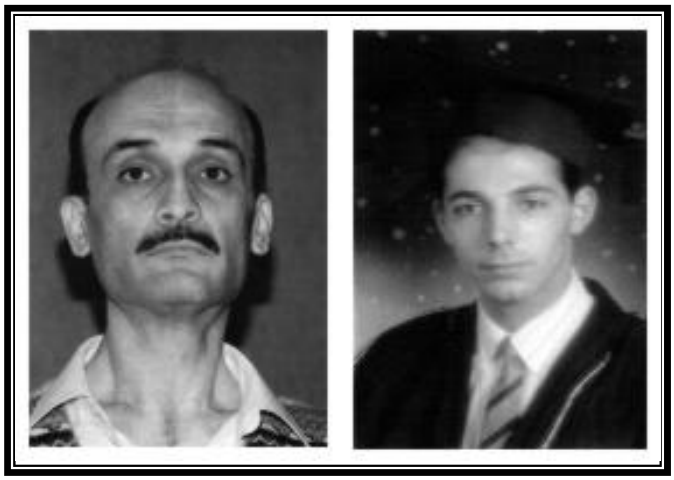
AMNESTY INTERNATIONAL
PUBLIC DOCUMENT
London, November 2004 •
Index AI : MDE 18/003/2004 •

Lebanon

Samir Gea'gea' and Jirjis al-Khouri: Torture and unfair trial



Summary: Political prisoners, Samir Gea'gea and Jirjis al-Khouri are serving life sentences for their alleged involvement in politically-motivated killings. They have been held since 1994 at the Ministry of Defence Detention Centre (MDDC) in solitary confinement mostly in cruel, inhuman and degrading conditions, following unfair trials.

This report describes Amnesty International's concerns about the pre-trial detention, the cruel, inhuman and degrading treatment and unfair trials of Samir Gea'gea' (leader of the banned Lebanese Forces (LF)) and Jirjis al-Khouri, a member of the LF. In 1994 they were arrested along with scores of LF members after the bombing of the Sayidat al-Najat (Lady of Deliverance) church in Junieh, in February 1994, in which 10 people died.

Both men suffered serious violations and irregularities in pre-trial detention at the MDDC, which, at the time of their arrest, was an unlawful detention centre in violation of Lebanese law and international standards governing detention. Jirjis al-Khouri told the judge at his trial that he was tortured to "confess" during his interrogation, by members of the military intelligence. Both men were held incommunicado, without access to lawyers or family members, during interrogation; they were not brought promptly before a judge to review the lawfulness of their detention. Their trials fell far short of international standards. In violation of international standards for fair trial, Jirjis al-Khouri's "confession" was accepted as the main evidence against him. Amnesty International believes that any statement made involuntarily or extracted under torture or ill-treatment should be excluded as evidence in judicial or other proceedings, except where it is evidence against a person accused of perpetrating torture.

Amnesty International is concerned that Samir Gea'gea' and Jirjis al-Khouri continue to be subjected to ill-treatment in detention. Over ten years after their arrest, they remain in solitary confinement at the MDDC. They are not allowed to communicate with other detainees, are denied access to newspapers, radio, TV and any literature of a political nature. They receive visits from their families on specified days of the week which are restricted and subject to prior approval by the Public Prosecutor, and are conducted in the presence of military intelligence officers.

Cut off from the outside world the two political prisoners have apparently suffered physically and mentally. Samir Gea'gea' suffers from, among other things, osteomalacia, a disease of the bones possibly due to a lack of exposure to regular and adequate sunlight. In September 2004 the authorities announced that he had been moved to a new cell, apparently with improved conditions.

Amnesty International is calling on the Lebanese authorities to release Samir Gea'gea' and Jirjis al-Khouri immediately, or promptly give them a retrial before an ordinary independent criminal court, in proceedings which adhere to international standards for fair trial; and to ensure that all allegations of torture and ill-treatment be investigated independently. The organization is also urging the authorities to: ensure the justice system undergoes reformation, including the abolition of the single-tier courts and the death penalty; implement all relevant international treaties and standards; improve detention conditions in the MDDC including by ensuring that they are brought in line with international standards. In particular the authorities should take immediate steps to ensure that detainees are well-treated and not subjected to any form of torture and cruel, inhuman or degrading treatment.

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Introduction

Leader of the banned Lebanese Forces (LF), Samir Gea'gea', and Jirjis al-Khouri, a member of the LF, have been held at the Ministry of Defence Detention Centre (MDDC) in Beirut since 1994. Both are serving life sentences for their alleged involvement in politically-motivated killings and are being held in cruel, inhuman and degrading conditions, after unfair trials. Samir Gea'gea' and Jirjis al-Khouri are now the only political prisoners held following their trials at the MDDC.

In this report, Amnesty International documents human rights violations suffered by Samir Gea'gea' and Jirjis al-Khouri during their incommunicado pre-trial detention, their interrogation, their trial before the Justice Council, and their imprisonment at the MDDC. The main human rights concerns are:

- Jirjis al-Khouri was not allowed access to lawyers during interrogations while he was held incommunicado in pre-trial detention, and was not brought promptly before a judge to review the lawfulness of his detention;
- While held incommunicado in pre-trial detention Jirjis al-Khouri was made to believe that he was a witness, and was not informed as required by law of charges being brought against him;
- While held incommunicado in pre-trial detention Jirjis al-Khouri was reportedly tortured and ill-treated, and the "confessions" he claimed he made under torture were subsequently accepted as the main evidence in his trial;
- Samir Gea'gea' and Jirjis al-Khouri were unfairly tried before the Justice Council, a special court whose decisions are final and not subject to appeal and which so far has failed to investigate allegations of torture and other abuses reportedly committed during pre-trial detention;
- Samir Gea'gea' and Jirjis al-Khouri have been held for over ten years in solitary confinement in cruel inhuman and degrading conditions, in a manner detrimental to their physical and mental health.
- Samir Gea'gea' and Jirjis al-Khouri, like scores of other LF members, may have been victims of human rights violations committed in a climate of political repression and intimidation. Amnesty International is concerned that there is no apparent prospect of these two long term political prisoners being retried by the Justice Council. The organization is, therefore, calling for Samir Gea'gea' and Jirjis al-Khouri to be released or promptly retried, before an ordinary and independent criminal court, in proceedings that conform with international fair trial standards, and for the allegations of torture and ill-treatment to be investigated. Over the last ten years the Lebanese authorities have ignored calls by Amnesty International and other human rights groups for the injustice visited upon the two men, including unfair trial, lack of pre-trial guarantees and allegations of torture in incommunicado detention, to be rectified.

Contextual Background

On 27 February 1994, a bomb exploded in Sayidat a-Najat (Lady of Deliverance) church in Zuq Michael in Junieh, near Beirut, killing 10 people and injuring others. In March and April 1994 scores of members and supporters of the Lebanese Forces (LF), the main Christian militia during the Lebanese civil war, including its leader Samir Gea'gea', were rounded up and detained for various periods in connection with the bombing. Following these arrests, the authorities banned the LF alleging that it was responsible for the church bombing, even though the investigation into the incident had not reached a conclusion. Consequently, there were additional restrictions on the freedom of expression and association of LF affiliates and suspected supporters, as well as other opposition groups. These measures led to serious human rights violations, including arbitrary arrest, torture, and unfair trials.

During the interrogation of LF members held in connection with the church bombing, the examining magistrate announced that he had discovered evidence indicating that the LF - led by Samir Gea'gea' - had perpetrated the assassination of the leader of the Liberal National Party, Dany Cham'oun and members of his family in October 1990. Subsequently, Samir Gea'gea' and other LF officials were indicted for the killings; some were indicted in absentia. They were then referred to the Justice Council, the highest criminal court in Lebanon, in connection with both the church bombing and the killing of Dany Cham'oun and his family. Accordingly the Justice Council proceeded with a concurrent trial for Samir Gea'gea' and other LF officials accused in both cases. In June 1995, the Justice Council issued a verdict in relation to the Dany Cham'oun case, sentencing Samir Gea'gea' to death, immediately commuted to life imprisonment.

In the case of Samir Gea'gea' and his involvement in the political killing of Dany Cham'oun, his defence lawyers argued that the crime took place during the civil war and was therefore covered by the General Amnesty Law of 1991 (Law No. 84/91). However, this argument was dismissed by the Justice Council which said the killing, despite having taken place during that period, fell within the category of crimes exempted from the Amnesty Law, and that the Justice Council had jurisdiction to pursue it.

The General Amnesty Law granted an amnesty for crimes committed before 28 March 1991. It was promulgated by the Lebanese government on 26 August 1991 and applied to crimes committed by all militias and armed groups throughout the civil war. The Amnesty Law was intended to encourage the 'turning of a new page' in the political history of Lebanon. However, it did allow for the exclusion of certain crimes, the most important of which are found in Article 3 of the Law, which says the amnesty does not cover "crimes of assassination or attempted assassination of religious figures, political leaders, and foreign or Arab diplomats".

The Lebanese public appears to be divided over the Amnesty Law: while some argue, as does the government, that the Law facilitates peace and reconciliation, others believe it provides impunity for those responsible for human rights abuses in the past and prevents the emergence of truth. Amnesty International has on several occasions expressed its concern about the Lebanese Amnesty Law of 1991. In its report Lebanon: Human Rights Developments and Violations (MDE 18/1997) Amnesty International stated:

"In general, Amnesty International believes that there should be thorough investigations into allegations of human rights violations. The object of such investigations should be to determine individual and collective responsibility and to provide a full account of truth to the victim, their relatives and society. Investigations must be undertaken by impartial institutions, and must be granted the necessary authority and resources for their task. The results of such

investigations should be made public. Amnesty International believes that a new future of true and lasting peace and human rights protection in Lebanon is only possible if the country comes to terms with its past through a process aimed at investigating and establishing the truth of the war period and its related abuses."

Apart from the general concern that the amnesty gives impunity to those who have committed human rights violations, the exemptions prescribed by the Amnesty Law have in effect created an environment which allows for selectivity and discrimination. The fact that certain crimes such as killings of religious and political personalities are exempt from the Amnesty Law has led to discrimination between victims of human rights violations during the war on grounds of their status - that is, only those violations committed against political and religious leaders are to be pursued to the exclusion of others. Likewise, the Amnesty Law states that those committing crimes covered by the amnesty, after the date of its promulgation, will be liable for prosecution and will also be liable for all the offences they committed during the war. This approach seems to be unfair and hampers attempts to address multiple human rights violations committed during the war, or to bring all perpetrators of these violations to justice, in an equal and fair manner.

The trials of Samir Gea'gea' and LF supporters are examples of the apparent selectiveness of this approach. For example, while asserting its jurisdiction over crimes such as assassination of political and religious leaders, the Justice Council has not actively pursued such cases apart from those allegedly committed by Samir Gea'gea'. This raises concerns about the impartiality and fairness of the court in dealing with the politically motivated assassinations during the war. This may be due to the fact that the Justice Council can only act if and when such cases are referred to it by the Council of Ministers, whose decisions in this regard may have been politically motivated. Although the case of the killing of Dany Cham'oun was originally referred to the Justice Council on 30 October 1990, shortly after the killing took place, it did not initiate and investigation or pursue Samir Gea'gea' for this crime until 1994 when he and scores of LF members were arrested in connection with the church bombing and at a time when the LF's relations with the government had broken down[1]. It is not yet clear why the Justice Council has not initiated proceedings in the cases referred to it by the government even after the security and political situation gradually stabilised by 1992.

[1] Among the cases involving killings of political and religious personalities, some of which were referred to the Justice Council, were those of Presidents Bashir Gemayel and Rene Ma'awwad; Kamal Jumblat the leader the Progressive Socialist Party; Mufti Hasan Khaled; and journalist and publisher Salim al-Luzi.

The arrests of Samir Gea'gea' and Jirjis al-Khouri

Samir Gea'gea' was arrested on 21 April 1994 along with scores of other LF members rounded up in mass arrests in March and April, following the February 1994 bombing of the Sayidat al-Najat (Lady of Deliverance) church in Zuq-Mikhael in Junieh which resulted in the death of 10 people and the injury of others. Jirjis al-Khouri handed himself over to the authorities on 15 March 1994, a week after military intelligence officers stormed his family's home and arrested the entire family, including his ten year old sister. However, after members of the family were released, they were subjected to intimidation and harassment between 1994 and 2002. During that period their home was raided time and time again by members of the military intelligence and other security departments, and their personal belongings, including valuables and books were reportedly confiscated. On his arrest, Jirjis al-Khouri was handcuffed and blindfolded and taken to the MDDC where he was held incommunicado for about six weeks.

Samir Gea'gea', a medical doctor by training, was born in 'Ayn al-Rummanah in Beirut in 1952. In 1986 he became leader of the LF, the main Christian militia during the civil war. Jirjis al-Khouri, a computer technician, was born in Tyre in south Lebanon in 1968. His exact position within the LF at the time of his arrest is not clear, but he was allegedly a member of the LF security department. He was previously a member of the Phalange Party's students' bureau.

Pre-trial detention and torture at the MDDC

There were serious violations and irregularities in Samir Gea'gea' and Jirjis al-Khouri's pre-trial detention at the MDDC. The detainees were arrested without warrant and were held incommunicado without access to lawyers or families. They were not brought promptly before a judge to review the lawfulness of their detention. Amnesty International is not aware of any habeas corpus remedies made available to them during their unlawful detention.

Both defendants were denied access to their lawyers during their interrogations at the MDDC. At a later stage lawyers were allowed to see them only for short periods of time and at intervals which would not allow them to perform their defence tasks properly. The defendants did not have unrestricted access to their legal papers, and defence lawyers were not allowed to communicate with them during trial proceedings. In the case of Jirjis al-Khouri, these flaws led defence lawyers to argue that all statements obtained during preliminary interrogations should be declared null and void as most were not carried out by authorized judicial officers, in contravention of the Code of Criminal Procedures.

Following his incommunicado detention and during the course of almost one year, Jirjis al-Khouri was allowed to see his lawyer only three times, briefly and in a very restricted manner. While held incommunicado he was not informed of the charges brought against him and only knew of them when the indictments were issued. During interrogation while held incommunicado, he was made to believe that he was a witness rather than a defendant, and was not informed as required by law of his rights in pre-trial detention nor of the charges being brought against him.

Jirjis al-Khouri told the court he was tortured during incommunicado pre-trial detention, and stated that "confessions" – which he retracted – were extracted as a result. He said he was tortured by members of military intelligence who used many techniques including: the ballanco (hanging by the wrists which are tied behind the back); electric shocks; having his toe nails crushed; having his hair pulled out; repeatedly being deprived of food and sleep over

a period of more than 40 days; being forced to drink dirty water; and hearing threats to kill members of his family. As a result of torture, he said he was unable to stand for about one month, bled from parts of his body including his mouth, suffered hallucinations and forgot his name. He said he was being beaten in the presence of judges and the Public Prosecutor. He was told that he had to choose one of two options: to confess that he had himself bombed the church or that he had participated in the bombing. He told the court that finally he signed papers presented to him because he could no longer stand the effects of torture which were compounded by pain from a back operation he had had in 1987.

Amnesty International has received many reports of torture committed at the MDDC. Fawzi al-Rasi, who was among those held in connection with the church bombing in 1994, died in custody apparently as a result of torture there. He died after being admitted to an intensive care unit on 22 April 1994. At the time of the arrest and subsequent incommunicado detention of Samir Gea'gea' and Jirjis al-Khouri, the MDDC was an unlawful place of detention operating contrary to Lebanese law and international standards. It continues to operate outside the state's ordinary prison system despite its legalization as a place of detention in January 1995.

The MDDC is one of about eight "private" detention centres in the country which were authorized by the government during the first half of the 1990s through a decree issued by the Council of Ministers. They are under the jurisdiction of the Minister of Defence and are apparently run by the military intelligence and other security services. A maximum security prison, the MDDC has been used over the years as a transit detention centre where detainees are held for weeks or months, before being transferred, mainly to ordinary prisons. In certain cases political detainees may be brought back to the MDDC where they may be abused again. The MDDC continues to be out of bounds of the International Committee of the Red Cross (ICRC) and apparently of prison inspection systems operated by the Ministry of Interior.

The reputation of the MDDC was such that when a detainee was told in 2000 that he was being transferred there he was overwhelmed with "fear and was praying to God to be dead before [his] arrival so they could not touch [him]"[2]. Another former detainee and member of the LF held for years without trial at the MDDC told Amnesty International in 2002:

"There was torture by electric shocks and the Ballanco and extraction of 'confessions' under duress. Cells were without windows or sun light. It was like a grave: you are confined to one place for long periods and subjected to ill-treatment, not allowed to have access to the toilet except one time during day time (during the night detainees are provided with containers to use instead) when the detainee will be blindfolded and handcuffed. At times the eleven cells in the detention centre would be full to the extent that people would be left handcuffed and blindfolded in the corridors. As a result of long solitary confinement underground detainees suffered physically and psychologically. They were physically weak suffering from pain in their joints."

Some of the torture methods documented in recent years by Amnesty International from testimonies given by former detainees at the MDDC include:

- Incommunicado detention in underground cells of about three by two metres without access to fresh air or natural light;
- Being stripped naked;

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[2] See *Lebanon: Torture and unfair trial of the Dhinniyyah detainees*, Amnesty International, AI Index: MDE 18/005/2003, May 2003, page 12.

- Blindfolding, hand-cuffing and tying of hands behind the back;
- Prolonged interrogation for hours, mostly during the night;
- Beating on different parts of the body;
- Crushing of toes;
- Pulling out of hair;
- Exposure to screams of other detainees being tortured;
- Being threatened that female relatives would be attacked and raped;
- Being forced to remain for prolonged periods in fixed positions;
- Being subjected to electric shocks;
- The ballanco (hanging by the wrists which are tied behind the back);
- Having one's religious beliefs denigrated;
- Being prevented from praying or having access to priests;
- Prolonged suspension in contorted positions while being beaten with sticks and cables on the feet;
- Deprivation of sleep, food and drink for prolonged periods;
- Denial of access to the toilet except once during the day, and being forced to use containers during the night.

Trials before the Justice Council

On 13 June 1994, 22 people including Samir Gea'gea' and Jirjis al-Khouri, were charged in connection with the church bombing but charges against most of them were later dropped by the examining magistrate. The charges brought against both defendants in accordance with the provisions of the Penal Code and [Terrorism] Law 11/1/1958 included the offences of "carrying out acts intended to change the Constitution by illegal means", "killings" and aiming to abolish the "legitimate role represented by the army". Eight of the 22, including Samir Gea'gea' and Jirjis al-Khouri, were referred to trial (five of them in absentia) before the Justice Council. In July 1996 the court acquitted Samir Gea'gea' of the church bombing charge, but sentenced him to ten years imprisonment for "maintaining a militia in the guise of a political party," and for "dealing with military weapons and explosives"; Jirjis al-Khouri was sentenced to life imprisonment with hard labour.

Between 1995 and 1999 Samir Gea'gea' was handed down multiple death sentences commuted to life imprisonment by the Justice Council for the October 1990 killing of Dany Cham'oun and his family, the assassinations during the civil war of former Prime Minister Rashid Karami in 1987, and the attempted assassination of former Lebanese Minister Michel al-Murr in 1991. A Criminal Court also sentenced him to life imprisonment for the assassination of former LF cadre Elias al-Zayek in 1990.

The Justice Council is a special court to which cases are referred at the discretion of the Council of Ministers, on the advice of the Minster of Justice, and not as a result of normal judicial procedures. The Justice Council has jurisdiction over cases involving, among other things, assassinations of, or assassination attempts on senior politicians, diplomats and religious personalities and cases of political violence and "terrorism". There is no right of judicial review of the sentences passed by the Justice Council, including death penalty

sentences. Amnesty International has expressed concerns about the Justice Council's procedures which are incompatible with fair trial standards as laid down by Article 14 of the the International Covenant on Civil and Political Rights (ICCPR). The UN Human Rights Committee, the body which moniters implemention by states of the ICCPR, has pointed out that "decisions passed by the Justice Council are not subject to appeal ... contrary to article 14, paragraph 5, of the Covenant."[3] Amnesty International is also concerned that defendants tried before this court are routinely held in prolonged pre-trial detention, sometimes for years.

Amnesty International considers trials before the Justice Council to be in violation of international standards for fair trial because its decisions are final and not subject to appeal. The way cases referred to this court are chosen is selective, and the manner in which they are prosecuted may be based on political considerations rather than legal merit. Article 26 of the ICCPR states "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Principle 5 emphasizes the right to be tried before an ordinary court: "[everyone] shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals."

Most of the defendants sentenced by this court over the last ten years were affiliated to political groups opposed to the government. Their trials were seriously prejudiced as a result of politically motivated smear campaigns following their arrest. In the two cases discussed in this report and subsequent cases brought before this court, Amnesty International noticed a persistent violation of the right to presumption of innocence.

One of the main flaws of the Justice Council is that it does not have total jurisdiction over the legal process of the cases brought before it, especially jurisdiction over all pre-trial procedures. This is contrary to Principle 3 of the UN Basic Principles on the Independence of the Judiciary which states "[t]he judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law."

As far as Amnesty International is aware, the Justice Council has failed to investigate numerous allegations made by defendants of torture and ill-treatment during pre-trial detention. In the case of Jirjis al-Khouri, the Justice Council has failed to investigate serious allegations of torture and extraction of "confessions" under torture and ill-treatment despite Jirjis al-Khouri's accusation that the then Public Prosecutor was present while he was being beaten during interrogation in incommunicado detention.

Prolonged solitary confinement at the MDDC

Over ten years after their arrests, Samir Gea'gea' and Jirjis al-Khouri remained held in solitary confinement in individual underground cells at the MDDC. They are not allowed to communicate with other detainees even when they are outside their cells, and are denied access

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[3] Concluding Observations of the Human Rights Committee: Lebanon, UN Doc. CCPR/C/79/Add.78 (1997), para. 9.

to newspapers, radio, TV and any literature of a political nature. Both detainees, however, receive visits from members of their families on specified days of the week. The visits are restricted and are subject to prior approval by the Public Prosecutor, and are conducted from behind glass barriers in the presence of military intelligence officers.

Cut off from the outside world the two political prisoners have apparently suffered physically and mentally. Samir Gea'gea' was examined by a team of medical doctors, who made their findings public in a press conference held at the Medical Syndicate in Beirut on 16 September 2004. The examination revealed that Samir Gea'gea' suffers from osteomalacia, a disease of the bones uncommon among those who are in their early fifties as is the case with Samir Gea'gea', and which could lead to spontaneous fracturing of the bones. Despite additional medical examination the cause of this disease was unclear, leading the panel of doctors to believe that it may be due to a lack of exposure over the years to regular and adequate sunlight. The report also revealed that he suffers from tachycardia or an irregular heart beat which may be the result of "physically and mentally stressful conditions". The panel stressed the necessity of providing him with proper medical care in accordance with international standards, and concluded that the general health of Samir Gea'gea' appears to be fine, but there are signs of ill-health in view of the heart and bone conditions. In previous years he had suffered from paralysis of one of his fingers and chronic pain in his right shoulder. Ten days after the release of the medical report on Samir Gea'gea', the authorities announced that he had been moved to a new cell with reportedly better conditions.

The precise health condition of Jirjis al-Khouri is not known given that he has not been allowed access to independent medical care, but he is reportedly suffering from pains in his spine, neck, leg and stomach. He reportedly sleeps on a mattress on the floor. According to information obtained by Amnesty International, his family's request to allow him access to an independent medical examination has been refused by the authorities. He is allowed access to his family every Tuesday and Thursday excluding public holidays, but his family's requests for him to be allowed access to priests, medical care and homemade food have been denied.

Amnesty International considers prolonged solitary confinement to be cruel and damaging to the physical and mental health of a prisoner. This is particularly so in the case of Samir Gea'gea' and Jirjis al-Khouri who have been held for over ten years in solitary and isolated cells in a place which is not a prison institution, not subject to ordinary prison rules, and not accessible to visits by the ICRC or other inspectors. Article 7 of the UN Basic Principles for the Treatment of Prisoners states: "Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged." The Human Rights Committee has stated that "prolonged solitary confinement... may amount to acts prohibited by article 7" of the ICCPR which states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.".[4]

Lebanon's obligations under human rights law

In these two cases the safeguards that must be accorded to pre-trial detainees have been absent, leading to allegations of torture and intimidation to extract "confessions". One of these safeguards is the right of the detainee to be brought without delay before a judicial or other competent authority. According to Article 9(3) of the ICCPR, to which Lebanon has been a

[4] CCPR General Comment No. 20. (General Comments), Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Article 7), 10 March 1992, para. 6.

state party since 1976, "[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." Principle 37 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states,

"A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody."

The Lebanese authorities are also obliged to investigate allegations of torture. In the case of Jirjis al-Khouri the authorities refused to conduct an independent investigation into claims of torture, and considered a medical report they commissioned to be conclusive proof that he had not been tortured. The Special Rapporteur on torture has stated that "the absence of marks on the body that would be consistent with allegation[s] of torture should not necessarily be treated by prosecutors and judges as proof that such allegations are false" and has called for "the judiciary to be made more aware of other forms of torture, such as intimidation and other threats".[5] The UN Commission on Human Rights has stated that "intimidation and coercion, as described in article 1 of the Convention [against Torture]…, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person, can amount to cruel, inhuman or degrading treatment or to torture".[6] Amnesty International is concerned that despite categorical retraction by Jirjis al-Khouri of the statements he made while held incommunicado at the MDDC, asserting that they were made under torture, the Justice Council accepted them and considered them as the main evidence against him and other defendants. This contravenes Article 15 of the UN Convention against Torture which provides that states parties must "ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".[7]

The Special Rapporteur on torture has stated "[n]o statement or confession made by a person deprived of liberty, other than one made in [the] presence of a judge or a lawyer, should have a probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means."[8] The Special Rapporteur on torture has recommended, "[p]rosecutors and judges should not require conclusive proof of physical torture or ill-treatment (much less final conviction of an accused perpetrator) before deciding not to rely as against the detainee on confessions or information alleged to have been obtained by such treatment; indeed, the burden of proof should be on the State to demonstrate the absence of coercion."[9] Article 15 of the Convention against Torture states, "[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture

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[5] UN Doc. E/CN.4/1998/38/Add.2, Report on Visit to Mexico, 14 January 1998, para. 88(i).

[6] Commission on Human Rights resolution 2003/32, 23 April 2003, para. 6.

[7] While Lebanon was not a state party to this convention at the time, this principle is enshrined in the Declaration Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly in 1975, Article 12.

[8] UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.

[9] UN. Doc. E/CN.4/1999/61/Add.1 Report on visit to Turkey (1998), para. 113(e).

as evidence that the statement was made." The Committee against Torture has recommended that "all evidence obtained directly or indirectly by torture be strictly prevented from reaching the cognizance of the deciding judges in all judicial proceedings".[10]

At the MDDC and other "private" prisons operated by the military intelligence and other security forces, political detainees, arrested usually without warrant, are routinely held incommunicado for months without the knowledge of their relatives or lawyers. This practice, which has continued for years now, apart from being in itself a human rights violation, facilitates other human rights violations against detainees including torture and ill-treatment leading to physical and mental ill-health and even death in custody. These are violations of Lebanese law as well as of international human rights standards and treaties to which Lebanon is a state party, including the UN Convention against Torture. Article 10 of the UN Declaration on Enforced Disappearance states, "[a]ny person deprived of liberty shall be held in an officially recognized place of detention".[11] The Human Rights Committee states that detainees should be held "in places officially recognized as places of detention". Furthermore, the Special Rapporteur on torture has stated, "the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court."[12]

Despite calls, including from members of parliament, for the improvement of conditions in "private" detention centres and for them to be brought in line with Lebanese prison regulations and international standards, violations against detainees at the MDDC continue to be widely reported and appear not to be investigated. The lack of ICRC access to the MDDC runs counter to Decree No. 8800 issued by President Emile Lahoud on 4 October 2002. The Decree states "Delegates of the ICRC shall be allowed to visit the prisoners they choose, to talk to them without restriction or surveillance for the whole duration of the visit, and in a place that they choose inside the prison. They shall be allowed to record the identity of the prisoners they meet." The Decree authorizes medical delegates of the ICRC to meet all the prisoners they choose and to interview them without surveillance. However, despite this Decree the ICRC continues to be denied access to the MDDC, apparently due to the refusal of the military intelligence to comply with the Decree.

Conclusions and Recommendations

Amnesty International considers the trial of Samir Gea'gea' and Jirjis al-Khouri to be in violation of international standards of fair trial, and their conditions of detention to be cruel, inhuman and degrading. The organization is equally concerned at reports of torture and ill-treatment inflicted on Jirjis al-Khouri and scores of other detainees who have been held at the MDDC. The organization regrets that the Lebanese authorities have failed so far to address its repeated calls for these two prisoners to be given a fair trial, and for all allegations of torture and ill-treatment and extraction of "confessions" under torture and ill-treatment at the MDDC during incommunicado detention, to be investigated independently. The organization believes that any statement made involuntarily or extracted under torture or ill-treatment should be

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[10] UN Doc. A/53/44 (1998), Concluding observations on Germany, para.193.

[11] General Comment on Article 7, *ibid*., para. 11.

[12] UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.

excluded as evidence in judicial or other proceedings except where it is evidence against a person accused of perpetrating torture. Amnesty International calls on the Lebanese authorities to implement without delay the following recommendations:

Samir Gea'gea' and Jirjis al-Khouri should be released, or promptly retried before an ordinary and independent criminal court, that applies regular provisions of the criminal law, in proceedings which must adhere to international standards for fair trial, including the right of the defendants to:

- have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing, in private and without any hindrance;
- be tried without undue delay;
- examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them;
- not be compelled to testify against themselves or to "confess" guilt;
- have any statements obtained through torture or cruel, inhuman or degrading treatment or punishment made inadmissible in any proceedings before the court;
- appeal and review the court ruling before a higher court, which is similarly independent of government;

Conduct an independent, thorough, and impartial investigation into their trials and allegations of torture and ill-treatment, and their prolonged solitary confinement in cruel, inhuman and degrading conditions;

Reform the justice system, including by abolishing the single-tier courts and the death penalty. Ensure that all detainees are tried before a competent and impartial court established by law without any interference of a political or any other nature and with the judges having exclusive power to decide on matters of a judicial nature;

Implement all relevant international treaties and standards including the ICCPR, the UN Convention against Torture, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Standard Minimum Rules for the Treatment of Prisoners;

Enforce Presidential Decree No. 8800 and ensure that the ICRC is allowed immediate and unfettered access to all Lebanese prisons including those run by the MDDC and all other "private" detention centres. The MDDC and all other prisons must be subject to independent inspection through bodies that are independent of the authorities running the prisons;

Improve detention conditions in the MDDC including by ensuring that they are brought in line with international standards. The MDDC and all other "private" prisons must be subject to normal prison regulations governing the prison system in Lebanon and in line with recognized international standards for the treatment of detainees;

In particular take immediate steps to ensure that the detainees are well-treated and not subjected to any form of torture and cruel, inhuman or degrading treatment. The authorities must stop holding detainees incommunicado, confining detainees in dark cells or subjecting them to any other unlawful treatment or punishment prejudicial to their mental and physical health.

** END **

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