

LEBANON

I. INTRODUCTION

1. Legal Framework

1.1. The Constitution

Lebanon has a population of over three million people, with several ethnic and religious communities, mainly of Muslim and Christian faith.¹

Lebanon was established in its present borders in 1920 and gained effective independence in 1945.

According to the Constitution, adopted on 23 May 1926 and amended on 21 August 1990, Lebanon is a parliamentary democratic republic based on respect for public liberties, social justice and equality of rights and duties.² The Constitution contains only a limited number of civil and political rights, such as the right to personal liberty, freedom of belief, expression, education and movement.³ It does not include an express right to life or a right to freedom from torture, nor does it include a right of access to justice.

The judiciary is based on the civil (Roman law) system, and the courts of general jurisdiction are divided into civil and criminal branches, being composed of first instance courts, courts of appeal and the Court of Cassation. The Court of Cassation is the highest court for all civil, criminal and commercial law cases. There is also a Judicial Council, a recently established court that operates as an original and final jurisdiction in cases of sensitive criminal offences of a political nature. The administrative court system is known as the Council of State (*Conseil d'Etat*), comprised of 6 chambers. In 1993, the Constitutional Council was established. It is competent to examine the constitutionality of legislation but is not empowered to receive and adjudicate individual petitions.⁴ Military Courts have broad jurisdiction over offences committed by members of the army but also over civilians.⁵

The Constitution guarantees the independence of the judiciary.⁶

¹ See Core Document forming the first part of the reports of states parties: Lebanon, UN Doc. HRI/CORE/1/Add.27/Rev.1, 3 October 1996.

² See Preamble of the Constitution.

³ See Chapter II, Articles 6-15 of the Constitution.

⁴ See Article 19 of the Constitution and on the judicial system, Core Document, supra, paras. 44-47.

⁵ See Article 27 of the Military Code 24/68.

⁶ See Article 20 of the Constitution. However, "no decision for the purpose of appointment, promotion or transfer of any judge can be taken without the approval of the Minister of Justice (the Council of Ministers) being the last recourse for such decisions in case of conflicting positions." See Georges J. Assaf, The Application of International Human Rights Instruments by the Judiciary in Lebanon, in: Eugene Cotran and Adel Omar Sherif (eds.), *The Role of the Judiciary in the Protection of Human Rights*, CIMEL Book Series No.5, Kluwer Law International, 1997, pp. 81-92, at 83.

1.2. Incorporation and status of international law in domestic law

Lebanon has become a party to the following relevant human rights and humanitarian law treaties:⁷

- Geneva Conventions (10 April 1951)
- Genocide Convention (17 December 1953)
- CERD (12 November 1971)
- ICCPR (3 November 1972)
- ICESCR (3 November 1972)
- CRC (14 May 1991)
- CEDAW (21 April 1997)
- Additional Protocols I and II to the Geneva Conventions (23 July 1997)
- Convention against Torture (5 October 2000)

International treaties ratified by Lebanon⁸ become an integral part of domestic law upon exchange of or deposit of instruments of ratification or accession.⁹ The automatic incorporation takes effect upon publication of the treaty in the *Journal Officiel* (Official Gazette). Customary international law is also part of the law of the land. Rules of international law that are binding as a matter of international treaty or customary law are self-executing and can be directly invoked in the course of legal proceedings if they are sufficiently specific and concrete. In case of a conflict between national and international law, the judges are directed to accord priority to international law.¹⁰

Lebanese courts have applied international treaties in their jurisprudences and the Court of Appeal has held that they have an exclusive competency to interpret international treaties in cases involving individual rights and freedoms.¹¹ Thus, the ICCPR and the Convention against Torture are directly applicable in Lebanon.

2. Practice of torture: Context, Occurrence, Responses

2.1. The practice of torture

All parties in the 1975 – 1990 war, including the regular armies of neighbouring countries (Israel and Syria), are reported to have committed serious human rights

⁷ Date of accession or receipt of instrument

⁸ See Article 52 of the Constitution: “[Negotiation of International Treaties] The President of the Republic negotiates international treaties in coordination with the Prime Minister. These treaties are not considered ratified except after agreement of the Council of Ministers. They are to be made known to the Chamber whenever the national interest and security of the state permit. However, treaties involving the finances of the state, commercial treaties, and in general treaties that cannot be renounced every year are not considered ratified until they have been approved by the Chamber.”

⁹ Assaf, Application of International Human Rights Instruments, supra, p. 85.

¹⁰ Article 2 of the Code of Civil Procedure. However, a Court is not empowered to declare a law invalid on the grounds that it contravenes the Constitution or international conventions. See for references for jurisprudence in this regard, Assaf, Application of International Human Rights Instruments, supra, p. 86.

¹¹ Ibid, pp. 87, 88.

violations, such as torture and disappearances.¹² Torture was systematically practiced by the South Lebanon Army, the Israeli backed militia forces operating in South Lebanon, especially in the Khiam prison, until May 2000 when Israeli troops left South Lebanon.¹³

There have been several of reported incidents of torture and ill-treatment. The perpetrators of torture are generally members of the police and the armed forces. Many of these cases involve members of the security services which consist of the Lebanese Armed Forces (LAF), having the power, but not necessarily the right, to arrest and detain suspects on national security grounds; the Internal Security Forces (ISF), which enforces laws, conducts searches and arrests, and refers cases to the judiciary; and the State Security Apparatus and the *Suret  Generale*, both of which collect information on groups deemed a possible threat to state security. The victims are generally political opponents, Islamic activists, foreign workers, illegal immigrants and those suspected of having committed crimes, especially drug trafficking. Violent abuse usually occurs during the preliminary investigations that are conducted at police stations or military installations, where suspects are interrogated while held incommunicado, often for several weeks.¹⁴ There have also been several cases of rape in custody and other forms of violence by state officials against women accused of criminal or political offences. Reportedly, a large number of foreign women domestic workers have been systematically ill-treated, and in some instances tortured, by state officials. This has invariably occurred when these women complained to the police and others about their ill-treatment at the hands of their employers.¹⁵

2.2. Domestic Responses

Lebanon has recently ratified the Convention against Torture and adopted a new Code of Criminal Procedure, which contains an express prohibition of torture as well as safeguards against torture. However, no steps have been taken to make torture a specific offence in criminal law.

There has been sporadic human rights training for law enforcement officials and judges, especially on the minimum standards of treatment of prisoners. The Institute for Human Rights in Beirut has also provided human rights training for lawyers and judges.

The Parliamentary Committee for Human Rights, set up in 1994, is the only public body with a mandate to deal with human rights issues. It may investigate complaints about

¹² See for more detail, Amnesty International, *Lebanon: Human Rights Developments and Violations*, October 1997, AI-index: MDE 18/019/1997, pp.3 et seq.

¹³ Amnesty International, Lebanon/Israel: *Amnesty International welcomes Khiam releases, calls for respect for human rights standards*, 23 May 2000, AI Index MDE 02/005/2000, News Service Nr.96: "Amnesty International today welcomed the liberation of 144 Lebanese detained as hostages for up to 15 years in Khiam Detention Centre by Israel and its proxy militia, the South Lebanon Army (SLA). For 16 years, Lebanese detainees have been held without charge or trial and systematically tortured in Khiam Detention Centre. For seven years the detainees were held cut off from the outside world, even banned access to their families and the International Committee of the Red Cross (ICRC). 'At last the prisoners, men, women and even children, have left this centre of torture and injustice', Amnesty International said."

¹⁴ See Amnesty International, *Lebanon: Excessive force and torture by security forces must be investigated*, Press Release, 30 January 2003, AI Index: MDE 18/004/2003 (Public) and Amnesty International, Report 2002, p. 155.

¹⁵ See Amnesty International, *Lebanon-Torture and ill-treatment of women in pre-trial detention: a culture of acquiescence*, August 2001, AI Index MDE 18/011/2001.

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human rights violations but only has the power to issue recommendations. To date, the Committee has not played a significant role in torture cases.

2.3. International Responses

Torture and ill-treatment continue with impunity, despite the concerns raised by the United Nations Human Rights Committee in 1997 over "well substantiated allegations of acts of torture and cruel, inhuman and degrading treatment committed by the State party's police, Lebanese security forces and ... the occurrence of arbitrary arrest and detention, searches operated without warrants, abusive treatment of individuals deprived of their liberty, and violations of the right to a fair trial."¹⁶ No investigations appear to have been made following the Human Rights Committee's call on the government to "investigate the credible allegations of instances of ill-treatment and torture which have been brought to the Committee's attention."¹⁷ The Special Rapporteur on Violence against Women recently expressed her concern about reports of torture and ill-treatment committed against women.¹⁸

The Working Group on Enforced or Involuntary Disappearances noted, in 2002, that "while understanding the difficult situation in Lebanon, the Working Group remains concerned that only 2 out of 312 reported cases (of disappearances, the majority of which occurred in 1982 and 1983) have been clarified by the Government. It wishes to remind the Government of its obligation under article 2 of the Declaration not to practice, permit or tolerate enforced disappearances even if such acts are allegedly carried out by the authorities of another state. It is the obligation of the Government of Lebanon to take all effective legislative, administrative, judicial or other measures to prevent, terminate and investigate all acts of enforced disappearance in any territory under its jurisdiction and to bring the perpetrators to justice."¹⁹

II. PROHIBITION OF TORTURE UNDER DOMESTIC LAW

There is no specific prohibition of torture in the Lebanese Constitution.

The new Code of Criminal Procedure contains a prohibition of "physical or moral violence" during interrogations and prohibits coerced confessions, but does not expressly mention torture.²⁰ Confessions obtained through the use of prohibited means are invalid.²¹

¹⁶ Concluding observations of the Human Rights Committee: Lebanon, CCPR/C/79/Add.78, 1 April 1997, para. 16.

¹⁷ Ibid.

¹⁸ Report of the special rapporteur on violence against women, its causes and consequences, submitted in accordance with Commission on Human Rights resolution 2000/49, Ms. Radhika Coomaraswamy, UN Doc. E/CN/2002/83/Add.1, 28 January 2002, paras.55-71.

¹⁹ Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. E/CN.4/2002/79, 18 January 2002, paras.200 and 201.

²⁰ Articles 41 and 47 CCP.

²¹ Article 47 CCP.

Torture, as defined in Article 1 of the Convention against Torture, is also prohibited by virtue of the direct applicability of the Convention. There is, however, no jurisprudence where Article 1 of the Convention has been invoked or applied by courts.

III. CRIMINAL ACCOUNTABILITY OF PERPETRATORS OF TORTURE

1. The Substantive law: Criminal Offences and Punishment

There are several criminal offences that could be applied in lieu of a specific crime of torture.²² Extorting of confessions by unlawful means carries a punishment of three months to three years imprisonment. If the violence used results in a disease or injury, the minimum punishment is a one year prison term.²³

A person who is responsible for striking and wounding which has not caused injury or has caused less than 10 days incapacity, is liable to up to six months imprisonment or a fine of 10,000 - 50,000 Lebanese pounds or both. The penalty may be increased by up to one year imprisonment or a fine of 100,000 pounds or both if the incapacity lasts for more than 10 days.²⁴ If it lasts for more than 20 days, the penalty ranges from three months to three years imprisonment in addition to the above-mentioned fine.²⁵ In the event of mutilation, the maximum penalty provided is 10 years imprisonment with forced labour.²⁶

According to Article 550 of the Penal Code, any person who unintentionally causes the death of another, through beating, assault or other acts of violence, will be liable to a minimum punishment of five years hard labour. The minimum sentence is seven years hard labour if the act was accompanied by any of the aggravating circumstances laid down in Article 549 of the Penal Code, such as the use of ill-treatment or cruelty.²⁷

Article 569 of the Penal Code penalises the deprivation of liberty by abduction or any other unlawful means. This article was amended by Decree-Law No. 112 of 16 September 1983 to cover new cases of abduction in connection with the armed conflicts in the country. The language provides for a sentence of forced labour or imprisonment for life, *inter alia*, (a) where deprivation of liberty exceeds one month and (b) where the person deprived of his liberty has been subjected to physical or psychological ill-treatment. The sentence is capital punishment rather than life imprisonment or an

²² While the Convention against Torture is in theory directly applicable, there is no case law on the question as to whether Article 1 and 4 of the Convention would be a sufficient legal basis for the conviction of a perpetrator for the offence of torture.

²³ Article 401 Penal Code: "*quiconque, dans le but d'obtenir l'aveu d'une infraction, ou des renseignements sur une infraction, aura soumis une personne a des rigueurs non autorisées par la loi sera puni de 3 mois à 3 ans d'emprisonnement. Si les violences exercés ont entraîné une maladie ou des blessures, le minimum de la peine sera d'un an.*"

²⁴ Article 555 Penal Code.

²⁵ Article 556 Penal Code.

²⁶ Article 557 Penal Code.

²⁷ Article 549 (4) Penal Code.

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increase in the length of imprisonment by 1/3 or 1/2 where the offence caused the death of a person as a result of fear or any other related cause.²⁸

Rape carries a minimum punishment of five years imprisonment.²⁹ Rape in custody is not expressly considered to be an aggravating circumstance. Homicide is punishable by 15 to 20 years imprisonment and murder is punishable by death.³⁰

Disciplinary sanctions are provided by the codes applying to the respective forces.

2. The Procedural Law

2.1. Immunity

There is no amnesty law that covers acts of torture specifically. However, following the end of the war, Law 84 of 26 August 1991 granted a general amnesty for crimes committed prior to 28 March 1991. It granted amnesty for all crimes committed by militias and armed groups during the civil war. The amnesty covers, *inter alia*, political crimes (196-199 of the Penal Code), other crimes as specified (Article 569, paras. 1-4) and crimes under the Military Penal Code (Articles 107-171). It therefore covers certain offences that involve torture, such as Article 569 of the Penal Code.³¹ The fact that acts constituting violations of human rights have not been expressly excluded from the scope of the amnesty laws has been criticized by the Human Rights Committee.³²

2.2. Statutes of Limitations

The period of limitations is three years for offences deemed to be petty crimes and ten years for criminal offences.³³ Those offences that could be applied in lieu of a specific offence of torture are subject to prescription after ten years.

2.3. Criminal Investigations

A victim of a crime can file a complaint with the police, the examining magistrate or the public prosecutor (Prosecution Office at the court of appeal).³⁴ Such a complaint must be

²⁸ See also, Article 570 of the Penal Code, which provides for a lesser punishment when the person deprived of his/her liberty was released within 24 or 72 hours and no further offence was committed.

²⁹ Article 503 Penal Code.

³⁰ Articles 547 and 549 of the Penal Code respectively. According to Article 549 (4) of the Penal Code, intentional killing by means of ill-treatment or with cruelty constitutes murder.

³¹ See *supra*, III, 1.

³² See Concluding Observations, *supra*, para.12: "The Committee notes with concern the amnesty granted to civilian and military personnel for human rights violations they may have committed against civilians during the civil war. Such a sweeping amnesty may prevent the appropriate investigation and punishment of the perpetrators of past human rights violations, undermine efforts to establish respect for human rights, and constitute an impediment to efforts undertaken to consolidate democracy."

³³ Article 10 Code of Criminal Procedure.

filed immediately to the examining magistrate's office. This complaint must include all details such as personal information, a detailed account of the offence committed, details concerning the alleged offender, and, if applicable, information about his arrest.³⁵

Investigations are carried out by judicial officers (*Dabita al-'adliyya, Police judiciaire*) who operate within the police and the gendarmerie. The judicial officers are under the jurisdiction of the Public Prosecutor's office (*Niyaba*), the examining magistrate (*Qadi al-tahqiq, Juge d'instruction*) and the Court.³⁶ There is no specific agency charged with investigating allegations of torture.

Public officials cannot be prosecuted unless authorisation is given by their superior. There are exceptions in cases of flagrant crimes.³⁷ The victim of the crime cannot appeal the decision of the superior as it falls within the discretionary power of the government. However, this power is presently being challenged in the case *Aboukhalil vs State*, which is pending before the Beirut Court of Appeal.

The competent investigative authorities are obliged to investigate all of the complaints that are received. Complaints may be made to an examining magistrate or to a prosecutor of the *parquet general* (general prosecutor's office) attached to the Court of Appeal, for cases of severe assaults and murder. If a complaint is lodged with the examining magistrate, the latter will proceed to investigate the matter, and bring it to trial as appropriate.³⁸ The *parquet general* is in charge of investigating criminal complaints relating to the conduct of public officials and the preliminary findings of examining magistrates in respect of serious crimes.³⁹ In the course of the investigation, the magistrate can order an inquiry or a medical examination.⁴⁰ A defendant, upon arrest, has the right to undergo a medical examination, and such request should be lodged with and immediately granted by the prosecutor. The medical examination is to be carried in the absence of any judicial police and the doctor has to submit the report of the examination to the prosecutor within 24 hours. The detainee has the right to request a new medical examination throughout his/her detention.⁴¹ In cases of death in custody or in other suspicious circumstances, a prosecutor may order an autopsy to be carried out.⁴²

³⁴ Article 68 CCP. There is a Prosecution Office at every Court of Appeal in each province (Mohafazat) and a General Prosecutors Office at the Court of Cassation. The General Prosecutor supervises the work of the Prosecution Offices seated in provinces.

³⁵ Article 68 CCP. If a case is filed before the judge, authorisation to prosecute, see below, should be presented together with the complaint.

³⁶ Article 38 CCP.

³⁷ Article 40 of Decree No.1460 of 8 July 1971. The authorisation is not required in cases of flagrant offences according to Ref. Directive No.6/2000 issued by the Office of the General Prosecutor on 14 February 2000. This directive determines the procedures for prosecution of members of the ISF, the *Sûreté Générale* and the state security.

³⁸ Article 151 CCP.

³⁹ Article 5 CCP.

⁴⁰ See Article 77 CCP. They can have recourse to medical expertise to verify the condition of the person interrogated if he/she claims during questioning that he/she is suffering from a physical, psychological or mental illness.

⁴¹ Article 47 CCP.

⁴² There are no specific provisions on autopsies in the Code of Criminal Procedure.

The conclusions of the investigation are transmitted to the prosecutor who can, in cases where there is evidence that the offence constitutes a crime, order the arrest of the suspect(s) pending the official result of the investigation.⁴³ If the crime is not proven, the file is sent back to the prosecutor who then has a week to re-examine the evidence and represent the victim's point of view.⁴⁴ If the prosecutor decides to close the investigation, the victim may appeal this decision to the court of appeal Court within 24 hours or file a case before the competent penal court.⁴⁵ If there are sufficient grounds to do so, the prosecutor will transmit the file to the *parquet general*, and the matter will be brought to the attention of the court.⁴⁶

There is no specific legislation granting protection to victims of human rights violations or crimes in general.

2.4. Trials

Cases relating to torture are heard by penal courts.⁴⁷ Military courts have jurisdiction under the Military Code to try criminal offences committed by members of the army whether in the exercise or outside the scope of their duties.⁴⁸

Proceedings are inquisitorial and are largely based on the civil law system.⁴⁹ The guilt of the accused has to be proven beyond reasonable doubt. Victims of crime have the right to call witnesses, request expert witnesses and ask for documents to be produced. The court has discretion as to which measures to take in delivering judgment.⁵⁰ The President of the Republic may grant a particular pardon but general amnesties have to be decreed by law.⁵¹

3. The Practice

There are no available statistics on the number of complaints lodged before the competent bodies in relation to torture and ill-treatment or the number of cases brought to trial and their outcome. Victims of torture, in particular detainees, appear to have refrained from complaining out of fear of repercussions. This is particularly so when detainees appear before the examining magistrate. They are in some cases accompanied by the very judicial officers who are responsible for the torture. Lawyers

⁴³ Article 44 CCP.

⁴⁴ Article 121 CCP.

⁴⁵ Article 135 CCP.

⁴⁶ Articles 121 and 125 CCP.

⁴⁷ Article 2 CCP.

⁴⁸ See Article 2 of Military Code No.24/68.

⁴⁹ See Articles 253-256 of the Penal Code.

⁵⁰ See Articles 622 to 681 of the CCP.

⁵¹ Article 53 (9) of the Constitution.

have also been reluctant to take on cases of torture victims to avoid potential harassment. Members of the military arrested several lawyers in August 2001. Procedures are often drawn out over several years and this is a further disincentive to victims, as is the very small number of cases in which perpetrators have been convicted. Many of the investigations that have been carried out have been inconclusive. This has been attributed to a lack of will on the part of the prosecution to investigate allegations of torture. On a positive note, in August 2001, authorities appointed a judge from the Prosecutor General's Office to investigate allegations into the torture and ill-treatment of women in pre-trial detention.⁵²

Even though victims have a right to consult a doctor while in detention, medical examinations are reportedly not carried out adequately and the authorities responsible for investigations have in most cases not ordered the required medical examinations upon receiving complaints of torture.⁵³

Judges have only rarely taken a proactive stance when allegations of torture have been raised in the course of proceedings. In one noteworthy case, the Criminal Court of Bekaa, in a judgment issued on 20 June 1996, ascertained that the defendant had been tortured and referred the case to the General Prosecutor after identifying the members of the judicial police that were responsible.⁵⁴ Subsequently, the prosecution found no evidence of torture, despite the fact that the torture survivor was permanently paralysed.⁵⁵ The only action taken by the authorities in respect of this particular case was the imposition of disciplinary sanctions. In other cases, courts have either disregarded allegations of torture or not called for further investigations even though examining magistrates are empowered to do so.⁵⁶ In spite of the constitutional guarantees, there are concerns about the independence of the judiciary as judges are appointed by the executive branch of the government upon nomination by the High Judicial Council.⁵⁷

There have been few trials of those accused of torture. On 22 April 1995, a single penal judge of Baabda, sentenced three members of the internal security for torturing a prisoner in Beiteddine prison to death. They were sentenced to 10 days imprisonment each. The fact that the victim's father had withdrawn the complaint was taken into consideration as a mitigating factor. Since 2001, five cases have been filed against alleged perpetrators as part of a scheme instituted by a team of lawyers. The scheme was devised to support victims of torture in bringing complaints and pursuing their

⁵² The preceding paragraph is based on information provided by Georges Assaf, Attorney-at-Law, Director, Institute for Human Rights, Beirut Bar Association, and AI, Lebanon, Torture and ill-treatment of women, *supra* and AI, Report 2002, Lebanon, p.155.

⁵³ See case studies in AI, Lebanon, Torture and ill-treatment of women, *supra*, pp.13 et seq.

⁵⁴ See Assaf, Application of International Human Rights Instruments, *supra*, p.90.

⁵⁵ AI, Human Rights Developments, *supra*, p.23.

⁵⁶ See AI, Lebanon, Torture and ill-treatment of women, *supra*, pp.13 et seq.

⁵⁷ See *ibid.*, pp.24, 25 and the concern about the independence and impartiality of the State party's judiciary expressed by the Human Rights Committee in 1997, *supra*. Following an amendment to the law in 2002, in case of conflict between the two bodies, the Higher Judicial Council takes the final decision.

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cases.⁵⁸ To date, none of these cases has resulted in a conviction. The first case related to a woman who was tortured by the police in Hobeiche. The medical certificate confirmed that torture had been inflicted. The only action taken was the imposition of disciplinary punishments (one week detention). Following a complaint, the prosecutor advised the complainant after several months of inaction, that no action could be taken without prior authorisation by the General Director of the Security Forces. The court of first instance dismissed a further action that had been brought subsequently by the torture survivor, which included a claim for damages. This decision is presently under appeal, on the basis that no prior authorisation is required in cases of flagrant crimes, in accordance with the new Code of Criminal Procedure, and furthermore, that the Convention against Torture should be applied as it supersedes internal legislation.

In the second case, the victim died in detention under suspicious circumstances, and, according to witnesses, his body had scars evidencing torture. The family of the deceased requested the military prosecutor to exhume the body to carry out an autopsy. A military tribunal rejected a request for a hearing of the doctors who had examined the victim before his detention. A further appeal to the military Court of Cassation (which has jurisdiction for appeals against decisions issued by the military Court) was also rejected. The parents of the victim are presently preparing a civil lawsuit. In the third case, a person accused of peddling drugs who was eventually acquitted of all charges alleges to have been severely tortured in pre-trial detention by two officers of the police station in Hobeiche. A criminal complaint against the two accused officers, including a claim for damages, is currently pending before the Military Court. In the fourth case, military officers are alleged to have inflicted torture in the course of an investigation. The case was eventually abandoned after having been brought before the competent court because the victim pulled out of proceedings. The final case, relating to a woman who was subjected to torture, is pending before the court of appeal. In all of the above-mentioned cases, evidence has been particularly difficult to obtain and victims have faced intimidation not to testify.

IV. CLAIMING REPARATION FOR TORTURE

1. Available Remedies

1.1. Constitution

The Constitution does not provide for a right to reparation for victims of torture nor does it provide remedies for breaches of fundamental rights.

1.2. Public Law

Individuals whose rights have been infringed by a wrongful act by a public official may claim compensation from the Government, if necessary, by referring the matter to the Council of State if the act in question is considered to be service-related.⁵⁹ There are no

⁵⁸ This paragraph is based on information provided by one of the lawyers participating in the case scheme.

⁵⁹ Article 61 of the Act implemented by Decree No. 10434 of 4 June 1975 on the Organization of the Council of State.

specific criteria for damages which are awarded on a case by case basis. However, this public law remedy is confined to instances when the act in question is considered to be within the scope of his/her official duties. It is therefore doubtful whether such remedy could be invoked in torture cases and there has been no precedent to this end.

1.3. Civil Law

A civil claim for compensation could be based on a tort (délit) which is fault-based.⁶⁰ The individual and the state would be jointly liable, and the liability of the state is vicarious.⁶¹ Damages are awarded for pecuniary and non-pecuniary harm.⁶² Exemplary and punitive damages may also be awarded at the discretion of the court.⁶³ Relatives of a person who has died from torture may also claim damages covering the resulting losses.⁶⁴

A claim for damages must be brought before the competent civil court within ten years.⁶⁵ The claimant has to advance expenses and court fees.⁶⁶ The Bar Association offers legal aid on a pro bono basis. This service is conditional on the decision of the competent court of appeal to qualify the case for legal aid.⁶⁷

A government authorisation is required to file a suit against individual government officials but not for a suit brought against a state authority. Proceedings are adversarial in nature. The plaintiff carries the burden of proof concerning the commission of the delict and the amount of damages claimed.⁶⁸ The decision in the civil case depends on the outcome of any related criminal case.⁶⁹ Court fees and costs follow the ruling.

1.4. Criminal Law

A victim who is constituted as a civil party may claim reparation in the course of the criminal trial.⁷⁰ The State is represented by the office of the prosecutor. The victim or his representative may file a complaint to the prosecutor or directly to the Court.⁷¹ This complaint must include the name of the defendant as well as an account of the facts and the amount of damages. The claim must be made personally.⁷² The procedure is

⁶⁰ Article 122 Civil Code.

⁶¹ Article 162 of Decree No.112/59.

⁶² Article 134 Civil Code.

⁶³ Article 259 Civil Procedure Code.

⁶⁴ Article 134 (2) Civil Code.

⁶⁵ Article 349 Civil Code.

⁶⁶ See Article 10 of the Code governing legal costs and expenses (*Code de frais et dépens de justice*) according to which the plaintiff has to pay ¼ of the claimed amount as court fees.

⁶⁷ See Article 425 Civil Procedure Code.

⁶⁸ Article 132 Civil Procedure Code.

⁶⁹ Article 8 CCP.

⁷⁰ Article 68 CCP.

⁷¹ Ibid.

⁷² Article 443 CCP.

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governed by the Code of Criminal Procedure,⁷³ and the burden of proof lies on the victim.⁷⁴

The damages that can be awarded are of a monetary nature. The Court has discretion in calculating the quantum and may take into account the characteristics of the victim and the degree of physical and mental pain suffered.⁷⁵

2. The Practice

There are no known cases where victims of torture have been compensated for their injuries or pain and suffering. The main obstacle to a successful claim is the requirement of a criminal conviction. There have been no convictions of perpetrators of torture in Lebanon. Other hurdles include the fear of threats and harassment and the major resources and energy required to pursue the case.

In the course of the case scheme mentioned above, three claims for damages have been lodged as part of the criminal proceedings and these are pending.⁷⁶

V. GOVERNMENT REPARATION MEASURES

There is no government reparation scheme for victims of serious human rights violations or for victims of crime in general.

A Commission of Inquiry was set up by the Lebanese government in January 2000 to examine disappearances during the civil war. The Commission supported the demand by the families of the disappeared for compensation and rehabilitation to be provided by the Lebanese government, but also by Israel and Syria for those who disappeared in territories under their control.⁷⁷ The mandate of the Commission expired in 2002 but the chairman, Minister Fuad El Saad, has to date not presented a report of its findings. No further steps have been taken.

There is one independent torture treatment centre - the Restart Centre, based in Tripoli, and a programme for the rehabilitation of victims of torture at Balamand University under the Faculty of Medical sciences which operates according to a referral system, to physicians or lawyers acting on a pro bono basis.

⁷³ Article 68 CCP.

⁷⁴ Article 132 of the Civil Procedure Code also applies to civil suits brought in the course of criminal proceedings.

⁷⁵ Article 259 Civil Procedure Code.

⁷⁶ See for details, *supra*, III, 3.

⁷⁷ See Amnesty International, *Lebanon: Truth is a necessary part of reconciliation*, 3 August 2000, AI Index MDE 18/011/2000.

VI. LEGAL REMEDIES IN CASES OF TORTURE COMMITTED IN THIRD COUNTRIES

1. Prosecution of acts of torture committed in third countries

1.1. The Law

1.1.1. Criminal Law

Lebanese law recognises the active personality principle,⁷⁸ and allows for the exercise of universal jurisdiction. Article 23 of Section IV (*De la compétence universelle*) of the Penal Code stipulates that: "Lebanese law shall apply to any foreign national in Lebanese territory who, as perpetrator, instigator or accomplice, has committed, in a foreign country, a crime or offence ... respect of whom no application for extradition has been applied for or granted."⁷⁹ While Lebanese law does not apply to acts committed abroad which are not a crime in Lebanon, this arguably does not cover acts of torture by virtue of the direct applicability of Article 5 of the Convention against Torture. However, perpetrators of crimes committed abroad are not to be prosecuted if a final judgment has been entered against them or if any period of limitations for enforcement of any sentence that was imposed has lapsed or the person has been pardoned.⁸⁰

Diplomats and heads of states are granted immunity from criminal prosecution according to the Law on Diplomatic Immunity.

1.1.2. Extradition Law

Extradition is carried out on the basis of extradition treaties and according to general principles of international law.⁸¹ Torture is in principle recognised as an extraditable crime. However, the relevant provisions of the Convention against Torture have not yet been applied in practice.

1.2. The Practice

No cases are known in which Lebanon's courts exercised jurisdiction over torture committed in third countries or extradited an alleged perpetrator of torture. The reverse scenario of the exercise of universal jurisdiction over international crimes committed in Lebanon, namely the Sabra and Shatila massacre in Beirut in September 1982, has been

⁷⁸ Article 20 of the Penal Code for crimes committed by Lebanese nationals and Article 21 for crimes committed by Lebanese officials, including diplomats and consuls.

⁷⁹ See Amnesty International, *Universal Jurisdiction, The duty of states to enact and enforce legislation*, September 2001, AI Index: IOR 53/007/2001, Chapter Four, Part B, II and Chapter Ten.

⁸⁰ Article 27 of the Penal Code.

⁸¹ See Articles 15-30 Penal Code.

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prominent in the case lodged by survivors against Ariel Sharon (and others) in Belgium.⁸²

2. Claiming reparation for acts of torture committed in third countries

The Lebanese Civil Procedure Code of 1985 provides that in principle, rules governing internal-Lebanese conflict of jurisdictions are to be applied for conflict of international jurisdictions.⁸³ The basic rule is that the competent court is the court of the domicile of the defendant, unless another court is competent under a specific rule.⁸⁴ Therefore, a case can only be brought if the person responsible for the acts of torture resides in Lebanon. If the Court has jurisdiction on this basis, Lebanese law would be applied.

Victims of torture committed abroad could also claim compensation in the course of any criminal proceedings instituted against perpetrators of torture in Lebanon according to Article 23 of the Penal Code.

Diplomatic personnel enjoy immunity in accordance with the Immunity Act. Foreign states enjoy immunity in line with present customary international law.

⁸² Documents on this case are available on the website of the Universal Jurisdiction Information Network, www.universaljurisdiction.info (forthcoming).

⁸³ Article 74 Civil Procedure Code.

⁸⁴ Article 97 Civil Procedure Code.