaking bones, etc. In contrast, cutting the hair of someone without his consent is not wounding but hurting by means of causing psychological pain. wounds can be inflicted either with bare hands or with a weapon or tool.

hurting involves all aspects of violence and aggression, and includes, for example, putting a person in the same room as a sick person with a contagious disease with the purpose of hurting the former; giving poison or bad food to someone to disrupt the function of his organs or to ruin his health; shooting a gun or exploding a bomb near the victim to frighten and traumatize him.

returning to Article 401, aggression is stipulated only as "violent practices," which, as we explained, refers only to the first type of the above-mentioned acts. If the legislature truly intended to protect a person from the abusive acts of the authorities, or if the essence of Article 401 was really to prohibit torture, it should have included all types of violence under this article or used the word "torture" rather than the more ambiguous "violent practices."

It is also worth mentioning that mental or psychological torture is not discussed in Article 401.

⁶⁷ Article 401 is the only article under part 2.

⁶⁸ these acts are considered to be violent by the jurisprudence and the general principles of law

ii. what is legalized and criminalized by law

there is also confusion in Article 401 about what is criminalized by law. the article clearly stipulates, "Everyone who inflicts violent practices not permitted by the law against another person...will face imprisonment for three months to three years"⁶⁹.

the ambiguity of this expression leads one to interpret that there are violent practices that are illegal and other practices that are permitted by the law. such ambiguity could potentially allow for the extraction of confessions and information by force if such violent practices are not criminalized, and, hence, signifies a condoning of torture. rather than prohibiting torture, the very essence of Article 401 permits the violation of the core principles of human rights and the obligations of the Lebanese government, which signed and ratified the universal declaration of human rights including its Article 5, the covenant on civil and political rights, its Article 7, the convention on the elimination of all forms of racial discrimination, its Article 1, the convention on the rights of the child, its Articles 19 and 38, the UN convention against torture of 1984, and common Article 3 of both the Geneva conventions and Additional Protocol I of 1977.

iii. the criminal intent of the perpetrator

Article 401 limits the intention of inflicting violent practices to the extraction of a confession about a crime or information related to it, thus limiting the perpetrator's criminal intent and not embodying all aspects of intentions related to torture. There are, however, different intentions that the perpetrator may demonstrate by torturing or mistreating a victim. By not considering other criminal intentions, acts of torture are narrowly limited to those aimed at extracting a confession or information, which leaves grounds for impunity.

For comparison, Article 1 of the UN convention against torture⁷⁰ stipulates four types of intentions related to torture: (1) obtaining from a person or a third party information or a confession; (2) punishing a person for an act that he or a third party has committed or is suspected of having committed; (3) intimidating or coercing a person or a third party; (4) or any reason based on discrimination of any kind.

other criminal intentions should also have been considered in Article 401, such as inflicting mental trauma, changes in the attitude and behaviour of the victim, and/or inflicting breakdowns.

the conflict of nahr el-bared and the subsequent investigations were evidence that torture was inflicted against suspected members of Fateh el Islam with intentions often far beyond that of extracting information or a confession, and closer to discrimination and collective punishment.

iv. type of crimes

Article 179 of the criminal code stipulates that a crime is classified as a criminal offense (جناية), a petty crime (جنحة) or an infraction (مخالفة) according to its sentence. The same article continues that the maximum sentence of any crime is the one considered to define its type.

Article 39 of the criminal code stipulates the types of sentences for a petty crime, which range from imprisonment with forced labor to ordinary imprisonment to paying a fine. For criminal offenses, Article 37 stipulates the sentences ranging from the death penalty, to forced labor for life, to detention for life, to temporary forced labor and temporary detention.

returning to Article 401 of the criminal code, the sanction for extracting information or a confession by force is imprisonment for three months to three years. Accordingly, if we want to classify the type of crime described in Article 401, we must consider the maximum sentence for this crime, which is imprisonment for three years. hence, according to Articles 39 and 179, the crime in Article 401 is a petty crime with a medium sentence.

we previously explained the fact that torture is an international crime that violates the physical integrity and individual liberty of a person even if it is perpetrated against a single individual in a single instance. if the legislature was considering the crime in Article 401 to be torture, it should have then applied a heavier sentence for it to ensure that it be classified as a criminal offense. thus, ALEF considers that the sentence applied to the crime in Article 401 is for extracting inaccurate information and is not related to torture.

⁶⁹ translation by the author

⁷⁰ Lebanon ratified the CAT on 5 October 2000

following is an example of a verdict prohibiting the extraction of information or confession by force using Article 401 (8 March 2007):

on 19 May 2004, the Egyptian Salem Ahmad was arrested for suspicion of involvement in a robbery. After the interrogation and soon after his release on 23 May 2004, he headed to a doctor who examined him and noticed the marks and wounds all over Salem's body. The doctor immediately drafted a medical report stating that the wounds and marks were caused by beating and violent acts and that the injuries on Salem's body were similar to the ones inflicted when hanging someone, as in the act of Farouj, which consists of handcuffing a person from beneath the knees, passing a stick or a hose between his legs and putting him on a desk. This inflicts great pain on the victim.

consequently, a case was filed against an officer, who rejected the charges that he had beaten Salem Ahmad during the interrogation and forced him to confess. The judge, however, confirmed the charges that the officer had used violence and had beaten the victim to extract a confession. The judge continued that the officer was guilty of the petty crime (جنحة) stipulated in Article 401 of the criminal code and sentenced him with one year of imprisonment, but decided to substitute the sentence with imprisonment for fifteen days and a fine amounting to 200 USD and another for 400 USD for the damage he inflicted upon Salem.

The verdict in this case reveals many of the concerns that we have raised above regarding the application of Article 401 to cases of torture, an article which fails to include the minimum provisions needed for the effective prohibition of torture.

The following can be deduced:

The application of Article 401 in cases of torture is problematic. We do not see how it could have been applied to reach a verdict if the officer had inflicted pain and torture upon Salem's body for purposes of discrimination, punishment or intimidation rather than to extract information or a confession. The same can be asked if the officer had inflicted psychological torture on Salem, even for the sole purpose of extracting information or confession. Article 401 provides no stipulations for these scenarios.

because of the way the crime in Article 401 is stated, and because of the medium sentence applied to it, the judge, had to consider the crime of which the officer was found guilty (the crime described in Article 401) as a petty crime and not as a serious crime.

There was no mention or reference whatsoever to "torture" or "ill-treatment" in the verdict, only to violent acts and beating, thus raising more speculations about the essence of Article 401.

The sentence inflicted upon the officer, imprisonment up to fifteen days and 600 USD for the damage inflicted, does little to deter future acts of torture.

Another article that causes confusion among scholars and lawyers, who usually interpret it as legislation concerning torture (at least in part), is Article 569 of the criminal law.

2. Article 569 of the criminal code

Article 569 reads "Anyone who deprives another person of his individual liberty by kidnapping or by any other means, will be temporarily imprisoned. He will also be imprisoned for life...[i]f the one whose liberty was deprived was mentally or physically tortured....The sanction will be strengthened if the crime caused the death of a person because of terror or for any other reason related to the crime"⁷¹.

unlike in Article 401, in Article 569 the word torture is clearly mentioned. what is confusing, however, is that it is stipulated under the crime of deprivation of individual liberty. The legislator increased the period of imprisonment to life if the victim who was deprived of his liberty was physically or mentally tortured.

Here as well, however, the legislature did not recognize torture as a crime in itself. It is only mentioned when it occurs as grounds to increase the period of imprisonment from temporary to life imprisonment. The main crime in Article 569 is the deprivation of liberty and, in cases where this includes torture, the sentence will be raised.

Article 569 leaves room for confusion as well based on the standing of the perpetrator, i.e., whether he is 1) a public official or acting on behalf of a public authority or 2) just a civil criminal.

In cases where the perpetrator was a public official or acting on behalf of a public official, it is difficult to

⁷¹ translation by the author

say that the victim was deprived of his liberty unless the arrest occurred without legal grounds. Hence, if a person was arrested and transferred to a prison or a detention centre where he was tortured or ill-treated, Article 569 will not apply because there is no deprivation of liberty when the arrest is executed according to the law.

If the perpetrator was a simple criminal not acting on behalf of the public authorities, Article 569 may apply when the deprivation of liberty is followed by physical or mental torture. However, this is not enough to prohibit torture in all of its manifestations and protect victims in detention centers and prisons from the abuse of state's power.

The scope of application of Articles 554 through 557 is very broad and raises the following concerns with regard to the prohibition of torture or their applicability during interrogations:

Articles 554 through 557 are vague and do not directly prohibit torture during normal investigations and interrogations.

Article 401 does not refer to the provisions of Articles 554 through 557 as applicable to the crime of extracting information by force.

Articles 554 through 557 do not refer to either torture or ill-treatment and do not define the intentions of the perpetrator while he/she is inflicting these acts against a person.

The same articles did not refer to any mental/psychological punishment, which is a major aspect of torture.

In addition to the above mentioned reasons for rejecting the opinion that torture provisions are guaranteed in articles 554 through 557 of the criminal code, we add that the earlier mentioned verdict of 8 March 2007 did not mention any of these articles stipulated in chapter 1, section 8, although the victim, Salem Ahmad, was injured, beaten and hurt, thus confirming that Articles 554 through 557 are neither related to torture/ill-treatment nor binding during investigations.

IV.

Failure to adopt national measures

When Lebanon assumed international obligations by signing treaties or agreeing to customary rules, the country also assumed the obligation to adopt all the legislative and administrative measures necessary for implementing such obligations.

According to the above mentioned laws, and as previously explained, provisions against torture are not explicitly stipulated, and when there is a reference to torture, however vague, it is not criminalized. Wrongful acts occur when administrative or judicial measures are taken which are contrary to international rules due to the lack of implementing legislation. The failure to pass the required implementing legislation engages state responsibility.

Further, maintaining and enforcing legislation that is inconsistent with international rules and lacks the fulfillment of torture provisions, or passing legislation contrary to the international prohibition of torture engages international state responsibility.

It is, therefore, the express responsibility of Lebanon to institute, expeditiously, national measures against torture. Indeed, this is an integral part of the international obligation to prohibit this practice. Lebanon must immediately set in motion all of the procedures and measures within its legal system to forestall any act of torture and expeditiously put an end to any torture that is occurring.

A white, long-sleeved shirt is shown hanging against a dark, solid background. The shirt is wrinkled and appears to be made of a light-colored fabric. It is positioned in the center-right of the frame, with its sleeves and body draped downwards. A dark rectangular box is overlaid on the left side of the image, containing white text.

// ACCORDING TO THE TESTIMONIES GATHERED BY ALEF,
MOST OF THE INTERVIEWEES REVEALED BRUTAL TREATMENT
BY THE DRB DETECTIVES. INDIVIDUALS ARE ARRESTED, AND
OFTEN BEATEN IN PUBLIC PLACES //

I.

The drug law and the drug repression bureau – DRB

Drug law n° 673 was issued on 16 March 1998. The law included many regulations to improve the fight against drugs in Lebanon, including the organization of the activities of pharmaceutical companies and hospitals in the field, the gathering of information about drug addicts and drug smugglers, and the investigation into and eradication of cannabis agriculture.

The law created the central command for the fight against drugs at the Ministry of the Interior, hereinafter the central command, and assigned to it one main task: to investigate drug-related crimes, prohibit them and sanction the perpetrators. Among the responsibilities of the central command are gathering information that facilitates the tracking of drug-related crimes, detecting and prohibiting illegal drug trafficking, and eradicating illegal agriculture (Article 211). The law has also established clear procedures for the rehabilitation of drug addicts in Articles 182 through 198, section 2, "the fight against drug addiction," and has made this one of the primary objectives of the drug law.

Below is an organigram of the internal security forces within the Ministry of Interior (chart 1) and of the judicial police including, among other units, the Drug Repression Bureau (chart 2).

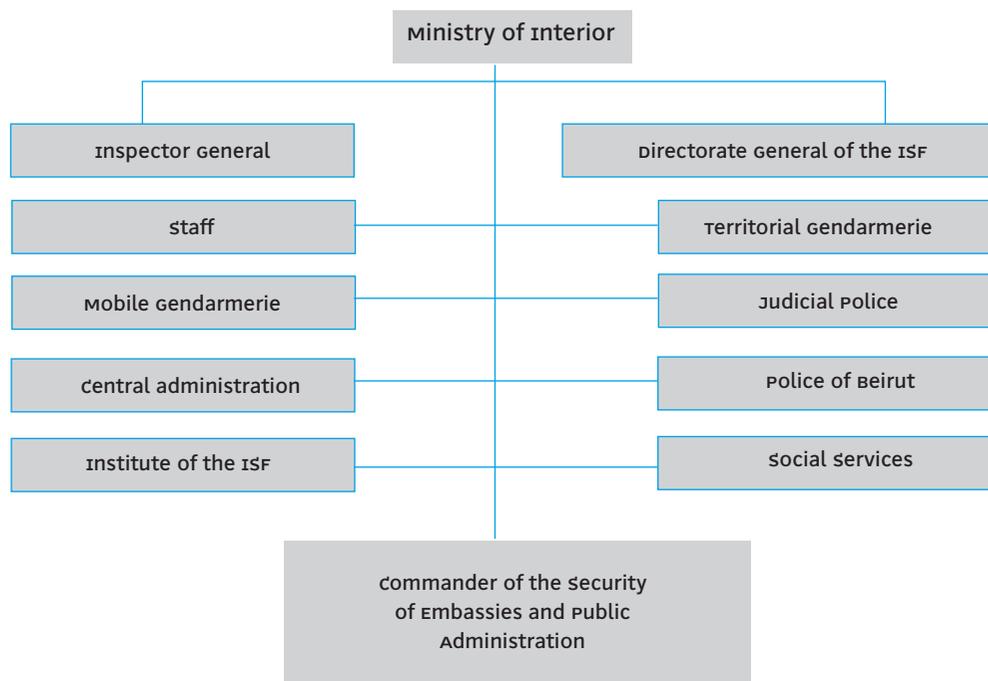


chart 1: organigram of the internal security forces within the ministry of interior

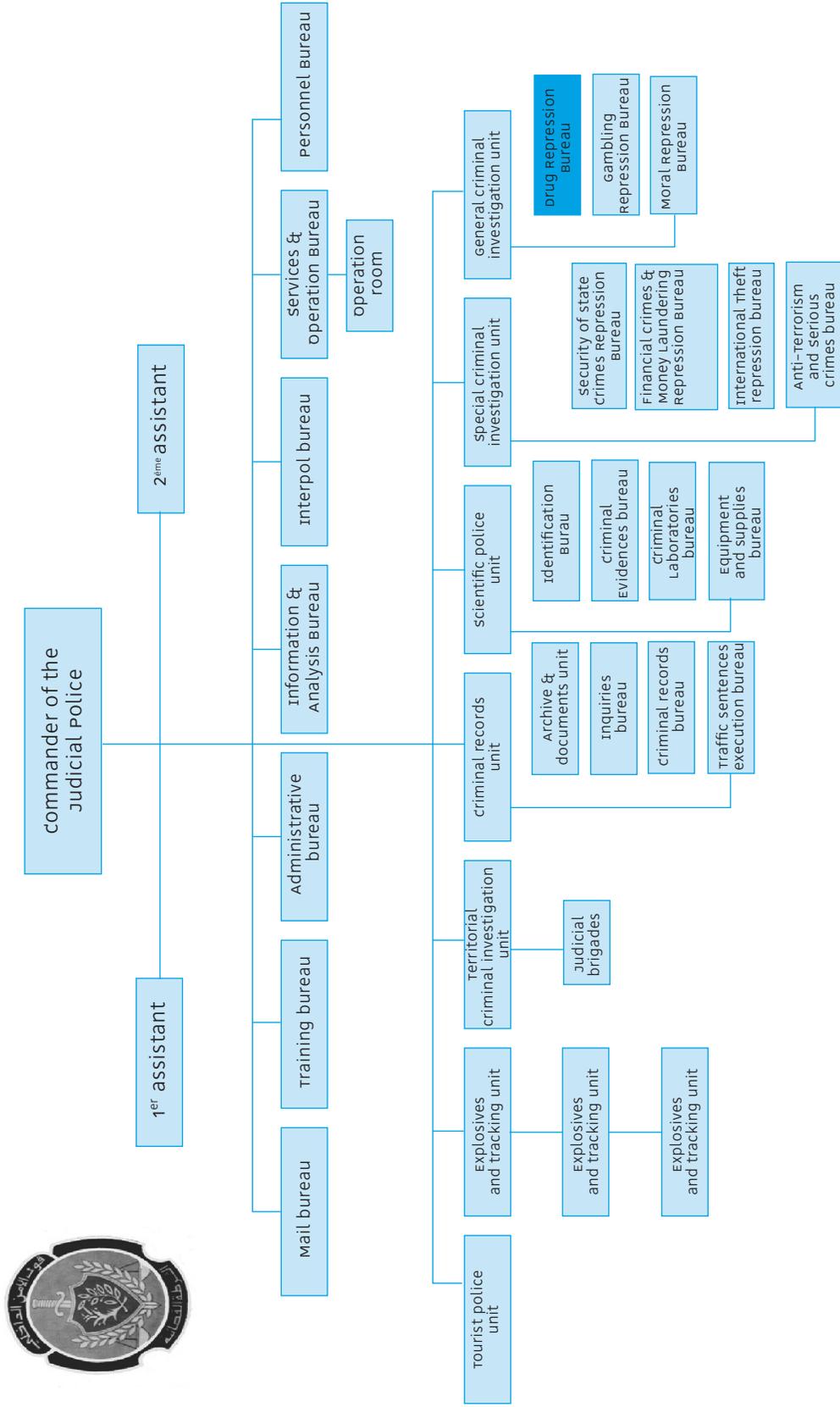


chart 1: organigram of the judicial police

According to law N° 17/90, issued in 1990, the ISF includes, among other forces, the drug repression bureau, hereinafter DRB, which is part of the judicial police. The drug law has also considered the central command as part of the judicial police (Article 162) when it comes to investigating and tracking drug related crimes. Arrests of individuals were limited to a maximum period of three days with previous approval from the general prosecution (النسابة العامة) (Article 163). Breaking into homes and other locations also required obtaining a warrant from the competent judiciary.

As for sanctions, Article 127 stipulates imprisonment for three months to three years of each person who acquired, obtained or bought a small amount of drugs without a medical prescription and with an intention to use them. The same sentence will be inflicted upon an addict who refuses to receive rehabilitation, as stipulated under section 2, "the fight against drug addiction," in Articles 182 through 198, mentioned above.

Although the drug law contains some of the international provisions regarding the conduct of arrests, investigations and rehabilitation for drug addicts, many of these provisions are, in practice, widely violated by the DRB detectives during their conduct of interrogations at detention centers.

// According to the testimonies gathered ⁷², most of the interviewees revealed brutal treatment by the DRB detectives. Individuals are arrested, and often beaten in public places//, and sometimes shootings occurred against unarmed victims. One detective did not even hide his intention to terrorize an unarmed addict when threatening him during his arrest on the streets of Bourj Hammoud, an eastern suburb of Beirut: "try to escape and you will see how the bullets will overcome," one of them told ALEF.

Arrests of suspects occur mostly in private residences or in public. A former prisoner reported having been hit with the butt of a DRB detective's rifle without even being addressed first by the detective: "I was on my motorcycle at Bourj Hammoud when I turned my head and saw the back of a rifle crashing on my face," he stated. Another young addict stated that the residents of Bourj Hammoud thought he was some kind of a gang leader after having witnessed how the detectives beat him. Most residents of Bourj Hammoud recognize some of the detectives from Hobeich Detention Centre. Rare were those who said that they were taken to the detention centre in a lawful manner without some occurrence of violation of their physical integrity. Some reported also having been beaten in DRB vehicles when they were taken for detention.

Hobeich, located in western Beirut, near the American University of Beirut, is notorious for torture and ill-treatment practices against drug addicts and drug traffickers. Most drug addicts and drug related criminals have experienced torture and ill-treatment in Hobeich dungeons. After having submitted to a urine test confirming drug usage, detainees were sometimes punched after hearing from a detective or an officer what came to be known as a common threat against addicts: "you are taking drugs, eh ; you will see what we will do with you."

Detainees were immediately locked up in a dungeon before facing a brutal interrogation. Interrogations generally take place either during the first day of arrest or on the following day. During interrogations, detainees are taken to the fifth floor, some of them blindfolded or with their heads covered. Those who have had previous interrogation experiences or have heard stories from previous detainees about the violent practices of the DRB can only guess how they might avoid what lies ahead.

According to the information that ALEF has gathered, interrogators at Hobeich have allegedly tortured and mistreated detainees to intimidate them, to extract information or a confession of drug crimes, or to force them to reveal identities of drug dealers. Among other tools, hoses, sticks, and electrical wires have been used to beat or bind the victim. Kicking and beating with bare hands are also common practices. Farouj, (translated as "chicken on the hoisting gear") is widely practiced essentially to cause physical collapse of the detainee and extract information or a confession by force. Insulting, cursing and shaming are also common. Brutal interrogation continues even when the suspect gives explicit signs of defeat or clearly says that he cannot carry on anymore. Many have reported to submitting, finally, and confessing to crimes they did not commit sometimes against persons they had never even heard of, which leads, ultimately, to imprisoning individuals for false and/or weak accusations. Even if the suspect did commit the crime of which he is accused and should be imprisoned, the end (imprisonment) does not justify the means (torture), even when it comes to cases of national emergency⁷³.

There is no fixed time frame that applies to each and every interrogation; some detainees reported attending only one session while others went through two or multiple interrogations. According to testimonies

⁷² Testimonies were gathered by ALEF between September and October 2007.

⁷³ See part 1 of this report.

gathered by ALEF, // individuals are often detained at Hobeich for two to five days without access to a lawyer or permission to contact a member of the family, thus amounting to incommunicado detention⁷⁴. // we could not check whether the judicial approvals regarding each arrest had been respected or not, as most detainees had no lawyers during the preliminary interrogations. After the interrogations at Hobeich, detainees were later transferred to the prison of the palace of justice at Baabda to face charges before the judge of instruction⁷⁵ (قاضى التحقيق).

Alleged brutal practices carried out by the DRB were also reported to have been taking place at Zahle detention center/palace of justice. Many drug addicts/dealers who were detained at Zahle were arrested in regions of the Bekaa valley, notorious for its lucrative cannabis crops. Since the beginning of the investigation, most interviewees taken there have reported the violent practices of the DRB detectives. Before interrogation, the detainees must undergo a urine test to confirm their usage of drugs. One interviewee, who was unable to urinate for the test, stated that detectives threw cold water on his head and back in an attempt to force him to urinate.

The DRB office is on the fifth floor in Zahle palace of justice. The establishment includes both cells and interrogation rooms. The cells are small, some of them limited to 2 x 2 meters including a toilet, and the number of detainees may reach eleven persons; the smell has been reported to be extremely awful. Similar to other detention centers, there was no food or water offered. Detainees had to pay for their own food.

The interrogation process at Zahle is, allegedly, as brutal as it is at Hobeich detention centre. DRB detectives seem to have been trained for such illegal and violent interrogations. Indeed, interrogations are the same in many other DRB units in detention centers throughout Lebanon. During interrogations, punching is a common act, detainees are often handcuffed, sometimes kept on their knees throughout the ordeal and receive, at random intervals, slaps on their heads and faces.

Questions asked during interrogations, whether at Zahle or in any other detention center, reflect similar primitive, inaccurate, and especially unlawful investigation procedures practiced by DRB detectives. All interrogations are centered around obtaining names of drug dealers/smugglers: "they will not leave you until you give names, if you don't they will beat you up and torture you. Some of the arrested didn't really know the identity of any drug dealer, so they gave fake names and the detectives didn't even bother trying to get more information about them like their appearance, address, etc. They just want to have names," one of the detainees stated.

Even more flagrant evidence of abuse is that these interrogations continue to be carried out even though they are unnecessary because the authorities are already well aware of the identities of drug dealers and the sources of drug trafficking in Lebanon. Thus, inflicting torture and ill-treatment is not only for purposes of extracting information but also for purposes of imposing collective punishment.

On September 2007, there were clashes between Lebanese farmers growing lucrative cannabis crop and the security forces trying to eradicate them. The illicit crop proved irresistible for many families in the Bekaa and adjoining Hermel region, well known for smuggling and militancy. Authorities estimate that between 7,000 and 7,500 hectares of cannabis have been cultivated this year⁷⁶. That is by far the largest amount since the end of the war when the government began its eradication program.

Lieutenant Colonel Adel Machmouchi, head of Lebanon's DRB, was quoted by media sources as stating that although his agency had intended to eradicate the crops this summer, it was unable to do so for security reasons⁷⁷. "we targeted eight sectors in the Bekaa and Hermel region but the army could not fully ensure the security of my agents in light of its battles with the Islamists at the Nahr el-Bared refugee camp," he said. He added that the owners of tractors his agency wanted to use to mow down the crops also refused to work at the last minute after they and their families received threats. Lieutenant Colonel Machmouchi and his agents came under fire, including rocket-propelled grenades, when they began eradicating cannabis fields in the Bekaa village of Boudai in early September.

⁷⁴ Torture is most frequently practiced when a person is held without access to a lawyer, his or her family and relatives or groups from civil society (incommunicado detention). In resolution 1999/32, the Commission on Human Rights reminded all states that "prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment" (para.5).

⁷⁵ Refer to the condition of prisons and detention centers part of this report.

⁷⁶ See, AFP, Bekaa farmers take advantage of political vacuum to grow lucrative cannabis crop, 4 October 2007

⁷⁷ idem

this reveals that the DRB is well aware of the identities of the main Lebanese drug dealers and smugglers, as well as of the regions and sectors where these dealers grow their cannabis crop. The bureau, however, as stated by its chief, was unable to eradicate the crops due to security reasons, and even when they tried doing so they came under fire by the farmers and drug dealers.

The authorities, therefore, seem to be well aware of outlaw areas and should stop beating drug addicts, who mostly need care and rehabilitation, in order to get the names of their suppliers. Questions also arise as to the reason why the Lebanese army did not supply the DRB with necessary troops to do drug crops eradication after the end of the conflict in Nahr el Bared.

Jihad Sakr, head of the social services department in the Hermel region, said authorities are now circulating leaflets threatening cannabis farmers with heavy prison sentences, but he believes the farmers will go on growing cannabis as long as they remain marginalized and ignored by the central government. It seems that even the supplier, then, is innocent in the eyes of the authorities and the true victim (the addict) is accused of the crime. When the authorities limit their actions to circulating leaflets, it reveals that these farmers and suppliers are well protected by the authorities or by an influential arm of Lebanese political powers. The authorities, represented by the DRB in drug cases, are either complicit or powerless, but in both cases they are protecting the illegal abuses practiced by detectives of the DRB and facilitating the torturing of detainees in its dungeons.

II. conditions in prisons

In this part we will reveal the legal provisions regulating prisons and their conditions in Lebanon, but first it is worth reviewing the principles and norms recommended by the United Nations regarding the prevention of torture/ill-treatment and the treatment of prisoners and their rights during detention compared to the provisions regarding Lebanese prisons under the authorities of both the Ministry of the Interior and the Ministry of Defense.

1. standard minimum rules for the treatment of prisoners

a. the UN congress on the prevention of crime and the treatment of offenders⁷⁸

The congress has listed a number of rules for the treatment of prisoners. In its preliminary observations, the congress noted that the rules "seek to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions." Therefore, despite their non-binding nature, the rules "should serve to stimulate a constant endeavor to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations."

In addition, it was agreed that the rules set by the congress shall be applied impartially and that there shall be no discrimination on grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. On the other hand it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs (rule 6, 1 and 2).

// The congress also organized the management of prisons and the partition of prisoners into separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. // Thus, untried prisoners shall be kept separate from convicted prisoners; and persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence (rule 8, b and c).

As for accommodation, sleeping is in individual cells or rooms where each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room (rule 9). Cells or rooms shall also be occupied by prisoners carefully selected as being suitable

⁷⁸ Geneva 1955, approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 - http://www.unhcr.ch/html/menu3/b/h_comp34.htm

to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution. Sleeping accommodation should also meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation (Rule 10).

// The congress also included a number of rules such as having separate and sufficient bedding (Rule 19); food of nutritional value, well prepared and served (Rule 20.1); transferring sick prisoners who require special treatment to specialized institutions or to civil hospitals (Rule 22.2); prohibiting all cruel, inhuman or degrading punishments such as placing in a dark cell // (Rule 31), punishment by close confinement (Rule 32.1), use of instruments of restraint such as handcuffs, chains, irons and strait-jackets, as a punishment (Rule 33).

conducting regular inspection was also considered to ensure that penal institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services. The visits should be conducted by qualified and experienced inspectors appointed by a competent authority (Rule 55).

b. body of principles for the protection of all persons under any form of detention or imprisonment⁷⁹

These non-binding principles are not limited to the protection of prisoners but also to all persons under any form of detention, thus expanding their scope of application to persons in detention centers and in other forms of imprisonment.

With regard to detention centers, the prohibition of torture and ill-treatment is clearly stipulated in principle 6. The same principle adds that no circumstances whatsoever may be invoked as justification of torture or ill-treatment. In case of torture or ill-treatment, the detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment to appropriate authorities (Principle 33). The persons arrested, detained or imprisoned shall be treated in a humane manner and with respect for the inherent dignity of the human person (Principle 1). Persons in detention should also, whenever possible, be kept separate from imprisoned persons (Principle 8).

2. Law decree n° 14310, 11 February 1949, regulating prisons and detention centers under the authority of the ministry of the interior

Conditions and management of prisons in Lebanon are regulated by the decree law 14310/49 which includes prisons under the authority of the ministry of the interior. However, as the view regarding the role of prisons is improving, particularly in the humane treatment of prisoners, decree 17315/64 was issued which transferred the control of prisons in Lebanon from the ministry of the interior to the ministry of justice. Accordingly, a new department – the management of prisons – was created in the latter ministry. However, due to the absence of a clear project related to the management of prisons, the ministry of justice still has no control over prisons. Hence, prisons remain de facto under the control of the ministry of the interior, and the authority of this ministry over prisons is also guaranteed in Article 1.2.3 of the law of the ISF internal organization⁸⁰.

It is worth revealing here the limited resources of the ISF, whose priority is maintaining security and not managing prisons.

According to the information gathered by ALEF, prisoners, especially in Roumieh central prison, but in other prisons as well, are hired by the ISF to do tasks where the internal forces lack the necessary human resources. Many former prisoners and social workers in Roumieh prison reported having been physically searched for security reasons by current prisoners upon entering the detainees' building. Where there is a lack of ISF officers in some administrative or logistical positions, we find prisoners assuming the burden of supervision in place of the prison's administration. In other prisons, staff is also severely limited. For example, in the women's prison of Baabda, there are only four guards on staff. These four guards work shifts in pairs, so that, during any shift, only two guards, with the assistance of two other nurses, are in charge of supervising around 80 prisoners and detainees.

// Tragic accidents could have taken place because of these deficiencies in ISF's human resources for managing prisons. // Last year, a fire occurred in the women's prison of Barbar el Khazen, Beirut. There was only one guard on duty working a night shift. Prisoners and detainees started screaming for fear of suffocation. The

⁷⁹ UN General Assembly resolution 173, 43rd session, December 1988
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NRO/531/52/IMG/NRO53152.pdf?OpenElement>

⁸⁰ see law n°17, 6 September 1990, on the internal organization of the ISF

guard refused to open the cells for evacuation for there was no assistance, and she had to wait for back up to control the fire and evacuate the prisoners. Fortunately there were no injuries, but the situation emphasizes the need to reinforce ISF presence in prisons to prevent such incidents⁸¹.

The Prisons Law contains 152 articles that deal with the management of prisons, inspection, health care, visitation rights and conditions of prisoners. Despite the fact that Law Decree 14310/49 is entitled "the management of prisons and detention centers," some regulations regarding prisons are not applicable to detention centers and there are no clarifications on this particular matter in the above mentioned decree, limiting the provisions of management and treatment detailed therein to prisons and prisoners (rather than to detentions centers and detainees)

a. provisions of international standards stipulated in the prisons law n° 14310

The prisons law contains some provisions on the management and the treatment of prisoners in line with international standards. Provisions related to inspection, medical care, separating prisoners according to their sex and criminal record, food, bedding and clothing are stipulated in Articles 13 (inspection), 52 to 54 (medical services), 62 (separating prisoners), and 75 to 86 (food, clothing, and bedding).

// Many of these provisions are not respected in many prisons, especially the prisons of Roumieh and Zahle where space is extremely limited, water is of poor quality, food is not nutritional, and hygiene is appalling. // Furthermore, in these facilities, detainees, prisoners and arrested individuals, albeit of a single sex, are all mixed together with no consideration of separation on the basis of their criminal records, whether they are untried prisoners or convicts, or whether they are civil prisoners or criminal offenders.

Prisoners held at Roumieh for drug-related crimes reported having learned how to conduct other criminal activities due to their regular contact with prisoners serving long-term sentences for criminal offenses. This situation clearly underlines the lack of rehabilitation programs in prisons, as well as the dire need to create such programs. More than a dozen interviewees said they would get involved again in crimes as soon as they leave the prison, while others said that it would be harder for the police to catch them again after their release due to the experience they acquired in prison⁸².

Bedding is limited to prisoners who have been serving a long-term sentence, to prisoners with good contacts (political or other), and to the shawish⁸³. According to Article 86 of the prisons law, bedding consists of a mattress, a pillow, and a cover sheet for each prisoner. Stated as such, a bed, in the legal sense of the word, is not stipulated, and so, in practice, most prisoners and detainees sleep on the floor. As for those having special privilege as explained above, a filthy mattress, 60 centimeters thick, serves as a bed.

Granted, sleeping on the floor or using mattresses rather than real beds may be the only way to spare some space in overcrowded prisons. According to the statistics of the prisons unit of the ISF, revealed during the meeting of the committee on the conditions of prisons on 5 November 2007, Roumieh prison currently hosts 3,694 convicts and detainees while its intended capacity is around 1050 prisoners⁸⁴. Most of these prisoners/detainees sleep in small dark dungeons.

The situation in Zahle prison is worse. The prison, initially a stable, holds only five cells⁸⁵. As many as 60 prisoners and detainees sleep on their sides in a room 2.5 x 3.5 meters. None except for the shawish have mattresses.

The women's prisons in Baabda and Barbar el Khazen, Beirut, are more spacious and host a limited number of prisoners, particularly in Baabda, which increased its capacity last year. As for the men's prisons, the situation is outrageous. It is not only scandalous because the prisons are overcrowded, but also because of the bad food and the scarcity of hot water and drinking water. The "two" daily meals are served simultaneously in the morning, forcing prisoners to reserve one of the meals for their lunch. No dinner is served. Prisoners have reported that the yoghurt is like water, vegetables and rice are not well-cooked, and the chicken is sometimes offered with its head. Food is served on huge plates, almost 80 centimeters in diameter, from which each prisoner takes his own share and eats with bare hands on a plate, if he has one.

b. provisions of international standards not stipulated in the prisons law

⁸¹ ALEF will keep the identity of the source anonymous according to his/her will.

⁸² See the survey conducted by Dr. Omar Nashaba at Roumieh Prison. Roumieh Prison if it Speaks, Omar Nachabe, Dar el Sakki, first edition 2007, p. 122 - 125

⁸³ Arabic word referring to prisoners hired by the head of each prison to look after the needs of a certain number of prisoners.

⁸⁴ Statistics also revealed during the meeting with the committee that there are currently 5776 prisoners in Lebanese prisons as of 5 November 2007.

⁸⁵ Cells number 2, 3, 5, 6 and 7. Room number 1 is a pharmacy and number 4 is a toilet used only by the shawish.

Although torture cases are not reported in prisons as frequently as they are in detention centers, the prisons law on the management of prisons and detention centers does not mention any provision on the prohibition of torture and ill-treatment on the basis of principle 6 of the UNGA resolution 173. The absence of such provisions widens the legal gaps between Lebanese laws on torture and the ill-treatment rules and principles stipulated in international resolutions and conventions.

other provisions on the treatment and protection of offenders are not stipulated, such as rules with regard to the prohibition of discrimination especially on grounds of race, color, and national or social origin, rules with regard to sleeping in individual cells, or, when this is not possible, to carefully select prisoners suitable to associate with one another, and rules with regard to punishment by close confinement or using instruments of restraint such as handcuffs, chains, and irons.

discrimination is easily detected in any prison and detention center in any city, area or district. It is institutionalized in each penal institution by what we call the 'shawish'⁸⁶, who presides over his area/room. prisoners who have good relationships with a shawish are well treated; he offers them a mattress, improves their conditions in the prison, and if they are fortunate he asks them to share his spacious cell. however, these 'luxurious' offerings are not free and those who seek them must give to the shawish in return, food, money, cigarettes or any other offerings of interest to him.

there are other prisoners besides the shawish with greater power granted them on the basis of discrimination. currently, only three hundred prisoners in roumieh prison participate in organized activities while the rest, some three thousand and five hundred (3,500), are left with no particular attention paid to them. prisoners with good political contacts have, to some extent, more power than the head of the prison himself. they live alone in spacious, fully-equipped cells with master-size beds, laptops and access to internet. they are allowed to see anyone in their private rooms (girlfriends, wives, children, prostitutes). prisoners at roumieh have reported seeing some cells even more luxurious than hotel rooms. many have referred to one particular cell in building B being more luxurious than a master suite in a five star hotel⁸⁷.

// Prisoners and detainees in prisons, as much as in detention centers, exceed five to six times building capacity; they are mixed altogether without consideration for whether they associate or not with one another especially on the basis of age. // detainees who showed signs of insanity or particular mental disabilities did not receive immediate treatment and were not put in special cells. the most appalling case of this occurred in the detention centre of ghazir where the suspect, antoine abi saab, was alleged to have committed suicide on the evening of 5 october 2007⁸⁸. abi saab was suspected of killing his wife, an incident that occurred on 30 september 2007, and was arrested for interrogation. abi saab stated that his wife was killed by thieves who stopped their car, shot his wife and beat him on different parts of his body before running away. he added that, upon seeing his wife dead, he started hitting his head on a wall, a fact that was confirmed during the primary investigation of the crime scene. regardless of whether abi saab killed his wife or not, he should have been treated immediately for mental disorder both because of the murder of his wife and because he was hitting his head on a wall. instead, he was arrested at the detention centre of ghazir where he stayed for four days and then, allegedly, committed suicide on the fifth day after hitting his head again against a wall in his cell. the legal doctors, ahmad el mekdad, sarkis abi akl and wahid saliba, stated in their medical report that there were no signs of violence on abi saab's body and a fracture on the left side of his skull was the cause of his death⁸⁹. this particular case shows the neglect in detention centers where detainees do not receive any medical attention for either mental or physical conditions. it also reveals that cells and rooms are not equipped with necessary safeguards required for the protection of detainees.

3. Law decree n°6236, 17 january 1995, for the management of prisons under the authority of the ministry of defense – The Army's commandment

article 2 of this law defines the prisons under the authority of the army (the ministry of defense) as follows: the prison of the military court, the prison of the military police, and the prison of the military intelligence in its headquarters at the ministry of defense and in other regions as well. the accused, detainees and convicts according to military judiciary law are jailed in these prisons (article 3).

⁸⁶ Footnote 87.

⁸⁷ In respect of their wish, ALEF will keep the sources of this information anonymous.

⁸⁸ See AN nahar, وجد ميتا في نظارة مخفر عزيز, 6 october 2007

⁸⁹ ALEF conducted an interview with the lawyer of the murdered wife, tony tabcharany, who confirmed the reasons of the death mentioned in the medical report.

Almost all provisions regarding inspection, medical services, bedding, clothing, and food of nutritional value are provided for in this law, similar to those in Law Decree 14310/49.

we will reveal here the conditions in one particular prison under the management of the ministry of defense.

a. varzeh prison – the torture factory

The Lebanese ministry of defense is located in varzeh, an eastern suburb of Beirut. It became an interrogation center in 1990 for individuals arrested for political reasons. Many civilians were illegally detained and tortured by Lebanese security agents for an indefinite period and prior to their appearance before the military tribunal for any trial⁹⁰. In 1994, the Lebanese government issued a decree officiating the prison at the ministry of defense. varzeh prison has a record of torture during the period of the Syrian presence in Lebanon. The majority of the detainees in the ministry of defense were members of groups who opposed the pro-Syrian Lebanese regime such as members of the Lebanese Forces party, supporters of the General Michel Aoun, anti-Syrian Sunnites from Tripoli, and juveniles who distributed anti-government leaflets. Included also were a few human rights defenders and activists. During this time, the cells were overcrowded and extra prisoners/detainees were kept in the hallways handcuffed and blindfolded for long periods that were sometimes extended to several months. Some detainees were driven to sign confessions incriminating others that were then submitted to the military tribunal of Beirut.

Torture is a common practice at varzeh. Sessions were usually conducted with the presence of a specialist who guaranteed leaving no marks or scars. Even after torture sessions, prisoners continued to be subjected to humiliation by the guards, and the brainwashing continued to glorify Syria. Psychological pressure was exercised on prisoners, which led them sometimes to believe that members of their families were arrested and were being tortured as well. Previous detainees at varzeh reported having been subjected to different types of torture, including, among other things, having their legs held open, being placed in hoisting gear, having bottles placed in their bottoms, being subjected to forms of torture known as "chicken style" and "chicken on the hoisting gear," being raped and receiving electric shocks on the tongue and sexual organs.

Even after the Syrian retreat, many alleged and proven torture cases were reported to have taken place at varzeh, such as the case of Ghassan Salibi and another nine detainees who were arrested on 31 March 2006 for allegedly creating an illegal association, acquiring weapons and planning to assassinate the Secretary General of Hezbollah, Hassan Nasrallah. They were all subject to different types of torture such as the electric chair, beating, threats to assault their wives, and balango for the purpose of extracting information and/or confessions. They have all signed confessions, under torture, incriminating themselves. On 21 April 2007, the principle detainees in this case appeared before the military court where they all testified to having been forced under torture to give false confessions. One of them, Seraj el Dine, stated that after facing four days of physical and mental torture he was forced to tell the investigators whatever they wanted to hear. "If I told them that I know nothing, they would have kept beating me"⁹¹.

During the conflict of Nahr el-Bared, from 20 May until 2 September, many torture cases against detainees suspected of involvement with Fateh el Islam were reported at the prisons of Kobbeh and varzeh. After their arrest during the evacuation of the Beddawi Palestinian camp or at military checkpoints, many were transferred, blindfolded, from the prisons in northern Lebanon, such as the Kobbeh prison, to varzeh at the ministry of defense. Most of them didn't realize that they had been at varzeh. They were all subjected to the most severe and violent practices, similar to those that took place against the political detainees during the Syrian occupation. Electric chairs, balango, beating, hangings (all types), sexual assaults and threatening were common acts practiced by the military intelligence during interrogations.

Until now, no public information concerning the prison of varzeh had been disclosed. The media is still silent with regard to the previous practices during the Syrian occupation. No judicial inquiries had been launched and there have been no governmental attempts to close this prison despite the many reports published by human rights organizations revealing torture cases in its dungeons and hallways.

It is important here to reveal that when a state allows impunity for perpetrators, this raises the issue of state responsibility under international law. Lebanon has an obligation under international conventions, including the UN Convention against Torture, to make sure that individuals who have carried out torture are held responsible for their actions. If a state does not prosecute individuals whom it knows to have been involved in torture, or does not allow another state to do so, it may well be failing in its obligations under international law.

⁹⁰ Le centre de détention du ministère de la Défense: un obstacle majeur à la prévention de la torture – victimes oubliées, bourreaux impunis, SOLIDA Paris, 5 October 2006.

⁹¹ This is how they tortured me, this is how I confessed!
<http://www.pal-monitor.org/portal/modules.php?name=news&file=article&sid=80>

those perpetrators of torture acting upon or benefiting from national measures should be held criminally responsible for torture, even under a subsequent regime, and should see the consequences of a breach of obligations erga omnes and of peremptory norms (jus cogens)⁹². However, the Lebanese government is still reluctant to open the files at the varzeh prison and compensate those who have been tortured and mistreated in the past fifteen years and during the conflict of Nahr el-Bared, a reluctance that engages the international responsibility of Lebanon.

III.

Illegal immigrants, asylum seekers and foreigners in Lebanese prisons - The general directorate of the general security

Lebanese prisons are not only a nightmare for nationals but for foreigners as well, namely illegal migrants and refugees. When a foreigner is caught staying in Lebanon illegally, without legal papers, they face a cycle of violence in detention centers and prisons. Subject to discrimination, they face harsh conditions before and after getting transferred to prison where they have to indefinitely wait for a judicial decision in regard to their status. In Roumieh prison, as well as in other prisons, they live in the same miserable conditions as other nationals.

Tony Tabcharani is one of many lawyers in charge of cases regarding illegal migrants and foreigners from different nationalities. In 2007, he was in charge of two cases, one regarding a couple of Australians and another concerning two Iranians, all four of whom were detained at Roumieh prison⁹³. A comparison of both cases is staggering.

The Australians were arrested on 23 December 2006 for involvement in a kidnapping operation and transferred to Roumieh. On February 2007, a judicial warrant ordered their release on a Friday evening. They were released that same day and immediately transferred to Rafik Hariri International Airport in Beirut where they left on a plane to Sydney. The Australian embassy took charge of following up their case and booking their flight.

As for the two Iranians, they were also arrested in December 2006 as suspects in a robbery and were later transferred to Roumieh. On March 2006, similar to the case of the two Australians, a judicial warrant ordered their release. Despite the warrant, they stayed detained at Roumieh without legal grounds for five months before they were freed on 8 August 2007, and later deported to Iran without any inquiries into whether they will face eventual prosecution in their home country.

The General Security, hereinafter GS, is in charge of dealing with and deporting foreigners from Lebanon. When foreigners serve their sentences or if judicial warrants ordering their releases are issued, the GS is in charge of deporting or releasing them from the prisons under ISF control after completing the necessary inquiries into their status.

However, this is not usually the case for many foreigners from other nationalities, mainly from non-developed countries, where the GS delay their releases, leaving them in prison for several months without legal grounds. Hence, when a detainee is American, European, Australian, Canadian or a national from any other developed country, he is automatically released after serving his sentence and deported during the same day, or the next day at most, to his home country. This is due to the close monitoring of the situation by their respective embassies who then take charge of all travel fees and other security checks. As for detained foreigners from Egypt, Sri Lanka, Sudan, Somalia, Philippines, and other non-developed countries with minimal follow up from their respective diplomats, those foreigners will wait several months in prison before the GS decides to release them, even after serving their sentences or a release warrant is issued in their regard⁹⁴.

However, the Lebanese government is trying to deal quickly with the issue of deportation and foreigners in prisons. According to a report sent by the General Directorate of the General Security to the Ministry of Interior, as of 12 October 2007, there are around 1378 foreigners who served their sentence but are still detained; 820 of those are in Roumieh prison and other prisons in the regions, 441 detained at the GS and the rest are divided between the embassies of Philippines, Sri Lanka and Ethiopia⁹⁵. This report shows that there are more than 1200 foreigners who served their sentences and are still detained in Lebanese

⁹² See Furundzija judgement of the ICTY. Prosecutor v. Anto Furundzija, case No. IT-95-17/1-T, judgement, 10 Dec. 1998.

⁹³ We will not reveal the identities of the concerned individuals in accordance with their wishes that we not do so.

⁹⁴ The Egyptian embassy takes charge of deporting its nationals on board of a ship that enters Beirut port once each two months, which causes delays in deporting those who served their sentences.

⁹⁵ Al Akhbar, 1200 أجنبي أُنهوا عقوباتهم ولا يزالون في السجون، 13 November 2007.

prisons. The report was discussed in a governmental meeting on 10 November 2007 headed by the Lebanese prime minister, Fouad Siniora. During this meeting, the government adopted the recommendation to deport foreigners who served their sentences made by the committee in charge of studying the conditions of prisons in order to solve the problem of overcrowded prisons. The GS evaluated the cost of deportation to be about half a million dollars, a sum which will be paid by the government itself. As for those for whom deportation is not an option for security reasons, they will stay as guests in Lebanese prisons. This is the case for hundreds of Iraqi refugees in Lebanon.

1. The indefinite detention of Iraqis

The situation of Iraqi refugees is similar to many foreigners who seek asylum. There are no accurate figures for the number of Iraqi refugees in Lebanon. This number varies between NGOs, government organizations and UN agencies⁹⁶.

Lebanon did not ratify the Convention on the Status of Refugees of 28 July 1951, or the 1967 Protocol related to the Status of Refugees⁹⁷. Lebanon is however a member of the United Nations General Assembly and a member of the Executive Committee of the UNHCR since 1963. Hence, the Lebanese authorities have an obligation to respect the mandate of the UNHCR in providing assistance for refugees in its territories.

The UNHCR is currently providing refugee status cards for Iraqis in Lebanon who originate from central and southern Iraq, excepting those who have committed serious crimes in Iraq⁹⁸. The refugee's status cards provided by the UNHCR for Iraqi refugees are not recognized by the ISF nor the GS⁹⁹. In addition, the memorandum of understanding signed in September 2003 between the General Security and the UNHCR, under which the GS issues circulation permits to illegal individuals for the period preceding their resettlement, is not applicable to Iraqis. Hence, Iraqi nationals are subject to frequent arrests, imprisonment and indefinite detention. The number of Iraqi refugees detained in Lebanese prisons varies between organizations and government agencies¹⁰⁰. Around 80% have served their sentences but are still in prisons, especially at Roumieh prison where most of them are serving longer periods, four to seven months, without legal grounds¹⁰¹. Hence, detention is used as a tool for expulsion of Iraqi refugees, who are sometimes deported back to Iraq even though they are at risk of being tortured. This represents a clear violation of the non-refoulement obligation enshrined in Article 3(1) of the UNCAT.

2. The responsibility of the General Security

When a release warrant is issued or a sentence is served, the detainee chooses between either getting deported or settling in Lebanon. However, both alternatives demand a certain amount of fees that Iraqis and other refugees cannot afford. Getting deported is not an option for most Iraqis due to the conflict in Iraq. A few, however, if they can pay the travel fees, decide to leave anyway. These precarious conditions leave many foreigners facing the latter option of settlement in Lebanon, which requires that they have the necessary means to pay close to 2000 USD¹⁰².

The last time the General Security (GS) opened the doors for Iraqis and other refugees to settle in Lebanon was in May and June 2007. Those who got the chance to find the needed funds were settled while others, even those with a release warrant issued in their regard, are still in prison. They will have to wait for the year 2008 before the GS decides again to allow settlement, which increases the detention period for some of them to at least one year without any legal grounds. The African community, mainly Sudanese who fled the war-torn region of Darfur, are also arrested for having no legal papers recognized by the authorities.

⁹⁶ Because most Iraqi refugees in Lebanon are in the country illegally, there are no precise statistics for the total number of Iraqi refugees. UNHCR estimated the number of Iraqi refugees in Lebanon to be around 20,000 to 40,000. "Iraq situation response – update on revised activities under the January 2007 supplementary appeal" July 2007 [http://www.unhcr.org/partners/PARTNERS/469632e32.pdf p.4](http://www.unhcr.org/partners/PARTNERS/469632e32.pdf_p.4). On 7 November 2007 the Iraqi association Al Rafidayn stated in a meeting to ALEF that there are around 16,000 Iraqi refugees in Lebanon and 11,000 are registered with the UNHCR. The General Security estimates that there are around 100,000 Iraqis in Lebanon.

⁹⁷ See <http://www.ohchr.org/english/law/refugees.htm>; for member states, see also <http://www.unhchr.ch/html/menu3/b/treaty2ref.htm>

⁹⁸ According to ALEF's meeting with the senior protection officer and the protection officer in UNHCR office in Beirut on 18 December 2007, Iraqis are randomly arrested by the Lebanese authorities but security officials have sometimes demonstrated flexibility in regard to respecting their rights of movement.

⁹⁹ idem

¹⁰⁰ Stéphane Jacquemont said in a Human Rights Watch conference that as of December 2007 there are 580 Iraqis detained. The Iraqi association Al Rafidayn estimated the number to be around 1200 as of November 2007.

¹⁰¹ Figures and numbers are provided by the Iraqi association Al Rafidayn

¹⁰² This includes, among other administrative fees, 633 USD for settlement for three months, 300 USD for the GS and a work license fee. It requires also having a Lebanese guarantor who is owner of a company.

this situation of prisoners detained with no legal grounds and without knowing when they will be released is scandalous. The imposition of indefinite detention in harsh conditions, when the detainees have served their sentences and are not facing other charges, constitutes, in itself, inhuman and degrading treatment and as such is a violation of both the ICCPR (Article 7) and the Convention Against Torture¹⁰³. The Committee Against Torture has also considered that a potentially prolonged detention of foreign nationals without sufficient legal safeguards and without judicial assessment of the justification for their detention constitutes per se a violation of the UNCAT¹⁰⁴.

Hence, this situation of foreign nationals facing a protracted detention raises issues under the peremptory international law rule against torture. The ICRC has also considered that the psychological effects that indefinite detention may have on individuals may entail violations of the UNCAT and other cruel, inhuman or degrading treatment or punishment¹⁰⁵.

The GS is violating the core principles of the UNCAT and torture provisions in other human rights conventions by keeping foreigners in indefinite detention and occasionally allowing for settlements once a year. The GS, as a government security institution, makes the Lebanese government responsible for not issuing new policies and adopting new measures to ease the suffering of foreigners, especially Iraqis, in prisons and detention centers and speeding up their settlement. Although such a measure – settlement of foreigners, mainly Sri Lankis, Egyptians, Sudanese, and Iraqis – is unlikely to be adopted due to the bad economic situation in Lebanon, depriving them of their liberties by putting them in indefinite detention is an inhuman and degrading treatment that violates their core rights as stipulated in Article 7 of the ICCPR and the UNCAT.

¹⁰³ see *C. v. Australia*, (UN Doc. A/58/40, UN Doc. CCPR/C/76/D/900/1999 (2002), para. 8.4.), "it was found that the immigrant detainee kept in indefinite immigration custody suffered psychological trauma because of the prolonged detention. The human rights committee determined that Article 7 of the ICCPR had been violated".

¹⁰⁴ see Conclusions and Recommendations: United Kingdom of Great Britain and Northern Ireland. Subjects of Concern 4 (e) – CAT/C/CR/33/3, 10/12/2004. See also the CAT Committee USA, U.N. Doc. CAT/C/USA/CO/2, July 25, 2006 – para. 22.

¹⁰⁵ see Alfred de Zayas, "Human rights and indefinite detention", *International Review of the Red Cross*, volume 87 number 857 March 2005, p.20. See also UNTS, vol. 660, p.195, 21 December 1984, entered into force on 26 June 1987.

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ANNEXES

Appendix A

relevant articles of the united nations convention against torture

Article 2

1. Each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No state party shall expel, return («refouler») or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each state party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each state party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each state party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 4 in the following cases:
 - a. when the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that state;
 - b. when the alleged offender is a national of that state;
 - c. when the victim is a national of that state if that state considers it appropriate.
2. Each state party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to Article 8 to any of the states mentioned in paragraph 1 of this article.
3. This convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 7

1. The state party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in Article 4 is found shall in the cases contemplated in Article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that state. In the cases referred to in Article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in

Article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in Article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 14

1. Each state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

Appendix B

common Article 3 to the geneva conventions

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
 - a. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - b. taking of hostages;
 - c. outrages upon personal dignity, in particular, humiliating and degrading treatment;
 - d. the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
2. The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the parties to the conflict.

The parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present convention. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

Appendix C

Article 4 of the Additional Protocol II to the Geneva Conventions

Article 4 - Humane Treatment

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their

liberty has been restricted, are entitled to respect for their person, honor and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:
 - a. violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
 - b. collective punishments;
 - c. taking of hostages;
 - d. acts of terrorism;
 - e. outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
 - f. slavery and the slave trade in all their forms;
 - g. pillage;
 - h. threats to commit any of the foregoing acts.
3. children shall be provided with the care and aid they require, and in particular:
 - a. they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
 - b. all appropriate steps shall be taken to facilitate the union of families temporarily separated;
 - c. children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;
 - d. the special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured;
 - e. measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

Appendix D

Article 7 of the international covenant on civil and political rights

Article 7

no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Appendix F

Articles 19, 37 and 38 of the convention on the rights of the child

Article 19

1. states parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment,

maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 37

states parties shall ensure that:

- a. no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- b. no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- c. every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- d. every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. states parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. states parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. states parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, states parties shall endeavour to give priority to those who are oldest.
4. in accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, states parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Appendix G

Article 5 of the universal declaration of human rights

Article 5

no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Appendix H

Article 8 of the Rome Statute (not ratified by Lebanon)

Article 8 war crimes [excerpts]

1. The court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
2. For the purpose of this statute, «war crimes» means:
 - a. grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - i. willful killing;
 - ii. torture or inhuman treatment, including biological experiments;
 - iii. willfully causing great suffering, or serious injury to body or health;
 - iv. extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - v. compelling a prisoner of war or other protected person to serve in the forces of a hostile power;
 - vi. willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - vii. unlawful deportation or transfer or unlawful confinement;
 - viii. taking of hostages.
 - b. in the case of an armed conflict not of an international character, serious violations of common Article 3 to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:
 - i. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - ii. committing outrages upon personal dignity, in particular humiliating and degrading treatment;
 - iii. taking of hostages;
 - iv. the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
 - c. paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
 - d. other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
 - i. intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
 - ii. intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
 - iii. intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
3. Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
4. Pillaging a town or place, even when taken by assault;
5. Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;
6. Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
7. Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
8. Killing or wounding treacherously a combatant adversary;
9. Declaring that no quarter will be given;
10. Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
11. Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.
12. Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a state when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

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