

LEBANON

Antoinette Chahin: Torture and Unfair Trial

INTRODUCTION

On 7 January 1997 Antoinette Yusuf Chahin, a Lebanese student born in 1971, was sentenced to death, commuted to life imprisonment with hard labour, for her alleged involvement in the assassination of Father Sam'an Boutros al-Khoury on 11 May 1992 in 'Ajeltoun. According to the prosecution and court verdict, the killing of Father Sam'an Boutros al-Khoury was planned and carried out by the Lebanese Forces, of which Antoinette Chahin was allegedly a member. The evidence presented in court implicating her in this offence was extremely weak. During her detention Antoinette was reportedly tortured, which resulted in her hospitalisation.

Amnesty International is gravely concerned at blatantly unfair aspects of Antoinette Chahin's trial and at reports that she was tortured. The organization is calling for an immediate judicial review of her conviction by an appropriate body offering full guarantees of independence and impartiality, including a full investigation into her allegations of torture.

BACKGROUND

The Lebanese Forces

The Lebanese Forces was the main Christian militia during the Lebanese civil war which lasted from 1975 to 1990. It was affiliated with the Phalange Party until the mid-1980s after which it became politically and militarily independent. All militias, except those fighting Israel in south Lebanon, were disarmed in 1991 as part of the implementation of the Ta'if Agreement of 1989 which ended the civil war. The Lebanese Government issued an amnesty law in 1991 pardoning those who had committed most political crimes during the civil war. The Lebanese Forces, under the leadership of Samir Geagea, accepted the Ta'if Agreement and started the process of transforming itself into a civil political party. However, it remained in opposition and refused the ministerial posts offered to it because of its reservations about what it considered selective implementation of the Ta'if Agreement, especially in relation to the withdrawal of the Syrian forces from Lebanon.

The Church Bombing Trial

A bomb exploded killing at least 10 people in *Sayedat al-Najat* church in Lebanon on 27 February 1994. Subsequently the government dissolved and banned the Lebanese Forces and arrested more than one hundred of its members, including Samir Geagea, before the prosecution's indictment in the case was issued. Some were later released. Antoinette Chahin was first arrested with 21 others on 23 March 1994 in connection with the church bombing. Her brother, Jean Chahin, was a member of the Lebanese Forces and she was questioned about his involvement in the bombing. The charges against her were dropped and she was released on 5 May 1994.

Eight members of the Lebanese Forces were tried for the church bombing by the Justice Council.¹ In July 1996 Samir Geagea was acquitted of the church bombing charge, but sentenced to 10 years' imprisonment for "maintaining a militia in the guise of a political party, and for dealing with military weapons and explosives". Therefore the ban on the Lebanese Forces continued. Jean Yusuf Chahin (Antoinette's brother), was sentenced to death *in absentia* for his alleged involvement in the church bombing. Another defendant, Jirjis al-Khoury, who was sentenced to life imprisonment with hard labour, retracted his statements alleging that they had been extracted under torture and duress. The court rejected the torture claim on the basis of the medical report and testimony of the prison doctor who stated that he had examined the defendant during the interrogation period and found no evidence of torture. No adequate judicial investigation appears to have been ordered into this allegation of torture.

THE ASSASSINATION OF FATHER SAM'AN BOUTROS AL-KHOURY TRIAL

Father Sam'an Boutros al-Khoury was killed on 11 May 1992 in his monastery in 'Ajeltoun. An investigation was conducted by the investigating judge but no one was charged. Investigation resumed again in May 1994 when Rashid Daw allegedly confessed to his involvement in the assassination of Father al-Khoury to another prisoner, Artin Hanna, in Rumieh Prison where he was detained on other charges. The prison director conducted an investigation before Rashid Daw was transferred to Jounieh Judicial Department, *Mafrizat Jounieh* (see Procedural Irregularities below). Rashid Daw allegedly confessed to his involvement in the crime with the intention of stealing. He later named others who reportedly took part in the crime: Jean Chahin, George Bakhous, Jihad Abi Ramia, Sa'd Jibra'il and Antoinette Chahin.

Sa'd Jibra'il allegedly confessed in *Mafrizat Jounieh* and again before the investigating judge, stating that the motive for killing Father al-Khoury was that he supplied the Lebanese Army with information about the Lebanese Forces during the latter's war with the army in 1989 and 1990.

ANTOINETTE CHAHIN'S ALLEGED ROLE IN THE ASSASSINATION

Antoinette Chahin was arrested on 9 June 1994 in connection with the assassination of Father al-Khoury and stood trial with five co-defendants before the criminal court. She denied the charges against her. The evidence against her was a confession by Rashid Daw who stated that her role was to knock on the door of the monastery and when the priest opened the door George Bakhous would kill him. Rashid Daw claimed that he saw Antoinette Chahin carrying a gun with a silencer, which is allegedly the type of weapon used by members of the Lebanese Forces' security apparatus. He also mentioned that she gave him her identification card as a guarantee that her brother would give him money for participating in the operation, and that was how he knew her name. Sa'd Jibra'il also testified that she took part in the assassination.

¹The Justice Council is a special court that takes up national security and political cases referred to it by the cabinet. Amnesty International and the Human Rights Committee have expressed concern over the absence of an appeal process for decisions passed by the Justice Council.

Both Rashid Daw and Sa'd Jibra'il later retracted their confessions alleging that they had been extracted under duress and that they never knew Antoinette Chahin.

THE COURT'S VERDICT

On 7 January 1997 Judge Hatem Madi issued the following sentences on six defendants in the trial for the assassination of Father Sam'an Boutros al-Khoury:

- Antoinette Yusuf Chahin, death sentence, commuted to life imprisonment with hard labour, for participating in the crime. The prosecutor considered that Antoinette Chahin had had a leading role in carrying out the crime by enabling George Bakhous to shoot Father al-Khoury.
- George Hamid Bakhous, death sentence *in absentia*, for killing Father al-Khoury.
- Jean Yusuf Chahin, death sentence *in absentia*, for planning and participating in the assassination.
- Sa'd Elias Jibra'il, Jihad Adib Abi Ramia and Rashid Nasri Daw were each sentenced to 12 years' imprisonment with hard labour for participating in the crime.
- In addition, the defendants were collectively liable to pay 80 million Lebanese liras (approximately US\$ 54,000) as personal compensation.

ANTOINETTE CHAHIN'S MEDICAL EXAMINATION

The forensic report on Antoinette Chahin was submitted by Dr Elias al-Sayegh to the investigating judge Justice Fawzi Dagher on 20 June 1994. Dr al-Sayegh had examined Antoinette Chahin on 17 June 1994, eight days after she had been arrested. He stated that she suffered from bruises on her arms apparently where she had been suspended from the ceiling, a large bruise on the left foot and ankle as a result of a blow from a solid object that dated back to approximately one week before the examination and swelling in her right foot from scalding with very hot water. Antoinette Chahin said she had been beaten while suspended from her arms and that this caused internal bleeding in her uterus. (See Amnesty International's communication with the Lebanese Government below.)

Antoinette Chahin was transferred to hospital several times during her detention and was reportedly treated by the Lebanese Red Cross for the swelling in her feet.

THE UNFAIR TRIAL

The International Covenant on Civil and Political Rights (ICCPR) to which Lebanon acceded in 1972, as well as the Lebanese Code of Criminal Procedures (CCP) of 1948 stipulate certain principles and procedures to guarantee fair trial for those accused of a criminal offence. In the case of Antoinette Chahin and her co-defendants, there are a number of aspects which clearly violate the principles of fair trial as laid down in Article 14 of the ICCPR and other international standards.

Procedural Irregularities in the Investigation

A number of procedural irregularities reportedly occurred in the conduct of the preliminary and pre-trial investigations, some of which contravened Articles of the Lebanese CCP and penal code. For example:

- the defendants were beaten by security officers, a crime under Article 401 of the Lebanese penal code;
- the public prosecutor carried out an investigation despite the fact that the case was in the hands of the investigating judge;
- the prolonged pre-trial detention of defendants beyond the period permitted by law (as per Articles 102 and 103 of the CCP);
- the interrogation of one of the defendants, Sa'd Jibra'il, before the investigating judge without the presence of his lawyer, in contravention of Article 70 of the CCP;
- the fact that two defendants were allegedly forced to 'reconstruct' the crime without the presence of their lawyers;
- the absence of corroborating evidence to confirm the testimonies of Rashid Daw and Sa'd Jibra'il.

The court acknowledged that there had been procedural irregularities in the conduct of the investigation by the prison director and the public prosecutor because the investigating judge was the only person authorized to conduct the investigation. However, the court decided to ignore this irregularity because the defendants later repeated their alleged confessions before the investigating judge. The court also stated that the prolonged detention of the defendants for investigation did not affect the outcome of the investigation.

Rights of the Accused

- Paragraph 2 of Article 9 of the ICCPR states that: "*Anyone 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.*" Article 261 of the CCP states that the arrest warrant is not valid unless it includes the charges against the defendant.

Antoinette Chahin was arrested, in connection with this case, on 9 June 1994. However, a warrant was issued only on 16 June 1994. A year later her lawyer made an official complaint stating that "until now the charges against Antoinette Chahin are not known to us" and asked for her release. Antoinette Chahin and her co-defendants were not officially indicted until 17 October 1995, sixteen months after their arrest and detention. Antoinette Chahin spent the first month of her detention in solitary confinement with no access to her family (though her lawyer was allowed to see her). It was during this time that the alleged torture took place.

- Paragraph 3(e) of Article 14 of the ICCPR gives the accused the right to "*examine ... the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him*". Article 301 of the CCP gives the defendant or his/her lawyer the right to cross-examine witnesses.

There are many incidents which suggest that these standards have not been followed in Antoinette Chahin's case. For example, the defence lawyers requested a number of defence witnesses, yet none of them appeared before the court which continued its proceedings without them. The court, however, allowed the testimony of Father Aqlimous al-Hakim, the only person present at the monastery when the crime was committed, who died soon afterwards in 1992 and therefore did not appear before the court. Accordingly, the defendants and their lawyers were not able to cross-examine the witness in question.

- Paragraph 3(g) of Article 14 of the ICCPR states that a defendant should "*not be compelled to testify against himself or to confess guilt*". Article 401 of the Lebanese Penal Code prohibits torture and provides for punitive measures against officials found responsible for torture or ill-treatment.

Two defendants, Rashid Daw and Sa'd Jibra'il, stated in court that they had been tortured during the investigation, and that they made their confessions because of torture. They also stated that they were compelled to 'reconstruct' the crime on 22 June 1994 when they were taken to the scene, without their defence lawyers. Both Rashid Daw and Sa'd Jibra'il retracted their testimonies and refused to 'reconstruct' the act of the crime when they were asked to do so for the second time, four months later, in the presence of their defence lawyers. Antoinette Chahin has also said that she was tortured in order to compel her to confess her guilt. The medical report mentioned above which recorded physical traces consistent with her alleged torture was presented to the court by her defence lawyer.

The court stated that even if there had been "harsh treatment" against the defendants by the investigating officers, this did not affect the outcome of the investigation. The court mentioned that "*the alleged beating of Antoinette Chahin did not make her change her testimony which she stuck to throughout the investigation*". Antoinette Chahin's testimony was that she had no involvement in the crime. Furthermore, the court did not discuss the retraction of the confessions of Rashid Daw and Sa'd Jibra'il despite their being the basis of the public prosecutor's case against the defendants.

In the opinion of the Human Rights Committee², "*[t]he law should require that evidence provided by means of such methods [which violate ICCPR articles prohibiting torture and ill-treatment] or any other form of compulsion is wholly unacceptable*"³. Furthermore, the Human Rights Committee argued that "*... the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment*"⁴. Article 12 of the UN Declaration on the Protection of All

²The treaty monitoring body of the ICCPR.

³Human Rights Committee General Comment No. 13.

⁴Human Rights Committee General Comment No. 20. (12)

Persons from being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment states that: *"Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in the proceedings."* Principle 6 of the UN Basic Principles on the Independence of the Judiciary entitles and requires the judiciary *"to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected"*.

Not only did the court failed to adequately address and investigate these torture allegations, but it argued that "even if there was harsh treatment this did not affect the outcome of the investigation". The seriousness of this court verdict is twofold:

- 1) It amounts to a court of law tolerating duress and harsh treatment against detainees;
- 2) The main body of evidence in this case was been built, almost entirely, around confessions allegedly extracted under torture.

Presumption of Innocence

- Paragraph 2 of Article 14 of the ICCPR states that *"everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."* The Human Rights Committee stated that by reason of the presumption of innocence, *"the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt"*⁵.

As pointed out above, the main incriminating 'evidence' was the confessions of the defendants Rashid Daw and Sa'd Jibra'il who later retracted their testimonies saying that they were extracted under torture. The court did not seek corroborating evidence to support these confessions, and the retractions were ignored. In examining the main body of evidence (the testimonies of Rashid Daw and Sa'd Jibra'il), the court overlooked the contradictory statements made particularly by Rashid Daw, who changed his story three times before giving the testimony that he and the other co-defendants were responsible for the politically-motivated killing of Father Sam'an al-Khoury. This testimony itself was later retracted before the court as mentioned earlier.

The court convicted Antoinette Chahin and her co-defendants primarily on the basis of the following:

- the confessions of two defendants that were later retracted and which were never substantiated with other supporting evidence;
- the alleged membership of Antoinette Chahin in the Lebanese Forces' security apparatus. This allegation was denied by Antoinette and was not proven by any other evidence apart from the same retracted testimonies of Rashid Daw and Sa'd Jibra'il.

⁵Ibid.

Finally, the court mentioned that Antoinette failed to rebut the confessions of Rashid Daw and Sa'd Jibra'il against her. Rather than putting the burden of proof of the charges on the prosecution as both the ICCPR and Lebanese law stipulates, the court seems to have expected the defendants to prove their innocence.

AMNESTY INTERNATIONAL'S COMMUNICATIONS WITH THE LEBANESE GOVERNMENT

Amnesty International delegates submitted a memorandum to the Minister of Justice in September 1996 which included the organization's concerns over the allegations of torture by Antoinette Chahin and requested the results of the investigation into these allegations. Public Prosecutor 'Adnan 'Addoum issued a press release in February 1997, apparently in response to the memorandum, mentioning that Antoinette Chahin claimed that she had been tortured during the investigation at the hands of security officers and that the security officers had denied under oath that the defendant had been tortured. Mr. 'Addoum also stated that "the forensic report confirmed that there was no evidence that any of her symptoms were a result of torture". Amnesty International received the same response from the Lebanese Government in April 1997.

Amnesty International has a copy of Antoinette Chahin's forensic report and it does not include the confirmation mentioned by Mr. 'Addoum. The organization believes that these allegations of torture have not been properly investigated by the Lebanese authorities and is again calling for an independent and impartial investigation the results of which should be made public as required by international standards.

Amnesty International submitted its concerns on this case to the Human Rights Committee before which Lebanon appeared in April 1997. In its concluding observations the Committee stated that:

"The Committee expresses concern over well substantiated allegations of acts of torture and cruel, inhuman and degrading treatment committed by the State party's police, Lebanese security forces and non-Lebanese security forces operating within the State party's territory, the occurrence of arbitrary arrest and detention, searches operated without warrants, abusive treatment of individuals deprived of their liberty, and violations of the right to a fair trial. It has noted the [Lebanese Government] delegation's statement that no such acts of torture and ill-treatment are committed by the Lebanese police and security forces; notwithstanding this statement, it urges the State party to investigate the credible allegations of instances of ill-treatment and torture which have been brought to the Committee's attention."

CONCLUSION AND RECOMMENDED ACTIONS

Amnesty International believes that the trial of Antoinette Chahin and her co-defendants was seriously flawed and is calling for Antoinette Chahin and her co-defendants to be re-tried in accordance with international fair trial standards. Amnesty International is also calling for an

impartial investigation into the allegations of torture by Antoinette Chahin and other co-defendants in this case.