

## Flygtningenævnets baggrundsmateriale

<b>Bilagsnr.:</b>	<b>285</b>
Land:	Libanon
Kilde:	Amnesty International
Titel:	"Lebanon – A Human Rights Agenda for the Parliamentary Elections"
Udgivet:	maj 2005
Optaget på baggrundsmaterialet:	1. juli 2005

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# LEBANON

## A Human Rights Agenda for the Parliamentary Elections

### Introduction

On the eve of the Lebanese parliamentary elections scheduled for 29 May to 19 June 2005, Amnesty International is seeking to promote debate over how human rights in Lebanon may be more effectively promoted and protected. Elections provide an opportunity for consolidating democracy and justice in a post-conflict situation or a situation characterised by insufficient attention to human rights protection. Amnesty International believes that human rights should be at the heart of the proposed agenda of each candidate, and of the future government.

Lebanese laws and the constitution are generally conducive to protecting human rights, and Lebanon prides itself on the role its representative played in the drafting of the Universal Declaration of Human rights, 1948. There continues to be a lively community of human rights organisations and defenders in the country, Lebanon has a reputation for being a regional media and cultural centre, and there is a Parliamentary Human Rights Committee. For years Amnesty International has had a good, open and frank dialogue with the Lebanese authorities who have permitted the organisation to carry out numerous human rights-related activities in the country. Amnesty International has also established its regional office for the Middle East and North Africa in Beirut. The organisation hopes that further cooperation continues after the elections and with the formation of the new parliament and government.

However, there continue to be human rights concerns in Lebanon, and the forthcoming elections provide an important opportunity for Lebanese citizens to raise their human rights concerns with candidates.

For over a decade Amnesty International has conducted numerous research visits to Lebanon, interviewed victims of human rights violations and their relatives, observed trials of political prisoners and held talks with government officials, members of the judiciary, lawyers and prosecutors. Although there is a noticeable awareness about human rights issues at both official and non-official levels, Amnesty International has documented gross human rights violations since the end of the civil war in 1990, committed by agents of the state or non-state actors. The organisation has communicated its findings and concerns in confidential correspondence with the authorities or published them in public reports and through the media. However, the bulk of the organisation's concerns and recommendations do not seem to have been properly addressed, or even taken seriously by the Lebanese authorities.

In 1997, and after a lapse of 14 years since the submission of its first report, Lebanon presented its second periodic report to the Human Rights Committee (HRC), the body of experts entrusted with monitoring implementation of the International Covenant on Civil and Political Rights (ICCPR), which Lebanon ratified in 1975. The HRC examined Lebanon's report and urged the Lebanese government to undertake a number of reforms and measures to bring its laws and practices in conformity with its obligations under the ICCPR. As with the case with recommendations submitted by Amnesty International, none of the HRC concluding observations appear to have been heeded by the Lebanese authorities.

In this document, Amnesty International is highlighting several key human rights areas: the need for reform of the justice sector; ending discrimination against women and marginalised communities; declaring a moratorium on executions as a step towards the abolition of the death penalty; ending impunity for past – and future – violations; and promoting and protecting human rights activities and freedom of association.

Amnesty International hopes that Lebanese citizens and Parliamentary candidates will take up the concerns raised in this document to help in their strengthening of a system of human rights laws and practices in which justice and truth prevail.

## **1. Reform of the justice sector**

### *A. Ensuring independence of the judiciary*

The UN fact-finding mission into the 14 February 2005 assassination of former Prime Minister Rafiq al-Hariri highlighted the lack of independence of the Lebanese judiciary. Ongoing research by Amnesty International and other international and national human rights organisations and defenders supports this. Similarly, the lack of independence was commented on in 1997 by the HRC in its consideration of Lebanon's implementation of the ICCPR. The HRC expressed "*concern about the independence and impartiality of the State party's judiciary, and notes that the delegation itself conceded that the procedures governing the appointment of judges and in particular members of the Conseil Supérieur de la Magistrature [Higher council of the Judiciary] were far from satisfactory. The Committee is also concerned that the State party does not, in many instances, provide citizens with effective remedies and appeal procedures for their grievances. The Committee therefore recommends that the State party review, as a matter of urgency, the procedures governing the appointment of members of the judiciary, with a view to ensuring their full independence.*"

### *B. Review of the Justice Council & Military Courts*

Trials before the Justice Council and Military Courts continue to fall short of international standards for fair trials.

July 2005 will mark the fifth anniversary of the indictment of the Sunni Islamist “Dhinniyyah” detainees, charged with “terrorism” and other security offences. The Dhinniyyah case illustrates key failings of the Justice Council, to where the case was transferred in early 2001 from the Mount Lebanon Criminal Court. First, the selection of cases referred by the Council of Ministers for consideration by the Justice Council appears to be of arbitrary nature. Second, the Justice Council has been unable to investigate the strong allegations of torture carried out against the Dhinniyyah and other detainees, at least partly because it has no jurisdiction over the pre-trial detention period, including interrogation. Third, as members of the Justice Council are usually senior members of the Court of Cassation the time they can devote to the proceedings of the Justice Council is limited, and consequent routine delays of hearings at the Justice Council can continue for years in a manner that undermines the right to fair trial. Fourth, and as stated by the HRC in 1997, “the fact that decisions passed by the Justice Council are not subject to appeal” constitutes a lack of conformity with the provisions of the ICCPR.<sup>1</sup>

Trials before the military courts also seriously fall short of international standards for fair trial. Despite being set up mainly to deal with cases related to the army and military personnel, and contrary to Lebanese legislation which does not give military personnel any legal authority over the civilian population, the military courts have been granted a very wide jurisdiction over civilians. Civilians currently being tried before the Military Court include members of the banned Islamist Hizb al-Tahrir (Liberation Party), arrested for the peaceful expression of their political and religious opinions. Judgments made by the Military Court, unlike civilian courts, do not provide a full explanation of the grounds for their verdicts. The Military Court is characterized by its summary proceedings as demonstrated by the vast number of cases it rules on every day. Although in law the right of defence is guaranteed to the accused, lawyers state that the *modus operandi* of the Military Court does not always allow them to discharge their tasks properly or allow time for them to make their case fully. In addition, judges are predominantly military officers with inadequate judicial training. Proceedings before the military courts are not subject to independent judicial review. On 24 February 1994 the Court of Cassation decided (Decision No.5/94) that the civil justice system has no authority over military justice. In theory, the military courts are bound to apply the Lebanese Code of Criminal Procedure, but in practice they frequently fail to do so. Violations in pre-trial procedure, such as arrests without warrant, prolonged incommunicado detention, and denial of detainees’ access to lawyers have created an environment where other human rights violations may flourish. In 1997 the HRC expressed “*concern about the broad scope of the jurisdiction of military courts in Lebanon, especially its extension beyond disciplinary*

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<sup>1</sup> For more analysis of the Justice Council and the Dhinniyyah case see AI reports, *Torture and unfair trial of the Dhinniyyah detainees* (MDE 18/005/2003). Other recent Amnesty International reports on Lebanon include: *Samir Gea’gea’ and Jirjis al-Khouri – Torture and unfair trial* (AI Index: MDE 18/003/2004); *Economic And Social Rights Of Palestinian Refugees: Submission To The Committee On The Elimination Of Racial Discrimination* (MDE 18/017/2003); *Torture and ill-treatment of women in pre-trial detention* (MDE 18/014/2001); *Unfair Trial of a Human Rights Defender* (MDE: 18/008/2001); *Human rights developments and violations* (MDE 18/19/97); *Antoinette Chahin: Torture and Unfair Trial* (AI Index: MDE 18/16/97); *Israel/South Lebanon: Israel’s Forgotten Hostages: Lebanese Detainees in Israel and Kham Detention Centre* (MDE 15/18/97); *Israel/South Lebanon: Unlawful killings during Operation “Grapes of Wrath”* (AI Index: MDE 15/42/96, July 1996).

*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. The State party [i.e. Lebanon] should review the jurisdiction of the military courts and transfer the competence of military courts, in all trials concerning civilians and in all cases concerning the violation of human rights by members of the military, to the ordinary courts."*

### *C. End incommunicado detention, torture & ill-treatment*

Article 401 of the Lebanese Penal Code forbids torture and provides for punitive measures against officials found responsible for torture or ill-treatment. However, torture and ill-treatment continue to be reported in Lebanon. Amnesty International is concerned not only at such reports, but also at the lack of investigations being carried out into them. Amnesty International is further concerned at the continuing use of "confessions" allegedly obtained as a result of torture as "evidence" in trials, such as in the Dhinniyyah case.

Amnesty International welcomed Lebanon's accession to the Convention Against Torture in 2000, but remains concerned that adequate legislative and practical steps have yet to be taken to implement the provisions of the Convention. Insufficient measures appear to have been taken to protect detainees against torture and ill-treatment or to curtail the use of incommunicado detention which facilitates the practice of torture. The UN Commission on Human Rights has stated that "prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture".<sup>2</sup> The HRC has stated that provisions should be made against the use of incommunicado detention,<sup>3</sup> and the Committee against Torture has consistently called for its elimination.<sup>4</sup> The UN Special Rapporteur on torture, recognising that "torture is most frequently practised during incommunicado detention", has also called for such detention to be made illegal.<sup>5</sup>

At least one detainee reportedly died in custody during 2004. In September Isma'il al-Khatib died, reportedly as a result of torture, after more than 10 days' of incommunicado detention.

Amnesty International repeats its calls upon the Lebanese authorities to implement the Convention Against Torture to which Lebanon acceded in 2000. All allegations of extraction of "confessions" under torture must be investigated according to international standards. Detainees must not be subjected to prolonged incommunicado detention as this

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<sup>2</sup> Commission on Human Rights Resolution: 2004/41, 19 April 2004, para. 8.

<sup>3</sup> Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRINGEN\1\Rev.1 at 30 (1994), para. 11.

<sup>4</sup> See for instance Report of the Committee against Torture, UN Doc. A/52/44 (1997), paras. 121(d) (re Georgia); 146 (re Ukraine); UN Doc. 44(A/55/44) (2000), para. 61(b) (re Peru); UN Doc. A/58/44 (2003), para. 42(h) (re Egypt); UN Doc. A/59/44 (2004), para. 146(d) (re Yemen).

<sup>5</sup> UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.

facilitates torture and can in itself constitute a form of cruel, inhuman and degrading treatment. Detainees must be held in recognizable places of detention in humane conditions. The authorities should enforce Presidential Decree No. 8800 and ensure that the International Committee of the Red Cross is allowed immediate and unfettered access to all Lebanese prisons including those run by the Ministry of Defence

### *Recommendations*

Up to eight years on, as far as Amnesty International is aware, none of the concerns or recommendations expressed above by the HRC or by Amnesty International regarding the lack of independence of the judiciary, unfair trials before the Justice Council or Military Court, and torture and ill-treatment in detention has been addressed. Amnesty International repeats them on the eve of the 2005 Parliamentary elections hoping that with the current galvanised spirit for justice in the country there is the environment for the necessary judicial reforms to be carried out.

Lebanon has been very late in its submission of its periodic reports to the human rights bodies responsible for overseeing implementation of international treaties. Lebanon has two overdue reports to the HRC and one overdue report to the Committee Against Torture. The elections provide a good opportunity for new commitments to be made to submit these overdue reports.

Amnesty International also recommends that Lebanon ratifies the Optional Protocol to the Convention against Torture. The overall objective of this Protocol is to enable regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

## **2. End Discrimination and protect rights of women and marginalized communities**

### *A. Discrimination and violence against women, including female migrant domestic workers*

There remain discriminatory laws against women including in Lebanon's Personal Status Laws, nationality laws and in the Penal Code – as well as in its labour law, social security and terrestrial trade laws.

The Personal Status Laws contain discriminatory provisions regarding marriage, divorce, parenting and inheritance. Nationality laws dictate that children receive their nationality only from their father and not from their mother. The UN Committee on the Rights of the Child has repeatedly expressed concern over this and recommended that “*the State*



*party ensure the right of the child to a nationality without discrimination on the basis of the gender of the parent(s), in accordance with articles 2 and 7 of the Convention [on the Rights of the Child].”*

Discriminatory laws in the Penal Code, include article 562 whereby a man who kills his wife or close female relative after surprising her “in the act of witnessed adultery, or during illegal sexual intercourse” or “in a suspicious situation” and “kills or injures one of them without premeditation, shall benefit from the mitigating excuse.” At least two women were killed by close male relatives during 2004 for alleged reasons of “honour”. Human rights defenders working on women’s rights in Lebanon note concern that perpetrators of violence against women may in fact falsely claim reasons of “honour” in an attempt to receive reduced sentences.

The HRC noted in 1997 that “*both legal and de facto discrimination continue to be a matter of concern [in Lebanon]. It refers in this context to articles 487 to 489 of the Criminal Code<sup>6</sup>, which impose harsher sentences for conviction of adultery on women than on men, to nationality laws and the law which may restrict the right to leave the country for spouses in the absence of the consent of their husband*” The HRC stated it was “*equally concerned about the compatibility of laws and regulations which do not allow Lebanese citizens to contract marriage other than in accordance with the laws and procedures of one of the recognized religious communities, and that these laws and procedures do not afford equality of rights to women.*”

Accordingly, the HRC recommended that Lebanon “*review its laws, especially those governing the status of women, women's rights and obligations in marriage and civil obligations, make appropriate amendments to them and take appropriate action to ensure full legal and de facto equality for women in all aspects of society.*”

Female migrant domestic workers face multiple discrimination on account of their lack of Lebanese citizenship, their gender and their lower economic and legal statuses. Many female migrant domestic workers work excessive hours, face restrictions on their freedoms of movement and association, and do not receive pay that is due to them. An unquantifiable number also suffer physical and sometimes sexual abuse. A consequence of discriminatory laws forbidding them from changing their employers is that they remain more vulnerable to abuse while their employers are effectively guaranteed impunity. There are also reports that some female domestic migrant workers are forbidden from marrying a Lebanese or foreign national while in Lebanon.

At least five female migrant workers died during 2004 having reportedly suffered abuse. Of four Filipinas who fell from buildings to their deaths, three were reportedly trying to escape from abusive employers, while autopsies on the fourth discovered that she had been recently sexually abused. A fifth female migrant worker, a Nepalese, hanged herself after reportedly being beaten by her employer. Amnesty International is not aware of any prosecutions being made in any of the five deaths.

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<sup>6</sup> The HRC is in fact referring to the Penal Code.

In 1997 the HRC commented on “*the difficulties faced by many foreign workers in Lebanon whose passports were confiscated by their employers*” and recommended that Lebanon “*take effective measures to protect the rights of these foreign workers by preventing such confiscation and by providing an accessible and effective means for the recovery of passports.*” In 2005 the practise remains whereby passports are confiscated from many migrant workers upon their arrival in Lebanon. Further, the UN Committee on Elimination of Racial Discrimination (CERD), responsible for overseeing the implementation of the Convention on the Elimination of Racial Discrimination, expressed concern in particular regarding the situation of domestic workers who do not benefit fully from the protection of the labour code. The Committee urged the government to take all necessary measures “*to extend full protection to all migrant workers, in particular domestic workers. In addition, the State party should provide information in its next periodic report on any bilateral agreements with the countries of origin of a large number of migrant workers. In addition, the Committee recommends that the State party ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990.*”

## **B. Discrimination against Palestinian refugees**

Amnesty International recognizes the efforts undertaken by the Lebanese authorities to host hundreds of thousands of Palestinian refugees on its territory for over 50 years. The organisation also supports the right of Palestinians to return to their homeland, which they should be given the opportunity to exercise and which is in many cases the preferred durable solution to a refugee situation. However, Palestinian refugees continue to be discriminated against in Lebanon. Laws and policies in Lebanon have a discriminatory effect on Palestinian refugees with respect to their right to an adequate standard of living, the right to work, the right to social security, and the rights to own and inherit property. In March 2004 CERD expressed concern over discrimination against Palestinian refugees in Lebanon, “*in particular access to work, health care, housing and social services as well as the right to effective legal remedies.*” CERD urged Lebanon “*to take measures to ameliorate the situation of Palestinian refugees with regard to the enjoyment of the rights protected under the Convention, and at a minimum to remove all legislative provisions and change policies that have a discriminatory effect on the Palestinian population in comparison with other non-citizens.*”

## **Recommendations**

Although Amnesty International is aware that the current Parliament has been considering draft amendments to the Penal Code, the organisation is not aware of any of the above discriminatory legislation against women, both Lebanese and migrants, or against Palestinian refugees, to have been repealed. However, persistent campaigning over a number of years by women’s organisations and other human rights organisations and defenders appears to have helped bring the country to the threshold of substantial human rights reform. At this critical

moment, Amnesty International urges that all discriminatory laws and provisions, particularly those relating to or affecting women, be removed or amended, that the United Nations Migrant Workers Convention be ratified, and that the economic, social and cultural rights of all persons on Lebanese territory be protected, as according to the International Covenant on Economic Social and Cultural Rights (ICESCR), to which Lebanon is a State party.

Amnesty International also urges that a public debate be initiated on the recommendations of CERD. Steps that are planned to be taken to implement these recommendations should be on the agenda of candidates in the elections. These steps should include effective measures to end all forms of discrimination against Palestinian refugees in Lebanon and to ensure the respect and protection of their human rights.

### **3. Moratorium on the Death Penalty**

Amnesty International was very concerned with the re-introduction of executions in Lebanon when, in January 2004, three men were executed after a *de facto* moratorium since 1998. Two men, Badea' Hamada and Remi Za'atar, were shot by firing squads while the third, Ahmad Mansour, was hanged to death. The re-introduction of executions sparked a wide movement of protest among the local human rights organisations that formed a coalition against the death penalty.

Amnesty International opposes the death penalty in all circumstances, and considers it to be a violation of the right to life, recognized by Article 3 of the Universal Declaration of Human Rights, and to be the ultimate form of cruel, inhuman or degrading treatment or punishment, contrary to Article 5 of the Universal Declaration. Amnesty International believes that the finality and cruelty inherent in the death penalty, and the lack of evidence showing it to be a deterrent to violent crime, make it an inappropriate and unacceptable response to crime. To this date, 84 countries around the world have abolished the death penalty for all crimes, and a total of 120 countries have abolished the death penalty in law or practice. In re-instating the death penalty, Lebanon is actually going against both the world trend and the domestic trend, given the increasing Lebanese activism on this issue, to abolish this cruel penalty.

#### *Recommendations*

As a step towards the abolition of the death penalty, Amnesty International calls on commitments by the authorities and candidates in the elections to declare a moratorium on executions.

## **4. End impunity for violations**

Impunity, meaning exemption from punishment, refers to the failure of the state to investigate and prosecute crimes under international law, to establish the truth about what occurred and to provide full reparations to victims and their families. Amnesty International's experience around the world indicates that impunity is the single most important factor leading to continued human rights abuses. In countries emerging from armed conflict and embarking on reconstruction and reconciliation, the need for justice is overwhelming. In Lebanon, neither justice was pursued nor were there efforts to uncover the truth in relation to multiple human rights violations and abuses which were committed by successive Lebanese governments and various other parties during and after the 1975 – 1990 Lebanese civil war.

During the Lebanese civil war mass human rights abuses were committed, such as killings of non-combatants, abduction of Lebanese, Palestinian, and foreign nationals, and arbitrary detention, by various armed militias and foreign military forces.

Among hundreds of Lebanese and Palestinian political prisoners who over the years were apparently held or “disappeared” in Syria are scores arrested or abducted by Syrian military forces operating in Lebanon and transferred to Syria outside any legal framework. Others were arrested or abducted by Lebanese or Palestinian militias during the war in Lebanon and handed over to the Syrian authorities. Another group was arrested in Syria without judicial warrants and detained without due legal process. All have been kept for years in arbitrary detention or subjected to secret and summary trials by military tribunals often under sweeping charges. Most were held in incommunicado detention with no access to the outside world; only a few were allowed to receive occasional visits from their families.

Scores of Lebanese and Palestinian nationals remain unaccounted for after they apparently “disappeared” during the wake of Israeli invasion of Lebanon in 1982, in which 18,000 people, the overwhelming majority of whom were civilians, were reported killed, and in Israel's subsequent military occupation of south Lebanon (up to May 2000).

Following pressure from non-governmental organisations (NGOs), particularly the Committee of the Families of the Disappeared, a commission of enquiry was set up in 2000 to investigate the fate of those missing and kidnapped during the civil war, and concluded that none of the “disappeared” was alive in Lebanon, that any of those missing for at least four years should be considered dead, and that compensation and social rehabilitation should be provided to families of the victims. However, the whole report of the commission was never made public. The Commission did not recommend publicly any criminal investigations into these cases, and therefore effectively provided a blanket amnesty.

In January 2001, another commission of enquiry was established by order of the Lebanese President to consider complaints of relatives of those who “disappeared” in either Syria or Israel. Although the Relatives of the Disappeared Complaints Commission concluded its work in June 2002 and despite spending 18 months collecting evidence, receiving complaints from families and conducting hearings covering around 700 cases, it did not publish a report or even make a public statement about its findings. No clarification has been made by the authorities as to whether the Commission has been disbanded, or not.

Amnesty International opposes amnesties for perpetrators of human rights abuses, such as the Lebanese Amnesty Law of 1991 which grants a general amnesty, with a few exceptions, for crimes committed before 28 March 1991. Amnesties and similar measures of impunity for crimes under international law are prohibited under international law. The UN's Human Rights Committee criticised the 1991 Lebanese Amnesty Law, stating that: "*The Committee notes with concern the amnesty granted to civilian and military personnel for human rights violations they may have committed against civilians during the civil war. Such a sweeping amnesty may prevent the appropriate investigation and punishment of the perpetrators of past human rights violations, undermine efforts to establish respect for human rights, and constitute an impediment to efforts undertaken to consolidate democracy.*"

Also in 1997 Amnesty International stated that it "*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.*" The organisation repeats this call in 2005.

## **Recommendations**

Amnesty International recommends that an independent commission of enquiry, to be composed of representatives of civil society representatives and relevant authorities, should be set up to conduct thorough, independent and impartial investigations into allegations of crimes under international law and other serious human rights abuses. It should be equipped with the necessary authority and resources, and should be involved in wide consultation with Lebanese civil society and relevant international bodies about its mandate, methodology and scope of work and be generally accountable to and transparent to the public. The 1991 Lebanese Amnesty Law should be repealed so as to enable such investigations and possible prosecutions for human rights abuses committed prior to 1991.

Lebanon should promptly ratify the Rome Statute of the International Criminal Court, which established a permanent international criminal court with jurisdiction over genocide, crimes against humanity and war crimes, and the Agreement on Privileges and Immunities of the International Criminal Court and implement them in national law. The Rome Statute has been ratified by 98 states.

## **5. Promote and protect human rights activities and freedom of association**

The HRC noted in 1997 that while Lebanese legislation is itself compatible with the ICCPR regarding freedom of association, *de facto* practice "*has restricted the right to freedom of association through a process of prior licensing and control*". Obstacles to becoming a licensed human rights organisation have contributed to the challenges faced by Lebanon's lively community of human rights organisations and defenders. In recent years, participants in

this community have been harassed, arbitrarily arrested or detained, unfairly tried and even beaten apparently on account of their activities promoting human rights.

### *Recommendations*

Amnesty International urges the Lebanese authorities to respect the UN Declaration on Human Rights Defenders<sup>7</sup>, adopted by the UN General Assembly on 9 December 1998. Article 1 of the Declaration states that *"everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels"*. Amnesty International also calls for measures laid out in the Declaration for the Respect, Promotion and Protection of Human Rights and Fundamental Freedoms, in particular in respect of the role of human rights defenders, to be implemented.

## **Conclusion**

Amnesty International's role in elections is not to act as an election observer but to call for human rights to be protected in the election process and for human rights issues to feature prominently in it. By outlining its concerns and recommendations in this document the organisation hopes it can help promote human rights debate before, during and after the elections. Amnesty International would then encourage the new Parliament to fulfil its roles of overseeing the work of the government and protecting the rights of all persons on Lebanese territory.

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<sup>7</sup> The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.