



**SITUATIONAL UPDATE ON THE OCCURRENCES  
AND TREND OF TORTURE IN LEBANON (2008 -2010)**

Torture Prevention and Monitoring in Lebanon  
October 2010



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## *ALEF - ACT FOR HUMAN RIGHTS AND ITS COMMITMENT TO TORTURE PREVENTION AND MONITORING IN LEBANON*

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Operational since 1996 (under the name of Nouveaux Droits de l'Homme-International) and officially registered in 2004, ALEF-Act for Human Rights (Association Libanaise pour l'Éducation et la Formation/Lebanese Association for Education and Training) is a Non-Governmental Organization, working on monitoring, protecting and promoting Human Rights in Lebanon through education, training, advocacy and lobbying activities.

Alef believes in the absolute value of Human Beings and in the moral and legal imperative to uphold this value. Embracing a comprehensive approach to monitor, defend, and educate on human rights, Alef aims to complement and gear all efforts towards the achievement of an influential Human Rights constituency.

Alef seeks to strengthen the respect and practice of human rights along all levels of the social, political, and economic structures and seeks to re-instate the fundamental value of every human being as a priority for policy makers and policy agendas.

Alef has been engaged in working on “Torture Prevention and Monitoring in Lebanon” since the year 2007, when it implemented a 1-year project aimed at mobilizing the local community towards detecting, addressing and reporting torture cases; raising awareness on the brutality of this practice and advocating at the national and international levels for the transposition of international standards related to torture and ill-treatment into the national legislation. This project provided ALEF with a valuable insightfulness on the prevalence of violations related to torture and ill-treatment in detention centers and prisons, mostly directed towards vulnerable groups such as drug addicts, undocumented migrants, sex workers, Lesbians, Gays, Bisexuals, Inter-sex (LGBTI), and people detained for national security reasons.

The work ALEF is conducting on torture prevention and Monitoring is on-going. A second project of two years funded by the Embassy of the Kingdom of the Netherlands started in December 2009 and aims to strengthen the efforts towards preventing torture and ill treatment in Lebanon as well as effectively monitoring and reporting torture allegations.



## ACKNOWLEDGMENTS

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ALEF would also like to thank Khalil Mechantaf, the researcher who conducted the legal review and wrote this report along with the assistance and support of the monitoring and advocacy program staff and interns at Alef. Many other stakeholders have also provided and still do continuous assistance both on the research and on the other components of the project.

## FOREWORD

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Following the first report on torture entitled: “*Lebanon: The Painful Whereabouts of Detention*”, on June 26, 2008 as part of ALEF’s first project on Torture Prevention and Monitoring in Lebanon (TPMLI), several developments have taken place on the legal front; the most important of which is the ratification of the Optional Protocol to the United Nations Convention Against Torture (OPCAT)<sup>1</sup> by the Lebanese Government on December 22, 2008, and the issuance of a ministerial decree n° 2036 that established a committee to draft National Preventive Mechanism law (NPM) pursuant to the OPCAT.

Developments include a growing interest from international stakeholders in training the Internal Security Forces on forensic investigation and crime prevention in a human rights context, mainly the right of due process and the prohibition to resort to torture. Moreover, although the overall condition of prisons remains appalling, two positive steps have been taken to improve it, the first the decision to build another newer prison for the General Security beside the prison of Roumieh and the second the opening of a new prison in Zahle.

As part of its second project on Torture Prevention and Monitoring in Lebanon (TPMLII) funded by the Royal Embassy of Netherlands, this report aims to highlight the major developments regarding torture in Lebanon since June 2008, date of the launching of ALEF’s first report.

These developments comprise the ongoing discussions on the creation of an NPM and the draft laws submitted thereon; the domestic laws that are related to torture; the legal protection of medical legists in their conduct and several other legal developments. As such, this report builds on the TPMLI report and will regularly refer to it.

This report also includes alleged cases of torture detected and a series of recommendations that ALEF is striving to ensure their implementation by major stakeholders and the Lebanese Government.

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<sup>1</sup>Optional Protocol to the United Nation Convention against Torture (OPCAT); <http://www2.ohchr.org/english/law/cat-one.htm>



## I- A BRIEF RECAP ON THE TREND OF TORTURE UNTIL 26 JUNE 2008, DATE OF THE ISSUANCE OF THE FIRST REPORT ON TORTURE

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The first report on torture drafted by ALEF<sup>2</sup> as part of the project on Torture Prevention and Monitoring I (TPMLI) - , issued on the International Day in Support of Victims of Torture - June 26, 2008 - , revealed a nationwide practice of Torture, inhuman and degrading treatment and punishment.

Through an in-depth legal analysis of the Lebanese legislation, the report unveiled the contradictions between domestic laws regarding physical safety of persons deprived of their liberty and the United Nations Convention Against Torture or Degrading Treatment or Punishment (UNCAT) signed and ratified by Lebanon on October 5, 2000<sup>3</sup>; thus, demonstrating the liability of the Lebanese State vis-à-vis its international obligations.

### THE DOMESTIC LEGISLATION ON TORTURE

The report reached a conclusion that the Lebanese Criminal Code, namely in article 401<sup>4</sup>, includes loopholes that are inconsistent with the UNCAT, which allows the practice of Torture and inhuman treatment by law enforcement officials. The afore-mentioned article lacks the necessary provisions required for the prohibition and punishment of acts of Torture, especially during Court proceedings<sup>5</sup>.

Torture is mentioned under Section 4 of the Lebanese Criminal Code, 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”.

<sup>2</sup> *Lebanon: The Painful Whereabouts of Detention*, ALEF, 2008.

<sup>3</sup> United Nations Convention against Torture, <http://www2.ohchr.org/english/law/cat.htm>

<sup>4</sup> Article 401 is the provision dealing with torture and ill treatment in the Lebanese Criminal Code; other articles of the criminal code also apply during detention such as article 41 and 47 and 77 of the Criminal Procedure Code (CPC) related to the right to remain silent; article 48 of the CPC related to detention. For the purpose of the UNCAT and the shortfalls in the Lebanese domestic laws, this report deals only with article 401, since it is directly related to the definition of “torture” in the Lebanese Criminal Code.

<sup>5</sup> *Lebanon: The Painful Whereabouts of Detention*, p.41, ALEF, 2008.

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.

a. *The form of Article 401*

The type of crime provided in Article 401, as it is listed in the criminal code, is one that breaches the proceedings of justice and the administration of the judiciary. By listing Article 401 under Part 2 of Chapter 1, Section 4 of the Lebanese Criminal Code, entitled *Extracting Information and Confession by Force*<sup>6</sup>, the legislature considers this article as related to a crime concerning the proceedings of the judiciary and its work. Usually and in principle, any information related to a crime and extracted by force is considered inaccurate and can obstruct or hinder the work of justice<sup>7</sup>.

Consequently, the legislature criminalizes resorting to force or violence with the aim to extract or provide information related to a criminal act but it does not criminalize torture itself. In international law torture is a crime violating the core principles of human dignity whereas, under the Lebanese Criminal code, art. 401 refers to it is a crime violating the proceedings of justice. Thus, the domestic law falls short from ensuring a proper legal framework for Torture by not including *a specific Section on Torture and ill-treatment*.

b. *The Substance of Article 401*

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

1. *Type of violence*

The main guidelines 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.

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<sup>6</sup> Article 401 is the only article under Part 2.

<sup>7</sup> "The Special Rapporteur reiterates his conviction that torture and ill-treatment are and always will be ineffective means or tools for intelligence or information gathering and law enforcement. Confessions and statements obtained under torture are inherently unreliable, and often disorient and disperse the efforts of law enforcement and investigations personnel", Report submitted by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 3 February 2011, A/HRC/16/52; <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A.HRC.16.52.pdf>

The following acts are considered to be violent<sup>8</sup> :

- 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 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 with a sick person having a contagious disease; 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.

Thus Article 401 refers to aggression as one among other “violent practices,” as the above-mentioned acts. As shown by the analysis of its content, the essence of Article 401 does not to prohibit torture, or else, it should have included all types of violence of article 1.1 of the UNCAT<sup>9</sup> or used the word “torture and other inhuman or degrading treatment” rather than the more ambiguous “violent practices.” Furthermore, article 401 falls short of the definition of torture provided by art. 1.1 of the UNCAT by not referring to the mental or psychological aspect of torture.

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<sup>8</sup> These acts are considered to be violent by the jurisprudence and the general principles of law, see Judge Elias Eid, Special Criminal Law, La Sagesse University

<sup>9</sup> The Lebanese Government ratified the UNCAT on 5 October 2000. Article 1.1 of the UNCAT provides that for the purpose of the Convention, 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

## *2. What is Allowed and Prohibited by Law*

There is also confusion in Article 401 about what is criminalized by law. The article explicitly provides: “Everyone who inflicts violent practices not permitted by the law against another person... will face imprisonment for three months to three years”.

The ambiguity of this provision leads to interpret that there are violent practices that are illegal and other practices that are permitted by the law. Such elusiveness 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 a prohibition of it. 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 (UDHR) including (art. 5), the International Covenant on Civil and Political Rights (ICCPR – art.7), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD-art. 1), the Convention on the Rights of the Child (CRC-art. 19; 38), the UN Convention Against Torture of 1984, and Common Article 3 of both the Geneva Conventions and Additional Protocol I of 1977.

## *3. 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 other acts committed for other purposes.

For comparison, Article 1 of the UN Convention Against Torture (UNCAT) provides four types of intentions related to torture: (a) obtaining from a person or a third party information or a confession; (b) punishing a person for an act that he or a third party has committed or is suspected of having committed; (c) intimidating or coercing a person or a third party; (d) 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 behavior of the victim, and/or inflicting breakdowns.

On the other hand and to what concerns the nature of the crime in article 401: As per article 179 of the Lebanese Criminal Code, 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. Additionally, article 39 of the Criminal Code provides for the types of sentences for a petty crime, which range from imprisonment with forced labor or mere imprisonment to paying a fine. For criminal offenses, Article 37 introduces sentences ranging from the death penalty, to forced labor for life, to detention for life, to temporary forced labor and temporary detention.

As per article 401 of the Criminal Code, the sanction for extracting information or a confession by force is imprisonment from three months to three years. To classify the type of crime given in Article 401, the maximum sentence for this crime, which is imprisonment for three years, should be considered accordingly,. Hence, as per Articles 39 and 179, the crime in Article 401 is a petty crime.

It is worth noting that no amendments have been introduced to article 401 of the Criminal Code since 2008.

## THE CONDITIONS OF PRISONS

The first report on Torture issued by ALEF revealed that the provisions of the decree n'14310/49 regarding the conditions of prisons and detention center are violated on a regular basis. ALEF conducted several interviews with previous detainees and prisoners who all confirmed the degrading sanitary conditions of prisons<sup>10</sup>.

Following its situational assessment in the afore-mentioned report, ALEF concluded that detention centers and prisons are the most common places where the practice of torture and degrading treatment takes place in Lebanon. Such centers are widespread in the capital Beirut, northern Lebanon and the Bekaa Valley. The assessment revealed

<sup>10</sup> *Lebanon: The Painful Whereabouts of Detention*, ALEF, 2008, p.51

that the crimes of torture and ill-treatment were most inflicted against vulnerable groups such as drug addicts, Lesbian, Gay, Bisexual, Transgender, Inter-sex (LGBTI), sex workers, refugees, asylum-seekers, undocumented migrants, and foreigners and against perpetrators of disgraceful crimes, and that it is also inflicted against authors of crimes against national security<sup>11</sup>. The report sheds the light as well on other human rights violations inflicted during detention and that are interconnected with the crime of Torture, revealing that the majority of the arrested individuals, who are taken to detention centers, suffer prolonged incommunicado detention which facilitates the perpetration of torture, cruel, inhuman or degrading treatment<sup>12</sup>.

Finally, that report revealed the causes of Torture, where the perpetrator benefits from total impunity, lack of trainings on forensic investigations and techniques of interrogations in respect of human rights standards, absence of legal provisions for the prohibition of torture, lack of political monopoly on State institutional control and security forces<sup>13</sup>.

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<sup>11</sup> *ib.*, p.27.

<sup>12</sup> “*Prolonged incommunicado detention may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment, and may in itself constitute such treatment*”, Joint study on global practices in relation to secret detention in the context of countering terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Working Group on Arbitrary Detention represented by its vice chair, Shaheen Sardar Ali and the Working Group on Enforced or Involuntary Disappearances represented by its chair, Jeremy Sarkin, A/HRC/13/42, p. 2; <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>

<sup>13</sup> See recommendations 22 and 23 of ALEF first report on torture “*Lebanon: the Painful Whereabouts of Detention*”, 2008.

## II- TORTURE TREND UPDATE AND CASES FROM JUNE 2008 TILL OCTOBER 2010

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The first report issued by ALEF in June 2008 featured several recommendations, amongst were: ensure the compliance of national laws with the UNCAT; ratify the Optional Protocol to the UNCAT and the Rome Statute of the International Criminal Court; provide a medical examination as a routine practice; close Hobeich detention center in Beirut and bring to justice those who were and/or are still in charge of interrogations in its premises<sup>14</sup>; transfer the management of prisons from the Ministry of Interior to the Ministry of Justice pursuant to the law n°17315 of 1964; close the Ministry of Defense prison in Yarzeh; , improve prisons' conditions-especially Roumieh central prison -; ban all interrogations by military intelligence officers and train law enforcement officials on interrogation techniques in line with Human Rights standards.

Since June 2008, ALEF pursued an advocacy plan for the amendment of the Lebanese Criminal Code according to the UNCAT, the improvement of the conditions of prisons and detention centers, the training of Internal Security Forces (ISF) on criminal investigation according to Human Rights standards, and the ratification of the OPCAT. Some of the above recommendations were implemented by the Lebanese Government<sup>15</sup> during the last 2 years. ALEF is still monitoring, and where necessary advocating, for the adoption of the remaining recommendations, on the legislative (A) and situational (B) levels.

### A- LEGISLATIVE UPDATES

#### *1- Update on the Ratification by the Government of Lebanon (GoL) of the Relevant International Conventions (mainly OPCAT);*

Until 26 June 2008, when the first ALEF report on Torture<sup>16</sup> was issued, the Lebanese Government had signed, but not yet ratified, the Optional Protocol to the UNCAT. The report provided in its fourth recommendation the ratification of the OPCAT as a step for establishing National Preventive Mechanisms to: examine the treatment of people

<sup>14</sup> "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...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"; *Lebanon: the Painful Whereabouts of Detention*, pag.49, ALEF, 2008.

<sup>15</sup> E.g. the ratification of the OPCAT; the training of ISF officers on human rights issues; some rulings have refused to consider evidences extracted through torture (see below in the cases section the rulings of Justice Ziad Mkenna – Judge of investigation in the Bekaa).

<sup>16</sup> *Lebanon: the Painful Whereabouts of Detention*, pag.49, ALEF, 2008.

deprived of their liberty, strengthen and reinforce safeguards related to detention, and also to allow the Subcommittee on Prevention of Torture (SPT) to conduct visits to police stations, prisons (military and civilian) and detention center (pre-trial detention).

On December 22, 2008, the Lebanese Government ratified the OPCAT<sup>17</sup>. Upon the ratification of the OPCAT, Lebanon has made no declarations under article 24 of the protocol that allows the country to postpone temporarily (initial period 3 years + 2 years further extension) part of the implementation of the protocol – either Subcommittee on Prevention of torture (SPT) (Part III) or the National Preventive Mechanism (NPM) (Part IV) but not both<sup>18</sup>.

This ratification is considered a step forward in the prevention of Torture since it allows the SPT, an international body, to conduct regular visits to prisons and detention center in Lebanon and issues its recommendations accordingly<sup>19</sup>. The other monitoring mechanism is through a national entity that Lebanon should establish, and that is an independent National Preventive Mechanism (NPM) with an objective of monitoring and conducting visits to prisons and detention centers, while cooperating with the Subcommittee on the Prevention of Torture on this level. Therefore, according to the OPCAT, Lebanon has to allow visits made by these bodies as part of a watchdog system at any time. This is crucially important for monitoring and preventing the practice of torture and ill-treatment.

During the draft of this report the SPT was conducting its ninth visit to Lebanon, from 24 May to 2 June 2010. Although the details of its visit remained confidential, the SPT visited several detention center and prisons, including the prisons of Tripoli, Roumieh, Zahle, and Yarze<sup>20</sup>. At the end of the visit, the delegation presented its confidential preliminary observations to the authorities of Lebanon.

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<sup>17</sup> Official Gazette n° 38 of September 18, 2008, page 3488 - Law n° 12.

<sup>18</sup> Article 24 provides the following: 1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol. 2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

<sup>19</sup> See article 1 of the OPCAT.

<sup>20</sup> See the press release for a full list of places visited, Subcommittee on Prevention of Torture concludes mission to Lebanon, 2 June 2010, [www2.ohchr.org/english/bodies/cat/opcat/docs/PR\\_LBN\\_02062010.doc](http://www2.ohchr.org/english/bodies/cat/opcat/docs/PR_LBN_02062010.doc)

## RATIFICATION OF AN NPM LAW AND RELATED CONTROVERSIES

As referred above, since the Lebanese Government has made no declaration with respect to article 24 of the OPCAT, it has then to establish a National Preventive Mechanism with respect to the obligations laid down in the protocol. As of the date of this report, Lebanon has not yet set into force an NPM as provided for in the OPCAT<sup>21</sup>; thus breaching article 17 of the Optional Protocol, which provides for the designation or establishment, at the latest one year after the entry into force of the Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level.

The current national efforts that are focused on ratifying an NPM law can be divided into two trends. Those efforts have led to issuing two draft laws that are being discussed. The first leans towards implementing a law that provides for the creation of an NPM committee that is independent from any official authority or human rights body (a), while the second supports the ratification of a law that establishes an NPM as part of a National Human Rights Institution (b).

### THE DRAFT LAW ON THE CREATION OF AN INDEPENDENT NPM COMMITTEE

On June 6, 2009 the Minister of Justice, Ibrahim Najjar, issued a ministerial decree n° 2036 for the creation of a committee to draft an NPM law pursuant to the OPCAT, which was thereafter established under the presidency of the judge Marlène Al Jorr<sup>22</sup>. The committee held thirteen meetings in total, and on September 30, 2009, Justice Marlène Al Jorr submitted the NPM draft law to the Minister of Justice<sup>23</sup> according to the above-mentioned decree. It is worth noting that the relevant authorities are currently considering the options available, namely, whether to establish a national preventive mechanism or national institution for the promotion and protection of human rights - National Human Rights institute (NHRI) - , in accordance with international standards – Paris Principles<sup>24</sup> -, with a mandate that includes the prevention of torture<sup>25</sup>.

<sup>21</sup> Article 3 of the OPCAT.

<sup>22</sup> The committee included: the rapporteur of the Parliamentarians Human Rights Committee; the head of the Human Rights Department at the Internal Security Forces (ISF); a representative of the UN High Commissioner for Refugees (UNHCR); a representative of the International Committee of the Red Cross (ICRC); a representative of the Office of the High Commissioner for Human Rights (OHCHR); a representative of the Beirut Bar Association (BBA); and two representatives of the NGOs Al Karama and Pierre Osseiran Association.

<sup>23</sup> Appendix 1

<sup>24</sup> Principles relating to the Status of National Institutions (The Paris Principles); <http://www2.ohchr.org/english/law/parisprinciples.htm>

<sup>25</sup> See National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1, Lebanese Republic, A/HRC/WG.6/9/LBN/1, para. A 28; [http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/LB/A\\_HRC\\_WG.6\\_9\\_LBN\\_1\\_E\\_Lebanon-eng.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/LB/A_HRC_WG.6_9_LBN_1_E_Lebanon-eng.pdf)

The merger between the NPM as part of the NHRI will cause further delays in the creation of a national preventive mechanism since the attempts to create the NHRI in Lebanon goes back to the issuance of the UNGA resolution 48/134 on 20 December 1993. A national committee for Human Rights has been established in 2000 according to the initiatives taken by the Human Rights Institute of the Beirut Bar Association. However, the abovementioned committee is not yet effective, awaiting the issuance of relevant decrees. As stated above, Lebanon has committed its first violation of the OPCAT since more than one year has elapsed after the ratification of the Optional Protocol without designating or establishing an NPM for the purpose of the said Protocol. Thus passing a law that establishes an NPM becomes very urgent in order for Lebanon to respect its international obligations, to prevent and prohibit torture.

The NPM draft Law includes six chapters and thirty one articles.

## DEFINITIONS

Article 1 refers to the establishment of a National Preventive Mechanism namely “Committee for the protection of the rights of detained and persons deprived of their liberty” that will according to the OPCAT. It also provides for the financial and administrative independence of its members from any other official authority. A major legal development appears in article 2 of the NPM draft law related to the transposition of the UNCAT definition of torture (article 1 of the UNCAT); thus, preventing the vagueness of article 401 and impunity that may prevail with regard to torture cases. Article 30 of the draft law provides for the primacy of its provisions over other domestic laws; as a result, art. 401 of the penal code will have to be amended, in order to reflect the exhaustive definition of torture according to per international human rights standards. Moreover, Article 3 of the draft law determines the interpretation of deprivation of liberty of the persons both in public or private detention according to a decision from a judicial or administrative authority. Examples of detention center, including those at the airport, the General Security, the Internal Security Forces and Ministries of Defense, Justice, Health and Social Affairs are also presented; hence, the mandate and places of visits that the committee can undertake according to this law is overarched. Following the above provision on visiting prisons, the draft law allows the NPM committee to visit any place where a person, on which the committee receives information of torture or ill treatment, is detained, whether such place is officially qualified by a ministerial decree as a prison/detention centre or not including but not limited to the Yarzeh prison at the Ministry of Defense.

## MANDATE

Regarding the committee's mission, the NPM draft law sets the ground in article 5 for the power of the committee to undertake unannounced or scheduled visits to detention center, to conduct individual or group meetings with persons in detention, with any person that is able to provide related information, to accept claims from the above persons and to conduct medical tests.

Article 7 constitutes an important provision for the notification of the committee by the judicial authorities of any decision related to torture, ill treatment or deprivation of liberty that the latter may issue. This is particularly significant since it allows the committee to follow up on the cases of torture detected, to refer them to the judiciary to stay informed on the situation of torture and the work of the judicial authorities in the prohibition of torture.

Article 8, para 2, of the law widens the mandate of the committee authorizing it to verify allegations on persons arbitrary detained, inform the competent judicial and administrative authorities of their situation, in order to put an end to their illegal detention. This provision is most welcomed and essential to prevent torture in those cases where the protection framework is absent such as arbitrary and incommunicado detention. Another important provision is the authority that the committee has in providing recommendations and comments on the draft laws and/or current legislation related to its work, i.e. deprivation of liberty and fair trial<sup>26</sup>. Such extension of the committee's mandate is necessary to monitor the situation of detainees as well as the judicial and trial procedures, have thorough knowledge of the circumstances of detention leading to torture and subsequent prohibition measures that are needed to prohibit and prevent such practices. Therefore, no draft law should be adopted if it does not clearly reflect a similar mandate of the NPM.

## MEMBERSHIP IN THE COMMITTEE

Chapter two of the draft law lays down the provisions related to the formation of the committee and the general conditions of membership, e.g. being a Lebanese national for at least ten years, having an expertise and sound knowledge of human rights issues, have at least thirty years of age (article 11). As for the background of the members, article 10 of the law sets the composition of the committee in ten members that mainly have a

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<sup>26</sup> Article 8, para 3 of the NPM draft law.

legal and, especially a human rights background welcomed<sup>27</sup>. It is worth noting that article 10 includes in its last para that during the appointment of the committee's members, no discrimination shall be made on the basis of sex. Members of the committee are appointed by the Council of Ministers for a non renewable period of four years (article 13).

### IMMUNITIES AND GUARANTEES

Articles 23 till 26 ensure sufficient guarantees for the work of the committee and its members, i.e. the immunity of its members for acts arising from the implementation of their mission, the prohibition of searching the offices of the committee without its prior approval. Individuals and associations providing information for the committee benefit as well from the listed immunities. One of the most important safeguards foreseen by this draft law is the prohibition to suspend the work of the committee by the executive authority even in cases of war and State emergency; thus, allowing the committee to monitor torture practices even in case of national security, such as cases involving alleged spies and alleged terrorists.

### INDEPENDENCE AND TRANSPARENCY

The financial independence of a human rights committee, especially the NPM committee is vital for ensuring its independence and neutrality. Chapter five of the NPM draft law includes provisions related to the financing of the committee's budget. Article 27 states conditions for its financial and administrative independence; however, those are not sufficient.

The requirement of independence of the NPM committee should be fulfilled on the financial level. Therefore, the NPM should be awarded with decent financial resources to ensure its financial integrity, without the need to complement its budget through fundraising and/or rely on donations. Lack of financial resources would lead to corruption and bribery. The present draft law should emphasize the need for a decent budget granted directly and totally by the Lebanese Government, without relying on donations, as it is the practice in Lebanon particularly on human rights and the rule of law<sup>28</sup>. This requires that the Lebanese Government envisages credits in its budget on the longer term that will be totally dedicated for the promotion of Human Rights. Financing means engagement and commitment and the Lebanese Government should cover a bigger role

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<sup>27</sup> According to article 10 of the NPM draft law, two out of the ten members of the committee are doctors, two lawyers, four civil and human rights activists, one honorary Judge, one Professor of criminal law and criminology.

<sup>28</sup> E.g. the National Human Rights Action Plan is funded by UNDP; the prison's health system is outsourced to the private sector; only 49% of the Special Tribunal for Lebanon is financed by the Lebanese state.

in guaranteeing the promotion of HR through the financing of such mechanisms instead of relying on foreign donations.

In the NPM draft law the committee will have to publicly report thus not only ensuring its transparency and accountability, but also allowing the civil society organizations to compare their own findings with the NPM activities and conclusions and/ or build upon its findings for future activities.

### ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

The first report recommended the Lebanese Government to ratify the Rome Statute and become a member State of the International Criminal Court (ICC)<sup>29</sup>. Article 8 of the ICC Statute qualifies torture or inhuman treatment as a war crime, if committed as part of a plan or policy, or as part of a large scale commission of such crimes. The first report revealed allegations of practices of torture as part of a plan and on a large scale against the Palestinian refugees and members of the Islamic group Fatah Al Islam during the conflict of Nahr el Bared in May 2007<sup>30</sup>. The Lebanese judiciary has not conducted any investigation on the basis of such allegations, a situation which could have triggered the jurisdiction of the ICC has Lebanon ratified the Rome Statute.

### CONVENTIONS ON THE STATUS OF REFUGEES AND THE PROTECTION OF MIGRANT WORKERS

Refugees and migrant workers in Lebanon do not enjoy any social and civil rights. The absence of awareness, the prevalence of discrimination and commonly the lack of legal status and of a protection framework in Lebanon renders these groups most vulnerable to torture. Domestic laws lack the provisions required for the protection of refugees and migrant workers. Furthermore, the relevant international conventions have not been ratified by the Lebanese Government<sup>31</sup>.

### *2- Update on the Amendment of Provisions in Domestic Laws regarding Torture and Ill-treatment;*

In addition to the provisions of article 401 of the Criminal Code detailed above, Lebanese domestic laws still have not met the requirements laid down in international Human Rights standards related to Torture such as:

<sup>29</sup> Lebanon: *The Painful Whereabouts of Detention*, ALEF, 2008 p.15, 5.

<sup>30</sup> *Ibid.* p.27.

<sup>31</sup> Namely the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 (see article 10 regarding the prohibition of torture) and the Convention relating to the Status of Refugees (1951) and its Optional Protocol (1967).

## ON THE PRINCIPLES OF GOOD CONDUCT FOR LAW ENFORCEMENT OFFICIALS

The principles embodied in the Code of Conduct for Law Enforcement Officials, United Nations General Assembly resolution 34/169 of 17 December 1979, especially articles 5 and 6 of the Code<sup>32</sup>, are not reflected yet in national legislation and no effective mechanisms have been established to ensure the internal discipline, external control and supervision of law enforcement officials.

As of the date of drafting this report, a long awaited development occurred when the ISF was in the process of adopting a new draft code of conduct, in which several provisions regarding the human treatment of prisoners and detainees and the prohibition of torture are provided. Article 5(2) in particular states that Police members will not practice or disregard any act of torture or ill-treatment of prisoners during investigations. As for article 8 of the draft code, it ensures the rights of suspects and detainees and defines the duties of Police members such as adopting legal procedures and scientific techniques during investigation, refraining from inhumane practice, informing the detainees of their rights, respecting the duration of detention and granting persons in custody access to medical care.

It is worth noting that the Code of Conduct does not refer to any mechanism that will monitor its enforcement. Consequently, the Code should also envision a procedure of enforcement and accountability in case of violation of its provisions, especially with regard to Torture and ill treatment.

Moreover, the code should have taken into account a system whereby the detainee, upon arrest must be immediately asked by the relevant ISF officers about his medical history, and any treatment, physical or psychological, that he is currently receiving. In case of suspicion the relevant officer must immediately request the presence of a doctor to examine the detainee's health condition. Even in the case of absence of emergency, the relevant ISF officer should request the detainee to have a medical check on a routine basis during the detention period and not be subject to the ISF officer's discretion. This practice would allow maintaining an accurate and updated record of each detainee in a prison or a detention centre. It is important that the Code adopts such procedure for the safety of both the detainee and the rest of the people in custody for many reasons: e.g.

<sup>32</sup> Article 5 of the resolution provides that "no law enforcement official may inflict any act of torture and ill-treatment or invoke superior orders or exceptional circumstances, while article 6 provides that Law enforcement officials should fully protect the health of persons in their custody and take immediate action to secure medical attention when required", United Nations General Assembly resolution 34/169 of 17 December 1979; <http://www.un.org/documents/ga/res/34/a34res169.pdf>

prevention of death cases in prisons and detention center caused by the deterioration of the detainees' health conditions, when the ISF officers are not aware of such conditions upon arrest.

## ON THE MANAGEMENT OF PRISONS AND DETENTION CENTERS

Despite the pressure of the civil society and international stakeholders working closely with the Lebanese Government<sup>33</sup>, the conditions within prisons and detention centers in Lebanon are still appalling.

### a) Prisons managed by the ISF

The transfer of the management of prisons from the Ministry of Interior to the Ministry of Justice pursuant to the law decree n°17315 of 1964 has not been implemented yet. Such transfer constitutes an important step for improving the conditions of prisons, since the (ISF) lacks, among others, the needed human resources, knowledge on human rights issues in a detention/prison contexts and trainings on how to administer those prisons<sup>34</sup>, thus contributing to the discrimination between prisoners and deterioration of the conditions of prisons. The practices detected during the drafting of the first report are still present, e.g. the hiring by the ISF of some prisoners called the “shawish” to be in charge of the management of a certain group of prisoners. Such practice, mainly due to the shortage in ISF human resources, is the cause behind several allegations on discriminatory practices among prisoners. Nevertheless, it remains a concern to transfer the prison's management given the following factors: a. there is still no proven capacity/resources at the Ministry of Justice to handle the prisons' management, b. it is still vague who would be responsible – Ministry of Interior or Justice - for the security apparatus management required in prisons, thus who would be the main duty bearer.

The criminal procedure law does not oblige law enforcement officials to register relevant information related to each detainee e.g. the state of health of the detainee upon detention and any changes thereto, the time and place of interrogations with the names of all interrogators present, etc. Such data should be included in every detainee official record and must be reviewed by the competent judge

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<sup>33</sup> EU promotes Rule of Law and Human Rights to underpin democracy in Lebanon  
[http://ec.europa.eu/delegations/lebanon/press\\_corner/all\\_news/news/2010/20100503\\_01\\_en.htm](http://ec.europa.eu/delegations/lebanon/press_corner/all_news/news/2010/20100503_01_en.htm)

<sup>34</sup> Knowing that pursuant to the law n°17315 of 1964, the management of prisons is to be transferred from the Ministry of Interior to the Ministry of Justice.

in order to determine, in case of torture or ill treatment, the extent of the crime and its perpetrator. In addition, upon arrest at any detention centre, a medical legist should be made available as a routine practice to examine the state of health of the detainee (mental and physical) and certify that there are no existing symptoms that may degrade his health condition in detention.

Moreover, the prisons' conditions, especially in Roumieh, witnessed no improvement. Prisons are managed with poor human conditions. However, a new prison at Zahle in the Bekaa Valley was inaugurated and replaced the old one, which had an extremely limited space and appalling hygiene conditions.

Almost all prisons suffer dangerous sanitary conditions; prisons are overcrowded<sup>35</sup>, with no distribution of prisoners as per age, criminal record, the legal reason for detention and the necessities of their treatment. Non convicted prisoners who are still under trial, and convicted ones are kept together in all prisons<sup>36</sup>.

#### **b) Prisons Managed by the Ministry of Defense**

According to the findings of the first report, Yarze prison at the Ministry of Defense witnessed several torture practices against the detainees of Fatah Al Islam during the conflict of Nahr el Bared in 2007. That prison was also a hub for political detention of individuals without fair trials before the retreat of Syrian troops on the 26 of April 2005. Despite the recommendations issued by several civil society organizations<sup>37</sup>, no measures have been taken by the Lebanese Government to ameliorate the Yarze prison by applying the Lebanese law and other international standards.

#### **c) Prisons Managed by the General Directorate of the General Security**

These prisons are assigned for foreigners, mainly refugees and migrant workers<sup>38</sup>. Their conditions have not changed since the publication of the last report in June 2008. Their main problem is related to the lack of space available to host the prisoners. Some prisoners are mixed with others who carry contagious diseases.

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<sup>35</sup> With some exception in Women's prisons.

<sup>36</sup> For details about the condition of prisons see ALEF first report on torture, "*Lebanon: the Painful Whereabouts of Detention*, ALEF, 2008", p.52.

<sup>37</sup> Including ALEF, *Lebanon: the Painful Whereabouts of Detention*, ALEF, 2008 p.15.

<sup>38</sup> See the Joint Submission of ALEF, Frontiers, Restart Centre and Al Karama to the Ninth Session of the Universal Periodic Review: Torture, Arbitrary Detention and Fair Trial – 2010, para 29. [http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/LB/FRA\\_FrontiersRuwadAssociation\\_JS.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/LB/FRA_FrontiersRuwadAssociation_JS.pdf)

The length of the detention of undocumented foreigners, depending mainly on their nationality and social class, varies from couple of hours to more than a year<sup>39</sup>.

With regard to the prison itself, it is located underground, beneath Elias el Hraoui bridge in Beirut, with little sun light and oxygen available to aerate its premises. It is reported that prisoners regularly lose consciousness due to that, especially the new ones<sup>40</sup>. The Shawish is also practiced in these prisons<sup>41</sup>.

The prison of the General Security is to relocate to its new premises in Roumieh area, currently under construction.

## ON THE TRAINING OF ISF OFFICERS

The lack of trainings of ISF officers, mainly detectives from the General and the Special Criminal Investigation Unit, on forensic science and interrogation techniques, coupled with the lack of resources (both human and financial) to prevent crimes, have significantly contributed to the spread of torture practices in detention center, as a tool to extract information from detainees<sup>42</sup>.

Whereas the prevention of political crimes<sup>43</sup> and counter-narcotic enforcement remains the major challenge for the ISF, exemplified by the creation of the Intelligence Department as an integral part of the institution to detect monitor and dismantle criminal networks and fight organized crime. Resorting to torture is considered the main tool to extract information that can unveil and dismantle various criminal networks and organizations. ALEF considers that the training of ISF officers on forensic science and interrogation techniques according to human rights standards is an essential component in the fight against torture.

The ISF officers receive trainings by several international stakeholders on the respect of the rule of Law and fighting crimes. Among were trainings conducted recently by the

<sup>39</sup> E.g. Australian, American and European embassies follow up regularly on the status of their nationals in Lebanon. In case of detention, a representative of any of those embassies is usually dispatched to visit the detainee. If deportation is ordered by the Lebanese judiciary, the embassy enforces the order without any delay. Those who cannot afford the ticket back home and are not financially supported by their respective embassies remain detained for a long period.

<sup>40</sup> [www.al-akhbar.com/ar/node/193606](http://www.al-akhbar.com/ar/node/193606) - نظرة الأمن العام بعيون نزيل: خفقات ليلية وبسكويت - June 14, 2010.

<sup>41</sup> As explained above, the shawish is a position given to the oldest detainee/prisoner or one with contacts who is in charge of a group of prisoners to provide, e.g. food, mattresses, cigarettes in return of money.

<sup>42</sup> The lack of resources and poor trainings are one of the reasons behind the spread of torture practices. One has to add the social reasons behind it.

<sup>43</sup> Including assassinations.

U.S. Drug Enforcement Administration (DEA) on counternarcotics enforcement. The course aimed at strengthening the capabilities of the ISF on drug prevention techniques<sup>44</sup>. Specific sessions on Human Rights, prohibition of torture, Democratic Policing and Ethics were also part of the program<sup>45</sup>, these issues were also covered during another training conducted by the ISF General Administration jointly with the association “Justice et Miséricorde”, and supported by the French Embassy in Beirut<sup>46</sup>.

On the other hand, under the framework of the EU-Lebanon Action Plan jointly agreed by the Lebanese Government and the European Union and adopted in 2007, the ISF received EU support to improve the ISF training capacity, mainly in the field of criminal investigation, through technical assistance, equipment and training<sup>47</sup>.

The management of prisons is a critical area that requires as well extensive training for proper administration. A training entitled “the management of prisons in a human rights context” was provided to the ISF on 28 October 2009 by the Human Rights Institute of the Beirut Bar Association with the association “Dar el Amal”. Several similar trainings are required in order to meet the international standards for the management of prisons and detention centers. The Human Rights Institute of the ISF is directly concerned on this level and should reinforce its projects with several activities, especially those related to raising awareness on human rights and torture issues.

It is worth noting that the ISF should implement a process whereby a proper transfer of the trainings received is ensured to the rest of the officers, mainly interrogators, detectives and officers dealing directly with detainees and prisoners. There should be evaluation system to ensure the accurate application and enforcement of the knowledge received through trainings.

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<sup>44</sup> 40 ISF Officers Complete Counternarcotics Training with U.S. Experts – 7 May 2010, [http://lebanon.usembassy.gov/latest\\_embassy\\_news/press-releases2/pr050713.html](http://lebanon.usembassy.gov/latest_embassy_news/press-releases2/pr050713.html)

<sup>45</sup> According to an interview by ALEF on 24 May 2010 with the International Law Enforcement Program at the U.S. Embassy in Beirut, “in the basic cadet courses, the program included as well trainings on the UN Universal Declaration of Human Rights and in particular Article 5 which deals with subjecting people to torture, cruel or inhumane treatment. However, no specific course on Interrogation for the ISF Cadets was offered, but rather a basic interview guide that includes interviewing of suspects. These lessons describe the steps used in the interview and interrogation of suspects and the interview of victims/witnesses”.

<sup>46</sup> “Seminaire pour pousser les FSI a mieux respecter les droits de l’Homme”, L’Orient Le Jour, 27 Juin 2010 [http://www.lorientlejour.com/category/Liban/article/665842/Seminaire\\_pour\\_pousser\\_les\\_FSI\\_a\\_mieux\\_respecter\\_les\\_droits\\_de\\_l%27homme.html](http://www.lorientlejour.com/category/Liban/article/665842/Seminaire_pour_pousser_les_FSI_a_mieux_respecter_les_droits_de_l%27homme.html)

<sup>47</sup> “The European Union supports the ISF to strengthen rule of law in Lebanon”, 7 May 2010, [http://ec.europa.eu/delegations/lebanon/press\\_corner/all\\_news/news/2010/20100507\\_01\\_en.htm](http://ec.europa.eu/delegations/lebanon/press_corner/all_news/news/2010/20100507_01_en.htm)

## ON THE INDEPENDENCE AND PROTECTION OF MEDICAL LEGISTS

According to the Lebanese Code of criminal procedures, the detainee may ask to be checked by a doctor<sup>48</sup>. In that case, an officer of the detention centre should assign a doctor pursuant to the authorization of the General Prosecution at the Lebanese judiciary. The assignment is made from among a list of medical legists that is jointly compiled on a yearly basis by the General Prosecutor at the Court of Cassation, General Managers of the Ministry of Interior and the Ministry of Health.

Several medical legists that ALEF has interviewed between May and August 2010<sup>49</sup> revealed that the system of their appointment and examination of detainees features many gaps that leave the perpetrators of torture with total impunity. A system that literally affects their independence and protection in case they decide to report cases of torture<sup>50</sup>.

The medical legists appointed in the aforementioned list are divided into the six *caza* – Mohafazah – of Lebanon. Those appointed in the *caza* of e.g. Beirut should cover all the detention centers in the capital. When an officer calls a medical legist upon the request of the detainee pursuant to General Prosecution authorization, the latter should visit the detainee and submit a report to the competent Judge. The medical legist is remunerated upon each examination and submission of his/her report. The more appointments they are designated to the higher number of remuneration they receive. According to some statements gathered by ALEF from medical legists, *“in case the medical legist reports that the detainee examined has been subjected to torture and/or ill treatment, his/her re-appointment for further missions by that same detention center will be negatively influenced; thus affecting their financial remuneration, as they are paid per report”*. Moreover, *“the officer at a detention centre when calling a medical legist may report that the medical legist X was called and was out of reach; thus leaving a detainee without medical check, or use this excuse as a way to buy time for the wounds to heal in case the detained was subjected to torture”*.

All the suspects in Lebanon are detained after arrest in six types of places depending on the alleged crime: Military Intelligence, General Security, State Security أمن الدولة, judicial interrogating section مفرزة قضائية, detention center and the police فصيلة. The medical legists conduct their examination of the individuals arrested in those centers, who can be kept in those places for a maximum legal period of 48 hours, after which they should be transferred to the General Prosecution in each *caza*.

<sup>48</sup> Article 32 of the Criminal Procedure law for red handed crimes; article 47 for ordinary crimes.

<sup>49</sup> Three in total on an anonymous basis.

<sup>50</sup> See the “Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”; <http://www2.ohchr.org/english/law/medicalethics.htm>

One possible solution to this problem is to create a centralized center of medical examination at the General Prosecution in each *caza* to which all the detainees are transferred after a maximum legal period of 48 hours from the date of arrest in the detention center located in that same *caza*. Such mechanism will make the examination of a detainee by a medical legist binding and obligatory, and will improve the doctor's protection and independence since he/she will not be assigned anymore by the Court or as per the request of the detention centre. The medical legist should also be remunerated by an independent body created at the Ministry of Justice similar to the Minors Protection Association.

In time being, the current system of appointment and examination is endangering the efforts implemented to monitor, detect and prevent torture and ill treatment in detention centers.

## B- SITUATIONAL UPDATES

### *1- Vulnerable Groups since June 2008;*

#### DRUG ADDICTS AND DRUG TRAFFICKERS

Drug addicts and drug traffickers are subject to torture and ill treatment in detention center. The Bekaa *governorate* is the main source of cannabis; hence, a region where most drug addicts and traffickers are regularly caught and arrested during their supply operations. However, as drug trafficking and consumption is spread all over, with more focus on the capital the Drug Repression Bureau (DRB) when detaining users, traffickers and sub-traffickers refer the suspects to respective governorates detention center.

Monitoring activities revealed that the Drug Repression Bureau (DRB) at detention center in the Bekaa and Beirut are the most common places where allegations of torture against drug addicts and traffickers are detected. Some Judges of instruction, such as Ziad Mkenna in the Bekaa, have taken courageous steps in referring two cases to the General Prosecution appellate of the Bekaa to investigate allegations of torture committed by the DRB investigators and refuse to admit and make use of information extracted under torture<sup>51</sup>.

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<sup>51</sup> See Appendix 2.

## UNDOCUMENTED MIGRANTS, ASYLUM SEEKERS, REFUGEES AND FOREIGNERS

Asylum Seekers and Refugees in Lebanon are subject to severe violations of human rights<sup>52</sup>. When in custody, a refugee faces one of the worst conditions in prisons and detention center<sup>53</sup>.

The Ozai incident in June 2010 reveals the abhorrent practices of the General Security against the Sudanese community, one of the fastest growing refugee communities in Lebanon. The circumstances of the incident are still to be revealed as the head of the General Security, General Wafik Jezzini, ordered an internal investigation. In brief, during a charity event organized by the Sudanese community in Ozai, one of the suburbs of Beirut, a squad of the General Security broke in and allegedly started beating and cursing the attendees in the event<sup>54</sup>. The Sudanese refugees and migrant workers, handcuffed, were escorted to the streets and ordered to lie down on the ground. Racist comments were addressed to them and beatings using the back of the rifles continued in public. Arrestees who possessed legal documents were not informed of the reasons of their custody. All of those arrested, around 100 according to some reports<sup>55</sup>, were taken to the prison of the General Security Elias el Hraoui Bridge in Beirut. Those who had legal papers were later released.

The issue of refugees is a complex and sensitive one; Lebanon has not signed the UN convention relating to the status of refugees of 1951; the Government of Lebanon has consistently prohibited in its program of work the naturalization of refugees, whether Palestinian Refugees or non-Palestinian Refugees, as indicated above, refugees in Lebanon do not enjoy any right and no protection framework is granted to them, leading to many cases of arbitrary and incommunicado detention. Lebanon does not validate the Refugee Certificate issued by UNHCR, which deprives refugees from legal protection and renders them most vulnerable to torture and ill treatment<sup>56</sup>.

<sup>52</sup> These violations include essential rights, e.g. legal protection, access to health care, right to work, right for ownership and property.

<sup>53</sup> See para C) of this report "Prisons managed by the General Directorate of the General Security".

<sup>54</sup> See al Akhbar newspaper, "سودانيون يشكون العنصرية: خت رحمة جزيني", June 18, 2010, [www.al-akhbar.com/ar/node/194300](http://www.al-akhbar.com/ar/node/194300); Daily Star newspaper, "Sudanese protest in Khartoum against Lebanese raid", June 24 2010, [http://www.dailystar.com.lb/article.asp?edition\\_id=1&categ\\_id=2&article\\_id=116336#axzzOrkWnqaHY](http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=2&article_id=116336#axzzOrkWnqaHY); Kleyom news portal, "سودانيون في لبنان يطالبون بالتحقيق في حادثة", "الأوراعي", June 21, 2010, <http://www.kelyom.com/ShowArticle.asp?id=5050>; Al Manar TV has also made the incident one of its headlines during its evening news of 21 June 2010.

<sup>55</sup> See note 55.

<sup>56</sup> See note 12.

When a refugee arrives to Lebanon, he should be referred to the UNHCR offices to ask for asylum<sup>57</sup>. Upon the request of the UNHCR, the General Security grants a renewable grace period of 3 months till the time the Higher Commission of Refugees finds a durable solution, in this context a resettlement country, a process that may take several months, even years.

Although the General Security signed a Memorandum of Understanding (MoU) with the UNHCR in Beirut on September 3, 2003, the General Security refuses, as per the policy of the Lebanese Government, to allow refugees to stay for an indefinite period, which may lead him/her to be detained in prison for illegal entry or stay and to remain in detention for a prolonged duration if he/she refuses to go back to his/ her country even if it was for fear of being persecuted.

Those who agreed to return to their Country of Origin for the sole reason of escaping prolonged/arbitrary detention might be persecuted upon return and tortured without being able to avail of the protection of their government.

Some of these refugees, mainly the Iraqi refugees, may be facing persecutory judicial procedures filed against them in their countries. Article 3 of the UNCAT, provides that Lebanon is under obligation not to extradite refugees to countries where they are at risk of being tortured (Principle of non-refoulement)<sup>58</sup>.

## LESBIANS, GAYS, BISEXUALS, TRANSGENDER, INTER-SEX (LGBTI)

Homosexuality in Lebanon is legally prohibited pursuant to article 534 of the Lebanese Criminal Code. Some Judges has refrained from referring to its provisions, however in some cases it is used for intimidation, assault and aggression, even in public. On the evening of January 29, 2009, a group of persons attacked on the Sassine square in Ashrafieh two men who were in a suspicious, allegedly sexual, situation in a building under construction<sup>59</sup>. The two men were beaten and humiliated in public; an evidence on the discrimination against homosexuals. No investigation has been launched to detect the identity of the perpetrators, despite the pressure from the media and civil society

<sup>57</sup> E.g. to flee political prosecution in his native country, or discrimination based on religion, sexual tendencies, etc.

<sup>58</sup> "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", UN CAT art.3, para 1. See also the Iranian Mohammad Taher Batili detained by the Lebanese authorities and facing extradition to Iran where he would be at risk of torture and possible execution - <http://www.amnesty.org/en/library/asset/MDE18/005/2010/en/a3d3526c-7b10-4582-9897-785fce893098/mde180052010en.html>; see also a similar forcible return of a Sudanese national Muhammad Babikir 'Abd al-'Aziz Muhammad Adam to Sudan where he would face arbitrary arrest, torture or other ill-treatment, and possibly enforced disappearance - <http://www.amnesty.org/en/library/asset/MDE18/006/2010/en/8a32325c-c28a-4331-8d43-051655e4d3f0/mde180062010en.html>.

<sup>59</sup> "ماذا حصل في ساحة ساسين؟", Helem, <http://helem.net/ar/node/48>

organizations. Many local NGOs, such as Helem, continue to lobby for the respect of the personal freedom, privacy, and human rights of the LGBT community.

The above incident reveals the vulnerability of LGBT community in Lebanon. In recent years , several cases of mistreatment in police stations were reported to Helem and other organizations. In some cases, confessions were obtained under duress of torture (Such as in Tripoli). Arrested men suspected of homosexuality undergo an anal examination a human right violation that human rights organizations consider as a form of torture and/or ill-treatment. Article 401 of the Lebanese Criminal Code only prohibits the use of torture to extract information, while violence in prisons and detention center against LGBT individuals may well be perpetrated for the purpose of punishment or discrimination against article 1 of the UNCAT; knowing that such mental elements of the crime of torture are not covered under article 401.

### *2- Torture Cases Detected and/or Brought to Court since June 2008;*

In an unprecedented step taken by the criminal judiciary, the Judge of instruction in the Bekaa, Ziad Mkenna, has referred three cases to the General Prosecution Appellate to open an inquiry in the allegations of torture committed by the ISF.

#### MISCELLANEOUS CRIMINAL CASES INCLUDING ALLEGED TORTURE PRACTICES

- i. The first case is related to an interrogation of two minors undertaken on March 24 2009 by the detectives of Machghara detention centre in the Bekaa without the presence of a representative from the Minors Protection Association. During their interrogation before the Judge, the respondents declared that they were beaten by the interrogators at the detention centre. A medical legist was appointed and the detainees were checked on 28/3/2009 accordingly. The report revealed that both minors had wounds on their bodies. As a consequence, Judge Mkenna rendered a decision on May 2, 2009 in which he requested the General Prosecution Appellate to open an inquiry in the allegations (For details, see Appendix 2).
- ii. The second case is related to a robbery of a house in Aytanit in the Bekaa, resulting in the arrest of three respondents at the Machghara detention centre on 23/3/2009. Two of the three respondents were minors and their primary interrogation was conducted at the detention centre without the presence of a representative from the Minor Protection Association. During their interrogation



“During their interrogation before the judge, the respondents declared that they were beaten by the interrogators at the detention centre. A medical legist was appointed and the detainees were checked on 28/3/2009 accordingly. The report revealed that both minors had wounds on their bodies”



before the Judge, the respondents declared that they confessed under torture during the primary interrogation at the detention centre. Subsequently the Judge appointed a medical legist, who examined each of the three respondents, and drafted a report in which he stated that the defendants had several wounds on their bodies. Judge Mkenna rendered a decision on May 2, 2009, in which he rejected the confession that was deemed as evidence, since it was extracted under torture during the primary interrogation (For details, see Appendix 2).

### DRUGS RELATED

- iii. The third case is related to drug trafficking and drug usage where an individual, Lebanese national, was arrested on 19/8/2009 on a military check point at Ablah in the Bekaa for possessing drugs in his car. Upon interrogation by the DRB detectives, the detainee confessed of his crime and revealed other information relating to a criminal organization. During his interrogation before the Judge, the detainee declared that he confessed under torture. His declaration was confirmed following a medical examination on 25/8/2009, six days after his arrest, conducted by a medical legist, who issued a report stating that the detainee suffered from several wounds that have occurred approximately one week before. Judge Mkenna rendered a decision on September 17, 2009 requesting the General Prosecution Appellate to open an inquiry into the said allegation. (For details, see Appendix 2).

### TERRORISM RELATED

- iv. Bora Mohammed Fouad, Moaz Abdelghani Shousha, Mohammed Al-Wafaei Abderrazzak, Mohammed Ahmed Qoja and Rajaa Tareq Nasser are Syrian nationals, who were arrested on January 3 and 4, 2006 by the Directorate General of Internal Security Forces. They were tried on April 24, 2009. When serving their sentence, it is feared that they will be deported to Syria where they risk torture and enforced disappearance. These five persons were accused of links with terrorist groups who maintain relations with Al-Qaeda. According to the International NGO Al Karama, they all reported having been detained incommunicado for five months, tortured and forced to sign statements under torture<sup>60</sup>.

<sup>60</sup> "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin", Lebanon, pp.10-13, A/HRC/13/37/Add.1, 18 February 2010; [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37-Add1\\_EFS.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37-Add1_EFS.pdf)



“Upon interrogation by the DRB detectives, the detainee confessed of his crime and revealed other information relating to a criminal organization. During his interrogation before the Judge, the detainee declared that he confessed under torture.”

- v. Fadi Sabunah is a resident of Tripoli in northern Lebanon. He was arrested on October 5, 2008 without a judicial warrant by the Palestinian Joint Security Committee in Beddawi, in North Lebanon, accused of having links to a cell responsible for attacks targeting the army in Abdeh in May 2008, and in Tripoli in August and September of that same year. Later on he was transferred to the Lebanese Army Intelligence. Fadi Sabunah was detained incommunicado and allegedly tortured for 35 days with the aim of making him sign a false confession. He was allegedly tortured at the Ministry of Defense during the period covering October 7 to November 11, 2008 and again from November 26 to 29, often for several hours at a time, some days for up to 8 consecutive hours. He was in particular subjected to the “Ballanco” (hanging by the wrists which are tied behind the back), violently beaten, forced to remain standing for two days, and he was also forced to stay awake for 5 days. His torturers allegedly threatened to rape his wife in front of him. The transcripts of interrogations were then handed over to the military judicial authorities, which then issued an indictment and instigated a trial before the military court. Since November 29, 2008, he was detained at Roumieh prison. On February 25, 2010, the Permanent Military Court based in Beirut announced that it is not competent enough to judge Fadi Sabunah. On March 31, 2010, he was released after nearly two years of detention<sup>61</sup>.
- vi. Mustafa Seo, a Syrian national, was arrested by the Internal Security forces on March 20, 2007 on “terrorism” charges resulting from the explosion of two buses in the ‘Ayn ‘Alaq area on February 13, 2007, in which a number of people were injured and killed. He allegedly suffered severe torture and mistreatment at the hands of the ISF affiliated intelligence section known as the Information section. Seo endured solitary confinement and incommunicado detention for 26 months at the Information section Center in Beirut and at Roumieh Prison. He was transferred, several times between these two facilities. Of the 26 months spent in solitary and incommunicado detention, three and half were spent underground. He was then moved to the 2nd floor of the Juvenile Building of Roumieh Prison in May 2009 and then at last to the 3rd floor, where he again suffered ill-treatment and beatings at the hands of the Lebanese authority officials. On June 18, 2010, the Justice Council Court continued his interrogation. Seo is still under trial. The

<sup>61</sup> “Lebanon: Incommunicado and Torture during 35 Days for Mr Fadi Sabunah”, Alkarama, 26 January 2009, [http://www.alkarama.org/en/index.php?option=com\\_content&view=article&id=180:lebanon--incommunicado-and-torture-during-35-days-for-mr-fadi-sabunah&catid=26:communiqu&Itemid=132](http://www.alkarama.org/en/index.php?option=com_content&view=article&id=180:lebanon--incommunicado-and-torture-during-35-days-for-mr-fadi-sabunah&catid=26:communiqu&Itemid=132); “Lebanon: Fadi Sabunah released on 31 March 2010”, [http://alkarama.cluster005.ovh.net/en/index.php?option=com\\_content&view=article&id=483:lebanon-freed-fabi-sabunah-released-on-31-march-2010&catid=26:communiqu&Itemid=132](http://alkarama.cluster005.ovh.net/en/index.php?option=com_content&view=article&id=483:lebanon-freed-fabi-sabunah-released-on-31-march-2010&catid=26:communiqu&Itemid=132)

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

“He was detained incommunicado and allegedly tortured for 35 days with the aim of making him sign a false confession.”

suspects in this case allegedly faced torture. It was reported during the trial that ten persons from among the defendants were sleeping in a room of two square meters. They were allegedly denied of sleeping, eating, sunlight and practice of religion<sup>62</sup>.

- vii. On February 26, 2007 Mr Kamal al-Nassan was arrested for allegations of terrorism. He was taken to the Information section Center in Beirut and was allegedly held in solitary confinement and incommunicado detention for seven months at the Information section Center and the Information section building at Roumieh Prison (he was also continuously transferred between these two facilities). He spent 47 days underground at the Information section Center where he was allegedly tortured. He is currently detained on the third floor of Building “B” in Roumieh Prison. On June 18, 2010, the Justice Council Court continued his interrogation. Kamal is still under trial<sup>63</sup>.
- viii. Mohamed Taha, a Lebanese national, was arrested on April 9, 2003 by the Lebanese Military Intelligence for accusations of terrorism. He was sentenced on December 20, 2003 to 12 years of imprisonment. He is currently detained on the 3rd floor of Building “B” in Roumieh Central Prison. Reports from the civil society organization, Al Karama, allege that a major incident took place on July 31, 2009 when he was being transferred from his cell to the medical clinic (the Department of Physical Therapy). He was stopped by a gendarme, who first insulted him and then without provocation savagely beat him. He was immediately returned to his cell and prevented from receiving his regular medical treatment or a visit from a doctor to treat his injuries caused by the incident. Taha is still serving his sentence<sup>64</sup>.

#### NATIONAL SECURITY RELATED

- ix. Maher Sukkar, a Palestinian refugee, was arrested on April 18, 2009 by agents of the Information section of the ISF in Sabra, Beirut. He was allegedly held incommunicado for a total of 18 days until May 6, 2009. At first held at the ISF Directorate, he was then moved to several detention centers until being brought to

<sup>62</sup> “Three Syrians, one Lebanese National Tortured”, Alkarama, 27 October 2009, [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=339:lebanon-three-syrians-one-lebanese-national-tortured-&catid=26:communiqu&Itemid=132](http://en.alkarama.org/index.php?option=com_content&view=article&id=339:lebanon-three-syrians-one-lebanese-national-tortured-&catid=26:communiqu&Itemid=132)

<sup>63</sup> See note 63

<sup>64</sup> See note 63

the Ministry of Defense in Yarzeh on April 28, 2009. He was allegedly subjected to two days of brutal torture by Military Intelligence officers who left him hanging in the Ballanco position while they regularly beat him with sharp objects. He was allegedly forced to sign confessions without having the opportunity to read them. He was finally taken to Roumieh central prison, where he remains today and is currently being tried before Beirut's Military Tribunal for suspicions of forming a military organization. From the date of his arrest until his transfer to Roumieh prison on May 6, 2009, Maher Sukkar was detained incommunicado: he was categorically denied contact with the outside world, his family, his friends, even a lawyer. On February 17, 2010, the Military Tribunal charged Maher Sukkar, along with 10 others, of "forming an armed gang to commit crimes against people and property", "undermining the state's authority", "monitoring the military forces from the Lebanese Army and the United Nations Interim Force in Lebanon (UNIFIL)" and "falsifying passports and Palestinian refugee cards". There are concerns that those charges have been extracted under torture.

On 13, 14 and 15<sup>th</sup> of October 2010, Faysal Muqaled, a current detainee at Roumieh prison, was relocated to the prison of Yarzeh at the Ministry of Defense. The legal basis for the transfer is unknown, and took place without notice to Faysal's attorney. During the transfer, Faysal was blindfolded, and was interrogated for six hours. The interrogation allegedly focused on threatening Faysal for his statements that he was tortured and ill treated. It is worth noting that Faysal's health condition is allegedly at stake since he is asthmatic and suffers from psychological trauma<sup>65</sup>.

### UNDOCUMENTED MIGRANTS

- x. Sany Kumar, a young Indian held in Roumieh for illegal entry in Lebanon is in danger of death. Having had a scooter accident, he was hospitalized two months ago, suffered multiple fractures and underwent several operations. He has been held in a very dirty, overcrowded cell. He is losing mobility in his legs. He has not been eating, nor drinking, has been vomiting continuously and suffers from dehydration. He has been receiving paracetamol for treatment purposes. Following the pressure of the Lebanese civil society, namely the Lebanese Centre for Human Rights (CLDH), he was transferred to the Riyak hospital in the Bekaa. At the

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<sup>65</sup> "Lebanon: Maher Sukkar Held Incommunicado and Tortured – Risks Death Penalty in Unfair Trial", Alkarama, 18 March 2010; [http://en.alkarama.org/index.php?option=com\\_content&view=article&id=457:lebanon-maher-sukkar-held-incommunicado-and-tortured-risks-death-penalty-in-unfair-trial&catid=26:communiqu&Itemid=132](http://en.alkarama.org/index.php?option=com_content&view=article&id=457:lebanon-maher-sukkar-held-incommunicado-and-tortured-risks-death-penalty-in-unfair-trial&catid=26:communiqu&Itemid=132)

time of writing this report, Sany Kumar was in the hospital receiving appropriate treatment. The civil society is lobbying for his repatriation to India<sup>66</sup>.

## LGBTI

- xi. In a case provided by Helem, a young man who was asked for questioning in November 2010 was arrested without a warrant. Police originally came looking for his brother, when they did not find the brother, they arrested him instead. He was then taken to Hobeich's drug unit, where he was beaten with fists and thick electric cables trying to get him to confess to dealing drugs. They broke his nose. He underwent a drug test, which turned out negative. Then, the policemen went through his phone, and found messages he sent to his boyfriend, so accused him of homosexuality. He was transferred to the Moral Repression Bureau, where he had to undergo an anal examination. The doctor concluded that he had not been penetrated. Police then accused him of being an "active" partner. He was forced to sign a police report where he admitted he was gay because of fear. He did not admit to being gay. He was explicitly threatened that by reporting the beating he would have suffered consequences. He was then released without charges after two nights in Hobeich, and was told by another detainee that she overheard the police saying they had to keep him for an extra night to have the swelling on his face diminished.

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<sup>66</sup> "Lebanon: Serious concern about the health of Mr. Sany Kumar, detained in Roumieh prison", World Organization against Torture, 15 July 2010; <http://www.omct.org/urgent-campaigns/urgent-interventions/lebanon/2010/07/d20798/>



“He was then taken to Hobeich’s drug unit, where he was beaten with fists and thick electric cables trying to get him to confess to dealing drugs”

## RECOMMENDATIONS

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### TO THE LEBANESE GOVERNMENT

- Ratify the NPM draft law which requires the creation of an independent national preventive mechanism pursuant to article 17 of the OPCAT, after introducing amendments to ensure the financial independence of the committee by holding the Lebanese Government fully liable in providing the required finances without relying on donations.
- Submit the initial overdue report of 2001 to the CAT committee as well as its periodic reports that were due respectively on 2005 and 2009 pursuant to article 19 of the UNCAT.
- Ensure the transfer of the management of prisons from the Ministry of Interior to the Ministry of Justice pursuant of the 1964 law decree n°17315 and guarantee a proper hand over through capacity building and adequate human and financial resources.
- Immediately close the Yarzeh prison under the control of the Ministry of Defense and transfer its detainees to other prisons.
- Improve the condition of prisons and detention center by providing appropriate budgets for the construction and/or extension of prisons' facilities in order to settle the issue of overcrowded prisons, and ensure the respect of international human rights standards.
- Provide appropriate budget for the training of the ISF members on the management of prisons, forensic investigation and crime prevention in a human rights context.
- Ban all interrogations by military intelligence officers,
- Facilitate visits made by members of the Subcommittee on the Prevention of Torture pursuant to the OPCAT.
- Review, as a matter of urgency, the alternatives available to indefinite detention of foreigners, e.g. refugees and illegal migrants by opening the doors for temporary or renewal of temporary settlement or any other appropriate mean in respect of human dignity, especially refugees from war torn regions.
- Ensure the independence and protection of medical legists by creating a centralized center of medical examination at the General Prosecution in each *caza* to which all the detainees are transferred after the maximum legal period of 48 hours from the date of arrest in the detention center located in that same *caza*.
- Closely monitor the valid application of the provisions of the NPM draft Law, once

ratified, in a sense that respects its spirit and goal in the prohibition of Torture as per the UNCAT, the OPCAT and human rights standards.

- Make public the reports submitted by the Subcommittee on Prevention of Torture in order to meet requirement of transparency when dealing with issues of public interest such as Torture and ill treatment.

#### TO THE LEBANESE PARLIAMENT

- Ensure consistency of national laws with the UNCAT, through undertaking the following measures:
  - 1- 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 code<sup>2</sup>.
  - 2- Amend article 401 of the criminal code in order to enclose all violent practices that constitute the elements of torture, and apply it so as to extend to 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). A proposed definition may be 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 sentence 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- Prohibit the use of information obtained under duress before courts of law.

4- Grant medical legists a prominent and independent role in visiting individuals in prisons and detention centers by creating a centralized medical examination service at the General Prosecution in each *caza*, which will improve the doctor’s protection and independence versus being assigned anymore by the Court of the place of the detention centre. he will be conducting his medical examination at the aforementioned Centre at the General Prosecution and to which all the detainees will be transferred after a maximum legal period of 48 hours from the date of arrest in the detention center located in that same *caza*.

- Ratify the Rome Statute of the International Criminal Court.
- Ratify 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).

#### TO THE INTERNAL SECURITY FORCES:

- Introduce standard procedure that requires, upon the arrest and detention of an individual, to register relevant information, including the state of health of the detainee and any changes thereto, the time and place of interrogations with the names of all interrogators present.
- Provide a medical legist as a routine practice to examine the state of health of the detainee (mental and physical) in order to assume that there are no symptoms that may degrade his health condition in detention.
- Allow a medical check as well after each interrogation, without any need for a specific request from the detainee.
- Guarantee that the examination takes place in private and without the presence of any military officer or public official.
- Ensure that the new Code of Conduct adopted be updated periodically in order to adapt it to the protection of citizen’s rights and respect as they are understood in a democratic society.

- Ensure that the Code of Conduct be amended to identify a supervisory body that monitors its proper enforcement and defines liabilities for its violation. Such liability should include as well those that were not engaged in any torture or ill treatment case against a particular detainee, but nevertheless were aware of it and failed to report it.
- Coordinating with relevant stakeholders on receiving trainings related to the management of prisons, forensic investigation, crime prevention and techniques of interrogation in a human rights context.

#### TO THE MINISTRY OF INTERIOR AND THE INTERNAL SECURITY FORCES:

- Take appropriate 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.

#### TO THE LEBANESE JUDICIARY

- Investigate promptly and impartially any breach of the CAT Convention along with any alleged torture case that come to its attention.
- Take effective judicial measures not only to repress but also to prevent acts of torture according to article 2 of the CAT convention.
- Investigate each death case that occurs in prisons and detention centers and have results made public.
- 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 stop extraditing asylum seekers, undocumented migrants and refugees to countries where they are at risk of being tortured.

#### TO THE EUROPEAN COMMISSION

To dialogue constructively with the Government of Lebanon for it to undertake the following:

- Implement its Human Rights obligations under the 2002 Association Agreement
- Strengthen the effective enforcement of legal provisions against torture as set forth in the 2007 European Neighborhood Policy's (ENP) Action Plan.

## APPENDIX 1 – NATIONAL PREVENTIVE MECHANISM DRAFT LAW

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### DRAFT LAW FOR THE COMMITTEE FOR THE PROTECTION OF DETAINED AND PERSONS DEPRIVED OF THEIR LIBERTY

#### PART I- ESTABLISHMENT AND THE POWERS OF THE COMMITTEE

##### ARTICLE 1:

Establishment of a committee “Committee for the protection of the rights of the detained and persons deprived of their liberty” to protect from torture and ill-treatment and other cruel, inhuman or degrading treatment.

It will be referred to as “the committee” and will assume the functions for the National Preventive Mechanism “NPM” according to the Optional Protocol to the convention against Torture (OPCAT).

The committee has financial and administrative independence and its members and employees can perform their duties in total independence from any other authority.

##### ARTICLE 2:

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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

##### ARTICLE 3:

Deprivation of Liberty means in this law any form of detention or imprisonment of persons, or putting them under surveillance in a public or private place, where they are not allowed to leave when they wish, and that is by a judicial or administrative order or any other authority.

Detention places are for example: prisons, detention centers, police stations, juvenile centers and associations, ports, airports, psychiatric hospitals in Lebanon where there are or might be people deprived of their liberty- either if it is under the authority of the

GS, ISF, the State Security, customs, or the ministries of national defense, ministry of justice, ministry of health, or ministry of social affairs, or any other authorities are referred to as: "Detention places".

#### ARTICLE 4:

The committee or anyone who represents the committee has the full authority to enter and visit all detention places without any exception, in order to protect the persons who are there from arbitrary detention and torture and other forms of ill treatment and other cruel, inhuman or degrading treatment. And to cooperate with the specialized authorities and to build a dialogue with them in order to activate and develop laws and regulations related to detainees and detention places.

#### ARTICLE 5:

The committee or any of its appointed members can:

- Perform periodical or ad hoc visits to detention places without prior notification and without the need for administrative permission (whether it is judicial or of any other type).
- Conduct group or individual interviews with people deprived of their liberty, away from any censorship/guards/ or any third party, and in the presence of an interpreter if needed. -Meet any other person that might have relevant information or help in any way. Having unrestricted access to confidential information according to the work of the committee, and the committee will not publish any of this info without the permission of the person or the source.
- Receive complaints or requests for interviews or medical examination.

#### ARTICLE 6:

In the framework of executing its mandate, the committee collaborates with the civil society bodies that are active in working for people deprived of their liberty.

The committee can also use experts (other than its employees) and these can- when needed- go with the committee or any of its members to visit detention places- taking into account the requirements of national defense and public safety.

#### ARTICLE 7:

In order for the committee to perform its duties it has the right to get any information from any concerned party:

- a- Number and location of detention place
- b-The complete identity of persons deprived of their freedom, their detention place and the date their detention started and duration
- c-How these detained persons are being treated and the conditions of their arrest
- d-The identity of those responsible for persons deprived of their liberty and places of detention

The committee may look at the content and the procedure of the complaints and allegations or prosecution, disciplinary or administrative defenses in which being subjected to torture, ill-treatment or detention.

Every judicial or disciplinary decision issued in torture, ill-treatment, or detention issues should be conveyed to the committee by the decision maker during 15 days from the date of issuance.

#### ARTICLE 8:

The committee puts its observations, recommendations and suggestions about detention places and the conditions of persons deprived of liberty and then it presents it to the relevant authorities in order to improve detention conditions and treatment.

As for persons arbitrarily detained, the committee will inform the relevant judicial and administrative authority of their conditions so that the latter will take the proper legal and judicial measures.

The committee shall share its opinion and present its notes, recommendations and suggestion in the suggested draft laws or amendments to active laws that are related to the treatment of persons deprived of their liberty: the place and procedures of detention and fair trial.

#### ARTICLE 9:

The executive, administrative, judicial, and legislative authorities and all other parties have to cooperate with the committee and facilitate its work in order to assist it with performing its duties and to execute its recommendations and suggestions.

In case the executive, administrative and judicial authorities do not cooperate with the committee in a reasonable period of time of no more than two-weeks from the date of the request; the committee has the right to inform the executive, administrative, judicial authorities in order to take appropriate action.

## PART II- FORMING THE COMMITTEE

### ARTICLE 10:

The committee is composed of ten members:

- 2 Medical Doctors
- 2 Lawyers one from the Beirut Bar and the other from the Tripoli Bar
- 4 Experts/Workers/Activists in the Human Rights Field
- Honorary Judge
- University Professor specialized in criminal law

It should be taken into account the equal representation of women, different social, ethnic and minority groups.

### ARTICLE 11:

The committee member should be:

- Lebanese from over ten years, enjoying his/her civil rights and not convicted of a felony or misdemeanor.
- Not to be less than 30 years of age
- Having the relevant knowledge and expertise and to be known for their integrity, credibility, and knowledge in International Human Rights Standards.

### ARTICLE 12:

Members of the committee are not allowed to perform any other duty while being in the committee, and their membership in any unions is suspended automatically.

### ARTICLE 13:

The term of office for the members is 4 non-renewable years, and the member isn't allowed to run for another term.

The mandate of half of the first appointed committee is finished after the issuing of this law in two years after the date of their appointment. These members are selected in the first meeting of the first committee by a lot by taking into account the diversity of functions specified in Article 10.

The members continue to do their functions until new members are elected.

#### ARTICLE 14:

The parliament elects the members of the committee from candidates who meet the requirements. Nominations are presented with CVs and other documents to the General Secretariat of the parliament after an announcement to be published in the official gazette and two local daily newspapers - 6 months prior to the expiry date of the mandate of a member, and it gives 30 days after the last announcement to receive applications.

The justice and administration committee of the parliament will study the applications in a period of 15 days. It will organize a list of candidates who have the required profile and present it to the parliament which should elect the committee members in the first following session with the absolute majority in the first session and with the relative majority of voters in the second session. If the votes are equal then the eldest is chosen.

#### ARTICLE 15:

In case one of the member's seats is vacant due to resignation, dismissal, medical condition, death, or any other reason six months prior to the expiration of its mandate, the committee shall announce this vacancy according to standard procedures, and the president of the committee shall inform the parliament during a week in order to take proper measures and fill the vacancy. The secretariat shall publish the vacancy in the official gazette and two local daily newspapers within a week. The nomination period is 10 days from the last announcement's date.

The administration and justice committee of the parliament shall study the nominations in the period of a week and then present them to the parliament to elect a member. The parliament shall elect the replacement member within a month. If the remaining period is less than 2 years, then the rule of non-extension shall not apply.

#### ARTICLE 16:

The members of the committee are not to be dismissed except by a decision taken by the committee and with a majority of 7 members and should be due to shameful act, a crime or a serious error in exercising his duties, or due to violating this law or the moral code of the committee or for three executive absence without a legitimate excuse, and that is after listening to the member and enabling him to defend himself.

The dismissal decision is subject to appeal before the court of cassation, within 2 months of informing the dismissed member.

## PART III- WORK OF THE COMMITTEE

### ARTICLE 17:

The committee is held as soon as it appoints its members and elects a chairman and a rapporteur among the committee members

### ARTICLE 18:

Except as provided in this law or in the rules of procedure of the committee, the committee takes its decisions with absolute majority.

### ARTICLE 19:

The committee decides how its mechanism is and puts its own rules of procedures, chooses its employees, and organizes their work according to its needs and based on the criteria it sets.

### ARTICLE 20:

The committee establishes its own system of ethics, to be signed and adhered to by all members, employees, representatives of NGOs, and other persons who collaborate with the committee to perform its duties.

### ARTICLE 21:

The committee has to present its annual report about the activities and accomplishments and publish it extensively. Copies of this report are to be sent to relevant official bodies which will distribute it too. A copy shall also be sent to the parliament to be discussed. The report cannot include private and personal information without the consent of the concerned party.

### ARTICLE 22:

The committee can communicate directly with the UN sub-committee on torture prevention and to give all the relevant information, to meet on a regular basis and when needed.

## PART IV- IMMUNITY

### ARTICLE 23:

It is not allowed to prosecute any member or employee of the committee for any act resulting from the exercise of their duties in accordance with this law except by agreement of 7 committee members.

### ARTICLE 24:

The offices of the commission are not to be searched except after its approval, and seals may not be placed on its offices. The executive power cannot take a decision to suspend or stop the work of the committee under any circumstance, including wars and emergencies.

### ARTICLE 25:

None of the executive, administrative, or judicial powers can take any action or punishment or exemption to any individual, organization, or committee because it gave information to the committee- regardless of the validity of the information. This individual, organization, or committee cannot be prejudiced against in any way, including professional secrecy issues.

### ARTICLE 26:

In all cases the authorities (judicial or administrative) cannot invoke the provisions of this law to prevent or limit the work of NGOs and associations who visit and meet persons deprived of their liberty in detention places, at the time of the issue of this law or if they do these activities at a later time.

## PART V- FINANCES AND BUDGET OF THE COMMITTEE

### ARTICLE 27:

The committee has its administrative and financial independence and is not subject to any censorship except by the Audit Bureau.

The committee has sufficient financial, human, and material resources in order to perform its duties effectively.

The committee has a special yearly budget included in a special section within the budget of the head of the government

The committee shall prepare a draft budget and send it by its chairman to the minister of finance within a period in accordance with the principles of the public accounting law.

The committee opens a private account at the Bank of Lebanon, and the chairman of the committee will handle its expenses and monitor it according to the principles of the public accounting law. At the end of the fiscal year, accounts of expenses are sent to the ministry of finance, certified by the chairman. The provisions of the public accounting law apply. These accounts are subject to internal audit and independent audit by independent audit firms according to the provisions of article 73 of the law 326 issued on 28-6-2001. (Budget Law 2001)

### ARTICLE 28:

The committee can use any financial support from local or international, voluntary, bequests, grants, or any other sources on the condition that is not restrictive to the independence of its work, and should be published in the annual report according to the provisions of the public accounting law.

## PART VI- FINANCES AND BUDGET OF THE COMMITTEE

### ARTICLE 29:

The UN CAT and OP CAT are used in all the provisions of this law.

### ARTICLE 30:

All other articles are to be cancelled if they don't conform to or d or contradict with this law.

### ARTICLE 31:

This law is to be used when it is published in the National Gazette.

## APPENDIX 2 – CASES OF TORTURE REPORTED

٥٠ قرار

نحن قاضي التحقيق في البقاع،

لدى التنقيب،

وبعد الاطلاع على ورقة الطلب عدد ٢٠٠٩/٦٤٢٨ تاريخ ٢٠٠٩/٨/٢٢،

وعلى الأوراق كافة،

وعلى المطالعة في الأساس تاريخ ٢٠٠٩/٩/٥،

تبيّن أنه أسند الى المدعى عليهم:

١- سعد صبحي زعيتر، والدته فاطمة، مواليد عام ١٩٦٥، سجل رقم ٢٦ سابعاً،  
أوقف احتياطياً بتاريخ ٢٠٠٩/٨/١٩ ووجاهياً بتاريخ ٢٠٠٩/٨/٢٢ ولا يزال موقوفاً،٢- زهير علي داوود زعيتر، والدته نجاح، مواليد عام ١٩٦١، سجل رقم ٣٢ الكنيسة،  
أوقف غائباً بتاريخ ٢٠٠٩/٨/٢٢،

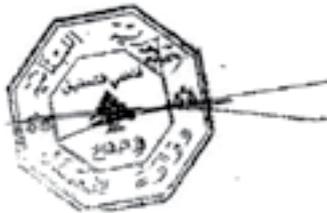
٣- عباس الملقب بعباس شحادة،

ومن بظهرة التحقيق،

بأنه في البقاع، وبتاريخ لم يمر عليه الزمن، أقدم الأول على تعاطي المخدرات وعلى نقلها  
لصالح الثاني الذي أقدم على الاتجار بها،  
الجرائم المنصوص عليها في المواد ١٢٥ و ١٢٦ و ١٢٧ من قانون المخدرات،

وبنتيجة التحقيق:

أولاً: في الوقائع:

تبيّن أنه بتاريخ ٢٠٠٩/٨/١٨ قصد المدعى عليه سعد زعيتر بلدة ربحا برفقة والدته  
ومكث فيها ليلة واحدة، وفي اليوم التالي وبينما كان متوجهاً الى ببيروت جرى توقيفه على  
حاجز للجيش اللبناني في بلدة أبلح، ولدى تفتيش سيارته من قبل عناصر الخدمة على الحاجز  
عثروا على كمية ٢١١ غراماً من مادة الهيدروين مقسمة الى قسمين وموضوعة داخل كيس

- ٢ -

دايلون كبير، وادى التحقيق معه في مكتب مكافحة المخدرات الإقليمي في البقاع أفاد بأنه يتعاطى مادة الهيرويين منذ حوالي السنة، وأن من علمه على تعاطي هذه المادة هو المدعى "عباس" الملقب "عباس شحادة" الذي يعمل لدى تاجر المخدرات المدعى عليه زهير زعيتر، وأنه تعرف إلى "عباس" بواسطة المدعى عليه زهير زعيتر الذي هو أحد أبناء بلدته وقد عرض عليه اللجوء إلى "عباس" في حال احتاج إلى الهيرويين، كما أفاد بأن كمية الهيرويين المضبوطة عائدة للمدعى عليه زهير زعيتر وهو ينقلها إلى بيروت لصالح "عباس" ويلتقي به في محطة الحدث قرب معرض قدوح للسيارات، وأنه لدى توقيفه على حاجز الجيش كان "عباس" يسير خلفه في سيارة دايو نوويرا لكنه تمكن من الهرب،

وتبين أنه أجري فحص مخبري للمدعى عليه سعد زعيتر فجاءت النتيجة إيجابية لجهة مادة الهيرويين،

وتبين أن المدعى عليه زهير زعيتر متوار عن الأنظار وهو مطلوب إلى القضاء بعدة أحكام ومنكرات، وبمراجعة ملفات مكتب مكافحة المخدرات المركزي تبين أنه يوجد ملف باسم المدعى عليه المذكور ويوجد بحقه اثنتان وتسعون أسبقية تهريب واتجار وزراعة مخدرات،

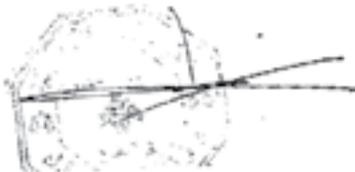
وتبين أنه في معرض التحقيقات الاستنتاجية أنكر المدعى عليه سعد زعيتر ما أسند إليه، وأفاد بأنه أدلى بإفادته في التحقيقات الأولية تحت تأثير الضرب، وهو لا يعرف المدعى عليه زهير زعيتر، وحضر إلى البقاع لليلة واحدة، ولم يسلم ببيارته لأحد خلال هذه الليلة،

وتبين أنه بناء على طلب المدعى عليه سعد زعيتر جرى تكليف الطبيب الشرعي الدكتور علي سلمان للكشف عليه، فأجرى الكشف بتاريخ ٢٥/٨/٢٠٠٩ ونظم تقريراً أثبت فيه أنه مصاب بعدة جروح وقد فصلها وأوضح أنها حاصلة منذ أسبوع تقريباً،

وتبين أنه بتاريخ ٣١/٨/٢٠٠٩ قدم المدعى عليه سعد زعيتر طلباً لتخليه سبيله، وبتاريخ ١/٩/٢٠٠٩ طلبت النيابة العامة رده،

ثانياً: في الأدلة:

- تأيدت هذه الوقائع
- بالادعاء العام
- بالتحقيقات الأولية والاستنتاجية
- بضبط كمية الهيرويين



### بالفحص المخبري

- بقرينة توري المدعى عليه زهير زعيتر عن الأنظار ووجود عدة ملاحقات قضائية بحقه ووجود عدة أسبقيات بحقه في تهريب وزراعة المخدرات والاتجار بها
- بتقرير الطبيب الشرعي

### ثالثاً: في القانون:

حيث تقتضي الإشارة في البدء إلى أن المادة ١٥ من اتفاقية مناهضة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية واللاإنسانية أو المهينة، التي انضم إليها لبنان بموجب القانون رقم ١٨٥ تاريخ ٢٤/٥/٢٠٠٠ تنص على أن كل دولة تضمن عدم الاستشهاد بأي قول يثبت أنه تم الإدلاء بها نتيجة للتعذيب كدليل في أي إجراءات،

وحيث استناداً إلى هذا النص، فإن الدليل المنتزَع بنتيجة تعريض المشتبه فيه للتعذيب يكون مصيره الإهمال، وفي المقابل، إن ذلك لا يؤدي بحد ذاته إلى إهمال الإجراءات الصحيحة التي تمت في معرض التحقيقات والتي يجوز الركون إليها بمعزل عما يمكن أن يترتب من نتائج عن فعل التعذيب سواء لجهة ملاحقة من الترفه أم لجهة إهمال الاعتراف الحاصل في معرضه،

وحيث أن المدعى عليه سعد زعيتر أنلى في التحقيقات الاستطلاعية بأنه تعرض للضرب خلال التحقيقات الأولية، وجاء التقرير الطبي ليؤكد وجود عدة جلوف في مختلف أنحاء جسمه ومنها جلوف بليغة حصلت قبل أسبوع تقريباً من تاريخ الكشف، أي خلال مرحلة التحقيقات الأولية، وبالتالي إن اعترافه في معرض هذه التحقيقات الأخيرة مستوجب الإهمال،

وحيث من جهة أخرى، فإنه يتبين من الوقائع المعروضة أنه تم ضبط كمية ٢١١ غراماً من الهيرويين في سيارة المدعى عليه سعد زعيتر بينما كان متوجهاً من البقاع نحو بيروت، وإن هذه الواقعة غير منازع فيها من قبل المدعى عليه المذكور، وقد حضر هذا الأخير إلى البقاع ليوم واحد فقط وبرفقة والدته، وإن ذلك يشكل قرينة على أنه حضر لنقل هذه الكمية وقد أحضر والدته معه لإبعاد الشبهات عنه، وإن ما يفيد به لجهة أن أحد الأشخاص قد وضع له هذه الكمية داخل السيارة بدون معرفته هو غير مقنع لأن الكمية المضبوطة كبيرة وموضوعة في مكان يصعب الوصول إليه بسهولة كما أنها موضوعة جيداً، وقد أفاد المدعى عليه سعد زعيتر أنه لم يسلّم سيارته لأحد خلال فترة تواجده في البقاع،

- ٤ -

وحيث أن المعطيات والقرائن المتقدمة تولد الدليل البالغ حد الظن بإقدام المدعى عليه سعد زعيتر على نقل كمية الهيرويين من البقاع الى بيروت،

وحيث أن المدعى عليه سعد زعيتر أفاد بأنه ينقل هذه الكمية لصالح المدعى عليه زهير زعيتر، وقد تبين أن هذا الأخير من أصحاب السوابق في جرائم المخدرات وهو متوار عن الأنظار ومطلوب الى القضاء بعدة أحكام ومذكرات، وإن هذه القرائن مجتمعة تحمل على الظن بصحة ما ورد في إفادة المدعى عليه سعد زعيتر لهذه الجهة، وبالتالي على الظن بإقدام المدعى عليه زهير زعيتر على الاتجار بالهيرويين،

وحيث أن إقدام المدعى عليه زهير زعيتر على الاتجار بمادة الهيرويين بشكل مخالف للخطر المنصوص عليه في المادة ١٣ من قانون المخدرات رقم ٩٨/٦٧٣، وإن إقدام المدعى عليه سعد زعيتر على نقل هذه المادة لصالح المدعى عليه زهير زعيتر بشكل مخالف للمادة عينها، وبالتالي يكون فعل كل منهما مشكلاً الجنائية المنصوص عليها في المادة ١٢٥ من قانون المخدرات المشار إليه،

وحيث أن العناصر الجرمية لجنائية المادة ١٢٦ من قانون المخدرات مستقلة تماماً عن عناصر جنائية المادة ١٢٥ من القانون عينه، ولا يمكن أن تتوافر عناصر الجنائيتين المذكورتين في فعل واحد، وبالتالي، وفي ضوء توافر عناصر جنائية المادة ١٢٥ المشار إليها في فعل المدعى عليهما يقتضي منع المحاكمة عنهما في جنائية المادة ١٢٦ المذكورة لعدم توافر عناصرها الجرمية،

وحيث أنه في معرض التحقيقات الأولية تم إجراء فحص مخبري للمدعى عليه سعد زعيتر وجاءت النتيجة إيجابية لجهة تعاطيه مادة الهيرويين، وإن هذا الدليل الناجم عن تحليل علمي يحمل على الظن بإقدام المدعى عليه المذكور على تعاطي هذه المادة، وإن فعله هذا يشكل الجنحة المنصوص عليها في المادة ١٢٧ من قانون المخدرات،

وحيث أن النيابة العامة تطلب في المطالبة بالأساس الظن بالمدعى عليه زهير زعيتر بجنحة المادة ١٢٧ من قانون المخدرات،

وحيث أن ورقة الطلب لم تشمل على ادعاء بحق المدعى عليه زهير زعيتر بجنحة تعاطي المخدرات، إنما هذا الأمر أسند فقط الى المدعى عليه بسعد زعيتر، ولم تدع النيابة العامة لاحقاً بحق زهير زعيتر سنداً للمادة ١٢٧ من قانون المخدرات، كما أن هذه الدائرة لم تجر التحقيقات بحق المدعى عليه زهير زعيتر لجهة تعاطي المخدرات وفق الصلاحية المقررة لها بمقتضى المادة ٦٠ أ.م.ج. لأنها لم تجد في المعطيات والقرائن ما يبرر ذلك،



رقم ١٥٩

وبالتالي، تكون الدعوى العامة غير محرّكة بحق المدعى عليه زهير زعيتر سنداً للمادة ١٠٠ من قانون المخدرات، ما ينتج عنه عدم جواز اتخاذ أي إجراء بحقه سنداً لهذه المادة،

وحيث بالنظر إلى ماهية الجرمين المنسوبين إلى المدعى عليه سعد زعيتر وإلى جنس سير الإجراءات فإنه يقتضي الإبقاء على توقيفه، ما يوجب رد طلب تخليته سبيله،

وحيث أن التحقيق لم يتوصل إلى معرفة كامل هوية المدعو عباس العلقب بعباس شحادة ما يوجب تسطير مذكّرة تحرر دائم توصلاً لمعرفتها،

وحيث أن ما ورد في أقوال المدعى عليه سعد زعيتر لجهة أنه تعرض للمضرب في معرض التحقيقات الأولية معزراً بنتيجة التقرير الطبي بولد شبيهة جنحة حول حصول جرم المادة ٤٠١ من قانون العقوبات، فيقتضي سنداً للمادة ٦٠ م.ج. إحالة الملف إلى النيابة العامة لاتخاذ ما تراه مناسباً بخصوص الإجراءات الواجبة لكشف ملابسات هذا الموضوع وترتيب النتائج القانونية،

### لذلك

نقرر وفقاً لمطالبة النيابة العامة الاستئنافية في البقاع وخلافاً لها:

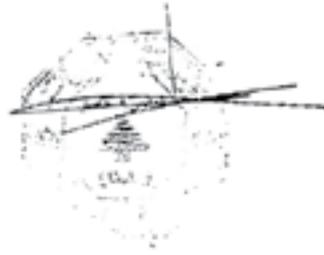
أولاً: اعتبار فعل كل من المدعى عليهما سعد صبحي زعيتر وزهير علي داوود زعيتر مشكلاً الجنائية المنصوص عليها في المادة ١٢٥ من قانون المخدرات رقم ٩٨/٦٧٣،

ثانياً: الظن بالمدعى عليه سعد صبحي زعيتر بجنحة المادة ١٢٧ من قانون المخدرات رقم ٩٨/٦٧٣،

ثالثاً: إتباع الجنحة بالجنائية للتلازم،

رابعاً: منع المحاكمة عن المدعى عليهما سعد صبحي زعيتر وزهير علي داوود زعيتر في جنحة المادة ١٢٦ من قانون المخدرات رقم ٩٨/٦٧٣ لعدم توافر العناصر الجرمية،

خامساً: اعتبار الدعوى العامة غير محرّكة بحق المدعى عليه زهير علي داوود زعيتر في جنحة المادة ١٢٧ من قانون المخدرات رقم ٩٨/٦٧٣، وبالتالي عدم اتخاذ أي إجراء بحقه سنداً لهذه المادة،



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- ٦ -

سادساً: تدريك المدعى عليهما سعد صبحي زعيتر وزهير علي داوود زعيتر الرسوم والنفقات كافة،

سابعاً: رد طلب تخلية السبيل المقدم من المدعى عليه سعد صبحي زعيتر،

ثامناً: تسطير مذكرة تحرر دائم توصلها لمعرفة كامل هوية المدعو عباس المنقلب بعباس شحادا،

تاسعاً: إعادة الأوراق الى جانب النيابة العامة الاستئنافية في البقاع لاتخاذ ما تراه مناسباً بخصوص الإجراءات الواجبة لكشف الملابس حول جرم المادة ٤٠١ من قانون العقوبات المشتببه بحصوله وترتيب النتائج القانونية، ومن ثم لإيداعها مرجعها،

قرار أصدر في زحلة بتاريخ ٢٠٠٩/٩/١٧

قاضي التحقيق في البقاع  
زيد مكنأ



عامش .

مما فتح جرار فقا بدار بين المدعي والمدعى عليه  
كل بمخر على صده في خلاف.

نقر ثلاثا رها صر وار دغيب التحقيقات واما في المدة التي  
بما فيها انبت به الفقه للمفضل بالمدار وكافة طار

١٩٠٤

فانني التفتي في البقاع

زهاد مكننا

دد نما كطالده ١٩٠٧/٤/١٩

شباريخ ١٩٠٧/٥/١٠ صر القار عر جب مجزيلي صرة.

فانني التفتي في البقاع

زهاد مكننا

٢٠٠٤

في ناصر التحقيق في البقاع

لوي التوسيف

ويعود لطلوع تلك الايام كانت

حين يتبين ان القائم بالتحقيق الكدكي في  
مخبر منظمة المصادق اول بلدي جبارة (رقم ٥٥٢٦٤)  
والمصادق اول بلدي سيد (رقم ١٦٧٥٥) قو استجواب الحوي  
على رها الناصح محمد حسن المباح حقا ومنتقل  
حسن القابم بومفا صفر منسوب جهميه حماره  
الاصحاب وبعون دعوتهم الكار الزقي توشكل  
احماره في فاضبا زها الدخيليه.

وحسبه في جره اضى . فلما الحوي عليهم جميعهم  
اناروا في مصح التحقيق الاستنطا في  
للغيب اثناء التحقيق معهم في مخبر منظمة . رقم

ش

صهيبة شنت في شبيل صوره الدائرة لمصانيفهم شامخ  
 ٢٠٠٦/٢/٢٨، أقر بعد سير أرواح الياح على التفتيشهم  
 نحو مخد منضفة . و رويت في التنايب المنظمة بنسبة  
 المقابله رويدا رويدا باللام في صم كد ٢٢٠  
 وصيت بيبينه في الكشايح من الحياة في شبيل صوره  
 الدائرة أن بعض الكوي عليهم أمانا بمعاينة الممارن  
 أرسل على جبارة بالظنون أول على بيد أ هذا فعلا ٢٢  
 بالضرب على صفة مشفرة .

وصيت بيبينه أيضا أن الكوي عليهم مشعل صحت  
 مام طلم أمانا في مصر من التفتيش الوسيطانية أن  
 أوصينا برخد الأذى الداخلي أ جبهه في مخد منضفة  
 على تفيد عضف التناسلي .

وصيت أنه عتض الكادة ٦٠ م.ج. إذا  
 اكتشف ناصح التفتيش أثناء التفتيش أمقار مربية  
 غير مكرمة مع العقل الكوي به يمد الملت إلى  
 أن سب العام الكوي براه الإيقال ،  
 وصيت أن بسب عطف في شانه أربوكر  
 شبره مربية على حصول جاتم ،

وصيت نقض سزا الكادة ٦٠ المشار إليها  
 ل حالة نسح في تحضي التفتيش الأولي وعن التفتيش  
 الطبية الكربية واما فاض استجواب الكوي عليهم  
 الكربية وعن فاض المقابله الكياة بين كل منهم  
 ريب الشياهي الكاهن أول على مبر والممارن  
 أرسل على جبارة ، و في محض استجواب الشاوي  
 المؤكدر في إلى جاب النوية العانة الاستئمان  
 في البقار لدا كما ما شراه منسأ مشا الأوامر

باروخ الميريه المنتبه عيجه/،

لؤلؤ

نفسه إصالة كشيحة على الأديان الميمنة في سنه هذا  
الذي اراد الى ما يقرب السوية الصانته المديسة في البقاء  
تدتماز ما راها نطلسا بياض الورد عار باروخ الميريه  
المنتبه عيجه/

ترا-أصوري رطله بتاريخ ٥/٥/١٩٠٠

فاضي التحقيق في البقاع

زياد مكننا

-١-

قرار

نحن قاضي التحقيق في البقاع،

لدى التدقيق،

وبعد الاطلاع على ورقة الطلب عدد ٢٥٤٢ تاريخ ٢٧/٣/٢٠٠٩،  
وعلى أوراق الملف كافة،  
وعلى المطالعة في الاساس تاريخ ٢٧/٤/٢٠٠٩،  
تبين انه اسند الى المدعى عليهم:

- ١- محمد حسين الحاج حنين، والدته آسيا، مواليد عام ١٩٩٢، سوري،
  - ٢- مشعل حسين حاج جاسم، والدته منسية، مواليد عام ١٩٩٢، سوري،
  - ٣- فادي حسين الشعبان، والدته فطومة، مواليد عام ١٩٨٨، سوري،
  - ٤- محمد فجر الكدرو، والدته صبيحة، مواليد عام ١٩٧٥، سوري،
- أوقفوا احتياطياً بتاريخ ٢٤/٣/٢٠٠٩ ووجاهياً بتاريخ ٢٨/٣/٢٠٠٩ ولا يزالوا موقوفين،

٥- كل من يظهره التحقيق،

بانه في البقاع وبتاريخ لم يمر عليه الزمن أقدم الأول والثاني والثالث بالاشتراك على السرقة من داخل منزل المدعى عبدو نجم جويسطة التعلق وذلك بتحريض من الرابع،  
الجرائم المنصوص عليها في المادة ٦٣٩ من قانون العقوبات بالنسبة للأول والثالث والمادة ٦٣٩ من قانون العقوبات معطوفة على القانون رقم ٢٢٢/٤/٢٠٠٢ بالنسبة للثاني، والمادة ٦٣٩/٢١٨ من قانون العقوبات بالنسبة للرابع،

وبنتيجة التحقيق:

أولاً: في الوقائع:

تبين أنه في الساعة الرابعة من بعد ظهر يوم الثلاثاء الواقع فيه ٢٤/٣/٢٠٠٩ اتصل المدعى عبدو نجم بمخفر مشغرة وأعلم عناصره بأن منزله في بلدة عينيت قد تعرض للسرقة من قبل أشخاص سجونيين في البدة ويعرف مكان إقامتهم، وعلى الفور انتقلت دورية من المخفر المذكور الى بلدة عينيت وأرشد المدعى عناصرها الى مكان إقامة المدعى عليهم وتم إحضار هؤلاء الى

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مركز المخفر، ولدى الاستماع الى المدعى أفاد أنه في الساعة الثالثة والنصف كان موجوداً داخل منزله وسمع صوت ثلاث ضربات وصرير في الباب الخارجي للشرقة الشرقية الجنوبية للمنزل فخرج من غرفته ليكتقد مصدر هذه الأصوات ووجد باب الشرقة الذي أقله سابقاً مفتوحاً، وشاهد شخصين من التابعة السورية يقيمان في بلدته يقفزان عن الشرقة الى حقل ملاصق للمنزل وفراً برفقة شخص ثالث كان ينتظرهما تحت الشرقة مباشرة، عندها تفتد جارور الخزانة الموجودة داخل الدار وتبين له فقدان مبلغ ثلاثماية ألف ليرة لبنانية من داخله، فتبعهم الى مكان إقامتهم، ودخل اثنان منهم الى الغرفة التي يقيمون فيها وفر الثالث الى جهة مجهولة،

وتبين أن عناصر مخفر مشغرة لجروا كشفاً تبين بنتيجته وجود مدخل أساسي للمنزل ومدخل يطل على شرقة الباب للجهة الغربية وهو من الخشب القديم يتم الدخول منه الى موزع على غرف النوم والمطبخ والحمام وغرفة الجلوس ويوجد في وسط الموزع للجهة الجنوبية خزانة درموار، وقبل مدخل الباب للجهة الشرقية يوجد آثار قدم داخل الموزع بالقرب من الباب،

وتبين أنه لدى التحقيق مع المدعى عليه محمد الحاج حسن أفاد أن المدعى عليهما مشعل حاج جاسم وفادي الشعبان طلبا إليه مرافقتهم الى سهل عيتيت، وبوصولهم الى قرب منزل المدعى طلبا إليه البقاء في الجبل المجاور ليذخلا هذا المنزل بهدف جلب المساتر، وبعدها سمع صوتاً من داخل المنزل وخارجه ففر هاربا باتجاه البساتين،

وتبين أنه لدى التحقيق مع المدعى عليه مشعل حاج جاسم أفاد بأنه اتفق مع المدعى عليهما فادي الشعبان ومحمد الحاج حسن على سرقة منزل عبود نجم، وانطلقوا من غرفتهم وكان الطقس ساطراً، وبوصولهم الى المنزل بقي المدعى عليه محمد الحاج حسن في الخارج وصعد مع المدعى عليه فادي الشعبان على سلم من الجهة الشرقية للمنزل وفتح باب المنزل وهو من الألومنيوم والخشب وفتشا في درج الخزانة الموجودة في موزع المنزل وعثرا على مبلغ من المال، وإن المدعى عليه فادي الشعبان فتح الدرج المذكور، وبعد ذلك تم تسليم المبلغ المسروق الى المدعى عليه محمد الكدرو الذي استبدله لدى أحد المحلات بأوراق نقدية من فئات أخرى وقام بتوزيع مبلغ أربعين ألف ليرة لبنانية لكل منهم،

وتبين أنه لدى التحقيق مع المدعى عليه فادي الشعبان أفاد أنه اتفق مع المدعى عليهما محمد الحاج حسن ومشعل حسين جاسم على سرقة منزل عبود نجم، وبوصولهم الى هذا المنزل بقي المدعى عليه محمد الحاج حسن خارجه المراقبة ودخل هو مع المدعى عليه مشعل حاج جاسم الى المنزل بواسطة تسلق سلم، وفتحوا درج الخزانة الموجودة في الموزع وأخذوا مبلغ ثلاثماية ألف ليرة



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لبنانية وفوجًا بالمدعي، فهربوا باتجاه البساتين، وتكاسموا المبلغ مع المدعي عليه  
محمد الكندرو الذي تمت السرقة بالاتفاق معه،

وتبين أنه لدى التحقيق مع المدعي عليه محمد الكندرو أنكر إقدامه على  
تحرير باقي المدعي عليهم على السرقة،

وتبين أنه لدى التحقيق مع المدعي عليه محمد الحاج حسن في مفزة زحلة  
القضائية بحضور مندوب جمعية حماية الأحداث أفاد بأن لا علاقة له بموضوع  
السرقة، وبأنه لم يكن يعلم بدخول المدعي عليهم مشعل حاج جاسم وفادي  
الشعبان منزل المدعي ولم يشاهدهما يقومان بذلك،

وتبين أنه لدى التحقيق مع المدعي عليه مشعل حاج جاسم في مفزة زحلة  
القضائية بحضور مندوب جمعية حماية الأحداث أفاد بأنه اتفق مع المدعي عليهم  
محمد الحاج حسن وفادي الشعبان على الذهاب الى مكتب النفايات، ولدى عودتهم  
اتفقا على السرقة من داخل منزل المدعي عبدو نجم لأنه بعيد عن باقي المنازل،  
وبوصولهم الى هذا المنزل بقي المدعي عليه محمد الحاج حسن في حديقة المنزل  
للمراقبة، وتمساق هو مع المدعي عليه فادي الشعبان سلماً يؤدي الى الشرفة وفتح  
باب الألو منيوم جراً ودفعوا الباب الخشبي الموجود خلفه ودخلا الصالون وفتحا  
درج طابوقة للتفاز وعثر فادي على مبلغ ثلاثماية ألف ليرة لبنانية من قطع مختلفة  
فوضع هذا المبلغ في جيبه، وعند هروبهم شاهدتهم المدعي فشتهم وتابعوا هاربين  
نحو محل المدعو جوزف منصور واشتروا المأكولات والمشروبات الغازية ودفعوا  
له مبلغ مائة وعشرة آلاف ليرة لبنانية كان مترتباً له بذمتهم وبقي لهم مبلغ مائة  
وعشرين ألف ليرة لبنانية وزعوه مائة في ما بينهم، وأن المدعي عليه محمد  
الكندرو طالبه اإدوم السرقة من منزل المدعي لعدم قدرتهم على شراء الطعام بسبب  
نفاذ المال، وأن منزل المدعي يكون خالياً من السكان يوم حصول السرقة،

وتبين أنه لدى التحقيق مع المدعي عليه فادي الشعبان في مفزة زحلة  
القضائية حاجت إقامته مطابقة لإفادة المدعي عليه مشعل حاج جاسم كقضية  
تنفيذ المسألة، إلا أنه أفاد بأن المدعي عليه محمد الكندرو لا علاقة له بهذه السرقة  
ولم يكن عامراً بحصولها، وأن سبب قيامهم بالسرقة هو عدم قدرتهم على شراء  
الطعام بسبب عدم وجود أموال بحوزتهم،

وتبين أنه لدى التحقيق مع المدعي عليه محمد الكندرو في مفزة زحلة  
القضائية أنكر أي علاقة له بالسرقة، وأفاد بأنه لا يعرف ما إذا كان أحد من  
المدعى عليهم الآخرين قد أدم على السرقة علماً أنهم أنكروا ذلك أمامه، وهم  
يتهمون معه منذ أسبوع،

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وتبيّن أنه في معرض التحقيقات الاستنتاجية أنكر المدعى عليهم ما أُسند إليهم، وأفاد كل منهم بأن اعترافه في التحقيقات الأولية انتزع منه تحت تأثير الضرب، فتقرر تكليف الطبيب الشرعي الدكتور وئيد سليمان لمعاينة كل منهم، وقد نفذ الطبيب المذكور ما كلف به ونظم تقريراً بنتيجة معاينة كل منهم، وتبيّن في كل تقرير الكدمات والألام التي يعاني منها كل من المدعى عليهم، وقد أجريت مقابلات بين المدعى عليهم والعنصرين القائمين بالتحقيقات الأولية في مخفر مشغرة، وأكد المدعى عليهم في هذه المقابلات تعرضهم للضرب من قِبَل هذين العنصرين،

وتبيّن أنه بتاريخ ٢٠٠٩/٤/١٤ قدم المدعى عليه محمد الحاج حسن طلباً لتخليّة سبيله، وبتاريخ ٢٠٠٩/٤/٢٧ أبدت النيابة العامة رأيها في هذا الطلب تاركة الأمر لتقدير هذه الدائرة،

#### ثانياً: في الأدلة:

- تأيّدت هذه الوقائع
- بالادعاء العام والادعاء الشخصي
  - بالتحقيقات الأولية والاستنتاجية
  - بالتقارير الطبية

#### ثالثاً: في القانون:

حيث تقتضي الإشارة في البدء إلى أن المادة ١٥ من اتفاقية مناهضة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية واللاإنسانية أو المهينة، التي انضم إليها لبنان بموجب القانون رقم ١٨٥ تاريخ ٢٠٠٠/٥/٢٤ تنص على أن كل دولة تضمن عدم الاستهزاء بأي أقوال يثبت أنه تم الإدلاء بها نتيجة للتعذيب كدليل في أي إجراءات،

وحيث استناداً إلى هذا النص، فإن الدليل المنتزع بنتيجة تعرض المشتبه فيه للتعذيب يكون مصيره الإهمال، وفي المقابل، إن ذلك لا يؤدي بحده ذاته إلى إهمال الإجراءات الصحيحة التي تمت في معرض التحقيقات والتي يجوز الركون إليها بمعزل عما يمكن أن يترتب من نتائج عن فعل التعذيب سواء لجهة ملاحظة من اقترفه أم لجهة إهمال الاعتراف الحاصل بنتيجته،

وحيث أن التحقيق في مخفر مشغرة مع القاصر محمد الحاج حسن ومشعل جاسم حصل بدون حضور مندوب جمعية حماية الأحداث، وقد أفاد المدعى عليهم جميعهم أنهم تعرضوا للتعذيب في المخفر المذكور، وجاءت

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التقارير الطبية لتؤكد وجود كدمات وآلام في جسم كل منهم، وقد أكدوا في مواجهة القائمين بالتحقيقات الأولية في المخفر تعرضهم للضرب من قبلهما، وبالتالي فإن الاعترافات الحاصلة من قبل المدعى عليهم محمد ومشعل وفادي لدى التحقيق معهم في مخفر مشغرة مستوجبة الإهمال،

وحيث من جهة أخرى، فإنه لدى التحقيق مع المدعى عليه مشعل حاج جاسم في مفرزة زحلة القضائية بحضور مندوب جمعية حماية الأحداث روى بالتفصيل كيفية اتفائه مع المدعى عليهما محمد الحاج حسن وفادي الشعيان على السرقة من داخل منزل المدعى، وكيفية تنفيذ السرقة، والغنيمة الناتجة عنها، وكيفية الهرب وتوزيع الأموال في ما بينهم، كما أفاد بأن المدعى عليه محمد الكندرو هو من حرضهم على السرقة وأرشدتهم إلى منزل المدعى لأنه يكون خالياً من السكان يوم حصول السرقة،

وحيث أن المدعى عليه مشعل حاج جاسم قد أدلى بإفادته المشار إليها أعلاه بحضور مندوب جمعية حماية الأحداث الذي وقع المحضر بدون أي تحفظ، وإن ذلك بشكل دليلاً أكدوا على أن المدعى عليه المذكور لم يتعرض لأي عمل شدة أو ضغط عند الإدلاء بإفادته المذكورة، وفضلاً عن ذلك فإن المدعى عليه محمد الحاج حسن قد أنكر أي علاقة له بالسرقة لدى التحقيق معه في المفرزة المذكورة، وإن المدعى عليه فادي الشعيان اعترف في هذه المفرزة بإقدامه على السرقة مع المدعى عليهما مشعل حاج جاسم ومحمد الحاج حسن ولكنه أفاد بأن لا علاقة للمدعى عليه محمد الكندرو بهذه السرقة، وإن ما ورد في إفادة المدعى عليهما محمد الحاج حسن وفادي الشعيان، من تناقض ومن إنكار، يزيل الخشبة من أن تكون إفادات المدعى عليهم في مفرزة زحلة القضائية قد تم الإدلاء بها بتوجيه معين من القائمين في التحقيقات،

وحيث أن إدلاء المدعى عليه مشعل حاج جاسم بإفادته بصورة دقيقة ومفصلة وبدون التعرض للضرب وبدون توجيه من القائمين بالتحقيقات وفق ما هو مبين أعلاه، يتعزز بقريئة وجود المدعى عليهم محمد الحاج حسن ومشعل حاج جاسم وفادي الشعيان بالقرب من منزل المدعى يوم حصول السرقة، وبقريئة وصف هذا الأخير لكيفية مباحثتهم وهربهم ومطابقة هذا الوصف مع ما ورد في إفادتي مشعل وفادي أمام مفرزة زحلة القضائية، ليشكل الدليل البالغ حد الظن بصحة ما ورد في إفادة المدعى عليه مشعل حاج جاسم المذكورة أعلاه من اعتراف ومن عطف جرمي،

وحيث أن فعل المدعى عليهم محمد الحاج حسن ومشعل حاج جاسم وفادي حسين الشعيان المتمثل بإقدامهم بالاشتراك في ما بينهم على السرقة من منزل المدعى عبود نجم بعد دخوله بواسطة التسلق من الخارج بشكل الخفية

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المنصوص عليها في المادة ٦٣٩ من قانون العقوبات معطوفة على القانون رقم ٢٠٠٢/٤٢٢ بالنسبة للمدعى عليهما محمد ومشعل،

وحيث أن فعل المدعى عليه محمد الكدرو المتمثل بإقدامه على تحريض المدعى عليهم الآخرين على اقتراف السرقة المشار إليها أعلاه يشكل جريمة المنصوص عليها في المادة ٢١٨/٦٣٩ من قانون العقوبات،

وحيث بالنظر الى مجمل المعطيات الواردة في الملف يقتضي رد طلب تغطية السبيل المقدم من المدعى عليه محمد الحاج حسن،

### لذلك

نقرر وفقاً لمطالبة النيابة العامة الاستئنافية في البقاع:

أولاً: اعتبار فعل المدعى عليه فادي حسين الشعيان مشكلاً للجناية المنصوص عليها في المادة ٦٣٩ من قانون العقوبات،

ثانياً: اعتبار فعل المدعى عليهما محمد حسين الحاج حسن ومشعل حسين حاج جاسم مشكلاً للجناية المنصوص عليها في المادة ٦٣٩ من قانون العقوبات معطوفة على القانون رقم ٢٠٠٢/٤٢٢،

ثالثاً: اعتبار فعل المدعى عليه محمد فجر الكدرو مشكلاً للجناية المنصوص عليها في المادة ٢١٨/٦٣٩ من قانون العقوبات.

رابعاً: رد طلب تغطية السبيل المقدم من المدعى عليه محمد حسين الحاج حسن،

خامساً: تدريك المدعى عليهم الرسوم والنفقات كافة،

سادساً: إعادة الأوراق الى جانب النيابة العامة الاستئنافية في البقاع لإيداعها المرجع المختص،

قراراً صدر في زحلة بتاريخ ٢٠٠٩/٥/٢

قاضي التحقيق في البقاع  
زياد مكن

