

**THE SPECIAL
TRIBUNAL FOR
LEBANON:
SELECTIVE
JUSTICE?**

**AMNESTY
INTERNATIONAL**



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1. INTRODUCTION

On 1 March 2009, the Special Tribunal for Lebanon will formally convene for the first time in The Hague, two years after it was established by the UN Security Council and four years after the assassination, on 14 February 2005, of former Lebanese Prime Minister Rafiq al-Hariri. The massive bomb explosion on the Beirut seafront that targeted his passing motorcade killed 22 people in addition to him, including bodyguards and bystanders, and injured 220 others.

The assassination set in train a series of events that changed the political landscape in Lebanon, including the accession to power after elections in May and June 2005 of a coalition led by Sa'ad al-Hariri, son of the assassinated former prime minister, and grouping together an alliance of Sunni Muslim and other political parties who had become increasingly opposed to Syrian influence in Lebanon, and the withdrawal of all Syrian military forces from Lebanon by the end of April 2005.

Shortly after the assassination, the UN despatched a fact-finding mission to enquire into the killing and the Lebanese authorities' investigation into it. It noted the negative role of Syrian Military Intelligence and of the leadership of the Lebanese security services in the country and found the investigation to be seriously flawed. The Security Council agreed with the mission's recommendation for an independent investigation, and established the UN International Independent Investigation Commission (UNIIC). This was later charged also with investigating certain other targeted killings and attacks. The Lebanese authorities arrested several high-ranking Lebanese intelligence officials and others, some of whom continue to be detained although, at least as yet, no charges have been brought against them.

The UNIIC has published 11 reports, the latest in December 2008. It is now ceasing its work and handing over responsibility for further investigations to the Special Tribunal, which has jurisdiction to try those accused of responsibility for the killing of Rafiq al-Hariri and other associated killings and crimes if found to be related. However, indictments are not expected to be issued for months.

The Special Tribunal is essentially a Lebanese national court that has some international components, in that it comprises both Lebanese and international judges while applying national law for the definition of crimes. However, it will sit in The Hague, as agreed by the Dutch government, partly due to security reasons.

The decision to establish both the UNIIC and, subsequently, the Special Tribunal marks an important break from the pattern of impunity of the past in Lebanon, which has seen perpetrators of political killings and other gross violations of human rights able to escape accountability for their crimes over many years. Thousands of Lebanese from across the country's different confessional and political groups have been victims of politically

motivated killings and enforced disappearances during the civil war of 1975-1990 and thereafter. The perpetrators continue to benefit from virtually total impunity due to the inaction of successive governments in the face of demands for truth and justice made by the families of the disappeared and others. Indeed, amnesty laws passed by the Lebanese authorities in 1991 and 2005 specifically block the possibility of bringing to justice those responsible for political killings and other gross abuses committed, let alone obtaining the truth and the degree of closure that it can help provide.

At the same time, the Special Tribunal's limited mandate and jurisdiction immediately suggests that it will be seen by some as an example of selective justice, according to which the perpetrators of the killing of Rafiq al-Hariri and a relatively small number of other attacks will be brought to justice while the perpetrators of many other similar crimes continue to escape all accountability. Consequently, it is vital for the credibility of the Special Tribunal not only that it conducts itself in full conformity with international standards for fair trial but that complementary measures are taken by the Lebanese authorities to address grave human rights crimes that are not within the jurisdiction of the Special Tribunal. Many of these were committed before the assassination of Rafiq al-Hariri but they have yet to be investigated and their perpetrators have yet to be brought to account.

This briefing describes the background to the establishment of the Special Tribunal and its mandate and procedures, so far as they have yet been determined, taking into account other international tribunals and tribunals with a mixed national and international dimension. It briefly describes the legacy of grave human rights abuses in Lebanon that has still to be addressed, and which fall outside the mandate of the Special Tribunal, as well as recent violations of human rights and deficiencies in the justice system which the Lebanese authorities have failed adequately to address, and recommends specific measures to overcome this gaping deficit. Such action by the Lebanese government is urgently needed to break the cycle of impunity that has for so long protected the perpetrators of human rights violations in Lebanon. It is needed both to complement the work of the Special Tribunal and, most especially, to show that the Special Tribunal is only one part of a wider process of turning the page on the abuses of the past and of ensuring equal access to justice for all victims of human rights violations.

2. BACKGROUND

Rafiq al-Hariri, a Sunni Muslim and self-made billionaire businessman, was prime minister of Lebanon from 1992 to 1998 and again from 2000 to 2004. He was assassinated during a tense political period. In September 2004, the presidency of Emile Lahoud had been controversially extended by a further three years, leading to the resignation in protest of four government ministers. One of these, Marwan Hamade, narrowly escaped an assassination attempt on 1 October, which left him seriously injured and killed his bodyguard. On 4 October 2004 Rafiq al-Hariri resigned as prime minister.

Four months later he was assassinated in Beirut, the victim of a clearly well-planned and orchestrated killing. A large bomb was detonated as he was driving past, killing him and his bodyguards and other people in the vicinity and injuring scores of others. The killing sent shockwaves through the country and abroad, sparking popular protests. Many speculated that the Syrian authorities might have been involved in the killing, as Rafiq al-Hariri had become increasingly in confrontation with representatives of Syria, whose military forces and intelligence agents had for almost 30 years played a potent role in Lebanon and were deemed one of the few actors capable of carrying out such a devastatingly accurate attack.

The Lebanese government resigned after losing a vote of confidence in parliament in late February and there were enormous demonstrations in Beirut, notably on 8 and 14 March by opposing political factions, which, in contrasting ways and combined with international pressure, helped usher the Syrian armed forces out of Lebanon, the last soldiers leaving on 26 April 2005. Elections held between 29 May and 19 June were won by a political alliance of the Future Movement, led by Sa'ad al-Hariri, son of the assassinated former prime minister, and other political parties. Fouad Siniora, a close friend and former business colleague of Rafiq al-Hariri, became prime minister.

The decisions by the UN Security Council, in 2005, to establish the UNIIIC to investigate the killing of Rafiq al-Hariri and, subsequently, in 2007, to create the Special Tribunal were deeply contentious within Lebanon, reinforcing divisions and underlining wider concerns about justice and impunity. The determination of key members of the Security Council, a political body, to ensure that the killing of Rafiq al-Hariri was investigated properly and that its perpetrators would be prosecuted was seen to contrast with the failure of the international community to insist on justice and accountability in the context of the civil war in Lebanon, in which thousands of people were killed for political reasons or subjected to enforced disappearance. It was also seen by many to contrast with the UN's perceived inaction during and after the 2006 conflict between Israel and Hizbullah, during which some 1,000 Lebanese civilians and 43 Israeli civilians were killed and tens of thousands of Lebanese homes and other civilian infrastructure were destroyed. The contrast sharpened a sense that justice had been politicized.

A complex country of four million people located between two powerful neighbours, Syria and Israel, Lebanon has been beset through its history by terrible violence and frequent upheaval, driven by both internal and international tensions. External forces have supported, opposed and played upon these tensions and struggles. Political alliances within Lebanon and with external allies have evolved and shifted considerably, coalescing over the last few years into two distinct political camps whose rivalry came to a head over the establishment of the Special Tribunal.

One group, widely known as the March 14 coalition, includes Sunni Muslims led by Sa'ad al-Hariri and Prime Minister Fouad Siniora, Druze supporters of Walid Jumblatt, and up to half of the Christian community. Often referred to as "anti-Syrian", "pro-Western" or "Saudi Arabian-backed", the March 14 coalition has been a strong advocate of international involvement in the investigation and prosecution of the assassination of Rafiq al-Hariri and certain other killings. In contrast, the March 8 coalition, led by Hizbullah, a Shi'a Muslim organization, and including at least half of the Christian community, is often referred to as "pro-Syrian" and has generally either opposed or shown itself to be extremely wary of such international involvement, considering this to be driven by the USA and France. US policy, in particular, is seen by this faction as pro-Israeli and, consequently, anti-Syrian and anti-Hizbullah.

Lebanon's constitutional provisions were bypassed in the establishment of the Special Tribunal. Although on 13 November 2006 the draft agreement for the Tribunal was approved by the Lebanese cabinet and eight days later by the Security Council, the cabinet's decision was made in the absence of six resigned ministers, five of them Shi'a, which arguably rendered the decision unconstitutional. Later, on 30 May 2007, when the Security Council narrowly adopted resolution 1757 to bring into force the agreement to set up the Tribunal, the agreement had not been ratified either by the Lebanese parliament or by then President Emile Lahoud.

The national unity government, formed in July 2008 and including representatives of both the March 14 and March 8 coalitions, has stated that it supports the Special Tribunal; however, it appears clear that there remains considerable suspicion about the Tribunal within Lebanon.

3. INVESTIGATIONS PRIOR TO THE SPECIAL TRIBUNAL'S INAUGURATION

An investigation into the assassination of Rafiq al-Hariri on 14 February 2005 was opened by the Lebanese judicial authorities on the day of the killing. The case fell under the jurisdiction of the Military Court and the investigation was initially led by Judge Rashid Mazhar. The Council of Ministers, which considered the crime a terrorist act targeting the Lebanese Republic, referred the case to the Justice Council, which deals with cases of state security and is Lebanon's highest criminal court. The court's chief judge, Michel Abu Arraj, consequently took over responsibility for the investigation from Judge Mazhar on 21 February.

With the agreement of the Lebanese government, the UN Secretary-General sent a fact-finding team, which arrived in Beirut on 25 February, to inquire into the causes, circumstances and consequences of the assassination. After meeting Lebanese officials and politicians, reviewing the Lebanese investigation and legal proceedings, and examining the crime scene and evidence collected by Lebanese police, the team issued a report on 24 March. This stated that the fact-finding team had found serious flaws in the Lebanese investigation, whose deficient mismanagement of the crime scene had led to important evidence being removed or destroyed without record, and whose examination of the key suspect vehicle had displayed "gross negligence" and that it had "neither the capacity nor the commitment to succeed". The fact-finding team's report concluded "that an international independent investigation would be necessary to uncover the truth", while noting, however, that it was "more than doubtful that such an international commission could carry out its tasks satisfactorily... while the current leadership of the Lebanese security services remains in office." It also pointed to the negative role of Syrian Military Intelligence.¹

The UN Security Council agreed with the conclusion and consequently, on 7 April and with the approval of the Lebanese government, established the UN International Independent Investigation Commission (UNIIC). The UNIIC was created with the purpose of assisting the Lebanese authorities in their investigation of all aspects of the killing of Rafiq al-Hariri. Its mandate was later repeatedly expanded to cover other killings and assassination attempts since 1 October 2004. It was headed at first by Detlev Mehlis, a senior German prosecutor, later by Serge Brammertz, a Belgian national and former Deputy Prosecutor at the International Criminal Court, and then by Daniel Bellemare, the former Deputy Attorney General of Canada. In its 11th and latest report to the Security Council, published on 2 December 2008, the UNIIC stated that it had provided technical assistance to the Lebanese authorities in investigating 20 attacks in addition to the case of Rafiq al-Hariri. The UNIIC said that a network of individuals acted in concert to carry out the assassination of Rafiq al-Hariri and that this network was linked to some of the other cases with which it was involved.²

In the majority of cases, the UNIIIC provided assistance to the Lebanese investigations following a request to the Security Council by the Lebanese government. In two cases, however, those of the killings of Major François al-Hajj and Major Wissam Eid, the UNIIIC's involvement stemmed from a direct invitation from the Security Council. It is not clear why the UNIIIC's involvement in these two cases was authorized differently nor how decisions were taken as to which killings and assassination attempts the UNIIIC was asked to assist in and which it was not.

In its reports, the UNIIIC has outlined the types of technical assistance it has provided to the Lebanese authorities, as well as progress and information on the cases it has helped investigate and an assessment of the cooperation it has received from both the Lebanese authorities and authorities of other states, such as Syria. The UNIIIC's technical assistance has focused on seven substantive areas: crime analyses; legal analyses; forensic analyses and investigation; identification of next investigative steps; gaps and areas of strengths; horizontal inter-case crime analyses; and capacity building measures.³

At least 10 individuals have been arrested in apparent connection with the investigations. The four of them who remain detained are former heads of Lebanese intelligence and security services, who were arrested on 30 August 2005: General 'Ali al-Hajj (Internal Security Forces); General Raymond Azar (Military Intelligence); Brigadier General Jamil al-Sayyed (Sûreté Générale); and Mustafa Hamdan (Presidential Guard). Three others who were arrested, Ahmad 'Abd al-'Aal on 28 September 2005, Mahmoud 'Abd al-'Aal on 21 October 2005 and Ibrahim Jarjoura in January 2006, were held for over three years, reportedly on suspicion of making false statements to the UNIIIC, before they were ordered to be released on bail on 25 February 2009. The remaining three who were arrested were also later released: Ayman Tarabay and Moustafa Talal Mesto, who were detained from 13 September 2005 until their release on bail in August 2008, and Ghassan Tufayli, a Military Intelligence officer who was arrested in November 2005 after being named in the first UNIIIC report of 20 October 2005.

4. THE SPECIAL TRIBUNAL

The Special Tribunal for Lebanon starts operation on 1 March 2009, having been established by UN Security Council resolution 1757 of 30 May 2007. The resolution followed the signing of an agreement between the UN and Lebanon on the Tribunal's establishment and the drafting of its Statute earlier in 2007. The agreement was never ratified by the Lebanese parliament because of a deadlock between the two main opposing political blocs, the March 8 and March 14 coalitions, over the issue, leading Lebanese Prime Minister Fouad Siniora to request that the UN Security Council put the Tribunal into effect.

The Special Tribunal is essentially a Lebanese national court that has some international components, in that it comprises both Lebanese and international judges while applying national law for the definition of crimes. The Special Tribunal will sit in The Hague in the Netherlands, partly for security considerations.

The UNIIIC's mandate ends on the eve of the inauguration of the Special Tribunal, which will continue investigations conducted by the UNIIIC without interruption. Information that the UNIIIC has gathered will be handed over to the Special Tribunal, according to Article 19 of its Statute.

4.1 MANDATE

The mandate of the Special Tribunal is defined by Article 1 of its Statute, which grants it jurisdiction to investigate and then prosecute the alleged perpetrators of the killing of Rafiq al-Hariri and 22 others. It also has jurisdiction over other killings and assassination attempts committed between 1 October 2004 and 12 December 2005, or a later date to be determined by the UN and Lebanon with the consent of the Security Council, but only if it finds them to be connected to the assassination of Rafiq al-Hariri and of a similar nature and gravity. The factors which may determine such a connection include, according to Article 1, "a combination of the following elements: criminal intent (motive), the purpose behind the attacks, the nature of the victims targeted, the pattern of the attacks (modus operandi) and the perpetrators".

The mandate is by far the narrowest of any tribunal of an international nature. It has no jurisdiction to address the enormous number of other serious human rights violations committed in Lebanon in recent years or decades, raising concern that the justice being promoted is politically selective.

4.2 STRUCTURE AND COMPOSITION

The Special Tribunal will consist of four organs: the Chambers, the Prosecutor, the Registry and the Defence Office. The Chambers will be composed of one international pre-trial judge, a trial chamber consisting of one Lebanese and two international judges and the appeals chamber consisting of two Lebanese, three international and two alternate judges (one

Lebanese and one international). Daniel Bellemare was appointed as the Prosecutor by the UN Secretary-General in November 2007, the same time he was appointed Commissioner of the UNIIIC, after consultation with the Lebanese government and upon the recommendation of a selection panel. The Registry, dealing with administrative and operational matters, is run by the Registrar. Robin Vincent of the United Kingdom, former registrar of the Special Court for Sierra Leone, was appointed to the position by the UN Secretary-General in March 2008. An independent Defence Office is mandated to act to protect the rights of the defence and is headed by an appointee of the UN Secretary-General, in consultation with the President of the Special Tribunal.

The Tribunal will include 11 judges, four from Lebanon and seven from other countries, who have been recruited using a selection panel appointed by the Secretary-General. In August 2007 the UN Secretary-General invited Lebanon and other states to submit nominations of judges. The selection panel then interviewed candidates and on 4 December 2008 submitted its recommendations to the UN Secretary-General, who accepted them. The Lebanese Supreme Council of the Judiciary had put forward to the Justice Ministry 12 nominees for the four Lebanese judges. For security reasons, the names are yet to be publicized. A possible weakness of the process is that the Statute of the Tribunal does not contain detailed criteria for appointments, such as the need for expertise and experience in international human rights and criminal law.

Fifty-one per cent of the expenses of the Tribunal are to be borne by voluntary contributions from states, while 49 per cent are to come from the Lebanese government.⁴ Registrar Robin Vincent announced at a press conference on 24 February 2009 that the finances of the Tribunal were “in an extremely healthy state”. However, the independence of the Tribunal may be affected if it ends up being perceived as having to rely on the funding of a few large donor countries. The experiences of the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia also demonstrate the uncertainty and operational problems that can result when states have failed consistently to make sufficient contributions.

Funding by the Lebanese government is problematic for two distinct reasons. On the one hand, a change in government in Lebanon could conceivably lead to a situation in which those in power favour halting or undermining the investigation, and might withhold funding. On the other, the financial burden of the investigation and Tribunal is considerable. On 24 February 2009 Registrar Robin Vincent stated that the Tribunal would have a budget of US\$51.4 million for 2009 and that Lebanon had already made a significant down payment. This would mean that the contribution of the Lebanese authorities would be several million dollars more than the yearly budget of its entire Justice Ministry. Many in Lebanon and elsewhere will be asking whether the investment in prosecuting the assassination of Rafiq al-Hariri and related attacks is proportionate, given the enormous number of other killings and grave human rights abuses that are not being investigated.

4.3 APPLICABLE LAW AND PROCEDURES

The Special Tribunal has jurisdiction to try only a limited number of crimes in Lebanese domestic law. Article 2 of its Statute stipulates that these are restricted to the “provisions of the Lebanese Criminal Code relating to the prosecution and punishment of acts of terrorism, crimes and offences against life and personal integrity, illicit associations and failure to

report crimes and offences, including the rules regarding the material elements of a crime, criminal participation and conspiracy.” Unlike other tribunals of an international nature, it has no jurisdiction over serious international crimes such as war crimes or crimes against humanity.

The Special Tribunal has the power to impose penalties leading up to and including life imprisonment. Penalties such as the death penalty and forced labour, which are otherwise applicable under Lebanese law, are excluded.

Unlike the case for certain other international tribunals of an international nature,⁵ the Statute of the Special Tribunal for Lebanon does not contain provisions limiting the immunity applicable to heads of state and sometimes other high-level government officials. Such immunity can relieve these officials, if they are accused, of criminal responsibility or constitute a ground, if they are convicted, for a reduction of their sentence. By contrast, Article 6 of the Statute specifies that amnesties shall not constitute a bar to prosecution before the Tribunal.

The Statute includes some procedural elements, but the main set of rules which the Tribunal's judges will apply will be set out in the Rules of Procedure and Evidence. A working group of experts was constituted in March 2008 to undertake preparatory work on drafting the Rules, which will be finalized and adopted by the judges as soon as practicable after they first convene. According to Article 28 of the Statute, they will deal with “the conduct of the pre-trial, trial and appellate proceedings, the admission of evidence, the participation of victims, the protection of victims and witnesses and other appropriate matters”. The official languages of the Tribunal are Arabic, English and French.

The rights of suspects during investigation and of the accused who appear before the Tribunal are set out in Articles 15 and 16 of the Statute, as well as the protections and fair trial provisions guaranteed by international law. It will be important that these rights are consistently respected in practice.

Under Article 22 of the Statute, trial proceedings can be conducted in the absence of the accused in certain scenarios, namely if he or she has “expressly and in writing waived his or her right to be present”; has “not been handed over to the Tribunal by the State authorities concerned”; or has “absconded or otherwise cannot be found and all reasonable steps have been taken to secure his or her appearance before the Tribunal and to inform him or her of the charges confirmed by the Pre-Trial Judge”. Amnesty International contends that trials should generally not be conducted in the absence of the accused, unless the accused has deliberately absented themselves from the proceedings *after* they have begun or has been so disruptive that they have had to be removed temporarily. Even then, video or audio links should be employed to allow the accused to follow proceedings. Consequently, in Amnesty International's view, if an accused is apprehended after being convicted in their absence for other than these two exceptional reasons, the verdict handed down in absentia should be rendered void and a new trial should be held before a different adjudicating panel.

Finally, the Tribunal has the authority to “identify victims who have suffered harm as a result of the commission of crimes by an accused convicted by the Tribunal”, according to Article 25 of the Statute, but it will be up to the victim to “bring an action in a national court or

other competent body to obtain compensation". There are two potential concerns here. One is that victims appear not to be able to claim reparations, whether financial compensation or other recognized forms of reparation such as restitution, rehabilitation, satisfaction and guarantees of non-repetition, directly from the Tribunal. The other is that there are no specific provisions for individuals who may be unlawfully arrested or detained in connection with the Tribunal's investigations to seek redress. In addition, it will be important that the term "victim" is interpreted widely to include all those "who have suffered harm", whether directly or indirectly, such as the case of family members of the victims of attacks.

5. LACK OF COMPLEMENTARY MEASURES TO ADDRESS IMPUNITY AND INJUSTICE

5.1 PAST VIOLATIONS

While the Special Tribunal for Lebanon focuses on certain serious crimes of recent years, there is a glaring lack of complementary measures to address the thousands of killings, forced disappearances and other grave human rights violations committed in Lebanon, by both Lebanese and foreign actors, in recent decades.

During the civil war of 1975-1990, at least 100,000 people are believed to have been killed by the various parties to the conflict and at least 17,000 enforced disappearances reported to have taken place. The Lebanese authorities have, however, taken almost no effective steps towards establishing truth and justice for the victims.

There is a similar situation of impunity for abuses committed during the presence of foreign military forces in recent decades. During the Israeli attacks of 1978, more than 1,000 civilians were killed and, during the 1982 Israeli invasion and subsequent occupation, a further 17,000 were killed. During the Syrian military presence of 1975-2005, hundreds more killings and enforced disappearances took place. However, to Amnesty International's knowledge, neither the Israeli nor Syrian authorities have satisfactorily investigated any such cases in which their forces were alleged to have been responsible for gross violations of international human rights or humanitarian law and the international community has shown no interest in opening inquiries at an international level.

5.2 RECENT AND ONGOING VIOLATIONS

Hundreds of civilians have been killed in political violence or armed conflict in Lebanon since 1 October 2004, the start of the temporal mandate of the UNIIIC and the Special Tribunal. Political violence has led to the deaths of: dozens of Syrian nationals who were reportedly killed in reaction to Rafiq al-Hariri's assassination; at least 40 civilians killed during armed clashes at the Nahr al-Bared refugee camp in 2007; and three protesters killed during a peaceful demonstration held on 29 June 2007 between the Nahr al-Bared and Beddaawi refugee camps. During the 2006 conflict between Israel and Hizbullah, some 1,000 Lebanese civilians were killed, hundreds of them children, and at least 28 civilians have been killed in the conflict's aftermath by unexploded cluster munitions fired by Israeli forces. However, the

Lebanese authorities remain unable or unwilling to prosecute the perpetrators and, in relation to the 2006 conflict, the international community has not acted to pursue justice either.

The role of the UN in investigating the killing of Rafiq al-Hariri and bringing to justice its suspected perpetrators was based on an acknowledgment that Lebanon's justice system suffers from a lack of independence and political impartiality. This and other failings have been well documented by UN bodies, Amnesty International and other human rights organizations, and publicly recognized by senior Lebanese politicians. However, the Lebanese authorities do not appear to have made concrete plans to address such shortcomings. Partly as a result of these deficiencies, allegations of grave human rights violations such as torture and other ill-treatment, arbitrary detention and violence against women are frequently reported.

Two court systems, the military courts and the Judicial Council, raise particular concerns. The UN Human Rights Committee recommended as long ago as 1997 that the jurisdiction of military courts should be curtailed and restricted to military crimes, and that civilians should no longer be tried before them. Trials before military courts have invariably fallen seriously short of international standards for fair trials, notably in that their judges are predominantly serving military officers who cannot be considered independent and lack adequate judicial training, and because military court judgments do not provide full explanations for their verdicts. The Judicial Council, for its part, is widely perceived to be influenced by political considerations in its functioning; it fails to provide for a right of appeal, even in death penalty cases, and its hearings are frequently subject to lengthy delays that undermine the right to fair trial.

Throughout the judicial system, however, concerns remain about torture and arbitrary detention and the impunity enjoyed by those who commit or order such violations. In the last few years dozens of detainees have reported that they were tortured or otherwise ill-treated in detention and the Lebanese authorities have failed, in almost all cases, to ensure that such allegations are investigated in a prompt, independent or impartial manner, as required by Lebanon's obligations under international human rights treaties such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In addition, "confessions" allegedly obtained under torture or duress, particularly while detainees are held incommunicado for interrogation, continue to be introduced and admitted as evidence against defendants in trials without courts adequately investigating the circumstances in which they were given or taking appropriate steps to ensure that they were not obtained under torture or duress.

The Lebanese authorities have generally failed to resolve the situation of detainees whose detentions have been ruled to be arbitrary by the UN Working Group on Arbitrary Detention in recent years. Six of 10 individuals whose detentions were declared to be arbitrary by the Working Group in November 2007 remain detained, four of them having been arrested in apparent connection with the investigation into the assassination of Rafiq al-Hariri.

Finally, partly because of other deficiencies in the judicial system, women in Lebanon continue to be inadequately protected from violence, particularly in the family and at their workplace. Some forms of violence are not adequately criminalized and perpetrators of so-

called “honour crimes” often escape punishment or receive lenient sentences. There is also widespread abuse of women migrant domestic workers by their employers, at least 45 of whom died from unnatural causes during 2008. Such cases are frequently not investigated properly and the perpetrators, therefore, are generally not brought to justice.

6. CONCLUSION AND RECOMMENDATIONS

6.1 CONCLUSION

The UNIIIC and the Special Tribunal for Lebanon mark an important break from the pattern of impunity that has so long persisted in Lebanon. Alone, however, they are an insufficient response. Unless they are accompanied by other measures there is a risk that they will be seen as a politically selective instrument and they will not gain the credibility and public confidence that they must have if they are truly to represent a shift towards greater respect for the rule of law in Lebanon. It is increasingly urgent that the Lebanese government puts in place complementary measures that address the legacy of other past, grave human rights abuses, as well as robust systems to address ongoing violations. If the Special Tribunal is left on its own to dispense selective justice there is even a risk that it will exacerbate the lines of political division within Lebanon and help to re-open the wounds of the past.

6.2 RECOMMENDATIONS

Amnesty International is making the following recommendations to the Lebanese government and asking the international community to support such initiatives:

- Address the legacy of grave human rights abuses, by:
 - establishing an independent commission of inquiry to investigate allegations of crimes under international law and other serious human rights abuses committed during the civil war period and its aftermath, and to make recommendations for addressing the legacy of past crimes and abuses taking into account the requirements of justice, truth and reparation;
 - repealing the amnesty laws of 1991 and 2005 so that past abuses can be investigated and prosecuted;
 - acceding to the Rome Statute of the International Criminal Court, the Agreement on the Privileges and Immunities of the International Criminal Court, and ratify the International Convention for the Protection of All Persons from Enforced Disappearance;
- Address ongoing violations of human rights, by:
 - remedying the situation of those detained apparently in connection with the Rafiq al-Hariri investigation whose detention has been declared arbitrary; they should be either

promptly charged with a recognizable criminal offence and brought to trial before a court whose procedures meet international standards of fairness or released;

- ensuring thorough, independent investigation of all allegations of political killings and attacks not considered to fall within the mandate of the Special Tribunal, including those allegedly committed in the context of the Nahr al-Bared conflict of 2007, and that those found responsible are brought to justice in fair trials and without recourse to the death penalty;
- enacting legislation to criminalize violence against women, including domestic violence and marital rape; establishing mechanisms to adequately protect women migrant domestic workers from abuse; and ensuring that perpetrators of violence against women, including so-called “honour crimes” and abuses against migrant domestic workers, are prosecuted and do not escape appropriate punishment;
- amending Article 401 of the Penal Code to criminalize all forms of torture, not merely physical violence, regardless of its objective, and to provide penalties appropriate to the grave nature of the crime;
- instructing all detaining authorities that torture and other ill-treatment are prohibited and will not be tolerated under any circumstances, and ensuring that all allegations of torture or other ill-treatment are promptly investigated by an independent and impartial body, and that those found responsible for torture or other ill-treatment are brought to justice;
- taking the opportunity of Lebanon’s welcome ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 22 December 2008 to set up an independent national mechanism for the prevention of torture and other ill-treatment which would have access to all places of detention in Lebanon;
- prohibiting incommunicado detention, and ensuring that detainees have prompt access to the outside world, including relatives, lawyers and all appropriate medical care;
- requiring that all persons are brought before an independent judicial authority promptly after arrest, are notified immediately of the reasons for arrest, and either formally charged or released within a reasonable time;
- removing civilian crimes from the jurisdiction of military courts and abolishing the Justice Council, thereby eliminating two major impediments to upholding the right to a fair trial.

ENDNOTES

¹ *Report of the Fact-finding Mission to Lebanon, inquiring into the causes, circumstances and consequences of the assassination of former Prime Minister Rafik Hariri, 25 February – 24 March 2005*, S/2005/2003, 24 March 2005.

² See the 11th report of the UNIIIC, S/2008/752, 2 December 2008, and the 10th report of the UNIIIC, S/2008/210, 28 March 2008.

³ See for example the 3rd report of the UNIIIC, S/2006/161, 14 March 2006, para 51.

⁴ Article 5 of the Agreement between the UN and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, annexed to UN Security Council resolution 1757.

⁵ See Article 27 of the Rome Statute of the International Criminal Court, Article 7 of the Statute of the International Criminal Tribunal for the Former Yugoslavia, Article 6 of the Statute of the International Criminal Tribunal for Rwanda, and Article 6 of the Statute of the Special Court for Sierra Leone.

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