

**OPINION No. 37/2007 (Lebanon)**

**Communication addressed to the Government on 27 April 2007.**

**Concerning General Jamil Al Sayed, General Raymond Azar,  
General Ali El Haj, General Mustapha Hamdan, Ahmad Abdel Aal,  
Ayman Tarabay, Mustapha Talal Mesto and Mahmud Abdel Aal.**

**The State is a party to the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of Opinion No. 14/2007.)
2. The Working Group thanks the Government for transmitting the requested information in a timely manner.
3. (Same text as paragraph 3 of Opinion No. 15/2007.)
4. Having seen the allegations made, the Working Group welcomes the cooperation of the Government. It transmitted the reply of the Government to the source and has received the source's comments. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, taking account of the allegations made, the reply of the Government and the source's comments.
5. The cases mentioned below were reported to the Working Group on Arbitrary Detention as follows: Following the assassination of the former Prime Minister of Lebanon, Mr. Rafiq Hariri, on 14 February 2005, and in response to a request from the Lebanese authorities, on 7 April 2005, the United Nations Security Council unanimously adopted resolution 1595 (2005). This resolution set up an International Independent Investigation Commission. It was headed by Mr. Detlev Mehlis and, from 11 January 2006 on, by Mr. Serge Brammertz.
6. Within the framework of this Investigation Commission entrusted with identifying the perpetrators and sponsors of the act and the accomplices, and with the cooperation of the Lebanese examining magistrate responsible for the case, Mr. Elias Eid, numerous arrests and detentions were ordered.
7. According to the information transmitted by the source, eight persons, all of Lebanese nationality, Ahmad Abdel Aal, Ayman Tarabay, Mustapha Talal Mesto, Mahmud Abdel Aal, General Jamil Al Sayed, General Raymond Azar, General Ali El Haj and General Mustapha Hamdan, have been detained for more than a year and a half without having been charged and without any date for their trial being known. Several applications for release have been submitted by these persons, but all have been rejected. A real grey area exists regarding which authority considers itself competent to rule on the judicial situation of these detainees. According to the information obtained by the source, the Investigation Commission states that it is the Lebanese courts that are competent to decide on questions of detention. This position was reaffirmed in Commissioner Brammertz's last report dated 12 December 2006.
8. Following their arrests during the period from August to October 2005, on the basis of suspicions as to their implication in the assassination, the detainees, after remaining temporarily in various places of detention, were transferred to the Roumieh central prison.

9. Except for Mr. Tarabay and Mr. Mesto, and more recently the brothers Mahmud and Ahmad Abdel Aal, all are being held in isolation in cells without light and ventilation, 2 metres long and 1.3 metres wide. Three of the detainees are said to be suffering from serious physical and mental health problems.

*Details of the individual cases*

10. On 30 August 2005, at 5.30 a.m., patrols of the International Investigation Commission appeared at the home of General Jamil El Sayed, a former Director of the Lebanese Department of Security (*Sûreté générale*), equipped with an order signed by the Head of the Commission, Mr. Mehlis, describing General El Sayed as a “suspect”. General El Sayed was then taken to the headquarters of the Commission where he was subjected to a prolonged interrogation by a Commission investigator, in the absence of a lawyer. General El Sayed was placed in detention at the headquarters of the Internal Security Forces.

11. The next day, the Commission investigator requested General El Sayed to sign the record of the interrogation. General El Sayed asked to see his lawyer, Maître Akram Azoury. Maître Azoury arrived and expressed reservations at the fact that the investigators had not asked General El Sayed whether he needed the assistance of a lawyer in keeping with Lebanese and international law. General El Sayed decided nevertheless to sign the record.

12. On 1 September 2006, General El Sayed was summoned to the headquarters of the Commission to be confronted with a witness, in the presence of his lawyer and the Commission investigators. The interview was recorded and filmed. The witness had his head covered by a bag, apart from his eyes. The witness affirmed that General El Sayed had visited Damascus seven times between November 2004 and February 2005 for meetings with the Chief of the Syrian Presidential Guard and the head of the Syrian intelligence services to plan the assassination of President Hariri and that on the last occasion, he had been accompanied by General Mustapha Hamdan, at that time Chief of the Lebanese Presidential Guard. El Sayed denied these meetings and requested more details on their dates. He also invited the investigators to check every date in his diaries. The masked witness was unable to specify any of the dates of the seven alleged meetings in Syria. General El Sayed remained in detention at the disposal of the Commission on the basis of the verbal order notified to him by one of the investigators on the night of 30 August.

13. On 3 September 2005, he was brought before the Lebanese examining magistrate, Mr. Eid, who subjected him to a purely formal interrogation which did not last more than one hour. Following this investigation, the examining magistrate issued a warrant for his detention.

14. From 3 September to 19 October 2005, five interrogation sessions took place with the Commission investigators. Each time that the investigator alluded to an individual, General El Sayed asked to be confronted with this individual, and the question was immediately shelved.

15. On 19 October 2005, the Investigation Commission presented its first report to the Security Council. This report accuses General El Sayed, General Mustapha Hamdan and General Raymond Azar of being among the main organizers of the assassination of President Hariri. General El Sayed had sight of the passages

concerning him six months after the presentation of the report. The accusations against General El Sayed are based primarily on the declarations of two individuals (identified as “witnesses”). The first, Mr. Hussam Hussam, is probably the masked individual with whom General El Sayed was confronted on 1 September 2005. He later withdrew his declaration publicly at a press conference held on 27 November 2005. No subsequent confrontation was carried out with Mr. Hussam, either before the Commission or before the examining magistrate, who to date has not interrogated him. The second witness is Mr. Zuhair El-Saddik, who has admitted before the Commission that he participated in the preparatory stage of the crime. The Lebanese examining magistrate did not interrogate Mr. El-Saddik and no confrontation was arranged with General El Sayed. Mr. El-Saddik was allowed to remain at liberty and departed for France, where he is today living in total freedom.

16. On 19 January 2006, General El Sayed was taken to the headquarters of the Investigation Commission to be interrogated.

17. On 15 March 2006, the Commission’s third report was published (the first under the headship of Mr. Brammertz). The report does not mention General El Sayed. The Commission published its fourth and fifth reports on 6 June and 25 September 2006. Neither of these reports alludes to General El Sayed.

18. On 7 and 8 April 2006, the Commission had a “discussion” with General El Sayed at the General’s request (the investigator refuses to describe the session as an interrogation). This discussion is to date General El Sayed’s only discussion with the present officials of the Commission.

19. On the basis of this discussion, General El Sayed presented a statement (No. 11) on 23 May 2006, requesting the Commission to revoke its recommendation to keep him in detention. On 6 June 2006, the Commission officially replied to the statement, indicating that all the questions raised in the statement fell within the exclusive competence of the Lebanese judicial authorities.

20. On 20 June 2006, General El Sayed’s lawyers presented to the examining magistrate a request for withdrawal of the warrant issued for the detention of their client. Since the request for withdrawal of the warrant was not answered, General El Sayed lodged with the Commission, on 12 October 2006, a further application for revocation of the detention recommendation. In correspondence dated 24 October 2006, the Head of the Commission stated that the Lebanese authorities had exclusive competence to deal with any questions of detention.

21. General Jamil El Sayed presented his last application for release on 25 March 2007.

22. General Mustapha Hamdan was Chief of the Presidential Guard, General Raymond Azar was head of the army intelligence services and General Ali El Haj was Chief of the Internal Security Forces. General Hamdan, General Azar and General El Haj were, like General El Sayed, arrested on 30 August 2005, each at his own home, by representatives of the International Investigation Commission, assisted by the Lebanese Internal Security Forces. A search warrant was presented to them and their homes were searched. They were then taken to the headquarters of the International Investigation Commission at Monteverdi. They were placed under arrest following their hearing at the headquarters of the International Investigation Commission on the same day. The three military officers were interrogated for three

days without the presence of a lawyer. (The Code of Criminal Procedure of Lebanon allows 24-hour custody, renewable once, without the presence of a lawyer.) On 3 September 2005, the Lebanese examining magistrate (Mr. Elias Eid) ordered their detention. They were detained for the requirements of the investigation and have not been charged. However, the applications for release submitted by their lawyers were rejected by the examining magistrate. After three days at the headquarters of the International Investigation Commission, they were detained on premises of the security forces. They were subsequently transferred to Roumieh prison, where they are still being held, in isolation, within the section under the exclusive control of the intelligence services of the Ministry of the Interior. General Raymond Azar, General Ali El Haj and General Mustapha Hamdan presented their last applications for release on 2 February 2007.

23. Mr. Ayman Tarabay and Mr. Mustapha Talal Mesto were working as mobile telephone salesmen. They were arrested on 13 September 2005 for selling telephone cards, at around the time of the assassination of Rafiq Hariri, without taking down the identity of the purchasers of the cards. Mr. Talal Mesto was detained for a month at the headquarters of the intelligence services of the Ministry of the Interior. He was then transferred to Roumieh prison. Both men were held, in isolation, until 7 December 2006. Their detention was ordered by the examining magistrate, Elias Eid, but they were not charged with any crime. Mr. Tarabay suffers from serious neurological problems due, according to his close relatives, to meningitis and he is also said to be under considerable psychological distress. Mr. Mesto has, since his arrest, suffered from not insignificant heart problems, which also require medical assistance. Mr. Ayman Tarabay presented his last application for release in February 2007. It has not been answered. Mr. Mustapha Talal Mesto presented his last application on 9 March 2007. It was rejected two weeks later.

24. Mr. Ahmad Abdel Aal was responsible for public relations in a Muslim charity association. He was summoned on 28 September 2005 by the military magistrate, who wished to question him in connection with an arms trafficking case. He was held at the detention centre of the Military Court of Beirut. Although the military examining magistrate was to order his release on bail, the International Investigation Commission, in conjunction with the Lebanese police, requested his detainment. He was brought before the examining magistrate, Elias Eid, who on 21 October 2005 ordered his detention. Mr. Ahmad Abdel Aal told his lawyer that he was forced to sign statements which he could not read owing to his poor eyesight and because he did not have his spectacles. The authorities suspect him of having had telephone contacts with officers suspected of complicity in the assassination of Rafiq Hariri but no charges have been brought against him. Mr. Ahmad Abdel Aal suffers from progressive cancer. His state of health gives cause for concern and urgently requires medical attention. Mr. Ahmad Abdel Aal presented his last application for release on 30 March 2007.

25. Mr. Mahmud Abdel Aal, director of relations in the Delbani electricity company, was arrested on 21 October 2005 following a police summons to the Basta gendarmerie. He was transferred to the headquarters of the intelligence services of the Ministry of the Interior in Beirut, where he was detained for five days. He was then transferred to the lawcourts, where he remained for one day. Since 26 October 2006, he has been held in the Roumieh prison section under the exclusive control of the intelligence services of the Ministry of the Interior on the ground that he

allegedly had telephone contacts with persons suspected of involvement in the assassination of Rafiq Hariri.

26. In all the cases mentioned, the source considers that the fundamental rights to a fair and just trial are not respected. These persons have been detained for more than one year and seven months without any charge or trial. Although their lawyers have submitted numerous applications for release, the detainees do not have any de facto recourse to a court able to rule on the principle of their indictment and detainment. In the case of General El Sayed, for example, the International Investigation Commission “recommended” detention and then (on 1 October 2005) opposed his release. However, following the replacement of Mr. Mehlis by Mr. Brammertz as Head, the Investigation Commission has indicated that the relations between the International Independent Investigation Commission operate “within the framework of Lebanese sovereignty and of its legal system” and that the Lebanese judicial authorities have exclusive competence with regard to questions of detention. The Lebanese examining magistrate responsible for the case acknowledges that he has no evidence against General El Sayed or against the other detainees but has to date not taken any decision pending completion by the International Investigation Commission of its investigations and its transmission to him of details concerning the detainee. Mr. Brammertz’s report dated 12 December 2006 indicates that the International Investigation Commission has transmitted to the Lebanese courts information on the individuals who are in detention, being aware that this can help the Lebanese authorities take the steps which they deem appropriate or necessary concerning their detention, and reaffirms the exclusive responsibility of the Lebanese courts for decisions relating to the detention of these persons.

27. In its response, the Government states that it cannot be held liable for any violations that may have occurred in regard to the investigations conducted by the International Investigation Commission, in particular those concerning the interrogation of Jamil El-Sayed carried out by the international investigator in the absence of his lawyer and without his having been informed of this right. The Government contends that the Lebanese authorities and courts have no connection with investigative acts of the International Investigation Commission.

28. With respect to the allegation of detention of the persons mentioned in the communication, the Government states that they are not detained but on remand in custody as suspects in the case relating to the assassination of the former Lebanese Prime Minister, Rafiq Hariri, in application of the Code of Criminal Procedure of Lebanon, which allows the suspects to be remanded in custody. With regard to the duration of their custody, the Government notes that this is a complex case which has necessitated the intervention of the Security Council and the creation of an international investigation commission, whose investigator has just requested a six-month extension, which the Security Council has granted. The Government considers the suspects’ custody to be dependent on the development of the inquiries conducted by the International Investigation Commission. It points out, however, that this does not mean that they will be kept in custody until the end of the investigation.

29. The Government disputes the allegation by the source that the examining magistrate has acknowledged that he does not have any evidence against the above-mentioned persons. In the view of the Government, the investigation is secret; it is

still pending and the Lebanese courts have not yet taken any decision. Regarding the conditions of detention and the allegations of maltreatment, the Government cites the agreement which it has just signed with the International Committee of the Red Cross (ICRC), which enables ICRC representatives to visit all places of detention in Lebanon, including those managed by the intelligence services of the Ministry of the Interior, and it has included a copy of this agreement in the case file.

30. Commenting on the response of the Government, the source points out that, while it is true that the arrests were carried out in conformity with the provisions of the Code of Criminal Procedure of Lebanon, the case in fact involves procedures applicable before a specialized court, the Council of Justice, which is the highest court in Lebanon and allows the indefinite detention of suspects. In the present case, the source notes that, two years after their arrest, the eight above-mentioned persons have still not been notified of the charges against them.

31. The source adds that the detention of the eight persons, although recommended by the International Investigation Commission and ordered by the Lebanese examining magistrate, is under the responsibility of the Lebanese courts. Serge Brammertz, the Head of the International Investigation Commission, has pointed this out on several occasions. The source states that it is deeply concerned by the response of the Lebanese authorities, which suggests that the detention of the suspects could be further extended for an indefinite period, probably pending the establishment of the international tribunal, without these persons being tried, which is in violation of article 9, paragraph 3, and article 14, paragraph 3 (c), of the International Covenant on Civil and Political Rights.

32. The source expresses its concern regarding the suspension, for an unknown duration, of the examining magistrate responsible for this case following the complaint by one of the prosecution lawyers. At the present time, the Lebanese courts are thus no longer in a position to rule on the detention of these persons. With regard to the agreement concluded between the Lebanese judicial and security authorities and ICRC, the source points out that ICRC's prison visits do not fully ensure that maltreatment cannot be inflicted on some of the detainees, in particular in cases of isolated confinement, to which the four generals are subjected.

33. It is apparent from the foregoing that the Working Group has received a communication which is directed against the Lebanese Government but which at the same time alleges serious violations which could give the detention an arbitrary character and which the communication imputes to the investigators of the International Investigation Commission. However, the source considers that, although recommended by the International Investigation Commission, the detention of the eight above-mentioned persons was ordered by the Lebanese examining magistrate responsible for the case and is continuing to date under the responsibility of the Lebanese courts.

34. To recapitulate, the Security Council decided, in its resolution 1595 (2005), to set up an international independent investigation commission based in Lebanon in order to assist the Lebanese authorities in investigating all aspects of the terrorist attack which took place on 14 February 2005 in Beirut and caused the deaths of the former Lebanese Prime Minister Rafiq Hariri and several other persons, including to help identify its perpetrators, sponsors, organizers and accomplices.

35. Regarding the violations allegedly committed by the investigators of the International Investigation Commission, the Working Group points out that, since an individual communication was received by the Working Group, its examination falls under the Opinion procedure provided for in section III.A, of its methods of work.<sup>18</sup> The Opinion procedure presupposes that the communications contain a complaint against one or more States. Under the terms of its mandate, as defined in Human Rights Commission resolution 1991/42 and reaffirmed by the Human Rights Council in its resolution 6/4 of 28 September 2007, the Working Group was given competence to investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned.

36. The Working Group considers that it is thus not competent to rule on the arbitrariness of detentions resulting from violations imputed to investigators acting within the framework of an international investigation commission set up by the Security Council.

37. With regard to the question of the responsibility of the Lebanese Government, the Working Group notes that, on 30 August 2005, General Jamil El Sayed, General Mustapha Hamdan, General Raymond Azar and General Ali El Haj, subsequently, on 13 September 2005, Mr. Ayman Tarabay and Mr. Mustapha Talal Mesto, and finally, on 21 October 2005, the brothers Ahmad and Mahmud Abdel Aal were all arrested and interrogated by investigators of the International Investigation Commission, which allegedly recommended to the Lebanese courts that they be detained. In its response, the Lebanese Government affirms that the eight above-mentioned persons were placed in custody, as suspects, in application of the Code of Criminal Procedure of Lebanon, by the examining magistrate appointed by the Lebanese courts to investigate the assassination of Rafiq Hariri and that to date these persons continue to be held as such.

38. The documents submitted to the Working Group for consideration show that the Lebanese authorities had initially entrusted the criminal investigation to the chief military examining magistrate, Rachid Mezher, who undertook the task during the period from 14 to 21 February 2005. At that date, the Lebanese Government decided to treat the crime as a terrorist act against the Republic, which led it to entrust the case to another court, the Council of Justice, which is the highest criminal court in Lebanon. As a result of this decision, a new examining magistrate was appointed to conduct the investigation, judge Michel Abu Arraj, representative of the Attorney-General's Department. On 23 March 2005, judge Abu Arraj resigned from his position as examining magistrate and was replaced by the examining magistrate Elias Eid. It was the latter who ordered the detention of the above-mentioned persons. In its last reply, the source indicated that the examining magistrate Elias Eid had been suspended from his duties as a result of a complaint by one of the prosecution lawyers.

39. It is thus not at all disputed that the eight above-mentioned persons were arrested under warrants issued by a Lebanese judicial authority officially entrusted with the criminal investigation of the assassination of Rafiq Hariri. The Lebanese Government neither contended that the eight persons were kept in detention at the

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<sup>18</sup> See E/CN.4/1998/44, annex I.

request of the International Investigation Commission nor maintained that this step was taken in fulfilment of its obligations under Security Council resolution 1595 (2005). The Working Group concludes that, if from the examination of the communication it is concluded that the detention is of an arbitrary character, the Lebanese Government bears full responsibility for it.

40. To justify the fact that the eight above-mentioned persons were detained for more than two years without any notification of charges or any indictment, the Government invokes the complexity of the case and the provisions of the Lebanese Criminal Code, which allows the detainment for an indefinite period of persons suspected of having committed an offence.

41. The Working Group observes that it is not enough that the detention be in conformity with domestic legislation; national law must also be in conformity with the relevant international provisions set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments to which the State concerned has acceded, in this case articles 9 and 14 of the International Covenant on Civil and Political Rights, which has been ratified by Lebanon.

42. Article 9, paragraph 1, guarantees to everyone the right to liberty of person, prohibits arbitrary arrest and detention and stipulates that no one may be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. The prohibition of arbitrary detention indicated in paragraph 1 implies that the law itself must not be arbitrary. The Human Rights Committee has specified that deprivation of liberty allowed by the law must not be manifestly disproportionate, unjust or unpredictable.<sup>19</sup>

43. Article 9, paragraph 2, provides that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”. Paragraph 3 adds that anyone arrested or detained on a criminal charge has to be brought “promptly” before a judge or other officer authorized by law to exercise judicial power and is entitled to trial within a reasonable time or to release. The Human Rights Committee has specified that “promptly” means that time limits must not exceed a few days.<sup>20</sup>

44. It is true that, in the present case, the eight detainees were brought before the examining magistrate within a more or less reasonable time and it was the latter who decided to detain them for the requirements of the investigation but without indicting them or notifying them of any specific charges. The Working Group considers that their detainment without indictment or notification of charges for more than two years deprives the above-mentioned persons of the exercise of the

<sup>19</sup> The Human Rights Committee has, in the context of lawful pretrial detention or remand in custody, held that the “drafting history of article 9, paragraph 1, confirms that ‘arbitrariness’ is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability”, Communication No. 305/1988, *Hugo van Alphen v. The Netherlands* (Views adopted on 23 July 1990), paragraph 5.8 (A/46/40 vol. II, p. 131). See also Communication No. 631/1995, *Spakmo v. Norway* (Views adopted on 5 November 1999, paragraph 6.3 (A/55/40, vol. II, p. 27); Communication No. 458/1991, *Albert Womah Mukong v. Cameroon* (Views adopted on 21 July 1994), paragraph 9(8) (A/49/40, vol. II, p. 193); and Communication No. 560/1993, *A v. Australia* (Views adopted on 3 April 1997), paragraph 9.2 (A/52/40, Vol. II, p. 159).

<sup>20</sup> Human Rights Committee, general comment No. 8 (1982), para. 2.



guarantees recognized to all individuals formally charged with a criminal offence, in particular the right to know the charges brought against them and the right to be tried within a reasonable time or released.<sup>21</sup>

45. The Working Group reaffirms that, in international law, detention prior to conviction should be the exception rather than the rule, a rule which stems from the principle of presumption of innocence. The Human Rights Committee has stated that deprivation of liberty, even if initially legitimate, will become arbitrary and be incompatible with article 9 of the International Covenant on Civil and Political Rights if it is of indefinite duration.<sup>22</sup>

46. The Working Group concludes that the detention of the eight above-mentioned persons for indefinite periods without charge or trial violates the most basic norms of the right to a fair trial, as guaranteed by international standards, and gives the detention an arbitrary character.

47. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Jamil El Sayed, Mustapha Hamdan, Raymond Azar and Ali El Haj, Ayman Tarabay, Mustapha Talal Mesto, Ahmad Abdel Aal and Mahmud Abdel Aal is arbitrary, being in contravention of articles 9 and 14 of the International Covenant on Civil and Political Rights, to which Lebanon is a party, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

48. Consequent upon the Opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of these persons in order to bring it into conformity with the standards and principles set forth in the International Covenant on Civil and Political Rights.

Adopted on 30 November 2007

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<sup>21</sup> General comment No. 32 (2007), paras. 31 and 35.

<sup>22</sup> Communication No. 560/1993, *A v. Australia* (note 19 above), para. 7.