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# “It’s Not the Right Place for Us”

The Trial of Civilians by Military Courts in Lebanon





# **“It’s Not the Right Place for Us”**

The Trial of Civilians by Military Courts in Lebanon

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## Summary

“It was the first time that I learned I could be treated this way,” said Tamara. “We were in a protest, what did we do? I had no idea that I could end up in front of a military court.”

Tamara is one of 14 protesters arrested at a demonstration in 2015 over Lebanon’s inability to solve a waste management crisis, and who are on trial before a military court facing three years in prison.

The military court system in Lebanon is an exceptional judicial system that falls under the jurisdiction of the Ministry of Defense. It has broad jurisdiction over civilians, including in cases involving espionage, treason, draft evasion, unlawful contact with the enemy (Israel), or weapons possession; crimes that harm the interest of the military or the internal security forces, or the general security; as well as any conflict between civilians and military or security personnel or the civilian employees of the Ministry of Defense, army, security services, or military courts. The military courts' broad jurisdiction means that civilians can end up in military court for any interaction with security services or their employees. Children are also tried before the military courts when they are accused of these crimes. According to the Union for Protection of Juveniles in Lebanon, 355 children were tried before the military courts in 2016.

Defendants, lawyers, and Lebanese human rights organizations have expressed concern that officials within the Ministry of Defense or Lebanese Army are using the overbroad jurisdiction of the military courts as a tool for intimidation or retaliation against political speech or activism.

One of the protesters facing trial before a military court said, “I was charged because I’m one of the known figures. I’m a very nonviolent person. They’re trying to set an example, so they say ‘we can arrest you and keep you in prison. If you raise your voice, we’ll shut you down.’”

In recent years, the military prosecutor has brought charges against human rights lawyers and activists who have spoken out about torture by the Lebanese military. In another case, a military court found a woman guilty of “offending the military institution” for telling a journalist that she had been raped and tortured in military custody.

The composition of the military courts and the system for the appointment of judges undermine the courts' competence, independence, and impartiality. Military judges are appointed by the Minister of Defense, and military judges on the courts are not required to have a law degree or legal training. Military personnel serving as judges remain subordinate to the Minister of Defense during their tenure. Furthermore, access to military court proceedings is restricted, which means that human rights organizations and journalists are not able to freely monitor the trials.

Individuals tried before the military courts and lawyers described a range of detainee rights and fair trial violations that they or their clients suffered before the military courts, including interrogations without the presence of a lawyer, ill-treatment and torture, incommunicado detention, the use of confessions extracted under torture, lengthy pretrial detention, decisions issued without an explanation, seemingly arbitrary sentences, and a limited right to appeal.

Human Rights Watch documented ten cases in which civilians being detained by military personnel said that they were tortured at various points during their detentions, including interrogations. In eight of these cases, detainees tried before the military courts on terrorism or security related offenses were tortured, forced to confess, and had their coerced confessions used as evidence against them in court. Suspects detained by the military are often held incommunicado and interrogated without the presence of a lawyer. Lebanese human rights organizations and lawyers described a troubling pattern of seemingly routine torture of detainees in military custody. In some of the cases documented by Human Rights Watch, the coerced confession was the only evidence of guilt presented against the accused. "I'm always worried about military investigations," one lawyer said. "There will always be some form of violence."

Lawyers who represent clients at the military courts and staff at Lebanese human rights organizations said that there is a higher incidence of torture in the military courts than civil courts because interrogations are conducted by military personnel, the types of allegations involved, such as terrorism, increase the likelihood of torture being used during interrogation, because of the absence of lawyers during military interrogations, and the often incommunicado nature of pre-charge military detention.

Survivors of torture described being subjected to beatings, psychological torture, electrocution, *balanco* [hanging a detainee by the wrists tied behind his back], and being ordered to sign statements while blindfolded. In one case, a woman told a journalist that she had been raped and tortured while in military custody. In another, a Syrian refugee who was apparently arrested on suspicion of being gay was subjected to an anal exam, a procedure that purports to provide “proof” of homosexual acts and a form of cruel, inhuman, and degrading treatment that may in some cases amount to torture.

Human Rights Watch also documented two cases in which military personnel tortured children and extracted forced confessions from them. Both children were tried in military courts. One mother said, “I screamed from under the ground when I saw him.... I couldn’t believe this was my son. You can’t describe it. His face was all bloodied, swollen, and blue. I barely had five minutes to see him, he begged me to get him out.”

Four Lebanese lawyers told Human Rights Watch that sentencing in the military courts is inconsistent and seemingly arbitrary, and that they have come to expect guilty sentences regardless of the evidence against their client.

According to Lebanese lawyers, there is only a limited right to appeal within the military court system, and the use of confessions extracted under torture in order to obtain a conviction is not considered grounds for appeal.

In a letter in response to questions from Human Rights Watch, the Ministry of Defense stated that, “The military judiciary in all of its statutes respects all national and international rules of law, especially what concerns respect for human rights.”

The United Nations Human Rights Committee and the UN Working Group on Arbitrary Detention have both held that military courts should not be used to try civilians. Civil society organizations in Lebanon have also long advocated for removing civilians from the jurisdiction of the military courts because of concerns about the lack of fair trials there.

Civilians should not be tried before military courts, where their rights are not protected, and children in particular should not be tried before military courts under any circumstances.

Lebanon should urgently reform the military court system by removing civilians and children from the military courts' jurisdiction and ensure that judges deem inadmissible all confessions and evidence obtained under torture. It should expressly guarantee the right to a lawyer during interrogation and criminalize all forms of torture. The Ministry of Defense should refer all allegations of torture to the public prosecutor and implement a policy of zero tolerance for all forms of torture and inhuman or degrading treatment. It should ensure all serving judges are fully independent and impartial, including ensuring that no judge is within the military chain of command.

## **Recommendations**

### **To the Lebanese Parliament**

- Amend article 24 of the Code of Military Justice of 1968 to remove civilians and all children from the jurisdiction of the military courts.
- Amend article 49 of the Code of Criminal Procedure to explicitly guarantee suspects the right to a lawyer during interrogation.
- Amend article 401 of the Penal Code to criminalize all forms of torture and ill-treatment. Adopt the Convention Against Torture's definition of torture.
- Fund and staff the National Human Rights Institute with qualified, independent experts and ensure that it is able to visit all places of detention in the manner and frequency with which it decides and without fear of sanction or reprisal.
- Amend the Code of Military Justice of 1968 to expressly remove military court judges from the military chain of command.

### **To the Ministry of Defense and the Military Court**

- Increase the transparency of proceedings within the military courts, including by providing basic information to the public on the number and status of cases involving civilians and by making proceedings open to the public.
- Ensure that detainees, upon admission to detention centers, are informed of and can exercise their right to speak with a lawyer, family member, or acquaintance; to meet with a lawyer; and to be referred to a judge promptly.
- Establish a centralized and accessible system for receiving and processing complaints of military personnel abuse of suspects or other malfeasance and ensure that complaints are trackable through unique complaint numbers.
- Refer all allegations of torture and ill-treatment received by the complaints mechanism, or otherwise known, to the public prosecutor and announce and publicly release the results of all investigations of torture and ill-treatment.

- Investigate and punish personnel who are found guilty of torture or ill-treatment, arbitrary detention, or failure to promptly refer a detainee to a judge.
- Ensure that judges deem inadmissible all confessions and other evidence obtained under torture.
- Mandate that independent doctors, who are not selected by officers at the detention facility in question, examine patients outside of the presence of army personnel, and record all indications of torture and other mistreatment. Include a copy of the physical examination report in suspects' case files.
- Ensure that all members of the Lebanese Armed Forces are clearly identifiable through name and rank tags on their uniforms at all times.
- Provide safeguards to protect female detainees from all forms of abuse, including gender-specific abuse, and ensure that female officers are present at all times during arrest, transfer, and interrogation of female detainees.
- Overturn all convictions of defendants that were based upon confessions extracted under duress.
- Ensure that social workers are able to access children in military detention and are present during interrogations of children as required by article 34 of Lebanon's Juvenile Law.

## **To the Ministry of Justice**

- Direct the office of the public prosecutor to investigate all torture and ill-treatment allegations against officials, regardless of rank or superior officer approval, and whether or not the victim or family has formally filed a complaint.

## **To the National Human Rights Institute and Preventative Mechanism**

- Conduct periodic monitoring of all places of detention including those under the auspices of the Ministry of Defense and submit any evidence of torture or ill-treatment to the public prosecutor.
- Monitor Military Court trials to guard against the use of coerced confessions and evidence extracted under torture to prosecute defendants.

## **To Donor Countries**

- Encourage the Lebanese government to implement the recommendations of this report.
- Audit funding and technical assistance provided to the Ministry of Defense to ensure that funding is not supporting policies, programs, or practices that violate international law, including torture and ill-treatment.
- Fund the National Human Rights Institute and Preventative Mechanism.
- Ensure that aid to the Ministry of Defense supports the development of internal oversight and accountability mechanisms within the Lebanese Armed Forces, including an independent body to investigate allegations of torture and ill-treatment.
- Refrain from funding Lebanese Armed Forces units that are credibly found to abuse human rights and make resumption of funding to such units subject to enactment of reforms that guarantee the cessation of such abuses and accountability for past violations.

## **To the Lebanese Authorities**

- Accept the request of the UN Special Rapporteur on the independence of judges and lawyers to visit Lebanon.

## Methodology

Research for this report was conducted between August 2014 and December 2016. Human Rights Watch conducted 41 interviews with individuals who appeared before the military courts, their family members, lawyers, judges, activists, and representatives from civil society organizations and the Lebanese government. Where possible, we corroborated witness accounts with other accounts and sources, including lawyers and family members.

Interviews and field investigations took place in Beirut, Tripoli, and the Bekaa Valley. Human Rights Watch was careful to conduct all interviews in safe and private places. Interviews were conducted in English and Arabic, sometimes with the assistance of an interpreter. Four of the interviews were conducted by telephone. The names of all interviewees in this report have been replaced with pseudonyms in the interest of individuals' safety, due to fears of retaliation for criticizing the military or because they have active cases before the military courts. All instances where pseudonyms have been used are referenced in the footnotes. Pseudonyms may not match the religious affiliation of the interviewee. In some cases, we have withheld additional identifying information to protect individuals' safety and privacy.

Human Rights Watch informed all interviewees of the nature and purpose of our research, and our intentions to publish a report with the information gathered. We informed each potential interviewee that they were under no obligation to speak with us, that Human Rights Watch does not provide direct humanitarian services, and that they could stop speaking with us or decline to answer any question with no adverse consequences. We obtained oral consent for each interview and took care to avoid re-traumatizing interviewees. Interviewees did not receive material compensation for speaking with Human Rights Watch.

We did not undertake surveys or a statistical study, but instead base our findings on extensive interviews supplemented by our analysis of a wide range of published and unpublished materials. As part of our research, Human Rights Watch met with several organizations in Lebanon, including Alef, Alkarama, and Legal Agenda. Badri and Salim El Meouchi Law Firm, a second Lebanese law firm, and a Lebanese lawyer reviewed this report. We also sent letters to the Lebanese Ministry of Defense, Armed Forces, Military

Police, Military Intelligence, and military court, submitted a request to attend the trial of the protestors on January 30, 2017 at the Military Tribunal, and met with the Ministry of Social Affairs. The Ministry of Defense responded to Human Rights Watch on January 5, 2017, and we have included a translation of their response in Annex III of this report. Human Rights Watch has not received a response to our request to attend the military court trial on January 30, 2017.

Human Rights Watch has withheld identification of organizations our researchers met with that requested anonymity in order not to jeopardize their ongoing operations.

# I. Background

## Structure and Jurisdiction of the Military Courts

The military court system is an exceptional judicial system that falls under the jurisdiction of the Ministry of Defense.<sup>1</sup> It is divided into three parts including the Military Cassation Court, the Permanent Military Court (commonly referred to as the Military Tribunal), and the single military judges. The military court system's proceedings are governed by the Code of Criminal Procedure and the Code of Military Justice of 1968.<sup>2</sup>

The military courts, as stipulated in the Lebanese Code of Military Justice of 1968, have jurisdiction over offences against national security, crimes committed by or against military personnel, crimes within military facilities, and crimes against foreign military personnel.<sup>3</sup>

Article 24 of the Code of Military Justice of 1968 states that the military courts have jurisdiction over all crimes that harm the interest of the military or the internal security forces, or the general security.<sup>4</sup> The courts have jurisdiction over civilians in cases involving espionage, treason, draft evasion, weapons possession, unlawful contact with the enemy (Israel), as well as any conflict between civilians and military or security personnel or the civilian employees of the Ministry of Defense, army, security services, or military courts.<sup>5</sup> Children can also be tried before the courts.<sup>6</sup>

In serious crime cases, such as felonies, the Military Tribunal is headed by a military officer assisted by four other judges, three of whom are military officers of a lower rank.<sup>7</sup> In less serious cases, such as misdemeanors, the head of the tribunal is assisted by two other

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<sup>1</sup> Alef, "Guilty Until Proven Innocent: Report on the Causes of Arbitrary Arrest, Lengthy Pre-Trial Detention and Long Delays in Trial," January 2013, <https://alefliban.org/wp-content/uploads/2016/10/ALEF-Arbitrary-Detention-2013.pdf> (accessed November 13, 2016), p. 45.

<sup>2</sup> Ibid., pp. 45-6.

<sup>3</sup> Code of Military Justice, 1968, arts. 24, 27.

<sup>4</sup> Ibid.

<sup>5</sup> Code of Military Justice, 1968, art. 24; Alef, "Military Tribunal: a breach in the integrity of the judicial system," <https://alefliban.org/wp-content/uploads/2016/10/MILITARY-english.pdf> (accessed December 20, 2016), p. 1.

<sup>6</sup> Human Rights Watch interviews with Lebanese Lawyers, Beirut, October 12 and November 11, 2016.

<sup>7</sup> Myriam Mehanna, "Marshalling Justice in Lebanon: How Military Courts Violate the Conditions of a Fair Trial," *The Legal Agenda*, June 26, 2015, <http://legal-agenda.com/en/article.php?id=713&folder=articles&lang=en> (accessed November 13, 2016).

judges, one a judicial judge and the other a military officer of a lower rank. The Minister of Defense appoints the military judges, who are not required to have a law degree or legal training. However, according to the Ministry of Defense, “Most officers are law degree holders, and some hold post-graduate degrees in law.”<sup>8</sup> Military personnel serving as judges remain subordinate to the Minister of Defense.<sup>9</sup>

Military court proceedings are nominally public unless a presiding judge issues a decree to hold a trial in secret.<sup>10</sup> In response to questions from Human Rights Watch, the Ministry of Defense acknowledged defendants’ right to “a fair, open and transparent trial,” and wrote that, “A trial before the military court is open, and no session is held without the attendance of representatives of the media (newspapers and television), with some sessions covered directly on television, with the exception of some cases related to the public morals.”<sup>11</sup> However access to the court is restricted because the court is located within a military area, meaning that human rights organizations in Lebanon are not able to enter and freely monitor military trials without the prior approval of the presiding judge.<sup>12</sup> Human Rights Watch wrote to the military court on December 14, 2016 requesting permission to attend a court session on January 30, 2017, but did not receive a response.

There have been a number of draft laws introduced to change the structure of the military court system, most recently by the Minister of Justice in 2015. However, Lebanese human rights lawyers have questioned the bill’s definition of terrorism, its creation of a parallel specialized court system, and the fact that it would not remove civilians from the jurisdiction of the military court.<sup>13</sup>

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<sup>8</sup> Letter from Afif Ayyoub, Director for International Organizations, Conferences and Cultural Relations, Lebanese Ministry of Foreign Affairs, to Human Rights Watch, January 5, 2017.

<sup>9</sup> Myriam Mehanna, “Marshalling Justice in Lebanon: How Military Courts Violate the Conditions of a Fair Trial,” *The Legal Agenda*, June 26, 2015, <http://legal-agenda.com/en/article.php?id=713&folder=articles&lang=en> (accessed November 13, 2016).

<sup>10</sup> Code of Military Justice, 1968, art. 55; Alef, “The Right to Fair Trial in Lebanon: A Position Paper on Exceptional Courts,” October 2016, [https://alefliban.org/wp-content/uploads/2016/10/PP3\\_v03\\_print.pdf](https://alefliban.org/wp-content/uploads/2016/10/PP3_v03_print.pdf) (accessed December 11, 2016), p. 10.

<sup>11</sup> Letter from Afif Ayyoub, Director for International Organizations, Conferences and Cultural Relations, Lebanese Ministry of Foreign Affairs, to Human Rights Watch, January 5, 2017.

<sup>12</sup> Human Rights Watch interviews with Lebanese lawyers and human rights organizations, Beirut, October 12 and 13, November 9, and December 6 and 7, 2016.

<sup>13</sup> See, for example, Myriam Mehanna, “Specialized Courts for Crimes of Terrorism in Lebanon: Unfulfilled Promises,” *The Legal Agenda*, April 9, 2016, <http://legal-agenda.com/en/article.php?id=3136> (accessed December 16, 2016).

## The Case of the Protestors

One prominent case before the Military Tribunal concerns 14 protesters who were arrested while demonstrating against the government's inability to resolve a waste management crisis in 2015 and are now facing charges before the Military Tribunal.<sup>14</sup> On July 17, 2015, Lebanese authorities closed the Naameh landfill that had accepted most of Beirut and Mount Lebanon's solid waste since 1998, but without first devising an alternate solution. As waste piled up on sidewalks, demonstrators took to the streets, protesting government paralysis over the accumulation of waste and inability to reach a solution.<sup>15</sup>

Police in Lebanon used excessive force to disperse protests, including on August 19, 22, and 23, 2015, failing to uphold human rights standards. Witnesses said that police fired water hoses without warning and kicked protesters, beat them with batons, and used rubber bullets, tear gas canisters, water cannons, and the butts of rifles. Security forces also fired live ammunition, reportedly in the air, to disperse protesters.<sup>16</sup>

Witnesses told Human Rights Watch that on October 8, 2015, Lebanese security forces again used force to disperse protests, after they attempted to dismantle a security barrier, including by using water cannons and beating protesters. Some protesters were detained by Internal Security Forces, the police, for up to eleven days, and fourteen of them face trial before the Military Tribunal.<sup>17</sup>

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<sup>14</sup> Human Rights Watch interviews with Lebanese lawyers, Beirut, October 12 and 20, 2016.

<sup>15</sup> Alexis Lai, "Lebanon's trash fueled protests," *The Daily Star*, August 28, 2015, <https://www.dailystar.com.lb/News/Lebanon-News/2015/Aug-28/312999-lebanons-trash-fueled-protests.ashx> (accessed November 13, 2016).

<sup>16</sup> "Lebanon: Police Violence Against Protesters," Human Rights Watch news release, August 22, 2015, <https://www.hrw.org/news/2015/08/22/lebanon-police-violence-against-protesters>; "Lebanon: Witnesses Detail Police Violence," Human Rights Watch news release, August 27, 2015, <https://www.hrw.org/news/2015/08/27/lebanon-witnesses-detail-police-violence>.

<sup>17</sup> Human Rights Watch interviews with Lebanese lawyers, Beirut, October 12 and 20, 2016.

## II. The Trial of Civilians Before the Military Courts

The military courts in Lebanon have jurisdiction over civilians in cases involving espionage, treason, draft evasion, unlawful contact with the enemy (Israel), or weapons possession; crimes that harm the interest of the military or the internal security forces, or the general security; as well as any conflict between civilians and military or security personnel or the civilian employees of the Ministry of Defense, army, security services, or military courts.<sup>18</sup> The courts' broad jurisdiction over any case between civilians and military personnel means that civilians can end up in military court for any interaction with security services. The composition of the military courts, the lack of required legal background or training for military judges and their direct appointment by the Minister of Defense and subordination to the Minister further undermine the competence, independence, and impartiality of the courts.

### Overbroad Jurisdiction: Intimidation and Retaliation against Civilians

According to defendants, lawyers, and Lebanese human rights organizations, the military courts have used this broad jurisdiction to intimidate or retaliate against individuals for political reasons and to stamp out dissent, including against those who protested the Lebanese government's mismanagement of waste in 2015. Because the courts fall under the jurisdiction of the Ministry of Defense, "the political interference at this court is really heavy," one lawyer told Human Rights Watch. "They are so close to the politicians they can't be impartial."<sup>19</sup>

The military courts have a history of trying activists, journalists, and human rights lawyers.<sup>20</sup> Alef, a local human rights organization, found in one report that "since its

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<sup>18</sup> Code of Military Justice, 1968, art. 24; Alef, "Military Tribunal: a breach in the integrity of the judicial system," <https://alefliban.org/wp-content/uploads/2016/10/MILITARY-english.pdf> (accessed December 20, 2016), p. 1.

<sup>19</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, October 20, 2016.

<sup>20</sup> See, for example, "Free Speech Punished in Lebanon," Human Rights Watch news release, April 26, 2000, <https://www.hrw.org/news/2000/04/26/free-speech-punished-lebanon>; Amnesty International, "Report 2001: Lebanon," 2001, <http://www.refworld.org/pdfid/3b1de37b3.pdf> (accessed December 11, 2016), p. 2; Maha Al Azar, "Crackdown continues as critics cry foul," *The Daily Star*, August 9, 2001, <https://www.dailystar.com.lb/News/Lebanon-News/2001/Aug-09/13800-crackdown-continues-as-critics-cry-foul.ashx> (accessed December 11, 2016); Committee to Protect Journalists, "Attacks on the Press in 2001 – Lebanon," February 2002, <http://www.refworld.org/docid/47c5662fc.html> (accessed December 11, 2016); "Lebanon: Torture and Trial of Civilians by Military Courts," Alkarama press release, September 4, 2007, <https://www.alkarama.org/en/articles/lebanon-torture-and-trial-civilians-military-courts> (accessed December 11, 2016);

creation ... the Military Court has been used as a political tool on many instances for suppressing the public opinion.”<sup>21</sup> “Military courts are being used as a tool of intimidation,” a researcher at a local human rights organization said.<sup>22</sup>

Fourteen protestors detained by the Internal Security Forces after demonstrating against Lebanon’s inability to solve a waste management crisis in 2015, are now facing trial at the Military Tribunal on charges of rioting, the use of force against security personnel during the exercise of their duties, and the destruction of property. They are in the military court system because the charges involve altercations between civilians and security forces. If found guilty, they face up to three years in prison.<sup>23</sup> Another group of at least 24 protestors are also awaiting charges before the military courts.<sup>24</sup>

Human Rights Watch interviewed three of the protestors, who expressed shock that they could be tried by a military court after attending a protest. “They treat you like they’re talking to Abu Bakr al-Baghdadi,” said Fadia, referring to the leader of the Islamic State (also known as ISIS).<sup>25</sup>

The three protestors and two Lebanese lawyers who spoke to Human Rights Watch also claimed that the overbroad jurisdiction of the military courts over civilians was being used to retaliate against the protestors and stifle dissent. One protester, Jawad, said, “I was charged because I’m one of the known figures. I’m a very nonviolent person. They’re trying to set an example, so they say ‘we can arrest you and keep you in prison. If you raise your voice, we’ll shut you down.’”<sup>26</sup> Another protestor, Tamara, described how the treatment she received before the military court was intentionally intimidating. She said:

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“Lebanese activist refuses to attend Military Court hearing,” *Now*, September 6, 2010, [https://now.mmedia.me/lb/en/archive/lebanese\\_activist\\_refuses\\_to\\_attend\\_military\\_court\\_hearing\\_](https://now.mmedia.me/lb/en/archive/lebanese_activist_refuses_to_attend_military_court_hearing_) (accessed December 11, 2016); “Lebanon: Cease Harassment of Human Rights Activist for Documenting Torture,” Alkarama press release, August 4, 2011, <https://www.alkarama.org/en/articles/lebanon-cease-harassment-human-rights-activist-documenting-torture> (accessed December 11, 2016); “Lebanon: Military Court Sentences Reporter in Absentia to Six Months in Prison,” Alkarama press release, December 6, 2013, <https://www.alkarama.org/en/articles/lebanon-military-court-sentences-reporter-absentia-six-months-prison> (accessed December 11, 2016).

<sup>21</sup> Alef, “Military Tribunal: a breach in the integrity of the judicial system,” <https://alefliban.org/wp-content/uploads/2016/10/MILITARY-english.pdf> (accessed December 20, 2016), p. 7.

<sup>22</sup> Human Rights Watch interview with a Lebanese human rights organization, Beirut, October 13, 2016.

<sup>23</sup> Human Rights Watch interviews with Lebanese lawyers, Beirut, October 12 and 20, 2016.

<sup>24</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, October 20, 2016.

<sup>25</sup> Human Rights Watch interview with Fadia (pseudonym), Beirut, October 24, 2016.

<sup>26</sup> Human Rights Watch interview with Jawad (pseudonym), Beirut, October 25, 2016.

It was the first time that I learned I could be treated this way. We were in a protest, what did we do? I had no idea that I could end up in front of a military court.... The treatment in military court is very ugly. I'm not military, I'm not wearing a uniform, you can't treat me like an enlisted soldier.... I have no problem, send me to a civilian court. But I shouldn't be in the military courts, it's not the right place for us. They're trying to scare us. The days we go down to the tribunal, I worry about what might happen.<sup>27</sup>

Defendants appearing in military court are effectively detained during the day of their appearance. They are required to appear at the court in the early morning, and are not allowed to leave the building until their session is complete and authorities have searched records and cleared them of any open warrants, a process that can take hours. "You have to wait for the background check before being released, I wasted four hours," said Jawad, one of the protesters. "We aren't respected as citizens. I can't work on days when I need to go to court, I'm losing time."<sup>28</sup>

In another case, Layal al-Kayaje, said that she was tortured while in custody at the Ministry of Defense and then later raped by members of Military Intelligence at their detention center in Rehaniyyeh in 2013. She said that she had been arrested because she had posted messages on Facebook supporting the cleric Ahmad al-Assir, whose followers allegedly fired on an army checkpoint in 2013, prompting two days of clashes in which 18 soldiers and 28 of Assir's supporters died.<sup>29</sup>

After speaking to a journalist about her detention, al-Kayaje was detained by Military Intelligence in Saida on September 21, 2015. Human Rights Watch interviewed her in detention on October 9. She said that following her arrest in September, military interrogators at the Ministry of Defense pressured her to withdraw the rape allegations reported by local media.<sup>30</sup> The military prosecutor brought charges against al-Kayaje and

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<sup>27</sup> Human Rights Watch interview with Tamara (pseudonym), Beirut, November 1, 2016.

<sup>28</sup> Human Rights Watch interview with Jawad (pseudonym), Beirut, October 25, 2016.

<sup>29</sup> "Lebanon: Woman Detained After Alleging Rape," Human Rights Watch news release, September 6, 2015, <https://www.hrw.org/news/2015/09/26/lebanon-woman-detained-after-alleging-rape>; "Lebanon: Investigate Army Beatings, Death in Custody," Human Rights Watch news release, July 17, 2013, <https://www.hrw.org/news/2013/07/17/lebanon-investigate-army-beatings-death-custody>.

<sup>30</sup> "Lebanon: Free Woman Alleging Rape by Soldiers," Human Rights Watch news release, October 16, 2015, <https://www.hrw.org/news/2015/10/16/lebanon-free-woman-alleging-rape-soldiers>.

on August 22, 2016 a military court found her guilty of “offending the military institution” and sentenced her to time served.<sup>31</sup>

In July 2011, Military Intelligence interrogated Saadeddine Shatila, of the international human rights organization Alkarama, for more than seven hours, focusing on his work documenting human rights violations in Lebanon, and cases of torture in particular. A military prosecutor, later interrogated Shatila, and referred his case to a military investigative judge, accusing him of publishing “information harmful to the reputation of the Lebanese Military.”<sup>32</sup> Six months later, in February 2012, the investigative judge closed the investigation without bringing charges against Shatila. Alkarama called the incident a clear “attempt to intimidate a human rights defender.”<sup>33</sup>

In 2006, Dr. Muhammad Mugraby, a lawyer and human rights activist stood trial in a military court on charges of “slandering the military establishment and its officers,” after he gave a speech to a European Parliament delegation in Brussels criticizing the Lebanese government’s practice of using the military courts to prosecute civilians for dissent. Dr. Mugraby told the delegation that the military judges lacked adequate legal training, and he condemned the use of torture to coerce confessions from suspects appearing before the military courts.<sup>34</sup>

## Court Structure: Not a Competent, Independent, Impartial Court

The structure of the military courts undermines the right to a fair trial, including the right to be tried before a competent, independent, and impartial court and the right to a public hearing.<sup>35</sup> The Minister of Defense, in consultation with the military and security services,

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<sup>31</sup> “Lebanon: Loyal Al Kayaje Sentenced by the Military Court for Having Denounced Her Rape by Military Officers,” Alkarama, press release, August 23, 2016, <http://en.alkarama.org/2194-lebanon-loyal-al-kayaje-sentenced-by-the-military-court-for-having-denounced-her-rape-by-military-officers> (accessed November 13, 2016).

<sup>32</sup> “Lebanon: Cease Harassment of Human Rights Activist for Documenting Torture,” Human Rights Watch news release, August 4, 2011, <https://www.hrw.org/news/2011/08/04/lebanon-cease-harassment-human-rights-activist-documenting-torture>.

<sup>33</sup> “Lebanon: Case against Alkarama representative dropped,” Alkarama, press release, February 29, 2012, <http://en.alkarama.org/lebanon/press-releases/865-lebanon-case-against-alkarama-representative-dropped> (accessed November 15, 2016).

<sup>34</sup> “Lebanon: Military Courts Used to Prosecute Dissent,” Human Rights Watch news release, March 16, 2006, <https://www.hrw.org/news/2006/03/16/lebanon-military-courts-used-prosecute-dissent>.

<sup>35</sup> Alef, “Military Tribunal: a breach in the integrity of the judicial system,” <https://alefliban.org/wp-content/uploads/2016/10/MILITARY-english.pdf> (accessed December 20, 2016), p. 2.

appoints the military judges at the beginning of each year.<sup>36</sup> A serving military officer presides over the Military Tribunal. In serious crime cases, such as felonies, the officer is joined by four other members only one of whom is a judicial judge, while the other three are officers of a lower rank than the president of the tribunal, and are not required to have legal training. In minor crime cases, such as misdemeanors, the officer presiding over the tribunal is joined by a lower ranked military officer, who need not have a legal background, and a judicial judge.<sup>37</sup>

The dominance of military judges without required legal training, the subordinate rank of some of the judges, and the fact that military judges remain answerable to the Minister of Defense undermines the competence, independence, and impartiality of the courts.<sup>38</sup> “The fact that you have a person in the military hierarchy creates an appearance of impartiality. How do we know that they aren’t following orders?” asked one Lebanese lawyer.<sup>39</sup> “The issue is that the military associate, lower ranked, will not disagree with the chief judge” said another lawyer who represents clients in military court.<sup>40</sup>

The UN Human Rights Committee has found that “the right to be tried by an independent and impartial tribunal is an absolute right that may suffer no exception.”<sup>41</sup>

The procedure used to appoint judges, the absence of required legal training for judges and the absence of oversight, alongside the lack of public court sessions, undermine basic

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<sup>36</sup> Code of Military Justice, 1968, art. 14.

<sup>37</sup> Myriam Mehanna, “Marshalling Justice in Lebanon: How Military Courts Violate the Conditions of a Fair Trial,” *The Legal Agenda*, June 26, 2015, <http://legal-agenda.com/en/article.php?id=713&folder=articles&lang=en> (accessed November 13, 2016); Alef, “The Right to Fair Trial in Lebanon: A Position Paper on Exceptional Courts,” October 2016, [https://alefliban.org/wp-content/uploads/2016/10/PP3\\_vo3\\_print.pdf](https://alefliban.org/wp-content/uploads/2016/10/PP3_vo3_print.pdf) (accessed December 5, 2016), pp. 9-10.

<sup>38</sup> Myriam Mehanna, “Marshalling Justice in Lebanon: How Military Courts Violate the Conditions of a Fair Trial,” *The Legal Agenda*, June 26, 2015, <http://legal-agenda.com/en/article.php?id=713&folder=articles&lang=en> (accessed November 13, 2016); Euro-Mediterranean Human Rights Network, “Lebanon: The Independence and Impartiality of the Judiciary,” 2010, [http://www.constitutionnet.org/sites/default/files/the\\_independence\\_and\\_impartiality\\_of\\_the\\_judiciary\\_in\\_lebanon.pdf](http://www.constitutionnet.org/sites/default/files/the_independence_and_impartiality_of_the_judiciary_in_lebanon.pdf) (accessed December 5, 2016), p. 19; Alef, “The Right to Fair Trial in Lebanon: A Position Paper on Exceptional Courts,” October 2016, [https://alefliban.org/wp-content/uploads/2016/10/PP3\\_vo3\\_print.pdf](https://alefliban.org/wp-content/uploads/2016/10/PP3_vo3_print.pdf) (accessed December 11, 2016), p. 10.

<sup>39</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, November 29, 2016.

<sup>40</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, October 12, 2016.

<sup>41</sup> UN Human Rights Committee, Decision: Miguel González del Río v. Peru, CCPR/C/OP/4, October 28, 1992, <http://www.ohchr.org/Documents/Publications/SDecisionsVol4en.pdf> (accessed December 7, 2016).

fair trial and due process rights.<sup>42</sup> In military courts, “the possibility of giving a quality defense is nonexistent,” said a second Lebanese lawyer.<sup>43</sup>

A report by the Lebanese human rights organization Alef, states that, “with the creation of the modern Military Tribunal in 1968, the denial of the right to a fair trial, arbitrary arrests and detentions, including incommunicado detention were facilitated in the judicial apparatus.”<sup>44</sup>

Civil society organizations in Lebanon have long advocated for removing civilians from the jurisdiction of the military courts because of fair trial concerns. In 2012 a group of nongovernmental organizations (NGOs) urged Lebanese authorities to stop referring civilians to the military courts, arguing that they “failed to comply with international standards relating to fair trial,” and created “a favorable atmosphere for the violation of the rights of the defendants as well as an environment of lawlessness, of impunity and blatant contempt for the rule of law.”<sup>45</sup> The statement went on to say, “The Military Court in Lebanon has, since its establishment, proved to be a judicial system without oversight mechanisms, accountability or transparency.”<sup>46</sup>

In 2015, the UN Special Rapporteur on the independence of judges and lawyers wrote to Lebanon requesting an invitation to conduct a country visit, but has not received a response.<sup>47</sup>

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<sup>42</sup> Human Rights Committee, General Comment No. 32, Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en) (accessed November 13, 2016), para. 22.

<sup>43</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, October 12, 2016.

<sup>44</sup> Alef, “Guilty Until Proven Innocent: Report on the Causes of Arbitrary Arrest, Lengthy Pre-Trial Detention and Long Delays in Trial,” January 2013, <https://alefliban.org/wp-content/uploads/2016/10/ALEF-Arbitrary-Detention-2013.pdf> (accessed November 13, 2016), p. 19.

<sup>45</sup> “Lebanon: Human Rights Organizations urge the Lebanese authorities to stop referring civilians to the Military Court,” Alkarama, press release, August 17, 2012, <https://www.alkarama.org/en/articles/lebanon-human-rights-organizations-urge-lebanese-authorities-stop-referring-civilians> (accessed December 20, 2016).

<sup>46</sup> Ibid.

<sup>47</sup> United Nations Office of the High Commissioner for Human Rights, “Country Visits,” 2015, <http://www.ohchr.org/EN/Issues/Judiciary/Pages/Visits.aspx> (accessed December 11, 2016); see also, “Lebanon: 10 Human Rights Organisations Call Upon the Authorities to Accept the Visit of the UN Special Rapporteur on the Independence of Judges and Lawyers,” Alkarama press release, August 11, 2016, <https://www.alkarama.org/en/articles/lebanon-10-human-rights-organisations-call-upon-authorities-accept-visit-un-special> (accessed December 11, 2016).

### III. Torture and the Use of Coerced Confessions

Human Rights Watch and Lebanese civil society organizations have for years documented a pattern of torture by Lebanese military forces.<sup>48</sup>

Lawyers who represent clients at the military courts and staff at Lebanese human rights organizations said that there is a higher incidence of torture in the military courts than in civil courts because interrogations are conducted by military personnel, the types of allegations involved, such as terrorism, increase the likelihood of torture being used during interrogation, because of the absence of lawyers during military interrogations, and the often incommunicado nature of pre-charge military detention.<sup>49</sup>

Human Rights Watch documented ten cases in which civilians being detained by military personnel said that they were tortured at various points during their detentions, including interrogations, and none of them had access to a lawyer or their families during interrogations.

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<sup>48</sup> “Lebanon: Monitor Detention to Combat Torture,” Human Rights Watch news release, June 26, 2015, <https://www.hrw.org/news/2015/06/26/lebanon-monitor-detention-combat-torture>; “Lebanon: Investigate Army Beatings, Death in Custody,” Human Rights Watch news release, July 17, 2013, <https://www.hrw.org/news/2013/07/17/lebanon-investigate-army-beatings-death-custody>; “Lebanon: End Abuse of Palestinians Fleeing Refugee Camp,” Human Rights Watch news release, June 12, 2007, <https://www.hrw.org/news/2007/06/12/lebanon-end-abuse-palestinians-fleeing-refugee-camp>; “Lebanon: Investigate Torture Allegations at Ministry of Defense,” Human Rights Watch news release, May 10, 2007, <https://www.hrw.org/news/2007/05/10/lebanon-investigate-torture-allegations-ministry-defense>; Lebanese Center for Human Rights, “Arbitrary Detention and Torture in Lebanon,” 2013, [http://www.rightsobserver.org/files/Arbitrary\\_detention\\_and\\_torture\\_in\\_Lebanon\\_Eg\\_2013\\_final.pdf](http://www.rightsobserver.org/files/Arbitrary_detention_and_torture_in_Lebanon_Eg_2013_final.pdf) (accessed November 15, 2016); “Lebanon: Another Case of Confessions Made under Torture,” Alkarama press release, May 11, 2016, <http://en.alkarama.org/lebanon/press-releases/2120-lebanon-another-case-of-confessions-made-under-torture> (accessed November 15, 2016); “Lebanon: Syrian National Tortured by Military Intelligence in Order to Extract Confessions,” Alkarama press release, February 25, 2016, <http://en.alkarama.org/lebanon/press-releases/2056-lebanon-syrian-national-tortured-by-military-intelligence-in-order-to-extract-confessions> (accessed November 15, 2016); “Lebanon: Syrian Citizen Sentenced to 5 Years in Prison on the Basis of Confessions Obtained Under Torture,” Alkarama press release, February 24, 2016, <http://en.alkarama.org/lebanon/press-releases/2054-lebanon-syrian-citizen-sentenced-to-5-years-in-prison-on-the-basis-of-confessions-obtained-under-torture> (accessed November 15, 2016); Alef, “Military Tribunal: a breach in the integrity of the judicial system,” <https://alefliban.org/wp-content/uploads/2016/10/MILITARY-english.pdf> (accessed December 20, 2016), p. 6; Lebanese Center for Human Rights, “Shadow Report: Submission to the Committee Against Torture in Relation to its Examination of the Initial Report of Lebanon,” December 15, 2016, pp. 15-16.

<sup>49</sup> Human Rights Watch interview with Lebanese lawyers and human rights organizations, Beirut, October 12, 13, 20, and 28, 2016.

A Lebanese human rights organization that documents the use of torture found that most cases of torture they see occur during the interrogation phase. “In military courts, torture is seen as part of the punishment,” a researcher for that organization said.<sup>50</sup>

In one case Human Rights Watch documented, Shadi, a Syrian refugee, said that during a January 2016 interrogation at his house in Jounieh, Military Intelligence officers punched him and his roommates in the face and hit them with batons. He said officers arrested him in early February, apparently on suspicion that he was gay, and transferred him to the Sarba Military Intelligence branch in Jounieh. There, he said, officers blindfolded him, stripped him naked, beat him with sticks, and punched him in the face. Shadi said that the next morning they blindfolded him again, forced him to sign a paper he could not read, and hit him when he asked what he was signing. He said officers then transferred him to the Ministry of Defense in Yarzeh. Upon arrival Shadi said they took him underground, where an interrogator elbowed him in the stomach, hit him on his neck, and kicked him in the groin.<sup>51</sup>

Shadi said that officers then transported him to the Rihanieh military police prison, where they took him into a room and told him to undress. While there, Shadi said that he asked to call a friend or a lawyer, but was told he was not allowed to do so.<sup>52</sup> He said officers handcuffed him while naked and told him to bend over facing the wall. The officer told him, “I will insert this into your anus to determine how many times you’ve had sex.” The officer inserted a rod into his anus, causing him to scream out in pain and beg for the officer to stop.

Forced anal examinations lack evidentiary value and are a form of cruel, inhuman, and degrading treatment that may in some cases amount to torture.<sup>53</sup>

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<sup>50</sup> Human Rights Watch interview with a Lebanese human rights organization, Beirut, October 13, 2016.

<sup>51</sup> Human Rights Watch interview with Shadi (pseudonym), Beirut, March 2016 (details withheld).

<sup>52</sup> Ibid.

<sup>53</sup> Human Rights Watch, *Dignity Debased: Forced Anal Examinations in Homosexuality Prosecutions*, July 12, 2016, <https://www.hrw.org/report/2016/07/12/dignity-debased/forced-anal-examinations-homosexuality-prosecutions>.

In another case, one woman, Layal al-Kayaje, said that she was tortured while in custody at the Ministry of Defense and then later raped by members of Military Intelligence at their detention center in Rehaniyyeh in 2013.<sup>54</sup>

Detainees, their relatives, and their lawyers said that lawyers and family often had no idea where detainees were being held.<sup>55</sup>

“I’m always worried about military investigations,” one lawyer told Human Rights Watch. “There will always be some form of violence.”<sup>56</sup> “Whenever it’s a case in the military line, they beat you before they ask your name,” another lawyer said.<sup>57</sup>

Human Rights Watch has documented eight other cases in which civilian detainees tried before the military courts on terrorism or security related offenses said that security officials tortured them, forced them to confess, and used their coerced confessions as evidence against them. Other civil society organizations have also documented cases before the military courts in which confessions extracted under torture were used against the accused as evidence of guilt.<sup>58</sup> “The court relies on the confession, they are never convinced that he confessed under duress or torture,” said one lawyer.<sup>59</sup> In some of the cases documented by Human Rights Watch, defendants and their lawyers said that the coerced confession was the only evidence of guilt prosecutors presented against the accused. In only one case did a court throw out a coerced confession, but even in that case, the authorities took no apparent steps to investigate and penalize the officers who tortured the detainee.<sup>60</sup>

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<sup>54</sup> “Lebanon: Woman Detained After Alleging Rape,” Human Rights Watch news release, September 6, 2015, <https://www.hrw.org/news/2015/09/26/lebanon-woman-detained-after-alleging-rape>.

<sup>55</sup> See Section on Access to Lawyers and Relatives in Pre-Charge Detention on page 29.

<sup>56</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, October 12, 2016.

<sup>57</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, November 9, 2016.

<sup>58</sup> Alkarama, “Lebanon Universal Periodic Review,” April 15, 2010, <http://en.alkarama.org/reports/1287-lebanon-alkarama-s-submission-to-the-upr-for-2010> (accessed November 13, 2016); Alef, “Military Tribunal: a breach in the integrity of the judicial system,” <https://alefliban.org/wp-content/uploads/2016/10/MILITARY-english.pdf> (accessed December 20, 2016), p. 1.

<sup>59</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, November 11, 2016.

<sup>60</sup> Human Rights Watch interview with Hafiz (pseudonym), 2015 (details withheld).

The use of confessions extracted through torture, an issue before other courts in Lebanon as well, is a violation of both Lebanese and international law and undermines the right to a fair trial.<sup>61</sup>

One lawyer said that although prosecutors also use confessions extracted under torture in civilian courts, lawyers there are more likely to succeed in getting those confessions thrown out.<sup>62</sup>

Forcing someone to confess violates both international law and article 47 of the Lebanese Code of Criminal Procedure, which states that “if [suspects] refuse to speak and remain silent, this must be mentioned in the official report. They must not be forced to speak or to be interrogated, under penalty of invalidity of their statements.”<sup>63</sup> While article 401 of the Lebanese Penal Code provides criminal penalties for the use of violence to extract confessions, the Lebanese judiciary rarely, if ever, prosecutes state agents alleged to have committed torture or other ill-treatment.<sup>64</sup> On October 19, 2016, Lebanon’s parliament passed a law to establish a National Human Rights Institute, which will include a committee to investigate and monitor the use of torture and ill-treatment in places of detention. But Lebanon has still not passed legislation to criminalize all forms of torture as required by the Convention against Torture.<sup>65</sup>

Ruwayd, a Lebanese man in his mid-20s from northern Lebanon, told Human Rights Watch that officials from the Information Branch of the Internal Security Forces (ISF) arrested him in Beirut in the spring of 2014 and transferred him to their headquarters in Achrafieh where they told him that he was suspected of being involved in clashes in Tripoli. He said interrogators tied his wrists behind his back and then hoisted him up into the air. “I couldn’t breathe. The wind was knocked out of me and I passed out,” Ruwayd told Human

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<sup>61</sup> Human Rights Watch, *“It’s Part of the Job”: Ill-treatment and Torture of Vulnerable Groups in Lebanese Police Stations*, June 26, 2013, <https://www.hrw.org/report/2013/06/26/its-part-job/ill-treatment-and-torture-vulnerable-groups-lebanese-police-stations>.

<sup>62</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, October 12, 2016.

<sup>63</sup> Lebanese Code of Criminal Procedure, 2001, art. 47.

<sup>64</sup> Lebanese Penal Code, art. 401.

<sup>65</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Lebanon on November 3, 1972, arts. 7, 14; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Lebanon on October 5, 2000, arts. 1, 2, 4.

Rights Watch. The next day he said officials transferred him to the Ministry of Defense in Yarze, and there, he told officers he was tortured by the ISF but that they said, “If you don’t talk, we will make you talk. We have *balanco* [hanging the victim by the wrists tied behind the back], *farrouj* [suspending the victim by the feet with hands tied together to an iron bar passed under the knees], electricity—whatever you want, we will do it. Speak or we will send you to torture!” Ruwayd said he confessed to everything he was accused of because he was afraid of being tortured further. Ruwayd was eventually released from prison in early 2015.<sup>66</sup>

Najib, another Lebanese man, also told Human Rights Watch that officers beat him and forced him to sign a confession during his interrogation at the Ministry of Defense in Yarze, after the army arrested him at his home in fall 2014. During the interrogation Najib said officers slapped him, punched him in the face, and threw him against the wall. He said officers made him stand in front of the wall in the interrogation room for five hours until he passed out and collapsed on the floor. He said that the beatings left him with a swollen neck, back, and legs, and that his whole body was black and blue. The next day they forced him to sign a piece of paper without telling him what was written on it. He said that two days later he was brought before the investigative judge at the military court and was charged with selling weapons. He said the only evidence presented against him was his coerced confession. He was released several days later pending trial.<sup>67</sup>

In some cases, military courts admitted coerced confessions as evidence even when signs of torture were apparent on the detainee’s body or when detainees said the confession was coerced.

Human Rights Watch interviewed a Lebanese man in his mid-20s from Jabal Mohsen, whose brother Basil was arrested in the spring of 2015 after reporting to the Marabatoun military intelligence station in Tripoli to finalize some routine paperwork as a former state employee. Military intelligence officials accused him of participating in clashes in neighboring Bab al-Tabbaneh and transferred him to Ibay Military Intelligence branch and then the Ministry of Defense in Yarze. He said that when he visited Basil in detention, Basil told him that Military Intelligence officials tortured him while in the custody of the Ministry

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<sup>66</sup> Human Rights Watch interview with Ruwayd (pseudonym), Tripoli, 2015 (details withheld).

<sup>67</sup> Human Rights Watch interview with Najib (pseudonym), Bekaa Valley, April 2015 (details withheld).

of Defense in Yarze and forced him to confess. “Basil told the judge that he confessed under torture. The judge didn’t seem to care,” he said. “Basil’s face was completely swollen and blood still occasionally trickled out of his nose while he spoke. He said that he couldn’t bare the torture so he just confessed to whatever they wanted.”<sup>68</sup> Human Rights Watch spoke with Basil’s lawyer who confirmed to Human Rights Watch that the coerced confession was entered into evidence against him.<sup>69</sup>

In another case, Alan, a Syrian refugee in his mid-30s, told Human Rights Watch that Military Intelligence arrested him in fall 2015, while his wife was giving birth in the hospital. They took him to Military Intelligence headquarters. He told Human Rights Watch:

There is a psychological toll when you get arrested, with people talking about others who were tortured.... They told me that the charge was terrorism, and my heart stopped. They handcuffed my hands behind my back and blindfolded me, and then the beatings began. They were telling me to speak, I told them I didn’t have time to speak. They made me stand against the wall and beat me until I fell to the ground. They beat me for an hour and a half. If I answer, he beats me. If I don’t answer the question, he beats me. They didn’t let us breathe.<sup>70</sup>

Alan said that Military Intelligence then transferred him to the Ministry of Defense in Yarze, where he said officers further tortured him.

I barely arrived before they started beating me.... They call you by a number so that you don’t know who else is there. When they call your number, you start to shake with fear. I was held by ISIS in Raqqa for 18 days. The treatment was largely the same, except here I knew I wouldn’t be killed. My ear was injured from the beating, so they brought a doctor.”<sup>71</sup>

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<sup>68</sup> Human Rights Watch interview with Basil’s brother (pseudonym), Tripoli, March 29, 2015.

<sup>69</sup> Human Rights Watch Interview with Basil’s lawyer (pseudonym), 2015 (details withheld).

<sup>70</sup> Human Rights Watch interview with Alan (pseudonym), Beirut, November 9, 2016.

<sup>71</sup> Ibid.

Alan's lawyer said, "A military doctor inspects the detainees, but in the report, they don't mention the injuries. In his report, it says he was inspected by a military doctor who found him in good health."<sup>72</sup> Alan said officers interrogated and tortured him for four days at the Ministry of Defense and forced him to sign a confession while blindfolded. The authorities then transferred him to the military court.<sup>73</sup>

According to his lawyer, Alan was charged with membership in a terrorist organization and financing a terrorist organization on the basis of the confession he signed while blindfolded.<sup>74</sup> The court found him guilty and sentenced him to one year in prison.

In one case, a former detainee told Human Rights Watch that the court ordered him released after a military court judge observed that his confession was coerced, but said that as far as he knew no further investigation was undertaken against the officers who tortured him.

Hafiz, a Lebanese man from the Jabal Mohsen neighborhood in Tripoli, said that Internal Security Forces and the Lebanese army stopped him at a checkpoint in Akkar in the spring of 2014 and informed him that he was wanted for shooting at the army. They transferred him to the Military Intelligence base in Ibay and the next day he was transferred to the Ministry of Defense in Yarze where officers interrogated and tortured him using the *balanco* method. He said:

I immediately blacked out. The last thing I remember I was laying on the ground in total pain and yelling that I confess, I shot at the army. I was in so much pain. I wanted to do anything to make it stop. More than a year later I am still undergoing regular physical therapy treatments for the injuries sustained in my shoulder.<sup>75</sup>

Hafiz said that when he appeared before an investigative judge he took his shirt off and showed her the torture marks on his body. "The judge threw out my case. The only thing

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<sup>72</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, November 9, 2016.

<sup>73</sup> Human Rights Watch interview with Alan (pseudonym), Beirut, November 9, 2016.

<sup>74</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, November 9, 2016.

<sup>75</sup> Human Rights Watch interview with Hafiz (pseudonym), 2015 (details withheld).

they had against me was the forced confession and she ruled that that was void because it was obviously taken under force. The marks on my body don't lie," he said.<sup>76</sup>

## Torture and Trial of Children Before the Military Courts

Human Rights Watch has also documented the use of torture to extract confessions from children on trial before the military courts. According to the Union for Protection of Juveniles in Lebanon, 355 children were tried before the military courts in 2016.<sup>77</sup>

Haitham, a Syrian refugee boy, told Human Rights Watch that after being stopped at an army checkpoint in Tripoli in 2014 at the age of 15, officers arrested him and held him for several days at Military Intelligence in Ibay before transferring him to the Ministry of Defense in Yarze. While in the custody of Military Intelligence, he said that officers beat him with their hands and legs and made him "confess to things I did not do."<sup>78</sup> At the Ministry of Defense, he said officers forced him to sign a confession while blindfolded, and that they then used this confession as evidence against him before a military court where he was tried for terrorism offenses. Haitham told Human Rights Watch that he had marks of torture on his body and the judge saw them but did not say anything about them. When Human Rights Watch interviewed Haitham a mark was still visible on his body where he said officers beat him with a rifle butt.<sup>79</sup>

Military Intelligence officers arrested Khaled, then 16, in his home in north Lebanon in 2014, and transferred him to Military Intelligence headquarters. His lawyer said that he was interrogated there for three days, and that interrogators blindfolded him and "punched him on his face, hit him with a rod on his back, insulted him, and threatened him." He said they transferred Khaled to the Ministry of Defense on the fourth day of his detention. There, the lawyer said interrogators hung him from a rope tied to his wrists behind his back, and beat him. He said they also attached wires to his genitals, electrocuted him until he fainted, and threw water on his face to wake him up—all while asking him to identify terrorism suspects, and to confess to placing a bomb, throwing

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<sup>76</sup> Ibid.

<sup>77</sup> Human Rights Watch interview with a member of the Union for Protection of Juveniles in Lebanon, Beirut, December 15, 2016.

<sup>78</sup> Human Rights Watch telephone interview with Haitham (pseudonym), January 17, 2015.

<sup>79</sup> Ibid.

grenades at army posts, and membership in a terrorist organization. “He didn’t know where the beating was coming from,” the lawyer said. “He admitted to everything, to crucifying Christ, to killing the prime minister.”<sup>80</sup>

According to his lawyer, Khaled spent four days at the Ministry of Defense in Yarze where officers threw water and shined a bright light on him to keep him from sleeping. “He could hear the sounds of people being tortured,” the lawyer said. He said officers forced Khaled to sign a statement while blindfolded after every session of torture, one to two times each day.<sup>81</sup>

Khaled’s lawyer said officers transferred him to the military court, where he appeared before the investigative judge alongside a juvenile representative, but without a lawyer. A prosecutor charged him with membership in a terrorist organization and conducting terrorist activities, which Khaled’s lawyer said carries a sentence of 5-15 years in prison. “I told the judge that he confessed under pressure,” the lawyer said. “The military court doesn’t listen; they don’t take it into consideration.”<sup>82</sup> The military court found Khaled guilty and transferred his file to the juvenile court, because they did not have the authority to sentence a child. “Why would you keep the file if you don’t have authority to sentence minors? They should have referred the case to the juvenile court” immediately, rather than trying the boy, said his lawyer.<sup>83</sup> Khaled is now awaiting trial for terrorism charges at the juvenile court, but has been released on bail after spending nearly a year detained alongside adults in Roumieh prison.<sup>84</sup>

The Ministry of Social Affairs has a project to support children in detention and provide them with psychological services, but the project does not extend to those detained by the military. “For the cases where they are in military detention, [the ministry] can’t reach them,” a representative of the ministry said.<sup>85</sup> He said that under Lebanese law, a social

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<sup>80</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, November 11, 2016.

<sup>81</sup> Ibid.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Human Rights Watch interview with the Ministry of Social Affairs, Beirut, December 8, 2016.

worker should be present within six hours of a child's detention and during interrogation, "but in many cases, the military court doesn't communicate that a child is detained."<sup>86</sup>

The Union for Protection of Childhood in Lebanon provides social support to children on trial in Lebanese courts, under a contract with the Ministry of Justice.<sup>87</sup> But one employee told Human Rights Watch that social workers are usually not present during military interrogations, because the military does not routinely alert them that a child has been detained.<sup>88</sup>

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<sup>86</sup> Lebanese Juvenile Law, No. 422 of 2002, art. 34; Human Rights Watch interview with the Ministry of Social Affairs, Beirut, December 8, 2016.

<sup>87</sup> Human Rights Watch interview with the Ministry of Social Affairs, Beirut, December 8, 2016.

<sup>88</sup> Human Rights Watch interview with a member of the Union for Protection of Juveniles in Lebanon, Beirut, December 15, 2016.

## IV. Due Process Rights

### Access to Lawyers and Relatives in Pre-Charge Detention

The Lebanese Code of Criminal Procedure guarantees detained suspects due process rights, including the right to contact a person of their choosing (such as a family member or an employer) and to meet with a lawyer. Article 47 of the Code of Criminal Procedure stipulates that arresting officers must inform all detained suspects of these rights promptly upon arrest.<sup>89</sup> However, almost all of the individuals interviewed by Human Rights Watch reported that they were not informed of the rights guaranteed in the Code of Criminal Procedure.

One lawyer who represents defendants before the military courts said that although Article 47 guarantees the right to call a lawyer, “they’re not applying this at all.”<sup>90</sup> Alef, a Lebanese human rights organization, found in a 2013 report that in practice, lawyers are not able to attend preliminary interrogations under article 47.<sup>91</sup> Another lawyer said detainees were routinely denied the right to call family members or a lawyer during interrogations conducted by Military Intelligence, which take place before a suspect has come before a judge or prosecutor. She said she may not even know that her client is detained, let alone that the client may already be undergoing interrogations.<sup>92</sup>

Of the ten cases in which Human Rights Watch documented alleged torture during military interrogations, none of the individuals said they were able to contact a lawyer before or during interrogation. In many of the cases Human Rights Watch documented, detainees were not allowed to speak with their relatives or a lawyer before they appeared in front of an investigative judge. “They hide them off the planet until they get a confession, and then you find out where they are,” said one lawyer.<sup>93</sup>

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<sup>89</sup> Lebanese Code of Criminal Procedure, 2001, art. 47.

<sup>90</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, October 20, 2016.

<sup>91</sup> Alef, “Guilty Until Proven Innocent: Report on the Causes of Arbitrary Arrest, Lengthy Pre-Trial Detention and Long Delays in Trial,” January 2013, <https://alefliban.org/wp-content/uploads/2016/10/ALEF-Arbitrary-Detention-2013.pdf> (accessed November 13, 2016), p. 32.

<sup>92</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, October 12, 2016.

<sup>93</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, November 9, 2016.

Khaled, who was 16 at the time of his arrest, “wasn’t allowed to call a lawyer, was not allowed to call a family member, and no one was allowed to ask about him” while he was interrogated by Military Intelligence and Ministry of Defense personnel and then detained at the military court, said his lawyer.<sup>94</sup> His mother said the family did not know where he was for several months, until an acquaintance was released from detention and told the family where Khaled was. His father went to the military court, “he kept telling them my son is here, my son is here,” she said. “I screamed from under the ground when I saw him. My son is beautiful, he’s not ugly. I couldn’t believe this was my son. You can’t describe it. His face was all bloodied, swollen, and blue. I barely had five minutes to see him, he begged me to get him out.”<sup>95</sup>

An arrest by state authorities, followed by a refusal to acknowledge an individual’s arrest or concealing their fate or whereabouts, constitutes an enforced disappearance under international law.<sup>96</sup>

In another case, Zouher, a Lebanese man in his mid-20s, had just undergone surgery at Shaheen Hospital in Tal in northern Lebanon, in early 2015, when, according to his parents, Military Police and Military Intelligence arrested him.<sup>97</sup> After the arrest, his father told Human Rights Watch that the authorities held Zouher incommunicado for more than a week and that the family only discovered his whereabouts through a former detainee who saw him in detention. Zouher was tried by the Military Tribunal, but court authorities did not permit his family to enter the courtroom. “Only those with connections are allowed in,” his mother told Human Rights Watch.<sup>98</sup>

Lawyers told Human Rights Watch that they often needed to use personal connections to locate clients in military detention.<sup>99</sup> One lawyer explained that although access to clients in detention is a widespread problem in Lebanon, during military interrogations in particular lawyers often have no way to determine that a client is detained or where they

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<sup>94</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, November 11, 2016.

<sup>95</sup> Human Rights Watch telephone interview with Khaled’s mother (pseudonym), North Lebanon, November 4, 2016.

<sup>96</sup> United Nations Declaration on the Protection of All Persons from Enforced Disappearances, adopted December 18, 1992, G.A. res. 47/133, 47 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (1992).

<sup>97</sup> Human Rights Watch interview with Zouher’s parents (pseudonym), Tripoli, February 1, 2015.

<sup>98</sup> Ibid.

<sup>99</sup> Human Rights Watch interview with Lebanese lawyers, Beirut, October 12 and November 9, 2016.

are being held.<sup>100</sup> Alan, who said Military Intelligence officers arrested him and subsequently transferred him to the Ministry of Defense, said his family had to hire a lawyer to try and locate him in detention.<sup>101</sup>

“The family wasn’t aware of where he was,” Alan’s lawyer said. “They came to me to find him, and if I didn’t know anyone at a security agency, I wouldn’t be able to find him. I had to use my own connection to find him, it took several days.”<sup>102</sup>

## Lengthy Pretrial Detention

A lawyer who represents clients before the military courts in Beirut also told Human Rights Watch that bail was often not granted to defendants before the first court session, which in some cases could take a year.<sup>103</sup> Lengthy pretrial detention violates due process rights guaranteed under international law which state that pretrial detention should be the exception, not the rule, and that anyone held in detention before trial is entitled to a trial within a reasonable time or to be released.<sup>104</sup> Alef, a Lebanese human rights organization, found in its 2013 report on arbitrary detention in Lebanon that, “Due to the nature of the procedures at military tribunals in almost all cases, there is a serious risk of detentions becoming arbitrary in nature.”<sup>105</sup> Article 108 of the Lebanese Code of Criminal Procedure restricts pretrial detention for felonies to six months, renewable once, but this restriction does not apply to those charged with “homicide, felonies involving drugs and attacks against state security, felonies which represent a global danger and offences of terrorism,”

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<sup>100</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, October 20, 2016.

<sup>101</sup> Human Rights Watch interview with Alan, Beirut, November 9, 2016.

<sup>102</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, November 9, 2016.

<sup>103</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, April 29, 2015.

<sup>104</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Lebanon on November 3, 1972, art. 9.

<sup>105</sup> Alef, “Guilty Until Proven Innocent: Report on the Causes of Arbitrary Arrest, Lengthy Pre-Trial Detention and Long Delays in Trial,” January 2013, <https://alefliban.org/wp-content/uploads/2016/10/ALEF-Arbitrary-Detention-2013.pdf> (accessed November 13, 2016), p. 46.

as well as those with a prior criminal conviction.<sup>106</sup> Human Rights Watch documented cases where detainees as young as 16 were held in pretrial detention for a year or longer.<sup>107</sup>

## Sentencing and the Right to Appeal

Sentences issued by the military courts are seemingly arbitrary. A judge in Tripoli told Human Rights Watch that sentences issued by the courts on the same charges varied widely, raising basic fairness and impartiality issues. “Based on the same charges literally some will get six months and others will get the death sentence,” said the judge.<sup>108</sup>

Lawyers who represent clients in military court also told Human Rights Watch that they have come to expect inevitable guilty sentences at the court. “If my client gets sentenced to time served and a 100,000 [LL, US\$66] fine, I consider this a success,” said one lawyer. “I’ve only ever gotten one non-guilty verdict,” she said, because someone else had been found guilty of the crime her client was charged with.<sup>109</sup> “Not guilty sentences are very rare. Whenever they don’t find evidence they sentence them to time served,” another lawyer said.<sup>110</sup>

Lebanon has the death penalty and civilians have been sentenced to death in military courts.<sup>111</sup> However, there is an unofficial moratorium on the death penalty in Lebanon, and the last known execution was carried out in 2004.<sup>112</sup>

There is only a limited right to appeal within the military court system. Cases before a single military judge can be appealed to the Military Tribunal. However, there is no right to appeal decisions of the Military Tribunal, only the possibility of submitting an appeal, called a “cassation challenge,” to the Military Cassation Court. But in practice lawyers said

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<sup>106</sup> Lebanese Code of Criminal Procedure, 2001, art. 108; Alef, “Guilty Until Proven Innocent: Report on the Causes of Arbitrary Arrest, Lengthy Pre-Trial Detention and Long Delays in Trial,” January 2013, <https://alefliban.org/wp-content/uploads/2016/10/ALEF-Arbitrary-Detention-2013.pdf> (accessed November 13, 2016), p. 37; Human Rights Watch interview with a Lebanese human rights organization, Beirut, December 6, 2016.

<sup>107</sup> See, for example, Human Rights Watch telephone interview with Khaled’s mother (pseudonym), North Lebanon, November 4, 2016.

<sup>108</sup> Human Rights Watch interview with a Lebanese judge, North Lebanon, January 18, 2015.

<sup>109</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, October 12, 2016.

<sup>110</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, November 11, 2016.

<sup>111</sup> Alef, “Guilty Until Proven Innocent: Report on the Causes of Arbitrary Arrest, Lengthy Pre-Trial Detention and Long Delays in Trial,” January 2013, <https://alefliban.org/wp-content/uploads/2016/10/ALEF-Arbitrary-Detention-2013.pdf> (accessed November 13, 2016), p. 49.

<sup>112</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, November 11, 2016; “Lebanon,” World Coalition Against the Death Penalty, accessed November 17, 2016, <http://www.worldcoalition.org/Lebanon>.

they often do not pursue this option because of the limited grounds for a challenge and because challenges are rarely successful. Under the Code of Military Justice of 1968, individuals before the court can file a cassation challenge if the case falls outside the court's jurisdiction, there is a failure to observe essential procedural requirements, or there is an error in the implementation of the law.<sup>113</sup> "Most appeals are sent back, with a decision that there aren't grounds for appeal," said one lawyer. "Usually, you need to find a procedural error or inconsistency. Torture is not considered grounds for appeal."<sup>114</sup> The military courts do not have to present a rationale or written opinion explaining their decisions, making them more difficult to challenge.<sup>115</sup>

According to the Draft Principles Governing the Administration of Justice Through Military Tribunals, military courts should be limited to ruling in first instance and "recourse procedures, particularly appeals, should be brought before the civil courts."<sup>116</sup>

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<sup>113</sup> Code of Military Justice, 1968, art. 74.

<sup>114</sup> Human Rights Watch interview with a Lebanese lawyer, Beirut, November 11, 2016.

<sup>115</sup> Myriam Mehanna, "Marshalling Justice in Lebanon: How Military Courts Violate the Conditions of a Fair Trial," *The Legal Agenda*, June 26, 2015, <http://legal-agenda.com/en/article.php?id=713&folder=articles&lang=en> (accessed November 13, 2016); Human Rights Watch interview with Lebanese lawyers, October 12 and November 9, 2016.

<sup>116</sup> UN Human Rights Commission, Report of the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux, *The Administration of Justice Through Military Tribunals*, E/CN.4/2006/58, January 13, 2006, [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/CN.4/2006/58&referer=/english/&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.4/2006/58&referer=/english/&Lang=E) (accessed December 7, 2016), p. 21.

## V. Legal Standards

Under international law, governments are prohibited from using military courts to try civilians when civilian courts can still function.

Article 14 of the International Covenant on Civil and Political Rights (ICCPR), which Lebanon ratified in 1972, guarantees everyone the right to timely trial by a competent, independent and impartial tribunal.<sup>117</sup> The Human Rights Committee, the international expert body authorized to monitor compliance with the International Covenant on Civil and Political Rights, has stated that civilians should be tried by military courts only under exceptional circumstances and only under conditions that genuinely afford full due process.<sup>118</sup> It has found that the “trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned,” and that “trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where ... regular civilian courts are unable to undertake the trials.”<sup>119</sup>

The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed concern that lower fair trial guarantees in military courts due to “prolonged periods of pre-charge and pretrial detention, with inadequate access to counsel, intrusion into the attorney-client confidentiality and strict limitations on the right to appeal and bail. Moreover, the Special Rapporteur is concerned that lower procedural and evidential standards in these courts often encourage systematic resort to extralegal practices such as torture to extract confessions of alleged terrorist suspects.”<sup>120</sup>

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<sup>117</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Lebanon on November 3, 1972, art. 14.

<sup>118</sup> UN Human Rights Committee, General Comment No. 32, Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 (2007), [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en) (accessed November 13, 2016), para. 22.

<sup>119</sup> Ibid.

<sup>120</sup> UN General Assembly, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, The Right to a Fair Trial in the Specific Context of

In its 1997 concluding observations on Lebanon, the Human Rights Committee expressed concern “about the broad scope of the jurisdiction of military courts in Lebanon, especially its extension beyond disciplinary matters and its application to civilians. It is also concerned about the procedures followed by these military courts, as well as the lack of supervision of the military courts’ procedures and verdicts by the ordinary courts.”<sup>121</sup>

The Committee on the Rights of the Child, the UN body charged with interpreting the Convention on the Rights of the Child, has stressed that “the conduct of criminal proceedings against children within the military justice system should be avoided.”<sup>122</sup> Lebanon ratified the convention in 1991.

The UN Working Group on Arbitrary Detention has found that “military courts should not have jurisdiction to try civilians, whatever the charges they face. They can no[t] be considered as independent and impartial tribunals for civilians.”<sup>123</sup> According to the UN Special Rapporteur on the independence of judges and lawyers, “using military or emergency courts to try civilians in the name of national security, a state of emergency or counter-terrorism is a regrettably common practice that runs counter to all international and regional standards and established case law.” She held in a 2013 report that, “In no case should a military tribunal established within the territory of the State exercise jurisdiction over civilians accused of having committed a criminal offence in that same territory.”<sup>124</sup>

The Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, presented before the United Nations Human Rights Commission in 2005, state that “the jurisdiction of military tribunals must be restricted solely to

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Prosecuting Terrorist Suspects, A/63/223, August 6, 2008, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/63/223](http://www.un.org/ga/search/view_doc.asp?symbol=A/63/223) (accessed December 7, 2016), para. 27.

<sup>121</sup> UN Human Rights Committee, “Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding Observations, Lebanon,” CCPR/C/79/Add.78, May 5, 1997, [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=CCPR/C/79/Add.78](http://www.un.org/en/ga/search/view_doc.asp?symbol=CCPR/C/79/Add.78), para. 14.

<sup>122</sup> UN Committee on the Rights of the Child, “Consideration of Reports Submitted by States Parties Under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Concluding Observations, United States of America,” CRC/C/OPAC/USA/CO/1, June 25, 2008, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.USA.CO.1.pdf>, para. 30.

<sup>123</sup> United Nations Working Group on Arbitrary Detention, “Opinion No. 27/2008 (Egypt),” A/HRC/13/30/Add.1, March 4, 2010, (accessed November 13, 2016), <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/13/30/Add.1&Lang=E>, para. 40.

<sup>124</sup> UN General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, Military Tribunals, A/68/285, August 7, 2013, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/421/29/PDF/N1342129.pdf> (accessed December 7, 2016), paras. 46, 101.

specifically military offenses committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court.”<sup>125</sup>

The ICCPR and the Convention Against Torture prohibit the use of torture or to cruel, inhuman or degrading treatment or punishment.<sup>126</sup> The Convention Against Torture also requires State Parties to criminalize all acts of torture, attempts to commit torture, and complicity in torture; to make sure that these offences are punishable by appropriate penalties that take into account the grave nature of these crimes; to launch a prompt and impartial investigation wherever there is reasonable grounds to believe that an act of torture has been committed; to ensure that any statement established to have been made as a result of torture is not invoked as evidence in any proceedings except against the person accused of torture; and to review interrogation rules, instructions, methods, and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest or detention, with a view to preventing any cases of torture.<sup>127</sup>

The ICCPR further guarantees the due process rights of detainees, including the right to be informed of the reasons for an arrest and promptly informed of any charges; to be brought promptly before a judge; to a fair and public hearing by a competent, independent and impartial tribunal; to have adequate time and facilities to prepare a defense and communicate with a lawyer of one’s choosing; to a trial within reasonable time or release; and to appeal a conviction and sentence to a higher tribunal. The Convention prohibits arbitrary arrest or detention and the routine use of pretrial detention.<sup>128</sup>

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<sup>125</sup> United Nations Human Rights Commission, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, E/CN.4/2005/102/Add.1, February 8, 2005, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=E/CN.4/2005/102/Add.1&Lang=E> (accessed November 13, 2016), para. 29.

<sup>126</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Lebanon on November 3, 1972, art. 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Lebanon on October 5, 2000, art. 2.

<sup>127</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Lebanon on October 5, 2000, arts. 4, 11, 12.

<sup>128</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Lebanon on November 3, 1972, arts. 9, 14.

The Special Rapporteur on the independence of judges and lawyers states in a 2013 report that judges “must appear to a reasonable observer to be impartial, and act in such a way as to maintain and enhance the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.”<sup>129</sup> According to the Draft Principles Governing the Administration of Justice Through Military Tribunals, judges called on to sit in military courts “should be competent, having undergone the same legal training as that required of professional judges” and that “statutory independence of judges vis-à-vis the military hierarchy must be strictly protected, avoiding any direct or indirect subordination.”<sup>130</sup>

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<sup>129</sup> UN General Assembly, Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaut, Military Tribunals, A/68/285, August 7, 2013, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/421/29/PDF/N1342129.pdf> (accessed December 7, 2016), para. 44.

<sup>130</sup> UN Human Rights Commission, Report of the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux, The Administration of Justice Through Military Tribunals, E/CN.4/2006/58, January 13, 2006, [http://www.un.org/ga/search/view\\_doc.asp?symbol=E/CN.4/2006/58&referer=/english/&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.4/2006/58&referer=/english/&Lang=E) (accessed December 7, 2016), paras. 46-47.

## **Annex I: Letter to the Ministry of Defense**

Minister Samir Moqbel  
Ministry of Defense  
Yarzeh, Lebanon

CC: The Military Court, The Lebanese Armed Forces, Military Intelligence

December 14, 2016

Dear Minister Moqbel,

Human Rights Watch is in the midst of a project researching the trial of civilians before military courts in Lebanon. Our research focuses on allegations of the use of the court to stifle dissent, the independence and impartiality of the courts, the use of confessions extracted under torture, and due process rights within the military court system. Human Rights Watch opposes trying civilians before military courts, where their rights are not protected, and strongly opposes trying children before military courts under any circumstances. Our established practice is to submit our findings to the authorities whose record is the subject of the report, in order for their information and point of view to be reflected in the reports that we publish.

We submit the questions below, as well as a summary of our principal findings, in the hope that you will respond. We will endeavor to reflect any relevant information you send us into our report, provided we receive it by January 6, 2016.

### **1. Use of the military courts to stifle dissent**

Defendants, lawyers, and human rights activists expressed concerns that the broad jurisdiction of the military courts over civilians, including children, has been used to retaliate against political activism or speech. Fourteen protestors detained by the Internal Security Forces after demonstrating against Lebanon's inability to solve a waste management crisis in 2015, are now facing trial at the military tribunal.

How many cases were tried before the military courts in 2015 and 2016? In how many of the cases were defendants civilians? In how many of the cases were defendants below the age of 18? In how many cases were defendants journalists?

In how many cases were defendants before the military courts prosecuted for insulting the Lebanese state, army, or president?

Have there ever been any investigations of political interference in the military court system?

## **2. The Structure of the Military Courts**

Lebanese lawyers and human rights activists told Human Rights Watch that the structure and composition of the court, including the appointment by the Ministry of Defense of military officers as judges regardless of legal expertise, the fact that the majority of judges remain answerable to the Ministry of Defense, and the subordinate rank of some judges, undermine the competence, independence, and impartiality of the court.

What steps are in place to ensure the independence and impartiality of the court? How is the independence of judges from the military hierarchy and the Ministry of Defense assured?

Are military officers serving as military court judges subject to orders from superior officers and military discipline? Can the Minister of Defense give orders to judges?

Who assigns individual judges to cases and panels?

Can the Ministry of Defense give instructions to prosecutors on individual cases, including on who to prosecute and when to drop a case?

What criteria are used to determine that a person is qualified to serve as a judge at the military? What legal training is required for military court judges?

What guidance are judges and prosecutors given regarding what they should do if there is evidence that a detainee has been tortured or ill-treated? Do military court judges receive training on the inadmissibility of confessions extracted under torture?

How do military court judges respond to allegations from defendants that evidence was obtained by torture?

### **3. Confessions extracted under torture**

Former detainees, family members, and lawyers described nine cases in which detainees tried before the military court on terrorism or security related offenses were tortured in the custody of the military intelligence and the Ministry of Defense in Yarze, forced to confess, and had their coerced confessions used as evidence against them in court. Lebanese human rights organizations and lawyers described a troubling pattern of seemingly routine torture of detainees in military custody. In some of the cases documented by Human Rights Watch, the coerced confession was the only evidence of guilt presented against the accused. In only one case was the coerced confession thrown out, but even in that case, no steps were apparently taken to investigate and penalize the officers who tortured the detainee.

Survivors of torture described being subjected to beatings, psychological torture, electrocution, Balanco (hanging a detainee by the wrists, behind his back), and being ordered to sign statements while blindfolded. In one case, a woman told a journalist that she had been raped and tortured while in military custody. In another, a Syrian refugee who was apparently arrested on suspicion of being gay was subjected to a so-called anal exam. Human Rights Watch wrote to the Ministry of Defense, Military Intelligence, and Military Police on November 2, 2016 in regard to that case. In two other cases, former detainees and lawyers said that military personnel tortured children and extracted forced confessions from them.

Former detainees told Human Rights Watch that they were tortured at various points during their detentions, including interrogations, and none of them had access to a lawyer or their families during interrogations.

What concrete steps are being taken to prevent the use of torture in military interrogations and detention?

What concrete steps has the Ministry of Defense taken to ensure that individuals are able to seek redress for abuses committed by military personnel? What procedures or mechanisms exists for detainees to submit a complaint of torture or ill treatment?

What training is provided to security forces and interrogators with respect to interrogation methods and the use of coercion and torture?

How many investigations were launched into torture or ill treatment by military personnel in 2015 and 2016?

How many officers were disciplined in 2015 and 2016 for torturing or ill-treating detainees? What sorts of disciplinary measures were carried out against police officers found guilty of abuse?

#### **4. Due Process Concerns**

Lawyers and former detainees describes a range of fair trial and due process violations in cases before the military courts, including interrogations without the presence of a lawyer, ill-treatment and torture, incommunicado detention, the use of confessions extracted under torture, lengthy pre-trial detention that exceeded a year in some cases, decisions issued without an explanation, and seemingly arbitrary sentences.

All of the 10 former detainees interviewed by Human Rights Watch who said they were forced to confess under torture told us that they were not able to contact a lawyer before or during interrogation. In many of the cases Human Rights Watch documented, detainees said they were not allowed to speak with their relatives or a lawyer before they appeared in front of the investigative judge.

Lawyers told Human Rights Watch that they often have no way to determine that a client is detained or where they are being held, and needed to use personal connections to locate clients in military detention.

Four Lebanese lawyers told Human Rights Watch that sentencing in the military court is inconsistent and seemingly arbitrary, and that they have come to expect guilty sentences regardless of the evidence against their client.

Lawyers also told Human Rights Watch that the use of confessions extracted under torture were not considered grounds for appeal, and that the lack of a written opinion in military tribunal judgments made them more difficult to appeal.

Are statistics available on how long people remain in detention before being referred to an investigative judge?

What measures are in place to prevent officers detaining people longer than the time permitted under the Code of Criminal Procedure?

What measures are in place to ensure that people can call a lawyer or receive medical treatment when requested and have a lawyer present during interrogation?

In what percentage of the cases were defendants found not guilty?

How many cases were appealed? In how many of the cases did the court of appeals overturn a conviction?

Under what grounds may a defendant appeal a decision? Is the use of a confession extracted under torture grounds for an appeal?

Are military trials public and freely accessible to members of the public? What is the process by which independent monitors can gain access to the military courts to observe trials?

Lebanon should urgently reform the military court system by removing civilians and children from the military court's jurisdiction, and ensure that judges deem inadmissible all confessions and evidence obtained under torture. It should expressly guarantee the right to a lawyer during interrogation, and criminalize all forms of torture. The Ministry of Defense should refer all allegations of torture to the public prosecutor and implement a policy of zero tolerance for all forms of torture and inhuman or degrading treatment.

We look forward to reading your comments on the above issues, as well as any additional comments you wish to provide on the issues of the trial of civilians before military courts. We welcome an opportunity to discuss these questions and our preliminary findings with you in person. As stated above, we will be able to reflect any pertinent information you provide to us by January 6, 2017 in our final report.

Thank you for your consideration.

Sincerely,

Lama Fakhri  
Deputy director, Middle East and North Africa Division  
Human Rights Watch

## **Annex II: Request to Visit the Military Court**

General Hussein Abdallah  
President of the Permanent Military Court  
Beirut  
Lebanon

December 14, 2016

Dear General Abdallah,

Human Rights Watch is in the midst of a project researching the trial of civilians before military courts in Lebanon. We wrote to the Minister of Defense concerning our preliminary findings on December 14, 2016.

As part of this project, we are following the military court trial of 14 protestors who were arrested at a demonstration on October 8, 2015 and are currently scheduled for trial at the Military Tribunal on January 30, 2017. We are writing to request your permission to attend this trial.

We will endeavor to reflect any response to this request into our report, provided we receive it by January 6, 2017.

Thank you for your consideration.

Sincerely,

Lama Fakhri  
Deputy director, Middle East and North Africa Division  
Human Rights Watch

## **Annex III: Response from the Ministry of Defense**

The Lebanese Republic  
Ministry of Foreign Affairs and  
Expatriates

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Number of pages:  
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Office of International Organizations,  
Conferences and Cultural Relations  
Issued Number: 13/8  
Beirut on 1/5/2017

**EXTREMELY URGENT**

**To the Office of “Human Rights Watch”  
Beirut**

**Subject:** Trying Civilians in Military Courts in Lebanon

In reference to the above subject, please find attached a copy of the response by the Ministry of National Defense, in response to your letter dated 12/14/2016 addressed to this Ministry, concerning the subject of trying civilians in military courts in Lebanon. For your consideration,

Director for International Organizations,  
Conferences and Cultural Relations

[signature]

Ambassador Afif Ayyoub

Fax 01 217 635  
Email: beirut@hrw.org

**Subject:** Trying Civilians in Military Courts in Lebanon

**Document:** Letter by Human Rights Watch, dated 12/14/2016

In reference to the above subject and document, as per the correspondence from Human Rights Watch regarding how military courts function, their structure, and the legal procedures taken in cases brought before them, we would reply as follows:

- The correspondence from the above organization is not based on substantiated facts, and the military judiciary in all of its statutes respects all national and international rules of law, especially what concerns respect for human rights.
- As for the prosecution of juveniles, the Protection of Juveniles Code (Law number 422 dated 6/6/2002) applies, which requires that an attorney and female representative of juveniles attend all stages of the investigation along with the juvenile.
- As for trial procedures, the right to defense, open trials and the means of review, the Code of Military Justice (Law number 24/68 dated 4/13/1968) linked to the Code of Criminal Procedure (Law. Number 328 dated 8/2/2001) specifically establishes the right of the defendant before military courts to designate an attorney to defend him, and to preserve all of his rights as stipulated by law to a fair, open and transparent trial.

**Regarding the function of the military court:**

- Law number 24/68 issued on April 13, 1968, ratified by the Lebanese Parliament, stipulates that the military judiciary comprises a military court of cassation, a permanent military court, and single military judges in the provinces, in addition to the government commissioner, his staff and investigative judges. This law establishes the authorities of military courts at all levels (regional and jurisdictional authorities), trial procedures for each one, and the means of review, while chapter three also defines crimes and their penalties, stipulating that the penal code and the Criminal Trial Procedures Code shall apply to all cases not mentioned in this law.
- In the military courts there are twenty-seven judicial judges appointed by the Ministry of Justice and the Supreme Judicial Council; as for judges who are officers, there are four of them in the permanent military court, four in the military court of

cassation, and five single judges in the regions. Most officers are law degree holders, and some hold post-graduate degrees in law.

- Prosecution before military courts (indictment or accusation) is brought by the government commissioner and his assistants, all of whom are judicial judges. Likewise, all investigatory judges are judicial judges, the military court of cassation is headed by a judicial judge, and the permanent military court council contains a judiciary judge as an advisor.
- Defense attorney representation for a defendant before military courts is mandatory, and court proceedings may not take place without the attorney's attendance. If the defendant has not appointed an attorney, for criminal cases and serious misdemeanors an attorney will be appointed for the defendant by the Lawyers' Syndicate at the request of the Court, or, for misdemeanors, a military lawyer will be appointed out of a roster set at the beginning of each year (officers with law degrees).
- No minor is to be questioned at trial without the attendance of a representative for the protection of juveniles, bearing in mind that juveniles may be prosecuted by a military court if they took part in crimes with adults. The court shall make a ruling of conviction or acquittal and then refer the case to Juvenile Court (to determine the penalty). However, if the case only involves juveniles, the Court shall proclaim its lack of jurisdiction regardless of the type of crime committed, and refer the case to Juvenile Court.
- The complaint before a military court contains preliminary investigations conducted by law enforcement officials, verbal investigations conducted by an investigative judge, a charge decision issued by the investigative judge, and a report by the government commissioner or his staff, and the court shall examine the case in its entirety without excluding any of the investigations.
- A trial before the military court is open, and no session is held without the attendance of representatives of the media (newspapers and television), with some sessions covered directly on television, with the exception of some cases related to the public morals, which are held in secret with judgements announced publicly in accordance with the law.



For certain offenses, civilians in Lebanon, including children, are tried in military courts where their due process rights are not respected and in violation of international law.

Based on interviews with civilians who have stood trial before military courts and their lawyers, *"It's Not the Right Place for Us"* reveals a military court system that routinely includes incommunicado detention, interrogations without the presence of a lawyer, ill-treatment and torture, the use of confessions extracted under torture, decisions issued without an explanation, seemingly arbitrary sentences, and a limited ability to appeal.

Many of the judges are military officers, appointed directly by the Minister of Defense, who are not required to have a legal background. The report includes accounts by children who reported being tortured while in detention awaiting prosecution before the military courts.

The report raises concerns that officials within the Ministry of Defense or Lebanese Army are using the overbroad jurisdiction of the military courts as a tool for intimidation or retaliation against political speech or activism. Fourteen activists, arrested during demonstrations against the government's inability to solve a waste management crisis in 2015 are on trial before a military court and face up to three years in prison.

The report urges Lebanon to urgently reform the military court system by removing civilians and children from the military courts' jurisdiction, allowing public observation of trials, and ensuring that judges deem inadmissible all confessions and evidence obtained under torture.

*(above) Security forces spray protestors demonstrating against a waste crisis and government corruption with a water cannon on October 8, 2015, after which 14 of the protestors were charged by the military prosecutor in Beirut.*

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*(front cover)*

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