

LEBANON
Joint shadow report

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

**ALEF – Act for Human Rights
Alkarama for Research and Studies
Ajem – Association of Justice and Mercy
Insan Association
Khiam Rehabilitation Center for Victims of Torture
Proud Lebanon
Restart Centre for Rehabilitation of Victims of Violence and Torture**

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1. Table of contents

1. TABLE OF CONTENTS	2
1. INTRODUCTION	3
2. THE PRACTICE OF TORTURE	3
2.2 DEFINITION, ABSOLUTE PROHIBITION AND CRIMINALISATION	3
2.3 FUNDAMENTAL LEGAL SAFEGUARDS	4
2.4 ABUSES DURING PRE-TRIAL AND ADMINISTRATIVE DETENTION	6
2.4.1 <i>Pre-trial detention</i>	6
2.4.2 <i>Administrative detention</i>	6
2.5 CONDITIONS OF DETENTION	7
2.6 ABUSES AGAINST REFUGEES AND NON-REFOULEMENT	9
2.7 ABUSES AGAINST LESBIAN, GAY, BISEX, TRANSGENDER AND INTERSEX PEOPLE (LGBTI).....	9
2.8 VIOLENCE AGAINST CHILDREN	10
2.9 HUMAN TRAFFICKING.....	11
2.10 EXCESSIVE USE OF FORCE AGAINST PROTESTORS.....	13
2.11 TRAINING AND MEASURES TO PREVENT TORTURE	14
2.12 IMPUNITY FOR ACTS OF TORTURE.....	15
2.13 ABSENCE OF REDRESS FOR VICTIMS OF TORTURE AND EFFECTIVE REMEDY, DENIAL OF THE RIGHT TO REPARATION.....	15
3. CONCLUSION	16

1. Introduction

Lebanon's first periodic report (CAT/C/LBN/1)¹ was submitted to the Committee against Torture on 9 March 2016, and will be reviewed by the Committee at its 60th session. Although this effort is a step forward, the report had been overdue for 14 years, and contained no substantial information in terms of developments and efforts made by the Lebanese government towards preventing and putting an end to the practice of torture in Lebanon. It also had no mention of Lebanon's progress towards implementing recommendations accepted as a result of the 2015 Universal Period Review related to the issue. This experience is unfortunately the norm, since prolonged delays often precede the submission of Lebanon's reports, which results in part from the absence of a comprehensive data collection policy or a specific mechanism to monitor human rights and prepare State reports. This directly affects the work of local and international actors in accessing valuable information through which they could keep track of Lebanon's progress and challenges to encourage reform at the domestic level.

The undersigned Lebanese civil society organisations hereby submit this shadow report in which they evaluate the use of torture and the environment conducive to it, highlighting their concerns and addressing recommendations for improvement to the State party. The report is built on contributions provided by the undersigned organisations, based on their respective area of expertise being it providing legal, social, psychological assistance to vulnerable categories or documenting human rights violations in the country.

As this report will detail, torture in Lebanon results from inhumane conditions of detention, the disrespect of legal safeguards and a general climate of impunity. The report also details the vulnerabilities of specific categories of the Lebanese population. An assessment of the absence of efficient measures for prevention and redress is also provided.

While acknowledging the challenges of various nature currently experienced by Lebanon, the undersigned organisations hope that the Committee's constructive dialogue with the State party and its recently appointed new government will allow it to tackle the issue of torture in the country.

2. The practice of torture

2.2 Definition, absolute prohibition and criminalisation

States parties to the Convention are required to include in domestic legislation a definition of torture in compliance with its requirements. Lebanese law, however, currently does not define, prohibit nor criminalise torture.

Article 8 of the Constitution safeguards the protection of personal liberty, which could eventually cover acts of torture but not torture itself. At the same time, the Lebanese Penal Code (PC) does not prohibit nor criminalises torture. The only provision that may cover torture is article 401 PC which prohibits and criminalises "violent practices not permitted by the law against another person with the intention to extract a confession of a crime or information related to it", without including other purposes listed in article 1 UNCAT that would qualify an act as torture, such as punishment, intimidation, coercion, or discrimination.

Article 401 PC also provides as a punishment imprisonment of a length ranging from one months to three years, a sentence that is clearly inadequate to reflect the gravity of the crime of torture, which should have equivalent sentence to the most serious crimes.

MPs, namely from the Human Rights Parliamentarian Committee, have been working alongside CSOs in a series of workshops and meetings seeking to draft, discuss and pass a draft law criminalizing torture in accordance with the Convention. A draft law was presented by MP Moukheiber to Parliament in December 2012, and throughout 2013 and 2014 was studied and reviewed by the Justice and

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

Administration Committee at the Lebanese Parliament. The current draft adopted by the latter committee included several changes that might hamper the efforts towards the prevention and the criminalization of torture, as torture is not defined in compliance with the Convention. According to the State Party's Report, the draft law would propose the following definition of torture:

"Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person by or at the instigation of or with the explicit or implicit consent of a public official or other person acting in an official capacity during inquiries, preliminary investigations, judicial investigations and trials".²

This proposed definition, however, lacks the purpose element, which would be needed to achieve full compliance with the Convention.

Additionally, the prohibition of torture and cruel, inhuman and degrading treatment is a rule of *jus cogens* and therefore can never be subjected to derogation. It is however extremely concerning to read in the National Report that "justifications (that) might be advanced by the security authorities for derogating from the prohibition of any cruel, inhuman or degrading treatment or punishment",³ listing exceptional circumstances such as a state of war, a threat of war, internal political instability or any other state of emergency as well as superior orders. In a country where the deteriorating security situation is systematically used as a justification for human rights abuses, such a provision should be incorporated into the law as a matter of priority.

Recommendations:

1. Define and criminalise torture in full compliance with the UNCAT and ensure penalties are fixed in the law and commensurate with the gravity of the crime;
2. The Lebanese Government should provide for command responsibility where superiors knew or should have known that torture was likely to occur, and repeal any legislation relating to amnesty or limitation periods regarding this crime;
3. Incorporate into the Lebanese legislation provisions affirming the non-derogable nature of the prohibition of torture, cruel, inhuman or degrading treatment and stating that no exceptional circumstance nor superior orders may be invoked as a defence for the crime of torture.

2.3 Fundamental legal safeguards

In a system which respects the rule of law, one of the main duties of the government is to preserve the fundamental guarantees of individuals in custody, protecting them from violence and mistreatment that could amount to torture or ill-treatment. Although these principles are guaranteed in Lebanese law, in practice, Lebanese authorities continue to fall short in protecting the rights of individuals against arbitrary detention and long delays in trial,⁴ ill-treatment and torture, in addition to violations of the principles of equality before the law, presumption of innocence, the right to appeal and compensation, and the right to legal counsel.

Following arrest, that can be performed in a *flagrante delicto* or based on warrants or sentences *in absentia*, suspects are to be held in police stations for a period of time set in law, which should not exceed 48 hours, renewable once under the approval of the general prosecution, as article 47 of the Code of Criminal Procedure (CCP) states. However, suspects are routinely held in detention past the 96-

² National Report, para. 217.

³ National Report, para. 79.

⁴ American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 20.

⁴ American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 24.

hour time limit before appearing in front of a judge.⁵ Former prisoners have also reported cases of arbitrary detention, involving raids of their homes without warrant.⁶

Article 47 CCP also provide the suspects the following rights: his right to contact a family member, the employer, a lawyer or anyone in relation with, the right to meet with the lawyer without the power of attorney, the right to have interpretation, the right to request a medical consultation which should be performed without the presence of any member of the judicial police. These rights are often violated. For example, the Lebanese law relating to legal aid can also be interpreted in a manner that does not require the presence of a lawyer during the initial interrogation and investigation; opening the door to forced confessions or other abuses at the police station.⁷

Investigative authorities heavily rely on confessions, which are obtained through coercion, torture and ill-treatment,⁸ with judges rarely challenging the inadmissibility of such confessions, resulting in unfair trials. Petty crimes and misdemeanours can still lead to the accused being placed in preventive detention with late bail sessions.

Additionally, the accused has the right to have his/her case reviewed by a competent tribunal within a reasonable delay. For the tribunal to be truly competent in making a fair decision, the judges, within the limits of the law, must be independent and impartial.⁹ The impartiality of judges and their independence are put in jeopardy by the Military Court as the majority of its judges are appointed by the Ministry of Defence and its president is a serving military officer. The Military Court has jurisdiction over cases related to espionage, treason, connection with the enemy, terrorism and all crimes that involve or somehow harms a member of the security services. Despite international standards require that the Military Court does not have jurisdiction over civilians,¹⁰ civilians are brought to trial before this jurisdiction, as the law allows for it. This has raised several questions after cases where torture was used were brought forward by this Court.¹¹ The Judicial Council, another court which is subject to influence by political parties in power, is often criticised for being very vulnerable to political pressures, especially since cases are brought to the jurisdiction by the Cabinet.

Recommendations:

1. Ensure consistency of national laws with the ICCPR and other international obligations, all of which must be effectively available by law and in practice. The procedural safeguards must also be available for every detainee without discrimination;
2. Establish institutions and mechanisms which ensure the legal system's adherence to "do no harm" principles and the equality of arms to protect the rights of all detainees, victims, and witnesses in trial;

⁵ American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 20.

⁶ LCPS AND ALEF, *Right to a Fair Trial Focus Group Report*, LCPS AND ALEF, 2015.

⁷ American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 20, ALEF, "The Right to Fair Trial in Lebanon: A Position Paper on Guarantees during Arrest and Investigation"; "The Right to Fair Trial in Lebanon: A Position Paper on Guarantees during Court Proceedings, Detention, and Appeal", October 2016.

⁸ American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 2.

⁹ *Ibidem*.

⁹ ICCPR, Article 14(1); Lebanese Constitution, Article 20.

¹⁰ Alkarama, *Lebanon: Loyal Al Kayaje Sentenced by the Military Court for Having Denounced Her Rape by Military Officers*, 23 August 2016, <https://www.alkarama.org/en/articles/lebanon-loyal-al-kayaje-sentenced-military-court-having-denounced-her-rape-military>.

¹¹ Human Rights Watch, 'It's not the right place for us', 26 January 2017 <https://www.hrw.org/report/2017/01/26/its-not-right-place-us/trial-civilians-military-courts-lebanon>, Alkarama, "Lebanon: Syrian National Tortured by Military Intelligence in Order to Extract Confessions" 25 February 2016, <http://en.alkarama.org/lebanon/press-releases/2056-lebanon-syrian-national-tortured-by-military-intelligence-in-order-to-extract-confessions>.

3. Pass a law adopting a restrictive jurisdiction for the Military Court to appropriate military matters, based on which the court will be allowed only to try military officers and military cases only, and transfer to ordinary courts the jurisdiction of trying civilians for security and other issues.

2.4 Abuses during pre-trial and administrative detention

The possibility for suspects to face lengthy periods of pre-trial and administrative detention opens the door to abuses and the practice of torture.

2.4.1 Pre-trial detention

While Lebanon has ratified a wide array of international agreements and conventions protecting inmates from excessively long periods of pre-trial detention, in practice, Lebanese criminal justice practices have not always functioned according to the same spirit. While detainees have the right to appear before a court without delay, pre-trial detention can sometimes last for years, arbitrarily depriving detainees of their liberty.

It is estimated that in July 2016, the prison population reached 6,200 individuals in 23 places of detention designed to hold a total of 3,500 inmates. The majority of the prison population in Lebanon are pre-trial detainees (55.63% according to figures from the Ministry of Justice's Directorate of Prisons). This excludes inmates being held at the Adlieh detention facility where the administrative detention of foreigners is served.

Petty crimes and misdemeanours can lead to an accused being placed in preventive detention with late bail sessions. Time limitations in preventive detention, including the four-day detention period before the accused is heard in front of an investigative judge, are often not respected. Someone may be detained indefinitely under terrorism charges since the investigative judge can order a six-month extension to the pre-trial detention period, which can be renewed for another six months indefinitely.

2.4.2 Administrative detention

The Working Group on Arbitrary Detention has considered administrative detention as a form of arbitrary detention, and lengthy periods of administrative detention can open the door to other abuses including torture.

Yet, according to Caritas Lebanon Migrant Centre, more than 3,500 men and women are currently detained by General Security in Adlieh Retention centre, and most notably migrant domestic workers (mostly women), male migrant workers, as well as refugees, despite the fact that Lebanese laws permit the detention and the subsequent deportation of a foreigner only on the grounds that their presence constitutes a threat to public safety and security (articles 17 and 18 of the Law on Entry, Stay and Exit of Foreigners 1962). Even when this is the case, the law sets out a strict procedure that must be followed including informing the Ministry of Interior of expulsion orders and obtaining the consent of the Public Prosecutor to expel the foreigner in question. Thus, administrative detention as it was limited by the law was a measure of exception and not the norm (Court Ruling: Judge Jad Maalouf 261/2015). In practice, however, thousands of individuals are subjected to administrative detention in flagrant violation of the law, especially migrant domestic workers and refugees, who are among the most vulnerable categories.

Starting from 2014, the General Security began to inconsistently apply a policy of detaining and deporting migrant domestic workers who had children in the country and who had regular status for reasons that have nothing to do with national security. These women and their families were given incredibly short notices to leave the country, in some cases as short as 24 hours. These decisions were based on an unpublished internal General Security directive. General Security also began deporting migrant domestic workers on the basis of not residing with their sponsors, which is a flagrant violation of the migrant workers' legally sanctioned right to freedom of movement and freedom of choosing their place of residence.

Refugees, who according to international law could not be returned, remained in administrative detention for extended periods of time. In one case, six Sudanese refugees remained in detention for a period ranging from three to seven months. When the case was brought to court, the judge ordered their immediate release (Court Ruling: Judge Jad Maalouf 261/2015), however even when the court was notified General Security still refused to release the detainees. This was not the first time that General Security who is tasked with implementing the law has in fact violated a court order.

Furthermore, General security has on many occasions impeded the work of lawyers and harassed them through a variety of practices including cancelling visitations or asking lawyers to submit special requests to meet with their clients.

Recommendations:

1. Promote stronger due process where detention is only looked at as a last resort leading to shorter detention period. This can be achieved through enhanced access to legal aid and facilitation of access to justice;
2. Ensure that detainees have the right to have their pre-trial detention reviewed by a court of law at short periods. Establish by law a maximum period of pre-trial detention in cases of homicide, felonies involving drugs and endangerment of State security, felonies entailing extreme danger and crimes of terrorism;
3. Ensure that the right of an accused to be heard in front of an investigative judge during the first four days of his/her detention is respected;
4. Amend article 17 of the Entry and Exit Law and clearly define what constitutes a threat to public safety and security;
5. Include guarantees in the entry and Exit Law that the enjoyment of any right including family rights and the rights to freedom of movement and choosing one place of residence does not constitute sufficient grounds for expulsion;
6. End administrative detention and introduce swift judicial processes to rule in immigration violations;
7. Conduct a stronger judicial oversight over the operations of General Security and especially in prosecuting violations including refusal to execute court orders.

2.5 Conditions of detention

Although the Prisons Law No. 14310 contains some provisions on management and the treatment of detainees in line with international standards, including provisions related to inspection (article 13), medical care (articles 52-54), separating prisoners according to their sex and criminal record (article 62), and the availability of food, bedding and clothing (articles 75-86), these provisions are not respected in numerous prisons.

The CCP does not oblige law enforcement officials to register all 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. As a result, there is no systematised information about each prisoner's age, criminal record, reason for detention and required medical treatment. Added to this, detainees in pre-trial detention are housed with convicted prisoners in all prisons.

Only two out of 23 prisons in Lebanon are architecturally built to contain prisoners in suitable conditions, whereas the rest were previously built for other accommodation purposes and later on were used as prisons. In particular, detention places are not well prepared to receive inmates for a long term. They do not have enough and well equipped restrooms, hot water is not provided, neither beds, thus inmates are forced to sleep on the floor or on old and rotten mattresses.

Moreover, the detained population is distributed over other different places of detention and under different authorities: police stations, detention cells of justice palaces, military detention centres, General Security detention centres and prisons. In addition, the most concerning is the fact that an unknown number of detainees are held in detention facilities run by the Directorate of the Lebanese army, where no civil society and human rights organization have access to it.

In all those places, persons deprived from liberty are living under difficult conditions and they are subject or at risk of human rights violations, including torture. In none of those places delays of detention are respected, nor standards detention conditions are available. For example, police stations are hosting persons for more than one month while they are not equipped to receive persons for more than 96 hours. The same applies in the detention cells of justice palaces where the persons are normally held only while waiting to appear before the judge.

We consider individuals in these conditions to be suffering from ill-treatment, in some cases even amounting to torture. Some of these premises are located underground, such as the General Security premises in Adlieh or the Justice Palace in Baabda. Other problems are humidity, lack of oxygen, lack of respect for basic hygiene rules, which lead to serious medical and psychological conditions among detainees.

In general, apart from Roumieh prison, prisons do not have separate sections or cells for minors, so that minors are detained together with adults. Moreover, the absence of social workers from the Minors department of the Ministry of Justice to take care of detained minors was reported. Similarly, inmates having committed crimes of different type and seriousness are held in the same sections of the prison and in the same cell, in violation of Rule 11 of the Standard Minimum Rules on the Treatment of Prisoners.

Another major problem detainees face is overcrowding, both in prisons and other places of detention. In particular, it was observed in November 2016 that, in Nabatiyeh prison, there were 130 prisoners divided into four rooms with an average of 32 prisoners in each room. To overcome this problem, a new practice has been observed with detainees being held for lengthy periods in police stations instead.

It is important to also mention that the quality of food distributed in prisons is way below the acceptable standard. Prisoners in general buy their own food in stores located within the prison or have their family bring them some. Only those that cannot afford to buy food or cannot rely on their families are the ones obliged to eat the prison's food. In Roumieh central prison, which inhabits about half of the prisoners of Lebanon, however, it is not allowed for relatives or visitors to bring food for inmates. Some other detention places do not even provide food for inmates, so that they are obliged to cook themselves. Inmates however do not have the tools needed for this purpose, so that they often use plastic materials that are carcinogen and leads to increasing the toxicity of the places.

Moreover, despite some NGOs started to implement projects in this sector, there is a general lack of vocational trainings and rehabilitation measures for detainees.

Finally, it is reported that most prisons only provide basic medical services due to the absence of a general health system and severe shortage of medicines. In particular, mental health services are poorly available, so that prisoners suffer from anxiety, lack of sleep, depression, headaches, among other, without being appropriately treated.

Recommendations:

1. Ensure all relevant information related to each detainee is duly registered;
2. Ensure individuals deprived of liberty are held in appropriate premises subjected to judicial oversight and that the measures necessary to alleviate the overcrowding are taken;
3. Ensure detainees are held in premises respecting minimum health standards, and be provided with appropriate air, floor space, lighting, heating and ventilation, food and water;

4. Ensure different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment;
5. Ensure detainee's access to health care, including to emergency treatments.

2.6 Abuses against refugees and non-refoulement

First of all, it is important to mention that refugees are at risk of being detained for the mere fact of lacking legal status. Indeed, the lack of the legal status is criminalised in the Lebanese Criminal Code. Illegal stay or illegal entry is the main reason for the arrest of a foreigner. According to Ajem studies, 45% of the detainees in prison were arrested for illegal stay or illegal entry, and 32% reported being exposed to ill-treatment.

For the same reason, most of the foreigners in detention cannot have family visits because their family members also do not have legal documents, and fear being arrested themselves. This situation is increasing the vulnerable situation of the foreigner as well as exploitation and discrimination inside the detention facilities by other inmates.

Moreover, as foreigners, refugees and migrants are subjected to specific procedures applied for non-citizens after completion of sentences or release order decisions. They are systematically transferred to the General Security before they are released; this transfer is done regardless of the charges or the legality of their residence. In practice, the administration of the detention facility (prisons and other detention centres) notifies the General Security Office of the release of any foreigner to be transferred under their custody and detained in one of their facility. In this case, the detention becomes an administrative detention outside any specific legal framework. Most of the time, prison authorities are unable to transfer the foreigner to the General Security Office detention centre due to overcrowding or to lack of transportation or staff; the foreigner who should be released is kept in prison waiting to be handed over to the General Security. This leads to arbitrary detention and it became, in a way, an accomplished fact and perceived as normal practice while no alternatives are being discussed to prevent this or to put an end to this form of arbitrary detention.

In addition, the deportation decisions of some of the Syrian refugees are also contrary to article 3 of the Convention which imposes the Lebanese State not to deport, return, or handover any person to another country, when there is strong possibility that the person would be in danger of being tortured. On 28 September 2014, Lebanese authorities forcibly returned two Syrian nationals to Syria despite fear of persecution and torture. Human Rights Watch communicated its concerns and called for an investigation to the General Security Office, but the latter did not respond. Similarly, it was discovered that the General Directorate of the General Security of Lebanon decided to deport to Syria four Syrians, through its land borders. At the last minute, the deportation was prevented because of the reaction of the civil society and international organizations. This was resulted in prompting the Interior Affairs and Municipalities Minister to intervene on 20 October 2016 to solve the situation and bring the Syrians back to Lebanon.

Recommendations:

1. Put an end to the arbitrary detention of refugees for illegal entry as well as their administrative detention, which puts them at risk of being subjected to cruel, inhuman or degrading treatment if not torture while held at the General Security Premises;
2. Put an end to the deportation of Syrian refugees and ensure the principle of *non-refoulement* is respected.

2.7 Abuses against lesbian, gay, bisex, transgender and intersex people (LGBTI)

Numerous cases reveal that individuals have been arrested and subjected harrassment, torture and other cruel, inhumane or degrading treatment by public law enforcement officers based on suspicions that they are LGBTI. This occurs during investigative and criminal procedures, at the outcome of which they can be sentenced on the basis of article 534 of the Lebanese Penal Code which criminalises sexual relations that are "contradicting the laws of nature".

In particular, forced anal examinations are still practiced despite being condemned by circulars of the Order of physicians and the Ministry of Justice. This constitutes torture or at least inhuman or degrading treatment. In a case, a young man was reported as "acting like a woman" and the Public Prosecutor subsequently ordered that he be arrested, interrogated and subjected to an anal examination.¹² In another example, a Syrian refugee reported having been tortured in Rehanieh military police station to confess to his homosexuality so the authorities could prosecute him on this basis. An officer affirmed to the victim that an anal examination was performed "to determine how many times he have had sex".¹³ This inhumane treatment is not only practiced by law-enforcement officers but is, in certain cases, ordered by judges. For example, in 2014, five men were arrested in the Msaytbeh neighborhood after the police had received a call informing them of "illegal activities" taking place in an apartment. Investigations were followed by a court order to conduct anal tests to "prove" their homosexuality.¹⁴

Other forms of torture are very commonly used against LGBTI individuals or individuals perceived as such, such as "*falaqa*" (beating the victim with sticks, batons, or whips on the soles of the feet), "*al-farrouj*" ("the chicken", under which the victim's hands are tied behind their back while the soles of his feet are beaten), "*al-watwat*" ("the bat", making the victim walk on all fours until she reaches the entrance of the room while kicking her from behind).¹⁵ Torture is practiced in order to extract confessions from the victims but also constitutes a form of punitive measure.

Lastly, other recurrent humiliating treatments are the verbal and psychological violence and abuse, since most arrestees who were LGBTIs or perceived as such reported being harassed. In an example, a transgender person reported having been arrested in Raouche and brought to the police station where he was photographed by the supervising officer who sent videos of him to his friends, asked him to perform oral sex, and made him sleep tied to a chair in the interrogation room for three days.¹⁶ In another case, an individual was deprived of access to his medication for nine months.¹⁷ All these practices amount, to torture or at least cruel, inhuman or degrading treatment.

Recommendations:

1. Ensure Lebanese law criminalises torture when it is inflicted not only in order to confess a crime but also on grounds of discrimination;
2. Ensure perpetrators of torture are brought to justice.

2.8 Violence against children

Physical abuse remains extremely concerning for Lebanese as well as non-Lebanese children, with 89% of children reportedly being exposed to physical violence. Additionally, there is legal ambiguity as article 186 PC authorises non-violent discipline at home while leaving it undefined, while the Juvenile Law No. 422 protects children from violence.

¹² Helem, "*Homosexual Relations in the Penal Codes: General Study Regarding the Laws in the Arab Countries with a Report on Lebanon and Tunisia*", 2010, <http://www.helem.net/node/188>.

¹³ Human Rights watch, "*Lebanon: Syrian Refugee's account of Torture. Detained, Beaten, Abused on suspicion of being gay*", 21 December 2016, www.hrw.org/news/2016/12/21/lebanon-syrian-refugees-account-torture.

¹⁴ Georges Azzi, "*Lebanon's LGBT community is still suffering abuses*", 25 August 2014, <https://now.mmedia.me/lb/en/reportsfeatures/561407-more-needs-to-be-done-to-protect-the-rights-of-lebanons-lgbt-community>.

¹⁵ Human Rights Watch Report, "*It's part of the job*", *Ill-treatment and Torture of Vulnerable Groups in Lebanese Police Stations*, see no 1.; Sarah Wansa, "Torture at Every Stage: The Unofficial Narrative of the Hammam al-Agha Raid", *Legal Agenda*, 12/11/2014, available on <http://legal-agenda.com/en/article.php?id=3043>.

¹⁶ Sarah Wansa, "*Detained Transgender in Lebanon: This is What Happened to Me*", see no 5.

¹⁷ Interviewed individuals by *Proud Lebanon*, 2016.

Furthermore, research has revealed that being the child of a migrant positively correlates with being subjected to violence and to experience certain types of child abuse and mistreatment.¹⁸ Children of migrants are more likely to be subjected to sexual abuse and neglected than Lebanese children. Indeed, many undocumented children of migrant workers of a certain age are subjected to arrest and detention when they lack appropriate identification papers. Once arrested, they often experience abuse and discrimination in detention centres. For fear of detention, many undocumented children are confined to the house and have substantial limits on their freedom of movement.¹⁹

In 2014, the General Security enacted a policy of mass deportations of children of migrants. Lebanon's General Security started refusing to renew their permit and subsequently detained and deported children of migrant workers who were born and raised in Lebanon.²⁰ The justification for this measure was that "migrant workers were in Lebanon to work and not to have children". In many cases, children were deported with one of the parents while the other parent stayed in Lebanon, breaking down the family.²¹ In fact, the General Security insisted on deporting children although those children reputedly asked to be allowed to stay in Lebanon, exhausting all administrative channels to appeal the General Security's decision. Children who were to be deported were sometimes detained and subjected to inhumane and degrading treatment. Many Insan beneficiaries have specifically confirmed that children of migrants were held with their parents in the underground General Security facility in Adlieh where more than 40 individuals were held in one cell with no access to fresh air or daylight. The facility has relocated in late 2016, but the conditions of detention of the new facility remain unknown.

Recommendations:

1. Bring the policies of the General Security and internal security forces in line with international agreements prohibiting the detention of children for residence related issues;
2. The General Security must explore alternatives to detention which meet international human rights standards;
3. The General Security must revoke all decisions to deport children of migrant workers born on Lebanese soil. Children of migrant workers who are born in Lebanon must be given the uncontested right of residence until they turn 18 years old;
4. Enact and effectively implement a law clearly prohibiting the use of any type of violence against children to reduce the incidence of violence against children and combat the acceptance of violence directed against children at home and at school.

2.9 Human trafficking

In 24/8/2011, the Lebanese Parliament passed an anti-trafficking law no. 164 that would amend the Lebanese PC and CCP to specifically address the crime of human trafficking. However, there has been no harmonization between the new law and the existing administrative regulations. In fact, administrative regulations which have been in place for a long time fosters conditions that encourage and facilitate human trafficking. This contradiction between the law and administrative regulations is evident in two instances: the residency system of migrant domestic workers, known as sponsorship or *kafala* system, and the *artiste* visa, which is given to approximately 3,000 women who perform in nightclubs in Lebanon.

In Lebanon, there are approximately 250,000 migrant domestic workers who fall under the sponsorship system. These women come to Lebanon from Afro-Asian countries and typically come on a two-year job contract. The status of migrant domestic workers is entirely dependent on their employer; if they leave their employer, they automatically lose legal status and as a result face a high likelihood of being detained by General Security. Those residency conditions have known to facilitate trafficking and discourage lodging complaints against traffickers, giving them *de facto* immunity.

¹⁸ Insan, *Shattered Dreams: Children of Migrant Domestic Workers in Lebanon*, 2015.

¹⁹ Insan, *Unprotected Childhood*, 2014.

²⁰ Insan, *Shattered Dreams: Children of Migrant Domestic Workers in Lebanon*, 2015.

²¹ *Ibidem*.

Even when domestic workers are able to escape their traffickers or their exploitative employers and lodge a complaint, access to justice is almost never assured. General Security has often times pursued a policy of “mediation” when a migrant domestic worker files a complaint against her employer, even in suspected trafficking cases.²² While this “mediation” is ongoing, the worker is usually kept in administrative detention or placed at a NGO-operated closed shelter. The process is typically concluded when the employer agrees to pay the flight and the worker is deported to her country of origin against her wishes; in very few cases General Security is able to get the worker her unpaid wages. This means however that employers are effectively given immunity for torture, inhumane and degrading treatment, even the more so as an extremely low number of cases of labour trafficking or of sex-trafficking of migrant workers ever make its way to court.

In one very severe case that Insan Association has documented, a worker has sought the protection of the police and asked to file a complaint after her employer enslaved and sexually exploited her. This worker was referred to General Security who contacted the employer and asked him to provide a plane ticket to deport the worker; she was deported before Insan was given an authorization to visit her.

Other concerns relate to the *artiste* visa system, a set of directives governing the conditions of entry for foreign male and female artists into Lebanon were issued in 1962. These directives target, in particular, the approximately 3,000 female “artists” who enter Lebanon each year and work in “super nightclubs”. These directives subjected the “artists” to moment-by-moment control (encompassing their dancing hours, sleeping hours, and hours for “outings” with supposed clients).²³ These restrictions contradict the many principles enshrined in Lebanese and international laws, including the freedom of movement and work to encourage and facilitate trafficking. These so-called artists are allowed to stay in Lebanon for a maximum period of six months, which is how long it takes to pay the debts stemming from the transactions associated with traveling to and from Lebanon and residency within it. Consequently, they usually stay within the same exploitation ring and must relocate with it to work in another country.²⁴

A recent reoccurring concerning phenomena is the trafficking of young Syrian women for sexual exploitation. In early 2016 and in a much publicised incident, the Internal Security Forces were able to dismantle and arrest a sex trafficking ring that exploited more than 75 women, mostly Syrian, many of whom were underage.

Despite significant improvements in the detection and prosecution of cases, victim protection has lagged behind. Victims are still prosecuted for crimes (or even violations) committed as direct result of trafficking, including illegal entry and illegal stay.²⁵

Recommendations:

1. Harmonise Law No. 164 with other laws and regulations and cancel administrative directives that encourage and facilitate trafficking;
2. Remove restrictions on the freedom of movement of women who come under the *artiste* visa and enact measure in accordance with international and Lebanese Laws;
3. Consider Migrant Domestic Workers as subject to the Labour Law;
4. Disentangle the status of migrant domestic workers from their employers, especially in cases in which they are suspected of violations, and provide migrant workers specifically and victims of trafficking generally with a temporary visa until the dispute is settled in court;
5. Increase efforts to protect victims of trafficking including signing memorandum of understanding with open shelters that meet international minimum standards and ensure that victims are not detained;

²² US Department of State, *Trafficking in Persons Report: Lebanon*, 2016.

²³ Legal Agenda, *Human Trafficking in Lebanon: A Shocking Reflection in the Mirror*, 2016.

²⁴ *Ibidem*.

²⁵ US Department of State, *Ibid*.

6. Refrain from prosecuting victims for crime or violations that are committed as a direct result of being trafficked including illegal entry and stay in Lebanon.

2.10 Excessive use of force against protestors

Freedom of expression and the right to peaceful assembly are one of the main tenants of a vibrant democracy and are enshrined in article 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Freedom of expression and the right to freedom of assembly are also protected under article 13 of the Lebanese Constitution.

At the same time, international law allows, in prescribed circumstances, that protests and assemblies may be dispersed, and in even more prescribed circumstances, may be dispersed by the use of force. Such use of force is strictly regulated by international law, especially the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

During the past few years, peaceful protests in Lebanon were met with excessive use of force by the security forces. The most prominent examples occurred during the Waste Management Demonstrations which started on 17 July 2015. Due to the closure of the Naameh landfill, more and more household, industrial and medical waste started to pile up in the streets. Because the government did not undertake any action to solve the crisis, a movement of activists arose under the name "You stink". This movement took the streets protesting against the alleged mismanagement of the crisis, and the delays in finding solutions to it. With additional delays on prospective solutions to the crisis, demonstrations of the movement escalated and united a large portion of concerned citizens. On 19 August 2015, a demonstration marked a turning point, when the Lebanese police violently dispersed the peaceful gathering.

This violent reaction from the State led to an even large scale participation in the demonstration held on 22 August. That day, the Internal Security Forces (ISF) violently repressed the protestors, without first resorting to non-violent means before employing force, as required by Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The protestors, who were mainly formed of young people and families with children, were dispersed with water cannons, rubber bullets, batons and sticks in addition to rounds of tear gas canisters. Protestors who tried to reach the Nejmeh Square from Riad el Solh were repeatedly exposed to water cannons and tear gas, while protestors who tried to reach the Nejmeh Square from the Martyr Square were blocked by units from the Parliament security battalion who were shooting live bullets in the air. The ISF started arresting protestors, and the organisers of "You Stink" announced an open ended demonstration which would be continued the day after, 23 August. Again, the gathering was violently repressed, ISF responding similarly as the day before with tear gas, rubber bullets and water cannons.

Due to the excessive force used by the ISF during the demonstrations, many protestors were reported to be injured, one severe case of bleeding necessitating blood transfusion was admitted to Clemenceau medical Centre, and led at least 50 protestors to be hospitalised according to Lebanese Red Cross officials.

During the months of September and October 2015, excessive force was used against peaceful protestors, including children with their parents, beating them and using tear gas and water cannons spraying protestors for more than five hours to disperse the crowd gathered in front of the Parliament. In October 2015, seven protestors were reported to be wounded, and 35 protestors were said to have been treated for tear gas inhalation.

The use of batons on unthreatening groups composed of peaceful protestors, unarmed women, parents with children, and individuals with disabilities, is neither necessary nor proportionate and clearly illustrates an unlawful use of force. The type of equipment used failed to be carefully considered in a proportional and lawful manner. Less-lethal weapons such as rubber bullets and tear gas were excessively used in closed streets, in a proximate range and sometimes directly on protestors. Furthermore, police officers could not be identified by name or number tag, resulting in an inability to track violators and file a complaint in front of an impartial investigative body.

Recommendations:

1. Ensure that unlawful use of force will not be used again against peaceful demonstrators;
2. Prohibit the use of lethal weapons such as firearms and shotguns, ensure that less-lethal weapons are not used excessively against protesters, and carefully consider the type of to be used in a proportionate and lawful manner;
3. Ensure that police officers can be identified by name or number tag, in order for protesters victim of excessive use of force to have the ability to file a complaint before an impartial investigative body;
4. Ensure that ISF officials are accessible to communication, and are able to effectively communicate with protesters; the decision to disperse must be clearly communicated and feedback of understanding should be granted, while reasonable time should be given prior to dispersing.

2.11 Training and measures to prevent torture

Certain law enforcement agencies have certainly committed to taking measures to counter torture, such as the Internal Security Forces, which established a department of human rights and a committee against torture. This committee was created with the aim to reduce acts of torture and to punish perpetrators. As such, when a victim of torture is identified, a report is sent to the Internal Security Forces committee against torture, which is mandated to follow up on the allegation. However, it has been noted that the ISF committee against torture fails to adopt a victim friendly complaint mechanism, is unable to react to pervasive torture, and most importantly is unable and unwilling to transparently report on the cases it has followed up on. To solve these problems, it would need to have an independent committee which can interfere without any limitations or boundaries. Furthermore, the issue is that there is no such mechanism for other law enforcement agencies such as the Lebanese army which is mostly responsible for the acts of torture.

In a positive step, in October 2016, the Lebanese Parliament passed legislation for the creation of a national preventative mechanism to monitor and investigate the use of torture and ill-treatment (NPM), as part of the National Human Rights Institute (NHRI).²⁶

In 2016, Ajem and UNDP tried to organise training to the ISF Committee against torture members. The training included different important topics such as national and international legal frameworks, the negative effect of torture on the victim, the perpetrator and the society and other topics that would help to reduce the practice of torture and other ill-treatments inside detention facilities. The goal of the training was to stop using torture as an investigative tool during the arrest and investigation and to have a better understanding and implementation of the law. Unfortunately, few days before the beginning of the training, it was rejected by the ISF which did not provide any explanation.

Recommendations:

1. Ensure the ISF committee against torture adopts a victim friendly complaint mechanism and that it ensures transparency of its work, including publishing statistics on the cases received and their outcome;
2. Ensure an independent mechanism mandated to monitor all places of detention without the need of a prior authorisation and without providing further notice is established, such as a National Preventive Mechanism, as the law enacted by the Lebanese Parliament on 19 October 2016 requires;

²⁶ Human Rights Watch, 'Lebanon, events from 2016', *World Report*, <https://www.hrw.org/world-report/2017/country-chapters/lebanon>.

3. Ensure law enforcement officials, judges and lawyers receive trainings on the prohibition of torture, and on how to detect and investigate cases in which confessions are obtained under torture.

2.12 Impunity for acts of torture

Article 12 UNCAT requires State parties to investigate thoroughly, promptly and impartially any allegation of torture. However, the dozens of testimonies gathered by Alkarama have shown that judges, both in civil courts and in military courts, systematically reject the torture allegations brought to their attention and subsequently refuse to open an investigation. Similarly, even when victims show the judge marks they still have on their bodies as a result of torture, no investigation is ever opened.

Alkarama is particularly concerned that no proper investigations were opened into serious allegations of military abuse against detainees in connection with the fighting between the Lebanese army and the armed Fatah Al Islam group in 2007, in the Nahr Al Bared refugee camp, despite the National Report stating the opposite.²⁷ Alkarama documented more than 300 cases of torture of Nahr Al Bared detainees and work in close contact with their lawyers, but could not receive any substantial information that the alleged torturers were investigated or penalised.

Persecution of officials responsible of torture is jeopardised by the fact that according to article 27 of the Code of Military Justice, crimes committed by members of the army and other security officers can only be investigated, prosecuted and punished by the military court. However, the latter falls under the jurisdiction of the same Ministry of Defence and the majority of its judges are appointed by and remain subordinate to the same Ministry, so that this cannot be considered to be an independent mechanism.

Recommendations:

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

2.13 Absence of redress for victims of torture and effective remedy, denial of the right to reparation

Article 14 UNCAT gives the victim of torture the right to redress. Therefore, the Lebanese State is required to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.”

The establishment of a rehabilitation program for victims of torture and ill-treatment in accordance with General Comment No.3 is a crucial function towards torture eradication. In this regard, the Ministry of Public Health – in collaboration with the partners of the National Mental Health Program, WHO, UNICEF, and International Medical Corps – has launched the National Strategy for Mental Health and Substance Use 2015-2020. Restart had an input in this strategy regarding prisoners and victims of torture.

The Mental Health and Substance Use Prevention, Promotion, and Treatment Strategy highlights Lebanon’s vision and objectives for the coming six years. The strategy mentions that the goal of targeting vulnerable groups is “to improve access to equitable evidence-based mental health services –

²⁷ State party report, para. 352.

preventive and curative – for all persons belonging to vulnerable groups living in Lebanon.” These interventions will focus on ensuring that they “receive comprehensive and equitable mental health services.” Additionally, the strategic objective for survivors of torture is to “train mental health providers working with survivors of torture on properly and timely assessing, documenting and managing the impact of torture on the mental health of the survivors and their families.”

While this is a welcomed progress, major concerns remain. In particular, this strategy is not consistent with international standards on the right to rehabilitation for victims of torture and ill-treatment as outlined in article 14 UNCAT and General Comment No. 3 of the Committee against Torture, and it is not developed clearly in terms of the treatment model and what is expected from mental health rehabilitation services to reach on the individual level. It should thus be revised in order to respond to the requirements of article 14.

Currently, the Lebanese Government does not provide torture rehabilitation services and does not provide victims of torture with reparations, i.e. restitution, compensation, rehabilitation satisfaction and guarantees of non-repetition as stated in the General Comment No.3. NGOs are playing this role by providing torture survivors with rehabilitation and mental health services based on a holistic approach consisting of medical and psychological care as well as legal and social services in order to restore as far as possible their independence on the physical, mental and social level in addition to reinstate their vocational ability, as well as their full inclusion and participation in society.

Recommendations:

1. The Lebanese law should stipulate that victims of torture and ill-treatment receive rehabilitation services that available, accessible and appropriate in accordance with article 14 UNCAT and HRC resolution No. 22/21;
2. Family members of victims of torture should benefit also from rehabilitation services based on holistic approach.

3. Conclusion

As the present report highlighted, the use of torture in Lebanon, including against vulnerable persons, is the result of a legal framework not compliant with the CAT standards and the disrespect of fundamental guarantees. Moreover, preventive measures remain ineffective to tackle the problem while perpetrators enjoy impunity. Finally, inmates are held in inhumane conditions of detention and those who are victims of torture are denied their right to have proper redress for the violations suffered.

It is noteworthy that the current security situation further affects the trends and practices of torture in Lebanon. Indeed, social and political tolerance for the use of violence and torture diminishes any public opinion’s effort to put pressure on the authorities to abolish the practice of torture, especially during the investigation stage.

The undersigned organisations therefore hope that the concerns raised in this report will be addressed constructively during the dialogue between the Committee against Torture and the representatives of the State Party in order to ensure Lebanese authorities put an end to torture and other violations of human dignity and miscarriages of justice.