

# Unrecognized and Unprotected

## The Treatment of Refugees and Migrants in Lebanon



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November 2020

## Table of Contents

<b>1. Executive summary and key recommendations.....</b>	<b>4</b>
<b>2. Introduction .....</b>	<b>6</b>
2.1 Methodology.....	8
<b>3. Lebanon's international human rights law obligations .....</b>	<b>9</b>
3.1 Primacy of international human rights law over national law.....	9
<b>4. Stateless persons.....</b>	<b>11</b>
4.1 Discrimination and statelessness in international law.....	11
4.1.1 The right to citizenship/nationality.....	11
4.2 Statelessness in Lebanon.....	12
<b>5. Domestic law, policy and practice pertaining to the human rights of migrants and refugees.....</b>	<b>14</b>
5.1 Domestic framework applicable to migrant workers.....	14
5.2 Domestic framework applicable to refugees.....	16
5.3 The right of entry in and stay on the territory.....	17
5.3.1 International law and standards.....	16
5.3.2 Domestic law, policy and practice.....	18
5.3.3 Analysis and assessment in light of international standards.....	31
5.3.4 Recommendations.....	31
5.4 The right to liberty and security of person and the prohibition against arbitrary arrest and detention.....	32
5.4.1 International human rights law and standards.....	32
5.4.2 Domestic law, policy and practice.....	37
5.4.3 Analysis and assessment in light of international standards.....	46
5.4.4 Recommendations.....	47
5.5 The right against arbitrary removal and expulsion and the principle of non-refoulement.....	48
5.5.1 International law and standards.....	48
5.5.2 Domestic law, policy and practice.....	49
5.5.3 Analysis and assessment in light of international standards.....	51
5.5.4 Recommendations.....	52
5.6 The right to access to justice and effective remedies.....	53
5.6.1 International law and standards.....	53
5.6.2 Domestic law, policy and practice.....	53
5.6.3 Analysis and assessment in light of international standards.....	54
5.6.4 Recommendations.....	54



## 1. Executive summary and key recommendations

Lebanon does not have an adequate domestic legal and policy framework to address the plight of refugees, migrants and stateless persons, a situation that, in turn, leaves persons entitled to protection under international law, in particular, in an extremely vulnerable situation. Moreover, the International Commission of Jurists (ICJ) is concerned that the existing legal framework falls short of international human rights obligations binding on Lebanon with respect to the human rights of refugees, migrants and stateless persons.

The domestic law criminalization of the “illegal” entry and stay of foreign nationals, including refugees, in Lebanon, for example, violates the human rights of refugees, including, in particular, their right not to be penalized for affecting an “illegal” entry, their right to a fair and effective process for determining their need of and entitlement to international protection, and their right to liberty and security of person.

The restrictions and high costs imposed for obtaining or renewing legal residence permits in Lebanon lead refugees to enter and remain in the country “illegally”, making them liable to arrest, detention and deportation, and creating a climate of fear among refugees present in Lebanon, leading to significant restriction of their freedom of movement.

In a country where access to justice and effective remedies for human rights violations is already impeded by various structural, legal, institutional and socio-economic obstacles, migrants, refugees and stateless people encounter even greater and often insurmountable challenges in exercising their rights and in their access to justice and effective remedies.

Furthermore, the restrictions on Syrian refugees present in Lebanon with respect to their residency and freedom of movement, the raids and arbitrary arrests and detentions they are subjected to, their extremely limited access to employment, housing, health, education and justice, as well as the hostility they experience at the hands of local municipalities and communities, may effectively force them to return to Syria, notwithstanding the fact that their lives or freedoms continue to be at serious risk in Syria. Their return in those circumstances is anything but voluntary, and in fact amounts to constructive refoulement.

The ICJ has concluded that the legal and policy gaps – coupled with an excessive and unbridled power to decide and apply policies and practices on the part of authorities, such as the General Security Office, local municipalities, the Ministry of Labour and the Lebanese army – are the reasons why violations of the human rights of refugees, migrants and stateless persons are rife in Lebanon.

This report provides an analysis of Lebanon’s inadequate law and policy framework in light of the country’s obligations under international human rights law and standards. The conclusions of this report are based on desk and field research, a review and analysis of a number of domestic judicial decisions, interviews with relevant stakeholders, consultation involving international and local civil society actors, and representatives of the Beirut and Tripoli Bar Associations, including through a two-day round-table organized in Beirut, Lebanon.

The ICJ addresses a number of recommendations for the Lebanese authorities in this report, including the following:

### **I) Become a party to the following treaties:**

- **the 1951 UN Refugee Convention and to its 1967 protocol;**
- **the 1954 UN Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;**
- **the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;**

### **II) Ensure that individuals claiming international protection have access to a just, fair and effective process for determination of their entitlement to such protection, under conditions that preserve human dignity, human rights and the rule of law. Ensure that they have the right to an individual examination of their asylum claim, and the right to an effective legal remedy, including the right to appeal to a separate, competent and independent judicial authority;**

- III) Ensure that any foreign national, including refugees, asylum seekers, stateless individuals and migrants are not automatically arrested or deported for their “unofficial” entry or stay in the country;**
- IV) Ensure that people entitled to international protection, chiefly refugees, are not penalized for their “illegal” entry and stay. Ensure that no-one should be deprived of their liberty solely on grounds of their immigration status, including in cases of “irregular entry” or stay and, to this end, amend Article 32 and 36 of 1962 Law;**
- V) Ensure that refugees and migrants may be detained for immigration-related reasons only exceptionally. In those instances, ensure that detention is only resorted to when the authorities are capable of demonstrating there is both a clear legal and factual basis to justify it, and that, in any event, detention is necessary, reasonable and proportionate in the circumstances of the individual case at hand, and for the shortest period of time;**
- VI) Ensure that migrants, refugees and asylum seekers have at all times and regardless of their immigration status under domestic law, the right to access the courts, to claim and be granted effective remedy and reparation for violations of civil, political, economic, social and cultural rights recognized under international law;**
- VII) Ensure that no individual is transferred to a country where he or she faces a real risk of persecution or other forms of serious harm, such as torture or cruel, inhuman or degrading treatment or punishment.**
- VIII) Establish a moratorium on all removals to Syria; and**
- IX) Ensure access to a lawyer in cases where the return is said to be voluntary to guarantee that the individual’s will has not been coerced and is being exercised voluntarily.**

## 2. Introduction

With a population of around 6 million Lebanese citizens, Lebanon currently hosts about 1.5 million Syrian refugees<sup>1</sup>; 180,000 Palestinian refugees;<sup>2</sup> 29,000 Palestinian refugees from Syria (i.e., Palestinian refugees who fled to Lebanon from Syria);<sup>3</sup> and 21,761 refugees and asylum-seekers from countries other than Syria and Palestine.<sup>4</sup> As such, Lebanon has the highest refugee population per capita of any country in the world.<sup>5</sup>

Furthermore, the overall economic conditions of refugees in Lebanon are dire: recent surveys and reports show that 69% of Syrian refugees, by far the largest refugee population in the country, live below poverty line, and 51% live in extreme poverty,<sup>6</sup> below the survival minimum expenditure basket of 2.90 USD per day. In addition, 65% of Palestinian refugees live in poverty,<sup>7</sup> and 95% of Palestinian refugees from Syria are food insecure, including 63% who are severely food insecure.<sup>8</sup> Among the various refugee communities, 87% of non-Syrian refugees' households present some degree of food insecurity, and do not receive World Food Programme (WFP) or UNHCR food assistance.<sup>9</sup>

### *Refugees and migrants*

The term "refugees and migrants" in this document is to be given a broad interpretation and taken as a whole. It includes, without limitation, asylum seekers, stateless persons, victims of human trafficking, unaccompanied or separated children, and other persons in the text of migration. It applies irrespective of whether a person's entry, presence or stay in Lebanon is considered under Lebanese national law to be "legal" or "illegal"

The average debt per Syrian refugee household has steadily increased over the years – from 900 USD in 2017 to over 1,000 USD in 2018.<sup>10</sup> Nine out of 10 households apply food coping strategies, and 97% of households apply a livelihood coping strategy. "Food-related coping strategies range from eating cheaper food to spending days without eating, while livelihood strategies range from incurring debt to putting children to work."<sup>11</sup> It has also been documented that 66% of refugee households have reduced their health and education expenditure to cope with lack of food or money to buy it.<sup>12</sup>

In addition, according to the United Nations High Commissioner for Refugees (UNHCR), there are estimated to be tens of thousands of stateless persons in Lebanon. Their exact number is unknown due to the lack of an official census in the country since 1932, and the fact that many stateless persons do not have civil registration records.<sup>13</sup> Statelessness in Lebanon is, to a great extent, the direct consequence of a series of legislative and administrative policy omissions, including: the failure to legislate so as to allow women to transfer their Lebanese citizenship to their children; complicated procedures and document requirements for citizenship and birth registration; as well as the Syrian refugee influx, which has resulted in thousands of refugee children lacking a birth certificate because their parents do not have a "legal status" in Lebanon.<sup>14</sup>

1- For comparative purposes, approximately 720,000 Syrian refugees are living in Germany, Sweden, Austria and the Netherlands by 2018. See "By the Numbers: Syrian Refugees Around the World," Frontline,

2- There are 470,000 Palestinian refugees registered with UNRWA in Lebanon. 180,000 of them are estimated to be residing in the country. See figures in UNRWA Lebanon web page, available at: <https://www.unrwa.org/where-we-work/lebanon>.

3- Lebanon Crisis Response Plan 2017-2020 (2019 Update), produced by the government of Lebanon and the United Nations, January 2019.

4- Refugees from other nationalities include people from Iraq, Sudan, Ethiopia, Egypt, Eritrea among others. See: Vulnerability Assessment of Refugees of Other Nationalities in Lebanon (VARON-2017), the United Nations High Commissioner for Refugees (UNHCR), June 2018.

5- Lebanon factsheet, European Civil Protection and Humanitarian Aid Operations, European Commission, last updated on 04/02/2020.

6- Lebanon Crisis Response Plan 2017-2020.

7- Survey on the economic status of Palestinian refugees in Lebanon, the United Nations Relief and Works Agency for Palestine refugees (UNRWA) and the American University of Beirut, 2015.

8- Lebanon Crisis Response Plan 2017-2020.

9- Vulnerability Assessment of Refugees of Other Nationalities in Lebanon (2018).

10- Vulnerability Assessment of Syrian Refugees in Lebanon, UNHCR, the United Nations World Food Programme (WFP), the United Nations Children's Fund (UNICEF), 26 December 2018.

11- Ibid.

12- Ibid.

13- Statelessness Update, UNHCR Lebanon, August 2014.

14- Since March 2011, 34,272 Syrian refugees have been born in Lebanon and, according to a UNHCR survey of 5,779 Syrian newborns, 72% do not possess an official birth certificate, see previous footnote.

According to a field assessment by the Norwegian Refugee Council published in 2015,<sup>15</sup> 92% of the Syrian refugees interviewed could not fulfil the legal and administrative criteria necessary to register the births of their children born in Lebanon; their lack of “legal status” in Lebanon prevented them from completing the steps required to issue a birth certificate. Their predicament ranged from their inability to provide the necessary documentation; to abide by the specific timeframe; as well as the fear of traveling within Lebanon and of approaching official authorities for the purposes of applying. In addition, in some cases, the Lebanese authorities have actively refused to provide the required documents to complete the birth registration process.<sup>16</sup> The resulting situation has created a real risk that those refugee children born in Lebanon lack a legal identity recognized by the Lebanese authorities. This, in turn, enhances the risk that those refugee children born in Lebanon will be stateless, and also affects their right to apply for international protection, and have access to a variety of basic services – such as healthcare, education and social services – as well as to the labour market. Refugees who lack “legal residency” papers are unable to move freely, and face a real risk of detention and arrest as well.

By 2015, the onerous administrative and financial requirements for obtaining and renewing residency permits had led to 70-80% of Syrian refugees – and up to 90% of Palestinian refugees from Syria – not having a valid residency in the Lebanon.<sup>17</sup>

Yet, Lebanon continues to lack an adequate legal framework and effective policies to address the daunting challenges inevitably arising from the circumstances described above, and to meet its international human rights law obligations to fully protect the human rights of migrants, refugees, asylum seekers and stateless persons. Specifically, the country does not have a domestic legal and policy framework to address the plight of refugees, migrants and stateless persons, a situation that, in turn, leaves persons entitled to protection under international law, in particular, in an extremely vulnerable situation. This legal and policy gap – coupled with an excessive and unbridled power to decide and apply policies and practices on the part of authorities, such as the General Security Office (GSO), local municipalities, the Ministry of Labour and the Lebanese army – are the reasons why violations of the human rights of refugees, migrants and stateless persons are rife in Lebanon.

In addition, the political, social, economic and infrastructural challenges faced today by the Lebanese State have a critical role in shaping the government’s policies toward refugees who are viewed as an unbearable burden and/or a security threat. Moreover, in a country where access to justice and effective remedies for human rights violations is already impeded by various structural, legal, institutional and socio-economic obstacles, migrants, refugees and stateless people encounter even greater and often insurmountable challenges in exercising their rights and in their access to justice and effective remedies.

This report provides an analysis of Lebanon’s inadequate law and policy framework in light of the country’s obligations under international human rights law and standards. The report also considers how Lebanon’s legal and policy framework has been interpreted and applied in practice through a number of judicial decisions. The report focuses in particular on:

- a) The right to entry and stay on the territory;
- b) The right of migrants, refugees and stateless people to liberty and security of person, including to be free from arbitrary arrest and detention;
- c) The rights against arbitrary removal and expulsion;
- d) The principle of non-refoulement; and
- e) The right to access to justice and effective remedies.

The report also formulates recommendations for law and policy reform with a view to fostering compliance with Lebanon’s obligation under international human rights law and standards, as well as assisting justice system’s actors, civil society organizations and inter-governmental institutions in their efforts to enhance respect for the right of migrants, refugees and stateless persons to access to justice and effective remedies against human rights violations.

15- Birth Registration Update: the Challenges of Birth Registration in Lebanon for Refugees from Syria, Norwegian Refugee Council, January 2015.

16- Ibid.

17- Lebanon Immigration Detention Profile, Global Detention Project, updated in February 2018.



## 2.1 Methodology

This report is based on both desk and field research on the impact in practice of the enforcement of Lebanon's inadequate legal and policy framework on the human rights of migrants, refugees and stateless people. It is also based on a review and analysis of a number of judicial decisions handed down by Lebanese judges in relation to the thematic areas mentioned above. In addition, the report relies on interviews with relevant stakeholders, including lawyers, personnel working in intergovernmental organizations and non-governmental organizations (NGOs).<sup>18</sup> A national consultation involving international and local civil society actors, lawyers and representatives of the Beirut and Tripoli Bar Associations took place over a two-day round-table organized on the 2nd and the 3rd of May 2019 in Beirut, Lebanon.

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18- Danish Refugee Council, Oxfam Lebanon, Anti-Racism Movement, ALEF-Act for human Rights, UNRWA and Beirut and Tripoli Bar associations.

### 3. Lebanon's international human rights law obligations

Lebanon is yet to become a party to a number of important international legal instruments that specifically address the circumstances and human rights of refugees, migrants and stateless persons.

Among them are:

- The 1951 UN Convention Relating to the Status of Refugees, as amended by its 1967 Protocol Relating to the Status of Refugee;
- The 1954 UN Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness; and
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Even though Lebanon is not bound by the above-mentioned treaties, it is a State party to a number of international human rights treaties that are relevant to the human rights of migrants, refugees and stateless persons. Among others, Lebanon is a State party to:

- the International Covenant on Economic, Social and Cultural Rights (ICESCR);<sup>19</sup>
- the International Covenant on Civil and Political Rights (ICCPR),<sup>20</sup>
- the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT);<sup>21</sup>
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);<sup>22</sup>
- the International Convention on the Elimination of All Forms of Racial Discrimination (CERD);<sup>23</sup> and
- the Convention on the Rights of the Child (CRC).<sup>24</sup>

#### 3.1 Primacy of international law over national law

The international treaties to which Lebanon is a party are part of the country's domestic legal system. For example, as a result of a constitutional amendment introduced by Constitutional Law No.18 of 21 September 1990,<sup>25</sup> the preamble of the Lebanese Constitution refers to the Universal Declaration of Human Rights (UDHR) in the following terms:

*"Lebanon is Arab in its identity and in its affiliation. It is a founding and active member of the League of Arab States and abides by its pacts and charters. Lebanon is also a founding and active member of the United Nations Organization and abides by its charters and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception."*

In 2001, the Constitutional Council of Lebanon ruled that the preamble to the Constitution was part of the Constitution,<sup>26</sup> including with respect to its reference to the UDHR. This ruling has been subsequently reaffirmed by a number of Lebanese judges, confirming that the UDHR and the two International Covenants (the ICCPR and the ICESCR) are part and parcel of Lebanon's constitutional framework. As a result, the two Covenants and the UDHR may be used by the Constitutional Council when examining the constitutionality of Lebanese laws.

In addition, article (2) of Lebanon's Code of Civil Procedure states that, "The courts shall comply with the principle of hierarchy of the rules. In the event of conflict between the provisions of international treaties and those of ordinary law, the former shall take precedence over the latter", thus establishing in domestic law the principle that international treaties take precedence and override ordinary law (namely, national laws and administrative regulations). Consequently,

19- Lebanon ratified ICESCR on 3/11/1972. The covenant was given effect domestically through law No.3855 dated 1/9/1972

20- Lebanon ratified ICCPR on 3/11/1972. The covenant was given effect domestically through law No.3855 dated 1/9/1972.

21- Lebanon ratified CAT on 5/10/2000.

22- Lebanon ratified CEDAW on 16/4/1997.

23- Lebanon ratified CERD on 12/11/1971

24- Lebanon ratified CRC on 14/5/1991.

25- This preamble was added to the Lebanese Constitution by Constitutional law No.18/1990 (after the Taif Agreement that ended the civil war).

26- Constitutional Council decision number 2/2001, on 10/5/2001, available in Arabic on: <https://www.cc.gov.lb/node/2584>

those international instruments by which Lebanon is bound are part of Lebanese positive law (allowing for certain gaps to be filled) and prevail over national legislation.

The primacy of certain international instruments in the domestic legal order over Lebanese legislation has had a direct impact on litigation. It has opened the possibility of protecting human rights that are not explicitly enshrined in the national legal order by recourse to relevant international treaties binding on the country. In other words, the parties to a lawsuit may refer in their legal arguments to principles and rights enshrined in international human rights law whenever they are relevant to the case. Consequently, the judiciary has acquired an essential role in promoting and protecting human rights, as enshrined in international human rights law binding on Lebanon, especially in the context of strategic litigation.

Having said that, judicial decisions of some Lebanese courts show that many Lebanese judges still do not fully embrace their critical role in upholding and protecting the human rights of migrants, refugees and stateless persons. For instance, for years Lebanese judges have convicted refugees, including Syrian and Iraqi refugees, in connection with their alleged “illegal” entry and stay in the country, notwithstanding the fact that, as people entitled to and in need of international protection, refugees should not ordinarily be penalized for their “irregular” presence in the country.

However, there have also been judicial decisions that have referred to Lebanon’s obligations under international law to prevent the deportation of refugees, although still convicting the individuals concerned in connection with their alleged “illegal” entry and/or stay<sup>27</sup>. Some judicial decisions made specific references to Article 9 of the UDHR, enshrining the prohibition against arbitrary arrest, detention or exile; Article 9 of the ICCPR, proclaiming the right to liberty and security of person; and Article 3 of the CAT, which enshrines the non-refoulement principle – namely, the prohibition against the transfer of any person in any manner whatsoever to a territory or place where they would face a real risk of torture or other cruel, inhuman or degrading treatment or punishment. Some judgments have even made reference to Article 33 of the 1951 Refugee Convention, which enshrines the non-refoulement principle with respect to refugees under Refugee Convention,<sup>28</sup> even though Lebanon is not a party to it.<sup>29</sup>

27- Section (5.3.2) of this report features a more detailed analysis of cases of “illegal” entry and stay on the Lebanese territory.

28- The Office of the UN High Commissioner for Refugees has described the non-refoulement under Article 33 of the 1951 Refugee Convention in the following terms: “International refugee law specifically provides for the protection of refugees against removal to a country where their life or freedom would be threatened. This is known as the principle of non-refoulement. Often referred to as the cornerstone of international refugee protection, it is enshrined in Article 33 of the 1951 Convention and has attained the status of customary international law. Article 33(1) provides ‘No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.’ Reservations to Article 33 are specifically prohibited under both the 1951 Convention and the 1967 Protocol.” See, “Submission by the Office of the United Nations High Commissioner for Refugees in the case of *S.A. v. Section for Asylum, Ministry of Interior of The former Yugoslav Republic of Macedonia*”, available at <https://www.legislationline.org/documents/id/16827>.

29- See section (5.3.2) and section (5.5.2) of this report.

## 4. Stateless persons

### 4.1 Discrimination and statelessness in international law

Core principles of international law and the rule of law include non-discrimination, non-arbitrariness, the universality of human rights, and the right to equality before the law and to equal protection of the law without discrimination. All States are obliged to respect, protect and fulfill the human rights of every person on their territory or otherwise within their jurisdiction, without discrimination, including discrimination on the grounds of citizenship, nationality or migration status. International human rights law intentionally does not limit rights protections to citizens only. States' obligations towards individuals do not depend on their particular legal status, except for a limited number of provisions explicitly applicable to special categories, which are generally limited to the right to vote, and to hold public office.<sup>30</sup>

#### Citizenship

"Citizenship" is a legal concept describing an individual's relationship to the State. In contrast, "statelessness" describes the lack of citizenship of any State. The term "stateless person" refers to an individual who is not considered as a citizen/national by any State under the operation of its law.

#### 4.1.1 The right to citizenship/nationality

The right to citizenship/nationality is clearly recognized in international law. International jurisprudence has consistently reaffirmed that the regulation of citizenship under domestic law is subject to States' human rights obligations under international law, including with respect to the right to nationality, and the prohibition on arbitrary deprivation of nationality, and the prohibition on rendering people stateless. Under national law, being a national of one's State generally entitles the individual concerned to citizenship of that State.

States do have some scope in prescribing under their domestic legal framework how nationality may be acquired. States' laws and practice typically recognize three ways in which individuals acquire nationality. The first is through the operation of the *jus soli* doctrine, that is, by virtue of being born on a State's territory. The second is through the *jus sanguinis* doctrine, namely, by virtue of being a descendant (e.g., through parentage) of a State's own national; and the third is through naturalization. Each State determines through their legal framework whether it recognizes and applies *jus soli* or *jus sanguinis* or both, as well as setting out the legal criteria for naturalization. The latter are ordinarily premised on factors such as having an established relationship with the State, through, for example, long-term residence.

While under international law States may determine criteria to establish who their nationals are, such discretion is not absolute. Article 15 of the UDHR affirms that: "(1) Everyone has the right to a nationality; and (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." Article 15 of the UDHR entails the right of everyone to acquire, change and retain a nationality.<sup>31</sup> In addition, other provisions of the UDHR, for example, affirm the principle of non-discrimination, including article 7, which codifies the equality of all before the law and their entitlement, without any discrimination, to equal protection of the law.

In addition to the UDHR, three of the international human rights treaties by which Lebanon is bound, namely, the ICCPR, CEDAW and the CRC, are among the international instruments recognizing and guaranteeing the right to a nationality.

Under the Convention on the Rights of the Child (CRC), the right to nationality is provided for in articles 7 and 8, while article 3(1) of the Convention requires States parties to take the best

30- For instance, all the rights recognized and guaranteed by the Universal Declaration of Human Rights (UDHR) apply to everyone, with the sole exception of the rights under article 21 (participation in public life, voting and election, access to serve in the public service), which the UDHR expressly guarantees only to citizens.

31- The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness further provide international standards, including safeguards for national jurisdictions to avoid statelessness.

interests of the child as a primary consideration in all actions concerning children.<sup>32</sup> Article 7 states that: "(1) The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents; and (2) States Parties shall ensure the implementation of these rights... in particular where the child would otherwise be stateless." There is no hierarchy of rights within article 7; all are fully applicable to States parties to the CRC. States must respect the rights in the Convention "without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."<sup>33</sup> General Comments of the Committee on the Rights of the Child further define State obligations with respect to the right to nationality and the principle of making the best interests of the child a primary consideration in all actions concerning children.<sup>34</sup>

## 4.2 Statelessness in Lebanon

According to UNHCR, "there are estimated to be tens of thousands of stateless persons in Lebanon. The exact number is difficult to ascertain."<sup>35</sup>

In Lebanon, nationality is mainly acquired through patrilineal affiliation according to which only men can pass their nationality onto their children while women cannot do so. Foreign women, however, may acquire Lebanese nationality if they are married to a Lebanese national. *Jus solis* (nationality by birth on the territory) only applies to exceptional cases, such as a child born in Lebanon from unknown parents. In practice, even this exception is not applied in many cases.

As mentioned above, Lebanon is not a State party to the 1954 Convention relating to the Status of Stateless Persons or to the 1961 Convention on the Reduction of Statelessness. Furthermore, the Lebanese legal framework and its policies and practice in this area fall short of providing protection to the majority of stateless people.

Statelessness in Lebanon has multiple reasons, which, in turn, have given rise to different profiles of stateless individuals. Some of the reasons for statelessness in the country go back to the history of Lebanon as a State, and the beginning of the "Lebanese nationality" in 1924, as a result of the Treaty of Lausanne.<sup>36</sup> Lebanese nationality was established pursuant to a decision of the French authorities<sup>37</sup> to grant the right to Lebanese nationality to every person who lived in the territory of Lebanon by the 30th of August 1924, and who had held an Ottoman nationality. Many people were not able to meet the application deadline, the criteria or the document requirements to register, and apply for Lebanese nationality. Consequently, many people and their descendants failed to obtain Lebanese nationality at that time. As a result, many of the same people became stateless.

32- This includes CRC Article 3 (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Article 8 states that: "(1) States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference; and (2) Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

33- This includes CRC Article 3 (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Article 8 states that: "(1) States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference; and (2) Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity."

34- See for example: CRC Committee, general comment No. 14, 2(c): "The Committee emphasizes that the scope of decisions made by administrative authorities at all levels is very broad, covering decisions concerning education, care, health, the environment, living conditions, protection, asylum, immigration, access to nationality, among others. Individual decisions taken by administrative authorities in these areas must be assessed and guided by the best interests of the child, as for all implementation measures."

35- Statelessness Update (2014).

36- The Treaty of Lausanne was a peace treaty that entered into force on 6 August 1924, under which Turkey's modern borders were established, and also where Turkey ceded its claims over other territories including what is today Lebanon.

37- Decision number 2825 by Maxime Weygand, the French High Commissioner to the French-mandated countries of Syria and Lebanon between 19 April 1923 and 29 November 1924.



In the following years, on different occasions, the authorities announced a timeframe, criteria and procedures to apply for the Lebanese nationality for those who had not managed to obtain it before. Then, in 1931, there was an attempt by the government to conduct a comprehensive national census, and provide Lebanese national identity papers accordingly. Despite those official steps to overcome this first way of statelessness, many people still did not manage to get themselves registered in the State's official records, either because they did not take the required steps to register for personal, political or practical reasons, or because they were not capable of producing the required documents, or of complying with the relevant procedures and/or of meeting the deadline. These people and their descendants remained stateless.<sup>38</sup>

Since then, on a number of occasions the Lebanese authorities have announced the possibility of applying for Lebanese nationality. There were people who applied because they considered themselves Lebanese and they did not hold identity papers from any other country, and some who applied for naturalization. These applications were registered as "under study" at the time, and many remain under study until today. People who are under study" are a group of people who have papers that mention that they are "under study," and they are regulated separately when it comes to their residency rights and other rights,<sup>39</sup> meaning that they are in a slightly better situation than other stateless persons, as they are at least acknowledged by the State, and are entitled to some rights, even though they are still not considered to be Lebanese citizens.

In 1994, Lebanon issued a naturalization decree to limit the number of stateless individuals, and grant nationality to some stateless people. In practice, the decree applied to only a small proportion of stateless individuals and, for the many, did not solve the predicament of statelessness in Lebanon.<sup>40</sup>

Another reason why statelessness is widespread in Lebanon is the lack of marriage registration of some marriages, and consequently, the lack of registration of the births arising from these marriages. Also, children who are born outside wedlock, or to unknown parents, are not registered, even though according to the 1925 Lebanese nationality law, children of unknown parents or of stateless parents should be entitled to Lebanese nationality.<sup>41</sup> Another category of stateless persons in Lebanon comprises people who are the offspring of a Lebanese mother and a stateless father, as women, under Lebanese law, are not able to pass their Lebanese nationality onto their children.<sup>42</sup>

In Lebanon statelessness is also linked to armed conflict and ensuing displacement. As a result of the fact that citizenship in Lebanon is acquired almost exclusively through the application of the principle of *jus sanguinis* patrilineally – as opposed to the principle of *jus solis* – then children born in Lebanon to refugee parents present on the Lebanese soil are not entitled to Lebanese nationality. Furthermore, because Syria too adopts the *jus sanguinis* principle in respect of the acquisition of Syrian citizenship, the ability to prove that the child's father is a Syrian national is the key factor in determining entitlement to Syrian nationality for that child. Unfortunately, however, Syrian refugees, as it is the case with refugees all over the world, are often unable to access or renew their passport or other identity documents to prove their citizenship. In many cases the father will therefore be unable to prove his Syrian citizenship to the satisfaction of the Lebanese authorities, which, in turn, contributes to a heightened risk of statelessness for children born and requiring birth registration in Lebanon.<sup>43</sup>

Another factor that increases the risk of statelessness is the fact that many refugees do not have a legal status in Lebanon. As discussed in the next chapters, the lack of legal status dissuades refugees from approaching official institutions in Lebanon to register their children's births for fear of arrest and deportation.<sup>44</sup>

38- Between Shame and Shadows, a legal study on the phenomenon of statelessness in Lebanon, Frontiers Ruwad, September 2011. available in Arabic at: <https://frontiersruwad.files.wordpress.com/2012/01/rs-stateless-arabic-2011-final.pdf>

39- Ibid.

40- Ibid.

41- Article 1, the Lebanese Nationality Law, 1925.

42- Article 1, the Lebanese Nationality Law, 1925.

43- Birth Registration Update (2015).

44- Birth Registration Update (2015).

## 5. Domestic Law, policy and practice pertaining to the human rights of migrants and refugees

### 5.1 Domestic framework applicable to migrant workers

Migrant workers and specifically migrant domestic workers risk a wide range of human rights violations due to the lack of adequate legal regulation of their stay and work in Lebanon. The legal protections for migrant domestic workers are inadequate and fail to provide effective human rights safeguards recognized under international law, such as a minimum wage, paid annual leave, recourse to arbitration councils, maximum daily working hours and other labour guarantees.<sup>45</sup> Consequently, migrant domestic workers risk becoming victims of various forms of exploitation and abuse without the possibility to access justice and effective remedies. The human rights abuses documented against migrant domestic workers include: excessive working hours; no holidays; delayed or unpaid salaries; restrictions on movement and communication; verbal, physical and sexual abuse; and confiscation of passport, even though it is illegal to do so.<sup>46</sup>

The Lebanese Labour Code of 1964 regulates the employment of migrant workers in the private sector. Article 7 of the Code, however, excludes domestic workers – both Lebanese and migrant workers – from the scope of the legislation altogether, thereby denying them the protection the Labour Code affords to other categories of workers.

Not only are migrant domestic workers not protected by the Labour code, but their situation is also left unprotected and unregulated by other legislation. Their only option to reside and work in Lebanon “legally” is under the sponsorship “Kafala” system.<sup>47</sup> The kafala system is a system under which foreign migrant workers can apply for and be granted a work permit in Lebanon, having secured the sponsorship of their prospective employer. However, the Kafala system has never been regulated by any comprehensive legal framework.

A work permit issued to a migrant domestic worker by the Ministry of Labour, and a residence permit by the General Security, are issued for one year and should be renewed every year.<sup>48</sup> The Kafala system makes a migrant worker’s immigration status legally bound to an individual employer or sponsor (kafeel) for the period of the contract. Migrant domestic workers are not able to enter or exit the country, nor can they change employment without obtaining explicit written permission from their sponsor.<sup>49</sup> The kafala system places migrant domestic workers under the total control and at the mercy of their employer who sponsors them, thereby heightening the risk of human rights abuses.

The main document regulating the rights and responsibilities of migrant domestic workers is their contract of employment, known as “the unified contract”, which is a standard contract for migrant domestic workers,<sup>50</sup> introduced by the Ministry of Labour in 2009. It is a mandatory and binding labour contract depriving the weaker party, the worker in this case, of the right to negotiate and amend contractual terms and conditions. The unified contract should be signed in Arabic in front of a notary, even though it typically concerns workers who do not speak, read, let alone understand Arabic. Also, it does not guarantee to migrant domestic workers their right to keep possession of their passport.

Recruitment agencies, which are in charge of facilitating the contractual relationship, function as the mediator between the sponsor and the domestic migrant worker.<sup>51</sup> Work permit applications for migrant domestic workers require them to secure a sponsor before arriving to Lebanon, which is the main reason for having recruitment agencies acting like brokers between employers seeking migrant domestic workers and individuals abroad seeking employment in Lebanon. However, some of the information that agencies provide to the prospective workers tends to be

45- The Labour Sector in Lebanon: Legal Frameworks, Challenges and Opportunities, Leaders for Sustainable Livelihoods, UNHCR, 31 May 2019.

46- Call on Lebanon to protect migrant domestic workers, Amnesty International.

47- Information Guide for Migrant Domestic Workers in Lebanon, International Labor Organization (ILO), 2012.

48- Ibid.

49- Reform of the Kafala (Sponsorship) System, Policy Brief No. 2, ILO, 2012.

50- Established by the Unified Contract Decree No. 19/1, 2009.

51- Interview with Mira Bene, Legal Services and Caseworker Coordinator, Anti-Racism Movement, on the 21 of May 2019.

misleading, which, combined with the power imbalance existing between unskilled workers and experienced recruitment agencies, has produced a recruitment model characterized by systemic abuses. Besides misleading information about the terms of the employment contract, recruitment agencies also impose extortionate recruitment fees on the workers; fail to report abuses committed by employers against workers; and assign workers to employers who are known to be abusive. Some recruitment agencies also engage in human trafficking, forced labour, as well as verbal, physical and sexual abuse.<sup>52</sup>

Based on an unpublished internal General Security directive, to which the ICJ had access, since 2014 the General Security has started detaining and deporting domestic workers for having children in Lebanon despite the fact that they had legal residence in Lebanon for the reason that “they are not supposed to give birth in Lebanon,” or for not residing with their sponsors. The domestic workers would be given a very short notice to leave Lebanon, sometimes as short as 24 hours.<sup>53</sup>

According to a recent report issued by Amnesty International, over 250,000 migrant domestic workers coming from African and Asian countries, and who work in private households, currently reside in Lebanon. Based on figures and statistics obtained from the Ministry of Labor (MoL), 186,429 women migrant domestic workers had a valid work permit as of November 2018 distributed as per the table below. These figures do not account, however, for those migrant domestic workers who lacked work permits and worked in the informal sector:

Women migrant domestic workers holding new or renewed work permits issued to them by the Ministry of Labor as of November 2018	
Nationality	Numbers
Ethiopia	144,986
The Philippines	17,882
Bangladesh	10,734
Sri Lanka	4,982
Ghana	1,384
Other	6,461
<b>Total</b>	<b>186,429</b>

The situation of migrant domestic workers in Lebanon has led some embassies (those of Ethiopia, Nepal and the Philippines) to ban their citizens from working in Lebanon.<sup>54</sup>

52- Protection framework, Towards Increased Protection for Migrant Domestic Workers in Lebanon, ALEF LIBAN, March 2019, available at: <https://alefliban.org/wp-content/uploads/2019/03/50-copies-Final-Protection-Framework-English-version.pdf>.

53- Report submitted to the Committee against Torture in the context of the initial review of Lebanon, Joint Report, Khiam Rehabilitation Center for Victims of Torture, 20 March 2017.

54- For example, the Philippines issued a deployment ban on domestic workers from the Philippines in 2006, which is still in force. Ethiopia did the same in 2018. Both countries are attempting to pressure the Lebanese government to sign a bilateral agreement ensuring the protection of domestic workers rights. See: Their house is my prison, Exploitation of migrant domestic workers in Lebanon, Amnesty International, p.10, 24/04/2019.

## 5.2 Domestic framework applicable to refugees

In the absence of domestic legal provisions specifically addressing the entry and stay of refugees and stateless individuals in Lebanon, it is the 1962 law on the entry, stay in and exit from Lebanon that generally applies to them as “foreigners.”<sup>55</sup> Provisions of Law 1962 criminalize the “illegal” entry and stay in Lebanon, and impose imprisonment, a fine and deportation upon conviction for these “criminal offences”. While, in theory, the 1962 law is applied to all “foreigners,” over time the provisions criminalizing “illegal” entry and stay have been enforced, in particular, against refugees.

As mentioned above, Lebanon is not a party to the 1951 UN Convention Relating to the Status of Refugees or to its 1967 Protocol. However, article 26 of the 1962 law provides that, “Any foreign national who is the subject of a prosecution or a conviction by an authority that is not Lebanese for a political crime or whose life or freedom is threatened, also for political reasons, may request political asylum in Lebanon.”

Article 1 of the 1951 Convention defines a refugee as a person who, among other things, has “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”. Clearly, the scope of the above-mentioned provision guaranteeing the right to apply for “political asylum in Lebanon” in article 26 of the 1962 law is narrower than the definition of who is a refugee featured in Article 1 of the 1951 Refugee Convention. The right guaranteed in article 26 of the 1962 law is restricted to people prosecuted for or convicted of “political crimes”, and excludes other refugees who have a well-founded fear of persecution for reasons other than “political crimes”, such as race, religion, nationality and membership of a particular social group.

Under article 27 of the 1962 Law, the Lebanese authorities have the power to grant asylum: “Asylum shall be granted pursuant to a decision made by a committee...A decision made by this committee cannot be reviewed by any means, including a review requesting revocation for an abuse of power.” The fact that the decision of the committee is final and cannot be reviewed, whatever the circumstances, is inconsistent with the right to access to justice and effective remedies (such as asylum from persecution) guaranteed by international law and standards, including Article 14(1) of the UDHR proclaiming the right of everyone “to seek and to enjoy in other countries asylum from persecution.” The UNHCR guidance provides that refugee claimants should have the right to lodge an appeal to an administrative or judicial authority against a refusal of refugee status; the guidance also affirms that there should be adequate time to lodge such an appeal, and that the applicant should be permitted to remain in the country while the appeal is pending.<sup>56</sup>

Furthermore, while Lebanese legislation recognizes the right to apply for “political asylum” in certain limited circumstances (as set out above), this domestic right is not recognized and given effect as the right to seek and enjoy asylum from persecution enshrined in international human rights law; rather, in practice, people are granted asylum solely based on the Lebanese authorities’ discretion. Indeed, it seems that, in practice, article 26 of the 1962 law has no impact and has been totally ignored.<sup>57</sup>

In 2003, the General Directorate of General Security signed a Memorandum of Understanding (MoU) with UNHCR (the UN Refugee Agency) on behalf of the Government of Lebanon (GoL) regarding the UN Refugee Agency’s mandate in the country, with the stated intention to address the situation of Iraqi refugees – who, at the time, represented the largest refugee population in Lebanon, aside from Palestinian refugees.

However, at the same time as signing this MoU, the Lebanese authorities stressed that Lebanon was not a country of asylum; indeed, wherever the MoU mentioned the term “asylum seeker” the meaning to give this term was that it referred to a person seeking asylum in a country other than

55- Law on the entry, stay in and exit from Lebanon, 10 July 1962.

56- Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, UNHCR, Re-edited in January 1992.

57- UNHCR, Global Appeal 2014-2015, available at: <https://www.unhcr.org/528a0a2da.pdf>, also see Politics and the Plight of Syrian Refugees in Lebanon, Political Brief on the Return of Syrian Refugees, The American University in Lebanon, August 2018.

Lebanon.<sup>58</sup> The MoU also highlighted that refugees would be tolerated, but only temporarily until their resettlement somewhere else or their voluntary return home.<sup>59</sup>

In addition, it is worth noting that the 2003 MOU does not apply to Syrian refugees.<sup>60</sup>

At the beginning of the Syrian refugee emergency in 2011, Lebanon adopted a policy of “non-policy,”<sup>61</sup> while maintaining open borders and generally respecting the principle of non-refoulement with respect to Syrian refugees until 2014. As the numbers of refugees from Syria soared dramatically in 2014, the GoL issued its first official “Policy Paper on the Syrian Displacement” in October 2014, with the stated aim of mitigating “the emergency” by seeking to decrease the numbers of Syrians in the country.<sup>62</sup> This policy shift resulted in a series of measures that made it increasingly difficult for Syrian refugees to secure their legal status in Lebanon. As a result, today, 73% of Syrian refugees over 15 years of age present on the Lebanese territory are without a valid legal residence.<sup>63</sup>

To sum up, Lebanon does not have a specific legal framework addressing the circumstances and upholding the human rights of refugees and asylum seekers, and it has been relying on the 1962 Law and ad-hoc policies to deal with their entry and stay in the country. Details on the implementation of the 1962 law, the MOU, as well as the different ad-hoc policies concerning the stay of Syrian refugees in Lebanon, will be addressed in the next section on the right to entry into and stay on the territory.

## 5.3 The right to entry into and stay on the territory

### 5.3.1 International law and standards

As a general principle of international law, granting non-citizens entry to a State, as much as providing them with permission to remain in the country – with or without conditions – are matters that fall within the discretion of that State. However, in exercising control over their borders – as with all matters pertaining to the exercise of the State’s immigration control powers – States must act in conformity with their international law obligations, including, in particular, international human rights law obligations.<sup>64</sup> In certain cases, States may be required by international law to permit a non-citizen to enter in or remain on their territory, for example, in connection with the right to seek and enjoy asylum from persecution in other countries, and the non-refoulement principle. In any event, whenever non-citizens are under the State’s jurisdiction, the authorities have a duty to respect, protect and fulfil their human rights.

No-one may be deprived of their human rights because they have entered or remained in a country in contravention of domestic immigration rules, just as no-one may be deprived of human rights because they look like or are “foreigners”, children, women, or do not speak the local language.

Immigration control must not infringe the principle of non-discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>65</sup> In this context, the non-discrimination principle is enshrined in Article 2.1

58- The Memorandum of Understanding between the General Directorate of General Security and the regional office of the UNHCR concerning asylum seekers (the 2003 MOU), signed on 09/09/2003, available in Arabic at: <http://www.legallaw.ul.edu.lb/ViewAgreementPage.aspx?ID=3748>.

59- UNHCR Global Appeal 2010-2011, available at: <https://www.unhcr.org/4b05121f9.pdf>

60- Two Years On: Syrian Refugees in Lebanon, ALEF – Act for Human Rights, 2014.

61- This term is used by local media and/or opinion pieces. See: Karim El Mufti, “Official response to the Syrian refugee crisis in Lebanon, the disastrous policy of no-policy”, Civil Society Knowledge Centre, Lebanon Support, 2014.

62- Decision by the Council of Ministers in its session on 23 October 2014, to approve the policy paper regarding Syrian refugees, available in Arabic at: <http://www.pcm.gov.lb/Arabic/subpg.aspx?pageid=6119>. “The paper had been drawn up in order to be officially presented at an international conference in Berlin on the state of Syrian refugees, after criticism from the international community that Lebanon had no strategy to deal with the crisis.” See: <https://lb.boell.org/en/2014/12/30/most-important-features-lebanese-policy-towards-issue-syrian-refugees-hiding-its-head>

63- Lebanon Crisis Response Plan 2017-2020.

64- See, among others, Maurice Kamto, UN Special Rapporteur of the International Law Commission, Third report on the expulsion of aliens, UN Doc. A/CN.4/581, 19 April 2007 (“ILC Third Report”), paras. 2 and 7.

65- CCPR, General Comment No. 15. See, Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius, CCPR, Communication No. 35/1978, Views of 9 April 1981 (Mauritian Women Case), on discrimination based on sex.



ICCPR, read together with Article 13 ICCPR and Article 26 ICCPR, as well as in other universal and regional human rights treaties.<sup>66</sup>

### 5.3.2 Domestic law, policy and practice

Article 32 of the Lebanese Law of Entry and Exit (1962) punishes with a term of imprisonment ranging from one month to three years, a fine and deportation, “a foreigner” who “illegally” enters the Lebanese territory. Article 33 of the same law punishes with a term of imprisonment ranging from one week to three months and/or fine any “foreigner” “who does not leave the Lebanese territory after being informed that he/she has been refused [permission] to extend his/her stay.” In addition, article 36 of the law punishes with a term of imprisonment ranging from one week to two months and a fine “every foreigner who without an acceptable excuse neglects to request renewal of his/her residency within the prescribed period of time.”

The 1962 law makes no provision for people who may be entitled to international protection. Therefore, non-citizens, including refugees, asylum seekers and stateless individuals, entering Lebanon through unofficial channels could be easily subject to criminalization, arrest and arbitrary expulsion without any process to determine whether they are entitled to international protection.

In practice, it is the General Security that makes decisions on questions related to the entry, residency and exit of foreigners.<sup>67</sup> It also decides whether to arrest and detain a foreigner slated for deportation pursuant to Article 17 of the Law of Entry and Exit.<sup>68</sup>

According to the 2003 MoU between the Lebanese authorities and UNHCR mentioned above in section (5.2), refugees would be able to stay in Lebanon for up to 12 months. Under the Memorandum, temporary residence permits should be issued to asylum seekers, ordinarily for a period of three months, pending UNHCR’s review of their asylum claims. When UNHCR confirmed that the person was a refugee, their residence permit would be extended for a further six to nine months to allow UNHCR to find a durable solution, that is, ordinarily, their resettlement to a third country.<sup>69</sup> If the UNHCR failed to resolve the case within this period of time, the General Security would have the authority to take the “appropriate legal measures,” unless the UNHCR could prove the case is an exceptional one.<sup>70</sup> This has applied to cases where the UNHCR has not managed to find a resettlement country within the six to nine month period allowed. The measures applied to cases of persons who had their asylum claims dismissed by the UNHCR, and thus were not recognized refugees, were not addressed in the MOU.<sup>71</sup>

According to the MOU, a person who entered Lebanon “illegally” had to apply to the UNHCR within two months of entering. The MOU also obliged the UNHCR to forward all refugee applications to the GSO, so the GSO could follow up, investigate and provide its opinion on the applications. This also meant that the GSO had full information about each application. There was concern that the disclosure to GSO of refugees’ identities and addresses along with their applications to UNCHR made them easy targets for arrest and detention.<sup>72</sup>

As mentioned above in section (5.2), the 2003 MOU does not apply to Syrian refugees.<sup>73</sup> In the aftermath of the start of the armed conflict in Syria, the Lebanese authorities took a series of ad-hoc measures to handle the arrivals of Syrian refugees, such as decentralizing the response and outsourcing responsibilities to municipalities and non-governmental agencies.

As the numbers of refugees from Syria soared drastically in 2014, the GoL issued its first official Policy Paper on the Syrian Displacement in October 2014, with the stated aim of mitigating the refugee emergency by seeking to decrease the numbers of Syrians in the country.<sup>74</sup> This policy resulted in a series of measures that made it increasingly difficult for Syrian refugees to secure

66- The principle of non-discrimination is enshrined in Article 2.1 UDHR; Articles 2.1 and 26 ICCPR; Article 2.2 ICESCR; Article 1 ICERD; Article I CEDAW; Article 2.1 CRC; Article 1.1 ICRMW; Article 4, Convention on the Rights of Persons with Disabilities (CRPD).

67- Art. 6 of Decree No. 2873 of 16 December 1959 regulating the General Security Directorate.

68- Lebanon Immigration Detention Profile (updated in 2018).

69- Country Operations Plan: Lebanon, UNHCR, 2004.

70- Also According to law 1962, illegal entry and stay is punishable by imprisonment, fine and deportation.

71- The 2003 MOU.

72- Statement on the Lebanon-UNHCR Memorandum of Understanding, November 2003, Frontiers Center.

73- Two Years On (2014).

74- Decision by the Council of Ministers (2014).

a legal status in Lebanon. As a result of this policy, as of 2020, 73% of Syrian refugees over 15 years of age did not have a valid legal residence in the country.<sup>75</sup> This is not dissimilar from the situation of the vast majority of refugees from other countries present today in Lebanon. Indeed, in 2017, 80% of refugee households of nationalities other than Syrian comprised no members with a residence permit, compared to 30% in 2016.<sup>76</sup>

The lack of legal status affects refugees, asylum seekers and stateless people's access to housing, civil registration, employment, education, humanitarian aid, health-care as well as their access to justice and effective remedies. Fearing arrest and detention for lack of a legal status, many refugees are forced to work in the informal labour market, exposing themselves to a heightened risk of discrimination and exploitation at the hands of unscrupulous employers and without any channels to seek a remedy in case of abuse. Furthermore, the lack of legal status increases refugees' fear of being arrested and detained at the numerous security checkpoints, significantly affecting their freedom movement as well.

### **Syrian refugees**

There are 1.5 million Syrian refugees in Lebanon, the largest refugee population per capita in the world of any country.<sup>77</sup>

Prior to the start of the armed conflict in Syria in 2011, the presence of Syrian nationals in Lebanon was regulated through the bilateral agreement for Economic and Social Cooperation and Coordination (1993) signed between Syria and Lebanon. The agreement abolished cross-border movement restrictions for Syrians in Lebanon and, vice-versa, for Lebanese nationals in Syria, and reciprocally granted to the citizens of each country the freedom of enter, stay, work, find employment and practise an economic activity despite not being a citizen of that country. The agreement envisaged the establishment of a labour office on the Lebanese-Syrian borders responsible for issuing special entry coupons for Syrian workers seeking jobs in Lebanon and vice versa.<sup>78</sup> Today, no such labour office has been opened, and no mechanism to implement the abovementioned agreement has been established.

The Economic and Social Cooperation and Coordination agreement was signed at a particular point in time, namely after the end of the Lebanese civil war, when both countries had an interest in developing relations and enjoying mutual benefits. Since the start of the Syrian armed conflict, however, Syrian refugees have arrived in large numbers to Lebanon, fleeing persecution and risks to their life and freedoms caused by the armed conflict. The Lebanese government's official policy regarding "Syrian refugees" bears no relation to the bi-lateral agreement, and deals with the presence of Syrian refugees as a separate issue that is not regulated by the terms of that agreement.

Between the start of the armed conflict in Syria in 2011 and 2014, the Lebanese government did not adopt any central official policy to regulate the entry and stay of Syrian refugees. As a result, they were generally allowed to enter Lebanon without many restrictions, although restrictive practices by Lebanese security forces and local municipalities still existed. On 23 October 2014, more than three years after the start of the armed conflict in Syria, the Lebanese government announced that it had approved a policy paper on the movement of displaced Syrians entering Lebanon.<sup>79</sup> The paper focused on three key stated objectives: (1) to reduce the number of new arrivals from Syria by stopping displaced persons from entering Lebanon at the border, apart from exceptional humanitarian cases; (2) to bolster security by deploying the Internal Security Force and municipality units to keep displaced persons under control; and (3) to ease the burden on Lebanon by strict law enforcement vis-à-vis Syrian displaced persons to protect Lebanese jobs and employment.

The measures to fulfil these objectives included banning the UNHCR from registering displaced Syrians except with prior approval of the Lebanese Ministry of Social Affairs (MoSA). Additionally,

75- Lebanon Crisis Response Plan 2017-2020.

76- Vulnerability Assessment of Refugees of Other Nationalities in Lebanon (2018).

77- "Lebanon hosts the largest number of Syrian refugees per capita, with a Government estimate of 1.5 million Syrian refugees", see, <http://reporting.unhcr.org/node/2520>.

78- Agreement on economic and social cooperation and coordination between the Lebanese Republic and the Syrian Arab Republic, 16 September, 1993, available in Arabic on: <http://www.legallaw.ul.edu.lb/ViewAgreementPage.aspx?ID=2935>

79- Asylum Crisis or Migrant Workers Crisis, Nayla Geagea, the Lebanese Center for Policy Studies, May 2015.

the policy focused on structuring the Lebanese authorities' relationship with international organizations with a view to having access to information about refugees from Syria, in order to reduce their numbers "according legal standards", and to meet the needs of "eligible displaced persons", as described in the policy paper.<sup>80</sup>

Following the introduction of this new policy, the General Security (GS) issued a directive in January 2015, introducing ten different categories for the entry of Syrians from Syria into Lebanon, under which they would have to prove that they had a "temporary reason" to stay in Lebanon, and would thus be allowed to stay in Lebanon legally. These classifications included: tourism; work visit; owning or leasing property; study; to travel from Lebanon to a third country; medical treatment; embassy consultation; and, in exceptional circumstances, as a refugee for those already registered with UNHCR.<sup>81</sup> The only exception according to the new policy is for a Syrian refugee to enter Lebanon on the basis of a "prior pledge of responsibility", which is a type of kafala practice specific to Syrians. Under this practice, a Syrian national entering Lebanon for purposes other than the above listed ones, is allowed to enter if they provide a "pledge of responsibility" signed by a Lebanese individual or a registered entity willing to sponsor them.

In order to enter into Lebanon Syrian nationals must have a temporary reason that matches at least one of the categories listed above. In addition they must also fulfil a number of other requirements, such as having a bank account, a specific amount of money in cash, a hotel booking, a date of departure or scheduled medical treatment. Today, the overwhelming majority of Syrians currently present in Lebanon would not be allowed entry into the country.<sup>82</sup>

Those Syrians refugees who had already been living in Lebanon prior to coming into effect of the GS directive in 2015 and who are no longer able to renew their residency on the basis of the additional criteria mentioned above (e.g. property ownership, etc.) may renew it in one of the following ways:

(1) Refugees already registered with the UNHCR have to pay a residency renewal fee of \$200, which is unaffordable for the majority of Syrian refugees considering the fact that 69% of Syrian refugees in Lebanon live below the poverty line and depend on aid to survive. According to a survey by UNHCR, "Only two out of the 40 refugees interviewed said they had been able to renew their residencies" in this way.<sup>83</sup>

(2) Refugees who were not previously registered with the UNHCR may renew their residency permit if sponsored by a Lebanese national (often an employer) who, in turn, makes a commitment to the General Security to "obtain a proper work permit and assume responsibility for the worker and their activities, and any action that could harm others or have security implications, and responsibility for their health care and accommodation" according to the template pledge provided by the GSO. According to a report by Human Rights Watch, some Lebanese sponsors charge Syrian refugees up to \$1,000 to sponsor them.

In addition, Human Rights Watch reported that in many cases the General Security required UNHCR-registered refugees for evidence of a Lebanese national sponsor.<sup>84</sup>

These policies on entry and stay ignore the plight of Syrian refugees. The only Syrians who can stay legally in Lebanon are the ones who can afford to meet the strict conditions mentioned above. Otherwise, they either find a sponsor, something likely to expose them to the risk of exploitation and abuse, or they just stay in Lebanon "illegally", as returning to Syria is obviously not an option for them.

As a result, between 70% and 80% of Syrian refugees are in the country without a valid residency and their presence in Lebanon is considered "illegal", making them liable to arrest, detention and deportation.<sup>85</sup>

80- The most important features of Lebanese policy towards the issue of Syrian refugees: From hiding its head in the sand to "soft power", Nizar Saghie, Ghida Frangieh, Heinrich Boll Stiftung, 30/12/2014.

81- Regulating the entry and residence of Syrians in Lebanon, General Directorate of General Security, available in Arabic on: <http://general-security.gov.lb/ar/posts/33>

82- Presentation by lawyer, Ghida Frangieh, on the lawsuit against the decision to regulate the residence of Syrian refugees, Legal Agenda, 23/11/2016.

83- Lebanon: Residency Rules Put Syrians at Risk, Year After Adoption, Requirements Heighten Exploitation, Abuse, Human Rights Watch, 12/01/2016.

84- Lebanon: New Refugee Policy a Step Forward, Open the Door to Legal Status for All Syrian Refugees, Human Rights Watch, 14/2/2017.

85- Presentation by lawyer, Ghida Frangieh (2016).

Since its adoption in 2015, the GSO policy has been amended significantly twice. First, in February and March 2017, the GSO published an announcement stating that Syrian refugees registered with UNHCR before 1 January 2015 would be granted a six months' residency permit free of charge that would be renewable several times and not subject to late fees.<sup>86</sup> Second, on an exceptional basis, from September 2017 to March 2018, Syrian refugees would be allowed to change sponsor without having to leave Lebanon, something that was an obstacle to the vast majority of Syrian refugees who wanted to do so.<sup>87</sup>

The judicial authorities and, more specifically, the Council of State, "Lebanon's high administrative court",<sup>88</sup> have intervened to rule on the legality of the GSO decisions and 2015 policies regulating the entry and residence of Syrian refugees in Lebanon. In February 2018, the Council of State issued Decision No.421, ruling that the GSO is not competent to issue new regulations concerning the entry and legal stay of Syrian refugees. It concluded that this competence belongs to the Council of Ministers. The most important points of the decision are:

- General Security decisions pertaining to the conditions of foreigners' entry and residence are subject to judicial oversight.
- The General Security decision issued in 2015 is illegal because it was issued by an incompetent body.
- The Council of Ministers is the authority competent to amend the conditions of foreigners' entry and residence.
- General Security's role is limited to applying these conditions. It has no right to amend them or impose new fees.
- There is no legal justification for the Council of Ministers not to exercise this prerogative as it has been functioning and the conditions for exceptional circumstances that could justify bypassing its powers have not been met.
- Any amendment to the conditions of Syrians' entry and residence in Lebanon must respect the international agreements signed with Syria, which guarantee freedom of movement of people between the two countries and freedom of residence and work.<sup>89</sup>

Even though this ruling was delivered to the Ministry of Interior on 4 June 2018 and to the General Security on 7 June 2018, and that according to article 93 of the Statute of State Council, the State Council decisions are binding on all administrative bodies, to this day, neither the government nor the GSO have complied with it and, in fact, the previous policies continue to be enforced.<sup>90</sup>

According to UNHCR, the Lebanese authorities have decided that any Syrian who "illegally" enters or re-enters Lebanon after 24 April 2019 would be deported and handed over to the Syrian immigration authorities. This decision would apply to Syrians arrested at the border as well as the ones apprehended inside Lebanon. The last date of (re-)entry is the date that matters, regardless of whether or not the refugee had previously entered legally.<sup>91</sup> This decision therefore also puts at risk Syrian refugees who entered before 24 of April 2019 if they are not able to prove the date of their entry.

### ***Other practices violating the human rights of Syrian refugees in Lebanon***

Mass evictions of Syrian refugees by local municipalities have been taking place since 2014, and have increased in 2017/2018, particularly as a result of discriminatory measures taken by local municipalities directed exclusively at Syrian refugees.<sup>92</sup> Human Rights Watch reported, for example, that at least 3,664 Syrian refugees were evicted from at least 13 municipalities from the beginning of 2016 until the beginning of 2018.

86- Q&A for Syrian refugees on new requirements for residency renewal in Lebanon, UNHCR, March 2017.

87- Regulating Entry and Residence Conditions for Syrians: A Legal Victory in Lebanon, Legal Agenda, 26/3/2018.

88- The Lebanese State Shura Council, which was established by Law No. 10434 of 14 June 1975 (Statute of the State Council), is currently the only administrative jurisdiction in Lebanon. While the last amendments to the Statute of the State Council, by Act No. 227 of 31 May 2000, provide for the establishment of first level administrative tribunals in each of the six provinces (mohafazas) of Lebanon, this reform has yet to be implemented. See: The Lebanese State Council and Administrative Courts: A Briefing Paper, International Commission of Jurists, October 2018.

89- Regulating Entry and Residence Conditions for Syrians (2018).

90- Position Paper On the decision to summarily deport Syrian nationals who entered Lebanon irregularly, signed by a number of Lebanese NGOs, Legal Agenda, 2019.

91- Q&A on consequences of irregular (re-)entry to Lebanon based on recent government decisions, UNHCR, July 2019.

92- Our homes are not for strangers, Human Rights Watch, April 2018.

The Lebanese army evicted another 7,524 Syrian refugees in the surroundings of the Rayak air base in the Bekaa Valley in 2017, and a further 15,126 refugees living near the air base had also been threatened with eviction. Following a recent decision issued by the governor of Beirut, Ziad Chbeib, between 200 and 400 refugees and migrants were evicted on the 22 of May 2019 from a building where they were living, purportedly to “to save the families” from what governor described as “human trafficking”.<sup>93</sup>

These mass evictions of Syrian refugees are not the result of an official policy, rather they seem to be caused by an ad hoc policy apparently adopted by some municipalities.<sup>94</sup>

Another practice implemented by local municipalities that has had a detrimental impact on Syrian refugees’ human rights in Lebanon is forcing them to obtain and/or renew “municipal ID cards,” issued by these municipalities.<sup>95</sup> For example in Bikfaya, a town in Matn District, Mount Lebanon Governorate, refugees reported that the municipality forced them to pay 10,000 LBP (7 USD) every three months to renew their municipal ID cards, then in January 2018, the fee increased to 50,000 (33 USD). According to Human Rights Watch, in the town of Ashqout in Keserwen District, the Ashqout municipality started to issue its own refugee ID cards as well for 200 USD, renewable every six months for an additional (100USD).<sup>96</sup>

This practice of requesting fees from refugees in order to issue a municipal ID card continues to this day despite the fact that, in July 2017, the Minister of Interior issued memorandum No.278/2017 requesting Mount Lebanon municipalities to stop this illegal practice lest face sanctions. No instances of municipalities being sanctioned have been reported to date.

Article 770 of the Lebanese Penal Code gives the authorities the power to arrest people who do not possess identification papers. However, migrants’ and refugees’ identification and legal residency documents - for those among those populations who have such documents - are typically withheld by their employers/sponsors. As a result, as mentioned above, refugees and migrants are often forced to limit their movements in the country to avoid being arrested.<sup>97</sup>

While illegal, it is common for hospitals in Lebanon to withhold the identification documents of refugees who have received treatment as a guarantee to ensure payment of hospital bills in instances where UNHCR does not cover such costs fully or only covers them partially.<sup>98</sup> However, no legal provision relating to the medical profession or to hospitals in Lebanon, such as those contained in law 288/1994, law 9825/1926 and law 574/2004, empowers hospitals to withhold an official identification document to guarantee the payment of a bill. As such, it is a debtor-creditor practice to which hospitals illegally resort. Indeed, Articles 410 and 441 of Lebanese Civil Code, which address debtors/creditors’ practices, do not give the latter the right to withhold official identification documents as a way of compelling repayment of a debt.

Syrian refugees reported other forms of discrimination and restrictions affecting them that suddenly started in 2017, such as schools refusing to accept Syrian refugee children, even though they were the same schools to which they had gone for years.<sup>99</sup> Syrian men, women and children have also reported having been verbally and physically attacked by members of the public in Lebanon in the aftermath of political speeches by Lebanese ministers and heads of municipalities expressing hostile views about Syrian refugees. Moreover, very often, Syrian refugees victims of such attacks at the hands of Lebanese communities would not contact the police to report these violent incidents as they feared the police would either condone the attacks or arrest them for lack of legal status.<sup>100</sup>

Following the outbreak of the global pandemic of Covid-19 in Lebanon, and the measures taken by the Lebanese authorities with the stated aim to combat it, more restrictions have been

93- Collective punishment for 400 foreign works under the pretext of saving them:” human trafficking” without offenders, Legal Agenda, 25/5/2019.

94- Ibid.

95- Ibid.

96- Our homes are not for strangers (April 2018).

97- Interview with Yasmine Shawaf, Advocacy specialist, Danish Refugee Council, on 17 May 2019.

98- Interview with a Lebanese lawyer who works with Syrian refugees, on 27 February 2020.

99- Our homes are not for strangers (April 2018).

100- Ibid.



reportedly imposed on Syrian refugees, compared to those imposed nationwide on the rest of the population.<sup>101</sup>

***Palestinian refugees born on Lebanese territory and officially registered in the records of the Ministry of the Interior and Municipalities***

The first wave of displacement of Palestinian refugees from Palestine was made up of people who fled Palestine due to the 1948 conflict,<sup>102</sup> and who then settled in various countries, including Lebanon. Palestinian refugees, in general, do not hold the nationality of any State. Palestinian refugees are “persons whose normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict.”<sup>103</sup>

Since then, Palestinian refugees have not been granted Lebanese nationality, despite the fact that many among them have been born in Lebanon as children of the first wave of refugees from Palestine; as a result, they are stateless. At present, there are an estimated 180,000 Palestinian refugees who live in Lebanon in 12 camps,<sup>104</sup> and 156 gatherings,<sup>105</sup> that is, “urban areas located within municipal zones inhabited by a majority of Palestinian refugees.”<sup>106</sup>

Similar to other countries, the presence of Palestinian refugees in Lebanon is addressed and regulated through presidential, ministerial and administrative decrees or orders.

The Lebanese authorities have displayed different approaches at different points in time to Palestinian refugees in the country. At the beginning of the arrival of Palestinian refugees in Lebanon, some institutions were established to manage the Palestinian presence.<sup>107</sup>

The work-related regulatory framework applicable to Palestinians in Lebanon dates back to 1964 when the Ministry of Labor issued a decree that classified Palestinian Refugees as foreigners, and thus required them to obtain work permits in order to work in the country legally. The decree forbade Palestinians from working in certain professions, such as law and medicine. A subsequent decree, in 1982, further restricted the fields of employment to which Palestinians could have access, in effect leaving only the fields of construction and agriculture open to them. According to Article 9 of the 1982 decree, the Minister of Labour is empowered to list the jobs that only Lebanese nationals can do; the list is updated every year purportedly based on the needs of Lebanese labour market.<sup>108</sup>

101- Lebanon: Refugees at Risk in COVID-19 Response: Discrimination Risks Harming Syrians, Lebanese Alike, HRW, April 2, 2020.

102- Who are Palestine refugees, UNRWA, available at: <https://www.unrwa.org/palestine-refugees>

103- Ibid.

104- Although Palestinian camps are part of the Lebanese territories and thus should fall under Lebanese security and administration, Palestinian political parties inside these camps, are in charge of the administration of the camps with UNRWA providing services inside these camps. The Lebanese security forces monitor only through checkpoints the entry into and exit from the camps.

105- There are twelve established Palestinian camps in Lebanon: Nahr El Bared, Bedaoui camp, Ein El Helwe, Borj El Barajne, Chatila, Al Bus, Al Rashidiye, Borj El Chmali, Miye-Miye, Dbaye, Mar Elias and Wavel. See: Population and Housing Census in Palestinian Camps and Gatherings in Lebanon, the Lebanese Palestinian Dialogue Committee, July 2017.

106- International and local organizations working with Palestinian refugees in Lebanon have used the term Palestinian gatherings throughout the past decade, to refer to areas outside the twelve official Palestinian refugee camps, where a large percentage of Palestinian refugees live in relatively vulnerable conditions, See: Profiling Deprivation An Analysis of the Rapid Needs Assessment in Palestinian Gatherings Host Communities in Lebanon, UNDP, May 2014.

107- “The first was the Central Committee for Refugee Affairs, and was considered as the first governmental intervention to regulate the –then temporary- Palestinian refugees’ situation in Lebanon. It was in charge with conducting statistics, and governing accommodation, relief and health care as well. It was created by a presidential decree No. 11657 of 26/4/1948. Then the Department of Affairs of Palestinian Refugees was established by presidential decree No. 42 of 31/3/1959, and its supplement Decree 927, and was designated the responsibility to coordinate with UNRWA and to handle the residency, civil registration, family reunion among other aspects of the presence of Palestinian refugees in Lebanon. One of its main tasks was to monitor the social and political activities of the Palestinian refugees, which was in consistent with the hostile policies against Palestinians at the time. Lastly, the Higher Authority of Palestinian Affairs was created by presidential Decree No. 3909 of 26/4/1960, and was in charge of, “gathering all information pertaining to political, military, economic, and other aspects of the Palestinian cause.” See: Jaber Suleiman, Marginalised Community: The Case of Palestinian Refugees in Lebanon, Development Research Center on Migration, Globalization and Poverty, University of Sussex, April 2006.

108- Employment of Palestine Refugees in Lebanon, an overview, UNRWA, 23/05/2016.

The jobs that Palestinians have been allowed to do have changed over the years; however, to this day, they still do not have the right to work in 39 employment fields.<sup>109</sup>

Upon obtaining work permits, Palestinians are required to pay into the National Social Security Fund (NSSF), but they are not entitled to receive any NSSF benefits as a result of their stateless status. As much is clear from Article 9 (3) of the Lebanese social security law, which provides: "Foreign labourers working on Lebanese soil are not subject to the provisions of this law, and therefore are not entitled to the benefit of any and all sections of social security, except if the country of their origin affords its Lebanese residents the same treatment as its own citizens with regard to Social Security."

The most significant change came in 2010, when the Labour Law was amended to waive the work permit fees for Palestinian refugees, and to enable them to access some National Social Security Fund benefits (only access to end-of-service indemnity and work-related injuries coverage).<sup>110</sup> While Palestinian refugees are required to pay into the NSSF the same amount as Lebanese citizens, they are, however, not eligible to receive any sickness, maternity or family allowance benefits.

As for the right to own property, foreigners in principle are allowed to own lands in Lebanon according to terms and conditions stipulated in the property ownership Law No.296/2001. However, the amended article 1 of the said legislation prohibits all forms of real estate rights to "any person who is not holding a nationality of a recognized State, or any person in general – should the ownership be nonconforming to the provisions of the Constitution in terms of rejecting permanent settlement (Tawteen)". According to this provision, therefore, Palestinian refugees in Lebanon cannot own real estate because they are stateless. In many cases, land registrars and public notaries have refused to register or execute sale agreements (real estate contracts) for Palestinians.<sup>111</sup> The only exception the law makes concerns inheritance cases.

In practice, therefore, the law prevents Palestinians from owning property, leaving them with the options of either being trapped in overpopulated refugee camps, in which their right to 'adequate housing' is explicitly violated, or to pay an expensive rent outside the camps, which most refugees cannot afford. In addition, the government's restrictions on the reconstruction of refugee camps destroyed during the Lebanese civil war, as well as on building new houses outside the camps, have played a major role in depriving Palestinian refugees of adequate housing.<sup>112</sup>

### ***Palestinian refugees from Syria***

Palestinian refugees previously present in Syria began fleeing Syria, alongside Syrian nationals, at the start of the armed conflict in Syria in 2011. Since 2011, more than 60,000 Palestinian refugees from Syria (also hereafter referred to as ex-Syria Palestinian refugees) have registered in Lebanon with UNRWA.<sup>113</sup> This number gradually reduced over the years, either due to refugees moving to third countries or through unassisted returns to Syria. In July to August 2018, UNRWA verified the presence of 29,145 Palestinian refugees from Syria in Lebanon.<sup>114</sup> Those Palestinians were previously refugees in Syria, including those who has fled Palestine in 1948 and had then settled in Syria, as well as those who were born to Palestinian refugee parents in Syria. For displaced ex-Syria Palestinian refugees in Lebanon, it is their second displacement after having first sought refuge in Syria as a result of the Israeli occupation of Palestine.

109- Twenty-two professions related to healthcare (such as general medicines, dentistry, management of blood transfusion centres, pharmacy, physiotherapy, licensed nutritionist, psychology and etc.), five professions related to transport and fishing (such as public transport driving license and etc.), three related to services and day-care (such as opening and managing a nursery and etc.), three professions related to engineering (engineering, agricultural engineering and topography), two professions related to public sector and law (public sector –governmental- in all its institution and the legal profession) and four other professions (wholesale of tobacco, certified public accountant, tourist guide and customs broker), *ibid*.

110- Palestinian Employment in Lebanon, ILO and Committee for the Employment of Palestinian Refugees in Lebanon, 2012, p.22.

111- Palestinian Refugee –Property Ownership- Lebanese Palestinian Dialogue Committee, available at: <http://www.lpdcc.gov.lb/property-ownership/the-palestinian-refugee-and-the-property-ownership/56/en>

112- Jaber Suleiman, *Marginalised Community* (2006).

113- Lebanon: Palestinians Fleeing Syria Denied Entry, Over 200 People Stranded at Border, Human Rights Watch, August 7, 2013

114- Palestine Refugees from Syria in Lebanon, UNRWA, available at: <https://www.unrwa.org/palestine-refugees-syria-lebanon>

Because the Lebanese government has refused the establishment of formal refugee camps since the displacement of refugees from Syria began, 51% of Palestinian refugees who fled Syria and are now in Lebanon live in preexisting Palestinian refugee camps, leading to extreme overcrowding,<sup>115</sup> with all the hardship that this entails.

The majority of ex-Syria Palestinian refugees in Lebanon have entered Lebanon legally, but have since overstayed their visa. For residency renewals, ex-Syria Palestinian refugees have to pay USD 200 themselves and for each member of their family.

Refugees who do not hold a valid visa for Lebanon have reported experiencing limited mobility.<sup>116</sup> Lack of legal status affects refugees' access to services, including civil registration, and to humanitarian assistance and justice, as well as their freedom of movement, as entrance to Palestinian refugee camps in Lebanon requires a valid residency permit.

The Lebanese government did not explicitly adopt formal restrictions on Palestinians entering Lebanon from Syria until May 2014.<sup>117</sup> However, in practice, hundreds of ex-Syria Palestinian refugees were banned from entry starting from August 2013 after the GSO – with no prior announcement – changed its policy regarding ex-Syrian Palestinian refugees.<sup>118</sup> According to Amnesty International, there was even a “leaked document, apparently from the security services, instructing airlines using the main Beirut airport not to transport any traveler, who is a Palestinian refugee from Syria to Lebanon, regardless of the documents they may hold.”<sup>119</sup>

In general, Lebanon has applied a more restrictive visa policy to ex-Syria Palestinian refugees than to Syrian refugees. In May 2014, the Lebanese Ministry of Interior announced that no visas would be issued at the border to Palestinians coming from Syria, with few exceptions. As a result, ex-Syria Palestinian refugees would be required to apply for a visa in advance of undertaking their journey. The Ministry of Interior also announced that Palestinians from Syria who had already obtained a visa at the border, would no longer be able to renew or extend it.<sup>120</sup>

According to UNRWA, since October 2015, the GSO initially issued several memoranda, mostly not accessible to the public, allowing ex-Syria Palestinian refugees a free-of-charge renewal of residency papers, for a limited period of time, except for those who had entered Lebanon “illegally”. However, from July 2017, free-renewal was available for six months and only for ex-Syria Palestinian refugees who had entered Lebanon before September 2016, but not thereafter. As a result, those ex-Syria Palestinian refugees who had entered Lebanon “illegally”, or after September 2016, have been excluded from this free-of-charge residency renewal policy, along with those who have been ordered to leave the country. In light of this policy, a large number of ex-Syria Palestinian refugees have been unable to regularize their status in Lebanon. In addition, UNRWA has noted that, since the arrival of ex-Syria Palestinian refugees, the Lebanese authorities have applied these policy memoranda inconsistently across the country.<sup>121</sup>

In conclusion, the General Security Office (GSO) issued multiple memoranda seemingly to enable ex-Syria Palestinian refugees to regularize their stay in Lebanon; however, the relevant regulations featured in the abovementioned memorandums have never been published on the website of the GSO and, therefore, have never been accessible to the public. Furthermore, each time the Lebanese authorities have allowed for the possibility to apply for a visa renewal or regularization, it has always been for very limited periods of time.

### ***Sudanese, Iraqi refugees and other refugees present in Lebanon***

As of January 2017, there were 21,761 refugees and asylum-seekers from countries other than Syria and Palestine registered with the UNHCR in Lebanon.<sup>122</sup> By 31 December 2018, the UNHCR reported that there were 14,322 refugees from Iraq, 1,902 from Sudan and 1,976 from other

115- Palestinian refugees from Syria: ongoing nakba, ongoing discrimination, Almajdal, Issue No.56 (2014).

116- Profiling the vulnerability of palestine refugees from Syria living in Lebanon, UNRWA, 08/10/2015.

117- Not Welcome, Jordan's Treatment of Palestinians Escaping Syria, Human Rights Watch, 7/9/2014.

118- Lebanon: Palestinians Fleeing Syria Denied Entry (2013).

119- Lebanon: Denied Refugee: Palestinians From Syria Seeking Safety in Lebanon, Amnesty International, 01/07/2014.

120- Ibid.

121- Palestine refugees living in Lebanon, Protection brief, UNRWA, October 2017.

122- Vulnerability Assessment of Refugees of Other Nationalities in Lebanon (2018).

countries registered with the UN Refugee Agency in Lebanon<sup>123</sup>. Out of a sample of 4,876 of these refugees, the countries of origins were: 86% from Iraq, 8% from Sudan, 2% from Ethiopia, 1% from Egypt and 3% from other countries. Among them, only 13% of individuals over 15 years of age reported having legal residency in Lebanon.<sup>124</sup>

As explained in section (5.2), the 2003 Memorandum of Understanding between the Lebanese government and UNHCR – regarding the Agency’s mandate in the country – addressed mainly the situation of Iraqi refugees, while stressing simultaneously that Lebanon is not a country of asylum. According to it, refugees would be tolerated only temporarily until they were resettled somewhere else or had voluntarily returned home. Otherwise, the Lebanese authorities maintained the right to take the measures they deemed fit, as previously discussed in the beginning of this section.

The GSO has been relying on the 1962 Law regulating the entry, stay and exit of foreigners, as the legal basis for the criminalization of Iraqi and other refugees who entered or stayed in Lebanon “illegally”. As described below in the judicial decisions the ICJ has reviewed, foreigners entering Lebanon “illegally” are liable upon conviction to be sentenced to a term of imprisonment -from one month to three years, a fine and deportation. Local and international organizations have reported that Iraqi refugees were significantly targeted for arrest and detention for “illegal” entry or stay.<sup>125</sup>

### ***Judicial Practice regarding criminalization of “illegal” entry and stay based on the 1962 Law***

Generally, the jurisprudence emanating from the Lebanese courts has not considered the act of seeking asylum from persecution in Lebanon as exempting the individual concerned from criminal liability for the “offences” of “illegal entry” or overstaying beyond the expiry of one’s residence visa.<sup>126</sup> The ICJ has reviewed a number of judicial decisions issued by first instance judges, appeal chambers judges, as well as judges of urgent matters in cases arising from the enforcement of the 1962 Law. Based on the cases reviewed, the ICJ considers that several judicial decisions were directly at odds with one another, ebbing between a total disregard of the individual’s status as a refugee in some cases, and an acknowledgment of a refugee’s right not to be deported in others.

One reason behind this contradictory approach, is that judges in Lebanon generally rely on Article 179 of the Lebanese Code of Criminal Procedures, which provides, “The alleged offences can be proved by any means if there is no legal provision to the contrary... The Judge shall assess the evidence in order to consolidate his/her ‘personal conviction’.” This Article, therefore, confers on judges a wide discretionary power to decide on criminal cases, while simultaneously doing nothing to dissuade them from relying on their personal biases. In relation to judicial adjudication of cases of “illegal” entry and stay under the 1962 Law, different judges have shown different personal views and biases over time. Some judges have demonstrated their belief that Law 1962 should be strictly implemented, regardless of whether the individual concerned is a refugee or not. On the contrary, other judges have decided cases based on their overview of the Lebanese legal order, including the fact that, pursuant to the Constitution and Article 2 of the Lebanese Code of Civil Procedure, international law by which Lebanon is bound takes precedence over domestic law.

Reviewing judicial decisions by Lebanese courts as well as reports by Lebanese NGOs, the ICJ has concluded that, up until 2011, Lebanese judges interpreted and enforced Article 32 of the 1962 Law on “illegal” entry, and Article 36 concerning “illegal” stay, strictly. Indeed, a 2008 report by Frontiers Ruwad on the situation of Iraqi refugees<sup>127</sup> highlighted that refugees arrested and charged with “illegal” entry were typically found guilty and sentenced via standard decisions. Ordinarily, this meant that Iraqi refugees would have their first appearance before the court of First Instance when they would find out through a one-page, pre-set form that they had already been convicted and sentenced, without any consideration given to the facts specific to each case,

123- UNHCR Fact Sheet, January 2019, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR-Lebanon-Operational-fact-sheet-January-2019.pdf>

124- Ibid.

125- Imprisonment and deportation of Iraqi refugees in Lebanon, Qusay Tariq Al-Zubaidi, Forced Migration Review 52, May 2016.

126- See the judicial decisions presented bellow in this section.

127- Double Jeopardy Illegal Entry - Illegal Detention Case Study: Iraqi Refugees and Asylum - Seekers in Lebanon, Legal Study by Frontiers Ruwad, December 2008.

including refugees' well-founded fear of persecution upon deportation to Iraq. The one-page form included information about the accused, the court, the "crime" – as in where he/she had been arrested – the applicable law and the "standard sentence", which for the "crime" of illegal entry was imprisonment for one month, a fine of 100,000 Lebanese pounds – i.e., USD 66 – and deportation.<sup>128</sup>

On several occasions, Lebanese courts have asserted that, notwithstanding the primacy of international treaties binding on Lebanon over domestic laws – as dictated by the Constitution – the provisions of international instruments could not be used to set aside domestic criminal law provisions criminalizing refugees and asylum seekers in connection with entering the country "irregularly" or overstaying their visa.<sup>129</sup>

In one such a case, a Lebanese judge sentenced a refugee to imprisonment, a fine and deportation, holding that he could not circumvent the application of Article 32 of the 1962 Law of Entry and Exit on the grounds that it was incompatible with the Constitution and international law, Article 14 of the UDHR and Article 3 of the CAT as demanded by the defence. The same judge explained that ruling on the constitutionality of a law falls exclusively under the competence of the Constitutional Council, and it was not the task of other courts.<sup>130</sup>

However, there were some exceptions for cases of "illegal" entry and stay even before 2011, where judges gave precedence to international law provisions guaranteeing the protection of refugees' human rights over the strict implementation of the 1962 Law. Nonetheless, even in those exceptional cases, the individual concerned was still convicted and sentenced to imprisonment and deportation, but deportation was suspended.

The following is one such case among those reviewed by the ICJ.<sup>131</sup>

#### **Decision dated 15 April 2008 – Judge Ziad Mkanna**

XX, is an Iraqi national who obtained a refugee recognition document from the UNHCR on 2 April 2008, valid until 2 April 2009. He was charged with violating Article 32 of 1962 Law, and he admitted his "illegal" entry into Lebanon. His defense was that he had fled Iraq due to the conflict, as a result of which he had been physically injured by an explosion. His lawyer claimed that he should not be deported because Article 32 did not apply to refugees, or it should not apply to them, according to international conventions and standards. Also, the lawyers argued that the necessity principle provided for in the Lebanese Penal Code should be applied in XX's case. Article 227 of the Penal Code provides: "Anyone who acts under irresistible physical or moral duress shall be exempt from any penalty."

#### **Ruling:**

XX is to be convicted pursuant to Article 32 of law 1962, and sentenced to one month in prison accordingly, including his pre-trial detention and to a fine of 100,000 LBP and detention for one day for each 10,000 LBP unpaid. He should not be deported.

#### **Reasoning:**

- Article 32 of Law 1962 is explicit and clear in criminalizing the illegal entry of any foreigner, without a distinction between a foreigner with a refugee card and a foreigner without it.
- It is proved that XX had entered Lebanon through Syria, which means that the risk and threat to him ended while in Syria, which means that there was no necessity for him to enter Lebanon. This proves his intention to commit the crime of illegally entry to Lebanon.
- The Court highlighted:
  - Article 14 of the UDHR provides that "Everyone has the right to seek and to enjoy in other countries asylum from persecution."
  - Article 33 of the 1951 Refugee Convention and the 1967 Protocol provides that "No State shall expel or return a refugee to a country where his/her life or freedom

128- Ibid.

129- See the judicial decisions presented bellow in this section.

130- Double Jeopardy Illegal Entry (2008).

131- Names of people in the judicial decisions have been anonymized.



would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

- Article 3 of the CAT, to which Lebanon is a State party pursuant to decree law number 185 on 4/5/2000, prohibits parties from returning, extraditing, or refouling any person to a State “where there are substantial grounds for believing that he would be in danger of being subjected to torture.”
  - The above-mentioned convention – CAT – is part of Lebanese law. The offender has a refugee card from the UNHCR due to the tragic situation in his home country, Iraq, and thus he has the right to not be deported to Iraq, as long as his life is threatened there.

Although these international conventions are superior to national law, according to Article 2 of the Code of Civil Procedures, they are only applicable to his deportation to his country pursuant to Article 32 of law 1962. The provisions of the conventions do not mean that the act of the offender should not be criminalized.

Even with respect to cases such as the one of the Iraqi refugee XX, subject of the decision above, the fact that he was convicted but not deported did not necessarily mean that his human rights were upheld and protected. Indeed, while refraining from deporting refugees is consistent with the non-refoulement principle, their prolonged detention for “illegal” entry and stay in many such cases amounts to a violation of their right to liberty. Indeed, according to the above mentioned 2008 report by Frontiers Ruwad focusing on the situation of Iraqi refugees, the most serious threat faced by refugees and asylum seekers was to be arrested and detained for prolonged periods. The report expressed concern that systematic prolonged detention was used to pressure refugees to abandon their asylum claims or accept “voluntary returns” to their home countries, despite the risk of persecution.<sup>132</sup>

There have also been cases where refugees who had already served sentences of imprisonment of one, two or three months continued to be held in the General Security’s custody for prolonged periods even though they had already completed their sentences.

Cases of prolonged detention taking place prior to and post 2011 will be discussed in the next section (5.4.2).

Since 2011, when the arrival of Syrian refugees to Lebanon began, Lebanese judges have shown a certain flexibility in enforcing Article 32 and Article 36 of the 1962 Law. “Foreigners” would still be convicted for “illegal” entry and stay, but judges would refrain from ordering their deportation. Indeed, since 2011, and especially so with respect to Syrian refugees, sentencing foreigners convicted of “illegal” entry and stay to be deported seems to be the exception – unlike what would have been the case prior to 2011. Some judges have invoked international law protecting refugees, but have then emphasized that this protection is applicable only to spare them from deportation, and that it does not mean that “illegal” entry and stay of these individuals is not a crime under the 1962 Law. In light of this, judges would often sentence “foreigners” entitled to international protection, refugees, to imprisonment and a fine only.

This position is illustrated in the following judgments issued during the period 2013 to 2020, as examined by the ICJ:

**The 10th Appeal chamber in Beirut decision, No. 552/ 2012 - 14 March 2013**

**Facts:**

On 10 December 2008, XX, who is an Iraqi national, entered Lebanon at Rafiq Hariri International airport through a general security checkpoint. He had an entry visa valid for one month. He remained in Lebanon, disregarding the procedures to extend his stay legally. On 10 May 2012, the UNHCR recognized him as refugee and gave him a document valid until 10 May 2013. He was arrested on 8 September 2012, and was convicted under article 32 of the 1962 Law by the 1st instance court. He appealed.

132- Double Jeopardy Illegal Entry (2008).

**Ruling:**

Substituting his conviction under article 32 with one pursuant to article 36 of the 1962 Law, and thus sentencing him to one month in prison – including his pre-trial detention.

**Reasoning:**

What the accused did does not constitute a crime under article 32 of 1962 Law with respect to illegal entry, rather it amounted to a crime under article 36 of the same law, which concerns disregarding the legal period allowed for a foreigner to extend his/her stay.

The fact that the accused was recognized as a “refugee” does not mean that he did not commit the act that meets the criminal elements in Article 36.

**The 3rd criminal appeal chamber, No.475/ 2014 – 24 February 2015**

XX is a Syrian national, who entered Lebanon illegally. He was sentenced on 18 August 2014, pursuant to Article 32 of 1962 Law, to two months in prison. He appealed against his 1st instance conviction relying on the defence of necessity for his entry into Lebanon. His appeal was allowed partially. He was still convicted by the appeal chamber pursuant to Article 32 of Law 1962, but his sentence was reduced to a fine – deeming his pre-trial detention sufficient.

The appeal court indicated that there was no convincing evidence that the accused faced an imminent risk at the time of his entering the Lebanese territory. However, in light of the Lebanese State’s policy toward Syrian refugees, which was not to expel them out of the country considering their “situation,” he should not be deported.

**The 3rd criminal appeal chamber, No. 465/ 2015- 26 January 2016**

XX is a Syrian national who was convicted under article 32 of 1962 Law on 25 June 2015, and sentenced to one month in prison, a fine and deportation. He appealed claiming the elements of the crime in article 32 were not satisfied in his case. The appeal court partially allowed his appeal, upholding his conviction, but reducing his sentence to only a fine – no prison term – and setting aside the deportation part of the sentence. The reasoning is cursory, just referring to “the total circumstances of the case.”

While the Courts have generally refrained from sentencing refugees to be deported upon convictions for “illegal” entry and/or stay, the 1962 Law has continued to be strictly enforced in many such cases. One of the cases examined by the ICJ concerned the conviction and sentencing of a refugee who was still a minor at the time for illegal stay:

**1st Instance Criminal Court decision, No. 96/2019 – 20 June 2019****Facts:**

XX is a Syrian national who at the time of the relevant facts was minor. On 25 January 2018, she reported to the authorities that she had lost her Syrian identity documents, and because she was a refugee, she was referred to the General Security. While questioning her, General Security became aware of the fact that her residency had expired four years previously.

She was accused of having failed to request an extension of residency within the period of time allowed without a valid reason, in violation of Article 36 of the 1962 Law, and her conviction was sought accordingly. Her lawyer reasoned that, because she was a minor, her application for renewing her residency would not have been accepted without a guardian and thus that she should not be convicted for having failed to apply to renew her residency. Her lawyer also pointed out that losing a document was a valid excuse for failing to apply for renewal, under Article 36. He also submitted that Article 36 should not apply to refugees according to international conventions and standards.

**Ruling:**

XX was convicted pursuant to Article 36 of Law 1962, and sentenced to 100,000 LBP (US \$ 66) + one day of prison for each 10,000 LBP unpaid.

**Reasoning:**

- What her lawyer has submitted – i.e., that her application for renewing her residency would not have been accepted because she was a minor – does not mean that the elements of the crime in Article 36 are not met. The crime of illegal stay is made out once: 1. The person is present on the Lebanese territory without a legal residency, 2. the criminal intention is shown. 3. There is a legal basis in criminal law.
- As for the claim that losing a document is a valid excuse for failing to apply for renewal, under Article 36, the Court provided an ambiguous answer, holding that the accused should be questioned about this but that it could not constitute an excuse.
- As for the claim that Article 36 should not apply on refugees, Article 36 is comprehensive and explicit in not distinguishing between someone who is a refugee and someone who is not.
- The offender was 15 years old at the time of the commission of the crime, and thus Article 3 of the Juvenile law, which provides that a minor under seven years of age cannot be criminally prosecuted, does not apply to her.

**1st Instance Criminal Court decision, No. 323/2019 – 16 January 2020**

XX is a Syrian national, who was arrested on 18 January 2019 and released on 24 January 2019. On 5 February 2019, the public prosecutor requested his conviction pursuant to Article 36 of 1962 Law. XX had remained in Lebanon despite the expiry of his residence permit, and had failed to request an extension within the period allowed for that. XX pleaded guilty to the charges. The court sentenced him to imprisonment based on Article 36 of the 1962 Law. However, the court considered that his per-trial detention from 18 to 24 January 2019 was sufficient.

There were cases where deportation was prevented by an urgent matters judge, but only for a limited period of time, which did not necessarily mean that the refugee concerned was no longer under threat of deportation, as he/she might still be arrested again and eventually deported.

There are other cases where Lebanese judges appear to have enforced the 1962 Law strictly, sentencing individuals to be deported. They concern individuals who, in addition to being charged with “illegal” entry and stay, were also accused of having committed other criminal offenses under Lebanese law. In such cases, judges would also rely on Article 88 of the Lebanese Penal Code, providing that, “Any foreigner sentenced to a criminal penalty may be expelled from Lebanese territory pursuant to a special clause of the judgment.” In the following case, a Syrian refugee was sentenced to imprisonment and deportation for illegal entry and for using a forged passport.

**The 12th criminal appeal chamber in Mount Lebanon, No. 229/2018 – 31 January 2019****Facts:**

XX was accused of violating Article 32 of law 1962 concerning illegal entry, as well as Article 463 of the penal code concerning forgery of official documents. He was convicted of these offences and sentenced by the first instance criminal judge on 28 June 2018, to three months in prison – taking into account the time spent in detention awaiting trial – and to be deported. He appealed against his conviction pleading that he had fled the war and conscription in Syria, and once entering Lebanon, he had sought to legalise his status with the General Security. He requested that his conviction for “illegal” entry should be quashed, as he was forced to leave Syria and enter Lebanon irregularly. As for the document forgery charges, he pleaded that he did not intend to acquire a fake passport.

**Ruling:**

Upholding the 1st instance court conviction and the sentence originally imposed (three months in prison and deportation).

**Reasoning:**

- Regulating his legal status after entering irregularly does not mean that the elements of crime under Article 32 of 1962 law are not met, meaning he is still convicted with illegal

entry, especially that the court concluded that there was no coercive force established to justify his illegal entry.

- The court believes that the accused knew that the passport was forged.

### 5.3.3 Analysis and assessment in light of international standards

The ICJ is concerned that the 1962 Law falls short of international standards guaranteeing the human rights of refugees, asylum-seekers, stateless persons and migrants. The 1962 Law fails to take into account the special circumstances surrounding the entry into and stay of refugees, asylum seekers, stateless people and migrants in Lebanon. The domestic legal framework fails, in particular, to provide an opportunity for refugees to claim and enjoy international protection, including protection against deportation in breach of the non-refoulement principle. Refugees – and others who may have a legitimate claim to international protection – have the right to have that claim examined fairly; the 1962 Law, however, fails to provide such an opportunity by penalizing refugees and asylum seekers as “foreigners” illegally present in the country.<sup>133</sup>

The restrictions and high costs imposed for obtaining or renewing legal residence permits in Lebanon lead refugees to enter and remain in the country “illegally”, making them liable to arrest, detention and deportation, and creating a climate of fear among refugees present in Lebanon, leading to significant restriction to their freedom of movement.

Criminalizing the “illegal” entry and stay of refugees in Lebanon based on the 1962 Law, and imposing financial and procedural restrictions for obtaining legal residence, violates the human rights of refugees, including, in particular, their right not to be penalized for affecting an “illegal” entry, and their right to a fair and effective process for determining their status and entitlement to international protection. In addition, these violations create attendant risks of breaches of the non-refoulement principle.

Concurrently, as a result of the strict criminalization of “illegal” entry and stay under Lebanese law and the demanding requirements for obtaining or renewing legal residency, refugees are very often either no longer in possession of their identification documents or are in any event unable to renew them upon expiry because re-documentation or document renewal would require them to return to their home countries with the risks that that entails.

The “illegality” in which refugees often find themselves in Lebanon is fertile ground for several abusive practices by the authorities, including the police, the GSO officials and local municipalities, as well as by private institutions and individuals. In particular, the General Security maintains an excessive power over devising, enforcing and changing their own policies vis-à-vis refugees absent any oversight by the Council of Ministers or the judiciary.

### 5.3.4 Recommendations

The ICJ thus calls on the Lebanese authorities to take the following steps:

#### **I) Become a party to the following treaties:**

- the 1951 UN Refugee Convention and to its 1967 protocol;
- the 1954 UN Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

#### **II) Amend the 1962 Law to ensure its compliance with Lebanon’s international human rights obligations, including with respect to the rights of refugees, asylum seekers, stateless individuals and migrants;**

133- See also, Principles on the Role of Judges and Lawyers in Relation to Refugees and Migrants, the International commission of Jurists, May 2017, Principle 3. In its 2017 *Guiding Principles on the Role of Judges and Lawyers in Relation to Refugees and Migrants*, the ICJ emphasized, “Refugees and migrants are entitled to a fair and effective process for determination of their status, under conditions that preserve human dignity, human rights, and the rule of law. This includes the right to an individual examination, and the right to an effective legal remedy, including the right to appeal to a separate, competent and independent judicial authority.”

- III) Pass legislation to ensure that the domestic legal framework adequately protects the human rights of refugees, asylum seekers, stateless people and migrants, in full compliance with Lebanon international human rights obligations.**
- IV) Ensure that individuals claiming international protection have access to a just, fair and effective process for determination of their entitlement to such protection, under conditions that preserve human dignity, human rights and the rule of law. Ensure that they have the right to an individual examination, and the right to an effective legal remedy, including the right to appeal to a separate, competent and independent judicial authority.**
- V) Ensure respect of procedural safeguards necessary to provide a fair and thorough examination of each individual case. Access to procedural safeguards must be effective in practice. For example, fees may not be imposed on those unable to pay. Time limits must be reasonable and subject to extension in appropriate cases. Access to the procedure should not be conditional on submission of documentation, such as official identity documents, in respect of which there may be a reasonable explanation for its absence. Persons must from the outset be informed of the nature and stages of the process, as well as about their rights. Persons should have access to legal advice and representation. Persons and their lawyer must be given due notice of procedural steps and hearings.**
- VI) Ensure that any foreign national, including refugees, asylum seekers, stateless individuals and migrants are not automatically arrested or deported for their “unofficial” entry or stay in the country.**
- VII) Ensure that people entitled to international protection, chiefly refugees, are not penalized for their “illegal” entry and stay.**
- VII) Ensure the right to access to justice and effective remedies, including through judicial oversight over the actions of General Security.**

## 5.4 The right to liberty and security of person and the prohibition against arbitrary arrest and detention

### 5.4.1 International human rights law and standards

Under international human rights law, the obligations of States to respect, protect and fulfil human rights do not depend on the particular status or recognition of that status of persons under domestic or international law, except for a limited number of provisions explicitly applicable to special categories. As a result, States’ human rights obligations apply to everyone under their jurisdictions, including to migrants, asylum seekers, stateless persons and refugees, irrespective of their immigration status under domestic law.<sup>134</sup> As set out below in this section, this is certainly the case with respect to States’ obligation to ensure the respect, the protection and the fulfilment of migrants and refugees’ right to liberty and security of person, including their right to be free from arbitrary arrest and detention.

Article 3 of the Universal Declaration of Human Rights proclaims, among other things, that everyone has the right to liberty and security of person. Article 9 of the ICCPR prohibits arbitrary arrest or detention, and proclaims that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

In its General Comment No. 35 on Article 9 of the ICCPR, enshrining the right to liberty and security of person, the Human Rights Committee has reaffirmed that: “[l]iberty of person concerns freedom from confinement of the body”; that [s]ecurity of person concerns freedom from injury

<sup>134</sup>- Principles on the Role of Judges and Lawyers in Relation to Refugees and Migrants, International Commission of Jurists, May 2017.



to the body and the mind, or bodily and mental integrity”; and that “Article 9 guarantees those rights to everyone”, including “aliens, refugees and asylum seekers, stateless persons, migrant workers”.<sup>135</sup>

Under international human rights law, the right to liberty and security of person requires that, to be justified, deprivation of liberty, including of migrants and refugees, must not be arbitrary, and must be carried out only “on such grounds and in accordance with such procedure as are established by law.”<sup>136</sup> Deprivation of liberty may be “arbitrary” either because it is not based on a legitimate basis for detention or because it does not follow procedural requirements. Detention of non-nationals, whether refugees, asylum seekers or undocumented migrants, either on entry to the country or pending deportation, must meet these standards in order not to be arbitrary.<sup>137</sup>

Under Article 9 of the ICCPR, and under international refugee law with respect to refugees and asylum seekers, the State must show that their detention is reasonable, necessary and proportionate in the circumstances of each individual case, in order to establish that detention is not arbitrary.<sup>138</sup> To establish the necessity and proportionality of detention, it must be shown that other less intrusive measures have been considered and found to be insufficient in the particular circumstances of each individual case. In summary, the right to liberty under international human rights law establishes a presumption in favour of liberty and against detention. Deprivation of liberty must be the exception rather than the rule; depriving individuals of their liberty must always be fully justified in accordance with the above-mentioned standards.

Moreover, Article 31 of the UN Refugee Convention and associated standards and guidance establish a specific presumption against the detention of asylum seekers and refugees. The UNHCR Detention Guidelines, among other things, reaffirm that:

*“Every person has the right to seek and enjoy in other countries asylum from persecution, serious human rights violations and other serious harm. Seeking asylum is not, therefore, an unlawful act. Furthermore, the 1951 Convention provides that asylum-seekers shall not be penalised for their illegal entry or stay, provided they present themselves to the authorities without delay and show good cause for their illegal entry or presence. In exercising the right to seek asylum, asylum-seekers are often forced to arrive at, or enter, a territory without prior authorisation. The position of asylum-seekers may thus differ fundamentally from that of ordinary migrants in that they may not be in a position to comply with the legal formalities for entry. They may, for example, be unable to obtain the necessary documentation in advance of their flight because of their fear of persecution and/or the urgency of their departure. These factors, as well as the fact that asylum-seekers have often experienced traumatic events, need to be taken into account in determining any restrictions on freedom of movement based on irregular entry or presence.”*<sup>139</sup>

“Article 31 of the 1951 Convention specifically provides for the non-penalisation of refugees (and asylum-seekers) having entered or stayed irregularly if they present themselves without delay and show good cause for their illegal entry or stay.”<sup>140</sup>

*“As noted in Guidelines 1 and 2, detention for the sole reason that the person is seeking asylum is not lawful under international law. Illegal entry or stay of asylum-seekers does not give the State an automatic power to detain or to otherwise restrict freedom of movement.*

135- Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), CCPR/C/GC/35, para. 3.

136- ICCPR, Article 9, para. 1; see also, Human Rights Committee, General Comment No. 35 on Article 9 (Liberty and security of person), CCPR/C/GC/35, para. 10.

137- Article 9 ICCPR.

138- *A v. Australia*, CCPR, Communication No. 560/1993, Views of 30 April 1997, para. 9.3: “The State must provide more than general reasons to justify detention: in order to avoid arbitrariness, the State must advance reasons for detention particular to the individual case. It must also show that, in the light of the author’s particular circumstances, there were no less invasive means of achieving the same ends.” *Saed Shams and others v. Australia*, Communication No.1255/2004, 11 September 2007; *Samba Jalloh v. the Netherlands*, CCPR, Communication No. 794/1998, Views of 15 April 2002: arbitrariness” must be interpreted more broadly than “against the law” to include elements of unreasonableness; *F.K.A.G. v. Australia*, CCPR, Communication No. 2094/2011, Views of 26 July 2013, para 9.3. In that case was not unreasonable to detain considering the risk of escape, as had previously fled from open facility.

139- UNHCR Guidelines on Detention, Guideline 1.: the right to seek asylum must be respected, para. 11, p. 12, footnotes in the original omitted.

140- *Ibid*, Guideline 2: The rights to liberty and security of person and to freedom of movement apply to asylum-seekers, para. 13, p. 13, footnotes in the original omitted.

*Detention that is imposed in order to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is inconsistent with international norms. Furthermore, detention is not permitted as a punitive – for example, criminal – measure or a disciplinary sanction for irregular entry or presence in the country. Apart from constituting a penalty under Article 31 of the 1951 Convention, it may also amount to collective punishment in violation of international human rights law.”<sup>141</sup>*

Detention must therefore never be automatic, and it should be used only as a last, necessary resort where there is evidence that other lesser restrictions would be inadequate in the particular circumstances of the case; it should also never be used as a punishment.<sup>142</sup>

The ICJ believes that no-one should be deprived of liberty solely on grounds of their immigration status, including in cases of irregular entry. In any event, whenever refugees, asylum seekers, migrants, stateless individuals and other non-citizens are deprived of their liberty for immigration-related reasons, their detention must:

- i) Have a clear legal basis in, and be carried out in accordance with national laws and procedures – the said laws and procedures must be of sufficient quality to protect the individual from arbitrariness;<sup>143</sup>
- ii) Not be arbitrary. In order to avoid arbitrariness, detention must, in addition to complying with national law:
  - be carried out in good faith and not involve deception on the part of the authorities;
  - be closely connected to the purpose of preventing unauthorised entry of the persons concerned into the country or of effecting their removal to another country;
  - the place and conditions of detention must be appropriate, bearing in mind that the people deprived of their liberty have not committed a criminal offence, and, in fact, may have fled from their own country, often in fear of their lives; and
  - the length of the detention must not exceed that reasonably required for the purpose pursued, and in any event should be for the shortest possible time.
- iii) Be necessary and proportionate. To establish the necessity and proportionality of detention, it must be shown that other less intrusive measures have been considered and found to be insufficient. In *C v. Australia*,<sup>144</sup> the Human Rights Committee found a violation of Article 9.1 on the basis that the State did not consider less intrusive means, such as “the imposition of reporting obligations, sureties or other conditions which would take account of the author’s deteriorating condition. In these circumstances, whatever the reasons for the original detention, continuance of immigration detention for over two years without individual justification and without any chance of substantive judicial review was ... arbitrary and constituted a violation of Article 9.1”.

### ***Treatment of detainees***

Article 10(1) of the ICCPR proclaims that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The prohibition on torture or other cruel, inhuman and degrading treatment or punishment (see, inter alia, Articles 2, 4 and 16 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Article 7 ICCPR) of anyone, including therefore anyone under any form of detention, is absolute and admits no derogation under any circumstances. The Convention against Torture establishes that States have obligations to take effective measures to prevent acts of torture<sup>145</sup> and of cruel, inhuman or degrading treatment or punishment,<sup>146</sup> including to keep under systematic review arrangements for the custody and treatment of persons subjected to any form of detention with a view to preventing torture and ill-treatment.<sup>147</sup>

141- Ibid, Guideline 4.1: Detention is an exceptional measure and can only be justified for a legitimate purpose, para. 32, p. 19, footnotes in the original omitted.

142- *UNHCR Guidelines on Detention*, op. cit., Guidelines 3 and 6.

143- See also, UN Working Group on Arbitrary Detention (WGAD), Annual Report 1998, UN Doc. E/CN.4/1999/63, 18 December 1998, para. 69, Guarantee 2; WGAD, Annual Report 1999, UN Doc. E/CN.4/2000/4, 28 December 1999, Annex II, Deliberation No. 5 “Situations regarding immigrants and asylum-seekers”, Principle 6; *WGAD, Annual Report 2008*, paras. 67 and 82.

144- *C. v. Australia*, CCPR. See also, *Al-Gertani v. Bosnia and Herzegovina*, CCPR, paras. 10.4.

145- Article 2.1 CAT.

146- Article 16.1 CAT.

147- Article 11 read together with Article 16.1 CAT.

Detailed standards on conditions of detention are set out in the revised UN Standard Minimum Rules on the Treatment of Prisoners known as the “Nelson Mandela Rules”;<sup>148</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;<sup>149</sup> the United Nations Rules for the Protection of Juveniles Deprived of their Liberty;<sup>150</sup> and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

The above-mentioned UNHCR Guidelines on Detention are also particularly relevant to detained asylum-seekers and refugees, as well as others deprived of their liberty for immigration control purposes. They contain a set of minimum conditions of detention to which refugees and asylum-seekers are entitled.<sup>151</sup>

## ***Safeguards in detention***

### ***Right of access to a lawyer***

Refugees and migrants deprived of their liberty have the right to prompt access to a lawyer, and must be promptly informed of this right.<sup>152</sup> The right to prompt access to legal assistance applies with respect to any form of detention, whether under criminal law or immigration powers. International standards and guidelines also state that detainees should have access to legal advice and facilities for confidential consultation with their lawyer at regular intervals thereafter. Where necessary, free legal assistance should be provided. Translation of key legal documents, as well as interpretation during consultations with the lawyer, should be provided where necessary. Facilities for consultation with lawyers should respect the confidentiality of the lawyer-client relationship.<sup>153</sup>

### ***Right of access to medical attention***

On first entering into detention, those detained also have the right to prompt access to a doctor of one’s choice, who can assess their physical and mental health.<sup>154</sup>

### ***Right to inform family members or others of detention***

International standards guarantee the right to notify a family member, a friend or another person with a legitimate interest in the information of the fact and place of detention, and of any subsequent transfer, as an essential safeguard against arbitrary detention.<sup>155</sup>

### ***Right to consular access, or access to UNHCR and other organizations***

Under Article 6(3) of the Convention against Torture, non-nationals or dual nationals held in detention have a right to contact their embassy or consular post. For asylum-seekers, refugees and stateless persons who are not able nor wish to seek consular assistance from their own country, they have a right to contact UNHCR officials. Persons seeking asylum have the right, following detention, “to contact and be contacted by the local UNHCR Office, available national refugee

148- United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) E/CN.15/2015/L.6/Rev.1.

149- Adopted by General Assembly resolution 43/173 of 9 December 1988.

150- Adopted by General Assembly resolution 45/113 of 14 December 1990.

151- UNHCR Guidelines on Detention, Guideline 8: Conditions of detention must be humane and dignified; and Guideline 9: The special circumstances and needs of particular asylum-seekers must be taken into account.

152- *Concluding Observations on Australia*, CCPR, Report of the Human Rights Committee to the General Assembly, 55th Session, Vol.I, UN Doc. A/55/40 (2000), para. 526, where the Committee expressed concern “at the State Party’s policy, in this context of mandatory detention, of not informing the detainees of their right to seek legal advice and of not allowing access of non-governmental human rights organisations to the detainees in order to inform them of this right.”

153- *UNHCR Guidelines on Detention*, Guideline 7(ii): “Free legal assistance should be provided where it is also available to nationals similarly situated, and should be available as soon as possible after arrest or detention to help the detainee understand his/her rights”; *Body of Principles for the Protection of all persons deprived of their liberty*, Principle 18.

154- *Body of Principles for the Protection of all persons deprived of their liberty*, Principle 24: “A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.”

155- Article 10.2, *UN Declaration on the Protection of All Persons from Enforced Disappearance*; Principle 16, *Body of Principles for the Protection of all persons deprived of their liberty*; WGAD, *Annual Report 1998*, para. 69, Guarantee 6; WGAD, *Annual Report 1999*, Principle 2.

bodies or other agencies and an advocate. The right to communicate with these representatives in private, and the means to make such contact should be made available.”<sup>156</sup> Non-citizens should be informed of this right promptly following detention, as established by the UN Body of Principles for the Protection of all Persons Deprived of their liberty.<sup>157</sup>

### ***Judicial review of detention***

International human rights law and standards recognize that anyone who is deprived of liberty by arrest or detention on any grounds has the right to challenge the lawfulness of the detention before a court, and the right to release if the court finds detention not to be lawful (e.g. ICCPR, article 9(4)). The right to challenge the lawfulness of detention before a court is a fundamental protection against arbitrary detention, as well as against torture or other ill-treatment in detention.<sup>158</sup> In its general comment 35, on Article 9, the Human Rights Committee provides that, “The object of the right is release (either unconditional or conditional) from ongoing unlawful detention; compensation for unlawful detention that has already ended.” General comment 35 also provides that, “To facilitate effective review, detainees should be afforded prompt and regular access to counsel. Detainees should be informed, in a language they understand, of their right to take proceedings for a decision on the lawfulness of their detention.”<sup>159</sup>

Additionally, those arrested on criminal grounds have the right to be brought promptly before a judge or other judicial officer (e.g. ICCPR, article 9(3)). See also the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Articles 4, 11, 32, 37.

Furthermore, the right to the judicial review of detention enshrined in international human rights law is also reflected in international refugee law. UNHCR guidelines require both automatic review of detention and regular automatic periodic reviews thereafter, and a right to challenge detention.<sup>160</sup>

With respect to this right, the ICJ’s Principles on the role of judges and lawyers in relation to refugees and migrants state that, “Every deprivation of liberty of any refugee or migrant must be subject to prompt and automatic judicial review of the lawfulness of detention, with guarantees of fair and effective process in each individual case. The judicial authority must be able to make a prompt and effective order for release if it finds that the detention is unlawful under national law or international human rights or refugee law.”<sup>161</sup>

The right to prompt and automatic judicial review of the lawfulness of detention applies to any detention of a migrant or refugee on any ground, whether criminal, administrative, related to immigration control, etc.. It is without prejudice to the position of many, including the ICJ, that no-one should be deprived of liberty solely on grounds of their immigration status, including in cases of irregular entry. International law prohibits, for instance, detention of a refugee or migrant on the basis of his or her race, colour, sex, language, religion, political or other opinion, national

156- UNHCR Guidelines on Detention, Guideline 7(vii). See, WGAD, Annual Report 1998, Guarantee 14; WGAD, Annual Report 1999, Principle 10, which also include the International Committee of the Red Cross and specialized NGOs.

157- Body of Principles for the Protection of all Persons Deprived of their Liberty, Principle 16.2.

158- Human Rights Committee, General Comment no. 35, Article 9, 16 December 2014, document number CCPR/C/GC/35, paragraph 41.

159- Human Rights Committee, General Comment no. 35, Article 9, 16 December 2014, document number CCPR/C/GC/35, paragraph 46.

160- *UNHCR Guidelines on Detention*, Guideline 7: “(iii) to be brought promptly before a judicial or other independent authority to have the detention decision reviewed. This review should ideally be automatic, and take place in the first instance within 24-48 hours of the initial decision to hold the asylum-seeker. The reviewing body must be independent of the initial detaining authority, and possess the power to order release or to vary any conditions of release. (iv) following the initial review of detention, regular periodic reviews of the necessity for the continuation of detention before a court or an independent body must be in place, which the asylum-seeker and his/her representative would have the right to attend. Good practice indicates that following an initial judicial confirmation of the right to detain, review would take place every seven days until the one month mark and thereafter every month until the maximum period set by law is reached. (v) irrespective of the reviews in (iii) and (iv), either personally or through a representative, the right to challenge the lawfulness of detention before a court of law at any time needs to be respected. The burden of proof to establish the lawfulness of the detention rests on the authorities in question. As highlighted in Guideline 4, the authorities need to establish that there is a legal basis for the detention in question, that the detention is justified according to the principles of necessity, reasonableness and proportionality, and that other, less intrusive means of achieving the same objectives have been considered in the individual case.”

161- Principle 8, Deprivation of Liberty, ICJ’s Principles on the role of judges and lawyers in relation to refugees and migrants.

or social origin, property, birth or other status, such as asylum-seeker or refugee status. Refugees and migrants may, at most, be detained for immigration-related reasons only exceptionally.

Detention of children on grounds of their or their parents' migration status violates the rights of the child and is incompatible with the best interests of the child, and the detention of children solely for immigration-related purposes should be prohibited in all circumstances. In the case of stateless persons, being undocumented or lacking required immigration/residence permits cannot, by itself, constitute grounds for detention.

Review of the lawfulness of the deprivation of liberty should include consideration of the legal and factual basis asserted to justify the detention, as well as its necessity, reasonableness and proportionality. In assessing the impact of detention, judges should take into account the age, gender, state of health and other relevant personal circumstances of the individual.

International standards emphasize the importance of the promptness of the detainee's access to the court, of the hearing and deliberation by the court, the issuance of a decision, and execution of any order for release. The detainee has a right to a qualified, independent and competent lawyer to assist in such proceedings.

Persons who are found by domestic or international courts or other appropriate authorities to have been wrongly arrested or detained have a right to reparation, in particular compensation, for their wrongful detention (Article 9.5 ICCPR). Under the ICCPR this right arises whenever there is "unlawful" detention, i.e. detention that is either in violation of domestic law, or in violation of the Covenant. The award of compensation must be legally binding and enforceable, ex gratia payments will not be sufficient.

#### 5.4.2 Domestic law, Policy and Practice

The Lebanese Constitution provides that: "No one may be arrested or detained except as provided for by law."<sup>162</sup> No crime or penalty may be established other than by law." Article 367 of the Lebanese Penal Code provides that, "Any official who arrests or imprisons a person in cases other than those provided for by law, will be punished with temporary forced labour."<sup>163</sup> Article 368 states, "If prison and detention centers' managers or guards or whoever enjoys these powers, hold a person without a judicial warrant or a court decision, or keep a person beyond the statutory time limit, they will be punished with one to three years in prison."<sup>164</sup>

However, Lebanese law also provides that foreigners – including refugees, asylum seekers and migrants, may be detained and deported through "both criminal and administrative procedures stemming from their migratory status."<sup>165</sup>

Refugees, migrants and other non-citizens may be detained in Lebanon for immigration-related reasons pursuant to the enforcement of the criminal law, in addition to being administratively detained as described below. The 1962 law establishes that "foreigners", including migrants, refugees and asylum seekers, may be detained for their "illegal" entry into the country. Foreign nationals who are charged with criminal offences related to their immigration status may face three kinds detention: 1) pre-trial detention ("66 percent of all detainees in the country are in pre-trial detention, including nationals and foreigners");<sup>166</sup> 2) a sentence of criminal imprisonment after conviction; 3) detention pending deportation after serving a criminal sentence.<sup>167</sup>

Under the 1962 law, the criminal charges that are related to entry and immigration status could be one of the following: 1) "irregular" entry; 2) forging identity documents or concealing one's identity; 3) staying in Lebanon upon a refusal to renew a residency permit, as well as re-entry or exit via unauthorized points; 4) staying in Lebanon after receiving a deportation order for security related issues; 5) "irregular" re-entry; and disregarding the timeframe for requesting an extension to a residence permit<sup>168</sup>.

Article 6 of the 1962 law provides that "No foreigner may enter Lebanon unless through one of

162- Article 8 of the Lebanese Constitution.

163- Article 367 of the Lebanese penal code.

164- Article 368 of the Lebanese Penal code.

165- Lebanon Immigration Detention Profile (updated in 2018).

166- Ibid.

167- ibid.

168- ibid.



the General Security stations, and on the condition that he or she has the regulatory documents and visas as well as a passport in which a transit or residence visa has been affixed by a representative of Lebanon abroad.” In addition, Article 32 of the 1962 Law states: “Shall be punished by imprisonment from one month to three years and with a fine of 2500 to 12,500 LL and deportation: i) Any foreign national entering the Lebanese territory without complying with the provisions of Article 6 of this law; ii) Every foreign national who makes a false statement with the intention of hiding the truth of his identity or using forged identity documents; and the iii) the sentence may not be suspended and the penalty may not be less than one month imprisonment.”

A specific legal ground for the administrative detention of non-citizens is when they pose a threat to national security or public safety.<sup>169</sup> Article 17 of the 1962 Law on foreigners’ entry, stay in and exit from Lebanon provides that, “A foreign national shall be deported from Lebanon if the presence of that foreign national is considered to be a threat to public security, based on a deportation decision by the Director of the General Security who shall immediately send a copy of the decision to the Minister of the Interior. Deportation shall be implemented either by notification to the person concerned by the order to leave Lebanon within the time set by the Director of the General Security, or by having the person [to be] deported taken to the border by the Internal Security Forces.”

Article 18 of the 1962 Law further provides that: “The Director of the General Security may, with the approval of the General Prosecutor, arrest and keep in custody any person who is to be deported and may do so for the period of time required to complete the travel formalities.”<sup>170</sup>

Article 33 of the 1962 Law provides, “Every foreigner who does not leave Lebanon after being informed of the refusal to renew their residency permit, or who enter Lebanon not through a general security check point will be detained for one week to three months.”

Finally, Article 34 of the 1962 Law states that, “Any foreign national who violates the provisions of Article 17 of this Law shall be punished by imprisonment from one to six months.” As a result, foreign nationals subject to a deportation order who fail to leave Lebanon within the timeframe set by the Director of the General Security once they have been notified of their obligation to do so, risk between one and six months in prison.

In addition, under Article 6 of Decree No. 2873 of 16 December 1959 regulating the General Security Directorate, General Security is empowered to decide on matters related to the entry, residency and exit of foreigner nationals. In addition, under Article 17 of the 1962 Law of Entry and Exit, General Security is also responsible for deciding whether to arrest a foreigner slated for deportation.<sup>171</sup>

Articles 17 and 18 of the 1962 Law give the Director of the General Security and the Ministry of the Interior wide discretionary powers to decide whether a foreign national constitutes a threat to the public security; if they so decide, the individual concerned may be detained and deported with little opportunity, if any, to have the courts independently scrutinize those decisions since, in practice, the judiciary does not usually oppose deprivation of liberty imposed by executive order.<sup>172</sup> It has been reported that detention ordered as a result of a determination that the person concerned constitutes a public security threat does not require proof. As a result, non-citizens may be detained without the authorities having to provide evidence for the reasons they are considered as a threat.

In addition, there is no established maximum time limit to administrative detention. There have been cases where “foreigners” have been detained for years.

Administrative detention of non-citizens is supposed to be an exceptional measure not a rule, but the scale of arrests by the GSO indicates a systematic policy of administrative detention. In practice, for example, the GSO, which is empowered to act within the confines set in by Article 18, as mentioned above, has reportedly detained foreigners without referring them to the public prosecutor.<sup>173</sup>

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169- Ibid.

170- Law on the entry, stay in and exit from Lebanon (1962).

171- Ibid.

172- Ibid.

173- Ibid.

As previously noted by the UN Working Group on Arbitrary Detention, there's a "disturbing tendency in Lebanon to place refugees, asylum seekers and migrants in an irregular situation in administrative custody."<sup>174</sup>

### ***Procedural safeguards***

In the absence of a separate legal framework specifically guaranteeing the human rights of refugees and migrants, it is the Lebanese Code of Criminal Procedures (CCP) that applies to all instances of detention of refugees and migrants arising from the enforcement of the above-mentioned criminal law provisions of the 1962 Law. In theory, the CPP should guarantee some of the procedural safeguards enshrined in international law and standards. For example, according to Article 47 of the CCP: "The suspect or person against whom a criminal complaint is directed, shall enjoy the following rights from the time of his arrest for investigation:

1. To contact a member of his family, his employer, a lawyer of his choosing or an acquaintance;
2. To meet with the lawyer he appoints by a written declaration in the investigation record; without the need for a duly drafted power of attorney;
3. To request a sworn interpreter if he is not proficient in the Arabic language;
4. To submit a request for a medical examination to the Public Prosecutor either directly or through his advocate or a member of his family...

The Judicial Police shall inform the suspect upon arrest of the rights set out above and this step shall be noted in the record."

The same article mentioned above also provides, "Judicial Police officers may not detain a suspect at the police station without a decision by the Public Prosecutor's Office and the period of detention shall not exceed forty-eight hours. This period may be extended by a similar period subject to the consent of the Public Prosecutor's Office." In practice, however, the detention of migrants and refugees does not comply with the procedural safeguards provided by the CCP.

### ***Arrests and Detention***

The framework provided by the 1962 Law has the potential to facilitate human rights abuses, including arbitrary detention and ill-treatment of migrants, refugees and asylum seekers. Arbitrary detention in Lebanon has been documented by different NGOs and UN bodies. In this section, ICJ has relied on Lebanese and International NGO reports, and mainly on the information and data collected by the Global Detention Project.<sup>175</sup>

Insofar as refugees are concerned, they could be arrested in the process of renewing their residency permits, during routine or checkpoint controls, or during raids by the Lebanese army at unofficial refugee camps.<sup>176</sup> In June 2017, it was reported that 356 Syrian refugees were arrested during raids in unofficial refugee camps. Fifty-six of them were referred to prosecution and 257 were referred to the GSO for lack of legal papers.<sup>177</sup>

Furthermore, following the adoption of the Lebanese government's policy of facilitating "voluntary returns" of refugees, the Lebanese army has reportedly arrested and detained scores of Syrian refugees.<sup>178</sup> In many cases, the GSO detains refugees and migrants without referring them to the public prosecutor or the judiciary as required by the 1962 Law.<sup>179</sup>

According to Lebanese NGOs who responded to a questionnaire circulated by the Global Detention Project, there were seven prisons used for immigration-related detention, namely: Roumieh Juvenile Centre, Qobbah Prison for Men, Qobbah Prison for Women, Zahle Prison for Men, Zahle

174- Communication addressed to the government on 9 February 2011, No. 55/2011m concerning Jawad Kazem Mhabes Mohammed Al Jabouri, available at: <https://www.unwgdadatabase.org/un/Document.aspx?id=2817&terms=%28+lebanon+%29>

175- Lebanon Immigration Detention Profile (updated in 2018).

176- Ibid.

177- Lebanon: Deaths, Alleged Torture of Syrians in Army Custody. Investigate, Publish Results, and Punish Anyone Found Responsible, Human Rights Watch, 20/7/2017.

178- For a more detailed account of those concerns, please see the next section on Lebanon's violation to the non-refoulement principle. Section (5.6.2).

179- Lebanon Immigration Detention Profile (updated in 2018).

Prison for Women, Babbda Prison for Women and Barbar Khazen Prison for Women.<sup>180</sup> Nearly half of all people detained in Lebanese prisons, including both foreigners and Lebanese, are pre-trial detainees, and it is estimated that 30 percent of the overall prison population is of Syrian nationals.<sup>181</sup> Some foreigners are kept in custody in police stations awaiting to be transferred, which can last for periods ranging from several days to more than a month.<sup>182</sup>

Refugees, asylum-seekers and migrants are detained in the General Security's "Adlieh" Retention Center. This detention centre is not an official detention facility or prison and, therefore, manages to evade the administrative and judicial oversight to which other prisons and detention facilities are subjected.<sup>183</sup> It was estimated that by 2017, more than 3,500 men and women were detained by General Security in Adlieh Retention centre. This number included migrant workers – mostly women domestic workers – and refugees.<sup>184</sup>

In the Adlieh Retention centre, refugees, asylum seekers and migrants are either serving their prison sentences, following convictions for "illegal" entry and/or stay, or are detained pending trial or deportation after serving a criminal sentence of imprisonment in another prison. In fact, any foreigner detained in any Lebanese prison, after completing their sentence, should be transferred to the General Security to arrange their stay or deportation, regardless of their migratory status. The administration of any official prison must notify the General Security of the release of any foreigner from that prison, and transfer the released person to the General Security's custody. Detention at the Adlieh Retention centre constitutes an administrative detention outside any specific legal framework, especially considering that it cannot accommodate all the foreigners released from other prisons, due to overcrowding. As a result, in practice, foreigners who should be released are kept in prison waiting to be handed over to the General Security, in many cases for prolonged periods of time.<sup>185</sup>

This is the case even though Article 58 of the Prisons Administration law obliges the head of a prison to release a person on the day their prison term expires. In addition, article 37 of the same law provides that "prison guards can be prosecuted if they keep an individual in prison after the completion of their sentence without legal grounds."<sup>186</sup>

In theory, the General Security's retention center's sole purpose is to hold "criminal aliens" after serving their prison sentences pending deportation.<sup>187</sup> In practice, foreigners, including migrants, refugees and asylum seekers are detained there for lack of legal status and inability to afford tickets to return to their countries. In addition, domestic workers who have left their employers but require their approval (and the return of their passports) to go home are also detained at Adlieh retention center, along with refugees who could not be resettled within one year of arriving in the country, and asylum seekers who claimed asylum more than two months after arriving in Lebanon.<sup>188</sup>

Cases of indefinite and prolonged detention – mostly by the General Security and in the majority of instances concerning Iraqi and Sudanese refugees – have been documented since 2007. While in some instances the General Security may have refrained from deporting refugees as required under international law by the non-refoulement principle, these were also often the very same cases where the refugees concerned were held in prolonged detention for "illegal" entry and stay. A report by Frontiers Ruwad in 2008, describing the situation of Iraqi refugees, identified arrest and prolonged detention as the most serious threats faced by refugees and asylum seekers in Lebanon. The report expressed concern that systematic, prolonged detention was used to pressure refugee claimants to abandon their asylum claims or to force refugees to accept "voluntary returns" to their home countries, despite the risk of persecution.<sup>189</sup>

180- Ibid.

181- Speaking Out for Foreigners in Lebanese Prisons, border Criminology Blog, Oxford University, 23/3/2016.

182- Torture, Detention and Unfair Trials, Joint Submission in View of Lebanon's 2nd Periodic Review by the Human Rights Council, Frontiers Ruwad, 2015.

183- General Security detention centers are not listed or recognised as official detention facilities in article 2 of decree organizing prisons No.14310 issued on 11/2/1949 and the related decrees.

184- Statistics by Cartias Lebanon Migrant Centre, see: Report submitted to the Committee against Torture (2017).

185- Report submitted to the Committee against Torture (2017).

186- Lebanon Immigration Detention Profile (updated in 2018).

187- Ibid.

188- Ibid.

189- Double Jeopardy Illegal Entry (2008).

According to a 2009 opinion by the UN Working Group on Arbitrary Detention, the Lebanese Government had not denied that the detention of the 11 Iraqi refugees on whose behalf the Working Group adopted the said opinion was “part of the Lebanese authorities’ practice of arresting Iraqi refugees without a valid visa and detaining them for an indefinite period in order to compel them to return to Iraq. These persons risk wasting away in prison interminably, unless they accept to return to Iraq.”<sup>190</sup>

### ***Torture and deaths in custody***

Detainees in custody, including migrants, refugees and asylum seekers, have reported ill-treatment by security forces both during arrest and while in detention. In July 2017, Human Rights Watch reported the death in custody of five Syrian nationals who had been arrested in a raid and were being detained by the Lebanese army. According to a doctor experienced in documenting cases of torture who spoke after examining photos of some of the bodies, “The injuries are consistent with inflicted trauma in the setting of physical torture”, and “any statement that the deaths of these individuals were due to natural causes is inconsistent with these photographs.”<sup>191</sup>

### ***Violations to Procedural Safeguards***

It has also been reported that foreigner nationals in detention are denied procedural fair trial safeguards.<sup>192</sup>

In 2006, an MoU signed between the GSO and the Beirut Bar Association was supposed to guarantee free legal aid. However, foreign nationals who are detained and prosecuted for “illegal” entry and/or stay have a hard time in securing access to legal representation. The MoU provides that lawyers must obtain the permission of the General Security to visit their detained clients, and when granted permission, they are only allowed to access particular parts of the detention center. In 2012, the General Security issued a directive, restricting lawyers’ access to its main detention facility. In some cases, UNHCR-registered refugees could have access to legal counsel through a lawyer appointed by UNHCR.<sup>193</sup>

According to field research by the Lebanese Center for Human Rights, at the General Security detention center, denying lawyers’ access to their clients appeared to be a “de facto rule.”<sup>194</sup>

Based on Article 47 of the Lebanese CCP, police detention prior to a hearing before a judge should not exceed 48 hours, albeit it may be extended for a similar period of time upon the approval of the Public Prosecution. However, it has been reported that this rule is constantly violated in practice, with migrants, refugees and asylum seekers often detained for longer periods without appearing before a judge.<sup>195</sup>

It has also been reported that, in violation of Article 47 of the CCP, the judicial police interrogate foreigners who have limited knowledge of Arabic or English without the assistance of interpreters.<sup>196</sup>

### ***Court Practice regarding detention of refugees and migrants***

Judicial decisions taken pursuant to Article 32 of the 1962 Law 1962 on “illegal” entry and Article 36 on “illegal” stay – i.e., failing to renew residency within the required timeframe – have imposed sentences of imprisonment, a fine and sometimes deportation on migrants, refugees and asylum seekers convicted of these “crimes”. From the case law reviewed by ICJ, it appears that imprisonment has been frequently imposed as the preferred criminal sanction for “illegal” entry and/or stay. For example, in most of the cases presented in the previous chapter on the right to entry and stay on the territory, the refugee concerned was sentenced to one, two or three months in prison and a fine of 100,000 LBP, and sometimes also to deportation.

190- Communication addressed to the Government of Lebanon on 13 November 2008, WGAD, document No. 5/2009.

191- Lebanon: Deaths, Alleged Torture of Syrians in Army Custody (2017).

192- Lebanon Immigration Detention Profile (updated in 2018).

193- (Letter No. 27/د.ع.ا/ص.م issued on 5/4/2012). See: Lebanon Immigration Detention Profile (updated in 2018).

194- Prisons in Lebanon: Humanitarian and Legal Concerns, the Lebanese Center for Human Rights, 2010.

195- Lebanon Immigration Detention Profile (updated in 2018).

196- Ibid.

Article 579 of the Code of Civil Procedures gives Summary judges (Juge des Référés) the power to put an end to an administrative violation of an individual's rights. There have been cases where judges have issued pioneering decisions, holding authorities accountable for deprivation of liberty in the absence of a legal basis, and ordering the immediate release from detention of the people concerned. In some cases, judges have also ruled that the detainees were entitled to compensation, and have imposed daily fines on the authorities for any delay in executing court orders.<sup>197</sup> However, the General Security has frequently failed to comply with these court decisions, and has continued to hold the detainees concerned.

The following cases reviewed by the ICJ are examples of judicial decisions ordering the release of refugees detained for an unspecified period of time, after completing their sentence of imprisonment upon conviction for one of the "offences" under the 1962 Law. Most of the cases reviewed by the ICJ concern the conviction and detention of Iraqi refugees in Lebanon. There have been credible reports that the General Security was operating an unspoken policy whereby it would hold Iraqi refugees in custody for prolonged periods beyond expiry of their sentences of criminal imprisonment to force them to return back to Iraq.

#### **Judge of Urgent Matters in Zahlah – 11 December 2009**

The plaintiff was an Iraqi woman who had been convicted of "illegal" entry pursuant to Article 32 of the 1962 Law, and sentenced to one month in prison. She had remained in detention for approximately six months by the time of the present judgment, after completing her sentence of imprisonment. She claimed that, as she was a UNHCR recognized refugee and, as a result, could not be deported to Iraq because her life would be in danger there, she remained in prison because the General Security refused to release her.

The plaintiff and the judge invoked:

- Article 14 of the UDHR "Everyone has the right to seek and to enjoy in other countries asylum from persecution."
- Article 33(1) of the 1951 Refugee Convention and the 1967 Protocol "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion."
- Article 3 of the CAT, to which Lebanon is a state party pursuant to decree law number 185 on 4/5/2000, prohibits parties from returning, extraditing, or refouling any person to a state "where there are substantial grounds for believing that he would be in danger of being subjected to torture."

#### **Ruling:**

The General Security should cease the infringement of her freedom and release her immediately. The judge justified his authority as a judge of urgent matters to review this case by stating that, "As the act of the administration – here the GSO – constitutes a violation of the personal freedom of the plaintiff, it is justified for the urgent matters judge to act.

#### **Judge of Urgent Matters in Mten on 28 January 2010**

##### **Facts:**

XX is an Iraqi refugee who was arrested on 25 November 2008 for entering Lebanon

illegally, and was sentenced on 12 December 2008 by the 1st instance judge in Mten, pursuant to Article 32 of Law 1962, to imprisonment – with his pre-trial detention considered to be sufficient – and to a 300,000 LBP (\$200) fine.

Despite the fact that XX had already completed his sentence of imprisonment and had paid the fine, he remained in Romieh Prison until the date of this judgment (i.e., 28 January

197- Ibid.



2010, more than a year later), because the General Security refused to release him, according to XX.

XX also submitted that his detention was part of a policy adopted by the General Security to keep refugees in custody to force them to return back to Iraq. The General Security denied responsibility of his detention. XX requested to be released immediately, as there was no legal basis for his detention.

**Ruling:**

The Ministry of the Interior and the General Security should release the plaintiff immediately, unless he was detained for another purpose.

**Reasoning:**

Keeping XX in custody went beyond the criminal judge's decision (i.e., the initial decision of 12 December 2008 by the 1st instance judge in Mten, pursuant to Article 32 of Law 1962). There was also no administrative decision by the General Security pursuant to Article 18 of 1962 Law 1962 providing the authority to detain a "foreigner" pending deportation as a result of posing a threat to public safety and security.

The following two cases concern the same Iraqi refugee, AA. He was arrested and sentenced for "illegal" entry twice, in 2007 and then in 2013. On both occasions, AA was kept in custody after completing his sentence. And on both occasions, the courts ruled that his detention beyond expiry of his sentence was unlawful.

AA was first arrested in November 2007. He completed his initial sentence, but remained in custody for two more years, as he refused to return to Iraq "voluntarily".

On 27 March 2010, AA was charged with violating the administrative decision ordering his deportation. On 20 April 2010, a criminal judge dismissed the case and ordered the immediate release of AA. However, he remained in prison despite the judge's order. AA then filed a complaint to the urgent matters judge requesting his release and compensation for his unlawful prolonged detention. On 8 June 2010 the urgent matters judge agreed and granted AA both an order for his release and compensation.

Nevertheless, he remained in prison until 4 October 2011, when, according to the 2011 opinion of the UN Working Group on Arbitrary Detention, he was deported to Iraq.<sup>198</sup> Before that date, AA was refusing to "voluntary return to Iraq where he feared persecution.

The details of the urgent matters judge decision are set out below.

**Judge of Urgent Matters in Mten on 8 June 2010**

**Facts:**

AA is an Iraqi refugee, registered with the UNHCR, who got arrested on 5 November 2007 for entering Lebanon illegally, and was sentenced on 15 November 2007 to three months in prison – inclusive of his pre-trial detention – to a fine of 300,000 LBP (\$200) and to deportation upon completing his sentence.

In early 2008, AA completed his sentence; since then he continued to be held by the General Security, until the date of this judgment (8 June 2010).

AA requested his immediate release and the imposition of a fine of 200,000 LBP (\$132) for each day of delay and 30 million LBP (\$19,900) in compensation for his unlawful detention. The General Security challenged AA's requests.

**Ruling:**

The General Security should immediately release the plaintiff without delay, and shall be

<sup>198</sup>- Communication addressed to the government of Lebanon (2011).

fined 250,000 LBP for each day of delay and will pay a compensation of 10 million LBP (\$6633).

**Reasoning:**

- The plaintiff is a refugee recognized by the UNHCR on 9 December 2009.
- The 1st instance criminal judge issued his judgment sentencing the plaintiff to imprisonment, fine and deportation on 15 November 2007, which is before he acquired the official refugee status.
- Lebanon is a State party to a number of human rights conventions protecting refugees, banning States from deporting an individual to a country where he could be subjected to risk of torture. These international conventions to which Lebanon is a party are superior to Lebanese laws.
- The fact that the administration – in this case the General Security – did not decide on the procedures that should be taken in cases of refugees, and whether they should be deported or not, does not justify keeping them in custody.
- The plaintiff has remained in detention after the completion of his sentence, which violated the 1st instance criminal judge's decision.
- Keeping the plaintiff in custody did not have any legal basis, constituting a clear and blatant violation to his rights, justifying the interference of the judge of urgent matters.
- The plaintiff deserves to be compensated for the harm he endured from his prolonged unlawful detention, without any legal basis.

On 10 December 2013, AA was arrested again and sentenced for "illegal" entry. He continued to be detained after completing his sentence for more than three months. On 20 June 2014, a criminal judge issued a decision on his detention, ordering his release and imposing a fine in the case of delay by the executing authorities.

The judge handling the decision in the case held that a refugee detained pursuant to article 32 of Law 1962 is not "a criminal and [should] not be detained accordingly." He further found that such detentions are due to the inadequacy of the Lebanese law, under which refugees and asylum seekers are being detained pending deportation for unspecified and often prolonged periods of time, often with no distinction made detention pending deportation, and detention in connection with the commission of a crime. He held that the provisions of the 1962 Law do not articulate deportation procedures, nor do they address the place of detention and the period of time spent in detention pending deportation. In his decision, the judge also finds that administrative detention by General Security should be subject to judicial oversight in all cases, and should be the exception.

The judge's reasoning, as well his reference to the relevant international law protecting refugees and asylum seekers, are set out below:

- In addition, it is clear here that the purpose of detention is to carry out the deportation and not a punishment itself, and thus should be for a specified period of time, and should also, similarly to what happens in other countries, be in a special centre and not in a prison. This does not exist in Lebanon due to a legislative gap.
- A foreigner in Lebanon enjoys the same basic rights enshrined in the constitution and international conventions, equally as Lebanese nationals, according to Article 26 of the ICCPR.
- Based on the above and in light of the fact that administrative detention does not constitute a penalty and cannot be for an unspecified period of time, and is a measure interfering with a foreigner's basic rights, a balance should be found between the necessity that may require resort to detention, and the [maximum] period of detention allowed by an administrative decision.
- Based on the facts provided in this case, keeping the plaintiff in detention may not happen in the absence of a judicial decision or an administrative decision according to article 18 of the 1962 law. In this case, it has not been proven that there is a judicial decision ordering the

detention of the plaintiff, and it has not been proven that there is a deportation order by the General Director of the General Security pursuant to the powers provided in article 17 of the 1962 law. Deportation pursuant to article 32 of the 1962 law, which was decided by the 1st instance criminal judge, cannot stand after the appeal decision to overrule it, and prevent the deportation of the plaintiff.

- While it is true that Lebanon has not acceded to the 1951 Refugee Convention, nor its protocol of 1967, Lebanon has acceded to several other relevant conventions, including the ICCPR and the CAT, that prohibit the expulsion of any person when there serious reasons to believe that they will be at risk of torture.

#### **Decision 20 June 2014, Urgent Matters court. Judge Jad Maloouf**

##### **Facts:**

Plaintiff AA is an Iraqi refugee, registered with the UNHCR since 2007, at the time of his complaint he had been detained for three months at the General Security

Detention Centre. He filed a complaint before the urgent matters court requesting his release. The General Security did not provide any response to the claim within the time limit.

Pursuant to Article 32 of Law 1962, AA was arrested on 10/12/2013, sentenced on 4/1/2014 to one month in prison, a fine and deportation for entering Lebanon irregularly. After the completion of his prison sentence on 4/2/2014, he was transferred to the General Security detention centre. The appeal court on 27/2/2014 partially overturned the 1st instance court decision, by prohibiting his deportation, and ordering his release. However, he remained in the custody of the General Security to the date of this decision – which is more than three months in total.

##### **Ruling:**

Plaintiff AA must be immediately released, and the authorities will be subject to a fine of 200,000 LBP (\$132) for each day of delay in complying with this order.

##### **Reasoning:**

- In other countries, there are special centres where foreigners slated for deportation may be housed until their deportation order is executed. This is especially important in view of the fact that the concerned person is not a criminal and should not be detained as one. This is a matter that the Lebanese legislator does not sufficiently address. The only legal basis for detention for deportation purposes in Lebanese law are Article 17 & 18 of 1962 Law.
- These provisions do not address the details of deportation procedures, neither do they address detention time and place pending deportation. These provisions do not distinguish between a foreigner kept in custody to deport him/her, and the detention of a foreigner for committing a crime.
- Article 8 of the Lebanese Constitution provides, "Individual liberty is guaranteed and protected by law. No one may be arrested, imprisoned, or kept in custody except according to the provisions of the law. No offense may be established or penalty imposed except by law."
- Article 9 of the UDHR provides, "No one shall be subjected to arbitrary arrest, detention or exile."
- Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Lebanon acceded by decree law number 3855 on 1/9/1972, provides, "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law...Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."
- Consequently, detention should be the exception, and should happen pursuant to a judicial decision, after providing fair trial guarantees to the person concerned. As an exception, restricting someone's liberty may happen pursuant to an administrative decision, e.g.

under article 18 of the 1962 Law. However, administrative detention provides fewer guarantees than detention pursuant to a judicial decision, and thus is an exception, and is subject to judicial oversight in all cases.

- The detention of the plaintiff by the General Security took place, absent any judicial decision, which makes it an administrative act. The judiciary has the power and authority to restrict an individual's liberty when necessary, and in doing so it is bound by rules and time limits. A judge is not allowed to order the detention of a person for an unspecified period without a decision convicting him, with very few exceptions. Hence, when it comes to restricting an individual's liberty, the rules binding the judiciary must be at least as exacting as those binding an administration.

### 5.4.3 Analysis and assessment in light of international standards

The ICJ is concerned that the legal framework established by the 1962 Law runs counter to Lebanon's obligations under international human rights law. The criminalization of "illegal" entry and stay under Articles 32 and 36 of the 1962 Law, respectively, fails to provide for an exception for refugees and other people presumptively entitled to international protection to enter and remain in Lebanon due to a well-founded fear of persecution or other forms of serious harm upon return to their home countries.

Furthermore, under international refugee law, refugees and others entitled to international protection should not be penalized for their irregular entry or stay on a State's territory. For example, Article 31(1) of the UN Refugee Convention states, "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."

In addition, the UN Working Group on Arbitrary Detention (WGAD) has consistently affirmed that the unlimited detention of non-citizens on the grounds of their irregular situation is arbitrary; and that, "the detention of asylum seekers, refugees and immigrants in an irregular situation must be the last resort and permissible only for the shortest period of time, and that alternatives to detention should be sought whenever possible." The more detention is prolonged, the more it is likely to become arbitrary.<sup>199</sup>

As previously described in this chapter, refugees and asylum seekers, among other foreign nationals, may be detained in Lebanon pursuant to Articles 32 and 36 of 1962 Law in connection with the "crimes" of "illegal" entry or stay, respectively. Moreover, they are also liable to administrative detention at the hands of the General Security, with the stated aim of affecting their deportation. However, as described above, they have also been detained administratively with no legal basis and for prolonged and indefinite periods of time, again by the General Security.

Article 18 of 1962 Law, which is the only Article addressing detention for the purpose of deportation, however, does not outline the procedure to carry out a deportation in this context. Moreover, it does not identify a particular place where the person concerned should be detained pending deportation. In addition, it does not set any maximum detention time limits; as a result, there is no time limit for detention of persons awaiting deportation in violation of international human rights standards.

The UN Working Group on Arbitrary Detention states that, "Administrative custody of immigrants and asylum seekers may in no case be unlimited or of excessive length because a maximum period should be set by law. The detention of foreign citizens in an irregular situation, immigrants and asylum seekers for an indefinite period is at variance with international law."<sup>200</sup>

In addition, under international human rights law and standards, every deprivation of liberty of any refugee or migrant must be subject to prompt and automatic judicial review of the lawfulness

199- See, WGAD, Annual Report 1998, para. 69, Guarantee 10; WGAD, Annual Report 1999, Principle 7; WGAD, Annual Report 2008, paras 67 and 82.

200- Communication addressed to the Government of Lebanon (2008).

of detention, with due process guarantees in each individual case. The judicial authority must be able to make a prompt and effective order for release if it finds that the detention is unlawful under national law or international human rights or refugee law. The detainee has a right to a qualified, independent and competent lawyer to assist in such proceedings.

The ICJ is also concerned that the General Security's unfettered and sweeping discretionary powers lead to arbitrary and prolonged detention to refugees and asylum seekers with no legal basis or judicial oversight. Moreover, in numerous egregious cases, such as those recounted above, the General Security has disregarded judicial decisions in which the judiciary attempted to impose its oversight over the General Security's actions.

The ICJ considers that such an inadequate legal framework facilitates human rights violations by the General Security and the Lebanese army as described above in this chapter in practice, including arbitrary detention, deportation in violation of the non-refoulement principle, torture or other ill-treatment and denial of the right to access to justice and effective remedies.

#### 5.5.4 Recommendations

In light of the above, the ICJ calls on the Lebanese authorities, including the government and the Parliament, to:

- I) comprehensively amend the 1962 Law, including with a view to ensuring that the irregular entry and stay of refugees, asylum seekers and others presumptively entitled to international protection is not penalized.**
- II) ensure that no-one should be deprived of their liberty solely on grounds of their immigration status, including in cases of "irregular entry" or stay and, to this end, amend Article 32 and 36 of 1962 Law;**
- III) ensure that refugees and migrants may, at most, be detained for immigration-related reasons only exceptionally. In those instances, ensure that detention is only resorted to when the authorities are capable of demonstrating there is both a clear legal and factual basis to justify it, and that, in any event, detention is necessary, reasonable and proportionate in the circumstances of the individual case at hand, and for the shortest period of time;**
- IV) provide automatic, periodic judicial review of the lawfulness, necessity and proportionality of any on-going detention. Refugees and migrants and their representatives should be able to attend and provide information and submissions to such periodic reviews.**
- V) ensure that the detention of children solely for immigration-related purposes be prohibited in all circumstances.**
- VI) ensure that administrative custody of refugees and migrants is in no case unlimited or of excessive length. The law should provide for a maximum time limit period of detention, which should be as short as possible.**
- VII) ensure that all detainees in GSO's facilities be registered, including registration of details of their identity, the date, time and place of their detention, the identity of the authority that detains and interrogates them, the grounds for their detention, and the date and time of their admission to the detention facility;**
- VIII) ensure that the judicial authority makes a prompt and effective order for release if it finds that the detention is unlawful under national law or international human rights or refugee law.**
- IX) Ensure that refugees and migrants in detention have unconditional, effective, prompt, and regular confidential access to a competent and independent lawyer, including without charge in cases where the person cannot pay.**
- X) Ensure that refugees and asylum seekers have access to the UNHCR and other organizations, family members and or friends during their detention.**



Principles on the role of judges and lawyers:

- I) As part of determining whether detention is lawful and non-arbitrary in relation to the facts and the law, judges should fully consider all available alternatives to deprivation of liberty. They should also ensure such alternatives do not in practice amount to detention by another name, and that detention is only ordered as a time-limited measure of last resort when no alternative is available.**
- II) Judges and lawyers should do their utmost to avoid any undue delay at all stages of the process. In general, judicial review should take place no later than 24 to 48 hours after the decision to detain the person.**
- III) Lawyers should, to the extent possible, monitor the conditions of detention and ensure the rights of refugees and migrants in detention are being respected and that they are being held in a dignified and humane manner. Judges should, to the extent permitted by national law, exercise a similar monitoring function, and legislators should provide for this where not already provided for. Persons deprived of their liberty must be ensured effective remedies, including judicial remedies, where the conditions of detention do not comply with international standards.**

## 5.5 The right against arbitrary removal and expulsion and the principle of non-refoulement

### 5.5.1 International law and standards

A person is presumptively entitled to international protection whenever the person effectively claims such entitlement, or there are other reasons to believe he or she may be entitled to it. Such persons have a right of access to a qualified, independent and competent lawyer. Access to a lawyer in removal proceedings is necessary to ensure the fairness and effectiveness of the process. Access to a lawyer in cases where the return is said to be voluntary is necessary to ensure that the will of the person concerned is being exercised voluntarily<sup>201</sup>.

#### ***The principle of non-refoulement and the protection against arbitrary removal or expulsion***

The principle of non-refoulement, prohibiting States from transferring – in any manner whatsoever – anyone to a territory, a country or a place where they face a real risk of persecution or other forms of serious harm is a fundamental principle of international law and one of the strongest limitations on the prerogative of States to control entry into their territory and to expel aliens as an expression of their sovereignty. It has its origin in international refugee law<sup>202</sup> and international extradition law, and is nowadays found in human rights, refugee, humanitarian, extradition, migration and customary law. Thanks to the Convention relating to the International Status of Refugees of 28 October 1933 the principle of non-refoulement was enshrined in international treaty law for the first time.<sup>203</sup> The principle is now clearly a provision of customary international law binding all States.<sup>204</sup>

#### ***Non-refoulement in international refugee law***

Regarding refugees, whether a formal determination of refugee status has been made by the destination country, or whether they are still in the determination process, or intending to

201- Principles on the Role of Judges and Lawyers in Relation to Refugees and Migrants, International Commission of Jurists, 2017.

202- Article 33, *Geneva Refugee Convention*.

203- "On the history of the international protection of refugees", Gilbert Jaeger, IRRC September 2001 Vol. 83 No 843, p. 727, available at [https://www.icrc.org/ar/doc/assets/files/other/727\\_738\\_jaeger.pdf](https://www.icrc.org/ar/doc/assets/files/other/727_738_jaeger.pdf).

204- See, Article 3, *Convention relating to the International Status of Refugees*, League of Nations, adopted on 28 October 1933, Treaty Series Vol. CLIX No. 3663; On the customary nature of *non-refoulement* see, UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law*. UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, para. 15. See also, Conclusion No. 6 (XXVIII) Non-Refoulement, ExCom, UNHCR, 28th Session, 1977, para. (a).

apply for asylum, Article 33.1 of the UN Geneva Convention relating to the Status of Refugees of 1951 prohibits the State from expelling or returning ("refouler") "a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".<sup>205</sup> States cannot derogate from their non-refoulement obligations.<sup>206</sup>

The refugee law principle of non-refoulement applies both to refugees present on the territory of the State and as well as at the border.<sup>207</sup> The principle of non-refoulement also applies to extradition procedures.<sup>208</sup>

### ***Non-refoulement in international human rights law***

The principle of non-refoulement is now well established in international human rights law, including under treaties by which Lebanon is bound. It applies to all transfers, including of refugees, asylum seekers and migrants, whatever their status, under domestic law.

### **5.5.2 Domestic Law, Policy and Practice**

As previously set out in section (5.3.2), Article 32 of 1962 Law punishes with imprisonment for one month to three years, a fine and deportation "a foreigner who illegally enters the Lebanese territory." Article 17 of the same law provides, "a foreign national shall be deported from Lebanon if the presence of that foreign national is considered to be a threat to public safety and security", while Article 18 provides, "The Director of the General Security may, with the approval of the General Prosecutor, arrest and keep in custody any person who is to be deported and may do so for the period of time required to complete the travel formalities."<sup>209</sup>

In addition, under Article 88 of the Lebanese Penal code, "any foreigner sentenced to a criminal penalty may be expelled from the Lebanese territory pursuant to a special direction of the judgment." Under Article 89 of the Penal code, "a foreigner against whom a deportation order has been issued must leave the Lebanese territory by his/her own means within 15 days. Any breach of a judicial or administrative deportation measure shall be punishable by imprisonment for a term of between one and six months."

As discussed in the previous section (5.3.2),<sup>210</sup> the enforcement of the abovementioned provisions of the 1962 Law and of the Lebanese Penal Code may lead to the deportation of a foreigner who is criminally convicted, including, in particular, for the "crimes" of "illegal" entry and stay, without any consideration of whether or not the person is fleeing persecution in their home country. The enforcement of these provisions has given rise to the arbitrary expulsion of refugees and asylum seekers in violation of the principle of non-refoulement.

The Lebanese government has addressed the inflow of refugees into the country differently and in an ad hoc manner. On the one hand, Iraqi refugees arriving in Lebanon from 2007 onwards were treated harshly; many among them were arrested and sentenced to deportation for "illegal" entry, while others were detained for prolonged periods despite the 2003 MoU between Lebanon and the UNHCR. On the other hand, from 2011 onwards the authorities' approach towards refugees changed and became more flexible with respect to Syrian refugees, at least up until October 2014, when the General Security issued its first official Policy Paper on Syrian refugees<sup>211</sup> with the stated aim of seeking to decrease the numbers of Syrians in the country<sup>212</sup>.

205- See *Conclusion No. 79*, UNHCR, para. (j). See also, *Conclusion No. 81 (XLVIII)* General, ExCom, UNHCR, 48th Session, 1997, para. (i); *Conclusion No. 82 (XLVIII)* on Safeguarding Asylum, ExCom, UNHCR, 48th Session, 1997, para. (d-i). See also, *Concluding Observations on Portugal*, CCPR, UN Doc. CCPR/CO/78/PRT, 17 September 2003, para. 83.12..

206- See, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, UNHCR, Geneva 26 January 2007, para. 12

207- *Conclusion No. 6*, UNHCR, para. (c). See also, *Conclusion No. 17 (XXXI) Problems of Extradition Affecting Refugees*, ExCom, UNHCR, 31st Session, 1980, para. (b). The need to admit refugees into the territories of States includes no rejection at frontiers without fair and effective procedures for determining status and protection needs: see, *Conclusion No. 82*, UNHCR, para. (d-iii).

208- See, *Conclusion No. 17*, UNHCR, paras. (c) and (d).

209- Law on the entry, stay in and exit from Lebanon (1962).

210- Section (5.3.2)

211- Explained in detail in section (5.3.2)

212- Decision by the Council of Ministers in its session on 23 October 2014, to approve the policy paper regarding Syrian refugees, available in Arabic at: <http://www.pcm.gov.lb/Arabic/subpg.aspx?pageid=6119>

However, from August 2013, hundreds of Palestinian refugees from Syria were banned from entry into Lebanon without explanation. Furthermore, the Lebanese Ministry of Interior announced in May 2014, that no visas would be issued to Palestinians coming from Syria at the border, with few exceptions. This meant that ex-Syria Palestinian refugees would need to apply for a visa in advance. Also, the Lebanese authorities announced that Palestinian refugees from Syria who had already obtained visas at the border would no longer be able to renew or extend those visas.<sup>213</sup>

Starting from 2017, Lebanese politicians started to encourage the return of Syrian refugees to Syria, and began publicly expressing hostile views against Syrian refugees.<sup>214</sup> Furthermore, raids on refugee camps and evictions by local municipalities and the Lebanese army reportedly increased<sup>215</sup>. In June 2018, Lebanon's then Minister of Foreign Affairs, Jebran Bassil, gave UNHCR two weeks to develop a strategy facilitating the return of Syrian refugees to Syria.<sup>216</sup> To put further pressure on UNHCR, Bassil had also frozen residency permits for UNHCR staff in Lebanon.<sup>217</sup>

From the end of November 2017, and almost every month thereafter, the General Security started announcing on its official website the number of "facilitated voluntary returns" of Syrian refugees to Syria.<sup>218</sup> The Lebanese authorities announced that from July to November 2018, between 55,000 and 90,000 Syrian refugees had returned to Syria;<sup>219</sup> those returns were not overseen by the UNHCR. The General Security announced that 341,873 Syrian refugees returned to Syria between 30 November 2017 and 29 December 2019.<sup>220</sup> The UNHCR reported that the number of Syrian refugees who returned to Syria through "self-organizing" was 230,418 in the period between 2016 and 2019. However, UNHCR does not provide any figures on facilitated "voluntary returns",<sup>221</sup> while acknowledging that the number of actual returns could be higher than the number of those it monitors.<sup>222</sup> Human rights Watch reported that, "Refugees have said they are returning because of harsh policies and deteriorating conditions in Lebanon, not because they think Syria is safe."<sup>223</sup>

In parallel, and in the absence of any international NGO monitoring, a number of Syrian refugees were forced to return from Lebanon to Syria by Hezbollah, who negotiated return deals with Syrian rebel factions.<sup>224</sup> As part of a deal, around 50 Syrian refugee families were forced to return to Aasal al-Ward, a town in southern Syria, on 10 June 2017.<sup>225</sup> In August 2017, another deal saw the return of 7,000 Syrian refugees who were allegedly rebel fighters and their families.<sup>226</sup> They were transferred to Idlib province in northern Syria, a place from which a mass exodus of Syrians would soon begin as people started fleeing for their life.<sup>227</sup>

On April 15, 2019, the Lebanese Supreme Defense Council adopted a confidential decision requesting security and military forces to take immediate measures to prevent Syrian refugees from "illegally" entering Lebanon. This led to a great number of deportations of refugees attempting to cross into Lebanon at unofficial border crossings. Just in the period between 7 and 24 May 2019, 301 Syrian nationals were deported back to Syria pursuant to this decision: 197 of them by the Lebanese Armed Forces, 100 by the Internal Security Forces and 4 by the General Security.<sup>228</sup>

213- See section (5.3.2)

214- Violence and discrimination against Syrian refugees is addressed in section (5.3.2). Also see Our homes are not for strangers (2018).

215- Lebanon: Deaths, Alleged Torture of Syrians in Army Custody (2017).

216- Lebanon presses UNHCR on refugee return strategy, the Daily Star, 6 June 2018.

217- Bassil freezes UNHCR staff residency permits, The Daily Star, 8 June 2018.

218- The General Directorate of General Security, the directorate activities, available in Arabic at: <http://www.general-security.gov.lb/ar/activities/directorate>

219- About 20 refugees who returned have been killed: Merehbi, the Daily Star, 3 November 2018

220- General Security Magazine issue no. 76, the General Directorate of General Security, 09/01/2020, available in Arabic at: <http://www.general-security.gov.lb/ar/magazines/details/334>

221- The UNHCR does distinguish between self-organized/spontaneous return, and Large-Scale Facilitated repatriation. See: <https://data2.unhcr.org/en/documents/download/71524>

222- Syria Regional Refugee Response: Durable Solutions, UNHCR, last updated 31 December 2019.

223- Lebanon Events of 2018, Human Rights World Report, Human Rights Watch.

224- Act for Human Rights (ALEF) Annual Report, 2017.

225- Ibid.

226- Thousands of refugees and militants return to Syria from Lebanon, Hezbollah escorts more than 3,000 across border in latest phase of repatriation that aid groups say fails to guarantee welfare, the Guardian, 14 August 2017.

227- The Guardian view on Idlib: nowhere left to run, the Guardian, 14 Feb 2020.

228- Position Paper on the decision to summarily deport Syrian nationals who entered Lebanon irregularly (2019).

In April 2019, the General Security announced that any Syrian who “illegally” entered or re-entered into Lebanon after 24 April 2019 would be deported and handed over to the Syrian immigration authorities.<sup>229</sup> It appears that this approach applies equally to Syrians arrested at the border as well as the ones who are found inside Lebanon. The last date of (re-)entry is the date of concern, regardless of whether or not the refugee had previously entered “legally”.<sup>230</sup> As a result, even Syrian refugees who arrived before 24 of April 2019 are at risk if they are not able to prove the date of their entry. Following this announcement, the General Security reported that it had deported 2,731 Syrians by handing them to the Syrian authorities between 21 May and 28 August 2019.<sup>231</sup>

In its announcement concerning “voluntary returns”, the General Security highlights its coordination with the UNHCR. However, according to the UNHCR, the Agency does not have any programs at the moment to facilitate large-scale returns of Syrian refugees. However, it “respects individual decisions of refugees to return home, and does not discourage or oppose returns taking place based on an individual’s free and informed decision.”<sup>232</sup> So far, UNHCR’s role in the returns of Syrian refugees “facilitated” by the General Security has been to provide assistance with the required documents, and in attempting to verify the “voluntariness of the returns”.

One of the practices of the General Security reported in the past was to force refugees to sign declarations attesting their “voluntary return”.<sup>233</sup> NGOs have raised concern over the extent to which the ongoing returns of Syrian refugees are truly “voluntary”, in light of the considerably hurdles and restrictions on residency permits and accompanying restriction on mobility and employment, the raids on refugee camps and mass-detention, political and communal hostility, as well as the dire economic and living conditions for Syrians in Lebanon today.<sup>234</sup>

### 5.5.3 Analysis and assessment in light of international standards

As of April 2020, there were 5,559,224 world-wide registered Syrian refugees, according to the UNHCR.<sup>235</sup> Lack of security in several parts of Syria remains a key issue for returning refugees. Even if returning to “safe zones” where the armed conflict has subsided at least for the time being, Syrian returnees remain at risk of enforced disappearance, arbitrary detention and torture, leaving aside the generally dire socio-economic conditions throughout the country. The ICJ is particularly concerned at reports indicating that thousands of Syrian refugees returning to Syria were arrested and detained, and that many among them were subjected to torture and other ill-treatment, resulting in death in some cases.<sup>236</sup> According to research on the fate of those who returned to regime-held areas, those refugees detained on return included former activists, former members of local councils, doctors who had worked in hospitals in areas previously held by the opposition, as well as commanders of rebel groups, with “at least a thousand people who thought they had reconciled with the regime having disappeared.”<sup>237</sup> On 3 November 2018, about 20 refugees who had returned to Syria from Lebanon, including at least two children, were reportedly killed by Syrian security forces.<sup>238</sup> Forcible conscription into the Syrian Army for an indefinite period of time constitutes another major source of fear among Syrian refugees who returned.<sup>239</sup>

Furthermore, it has been reported that 56% among Syrian refugees currently in Egypt, Iraq, Lebanon and Jordan who had property in Syria before fleeing, have had their property “fully destroyed” or “partially damaged/ destroyed” and thus uninhabitable as a result.<sup>240</sup>

229- The General Security has deported people who entered Lebanon before 24 April 2019 as well. See Syrians Deported by Lebanon Arrested at Home, Human Rights Watch, 2/9/2019.

230- Q&A on consequences of irregular (re-)entry to Lebanon (2019).

231- Syrians Deported by Lebanon Arrested at Home (2019).

232- Q&A on Returns to Syria, UNHCR, June 2018.

233- Shadow Report: Submission to the Committee against Torture in Relation to its Examination of the Initial Report of Lebanon, the Lebanese Center for Human rights, March 2016.

234- Why are Returns of Refugees from Lebanon to Syria Premature, Amnesty International, 12 June 2019.

235- Syria Regional Refugee Response (2019).

236- Assad urged Syrian refugees to come home. Many are being welcomed with arrest and interrogation, the Washington Post, 2 June 2019.

237- Thousands Of Refugees Returning To Syria End Up Detained, Imprisoned, Tortured, National Public Radio, June 24, 2019.

238- Lebanon Events of 2018 (2018).

239- Conscription Law, Brief, The Tahrir Institute for Middle East Policy, 08/22/2019.

240- Nasser Yassin and Rawya Khodor, 101 Facts and Figures on the Syrian Refugee Crisis, UNHCR, 2019, page 34, available at: <https://data2.unhcr.org/en/documents/download/70360>

In the circumstances, any deportation of Syrian refugees from Lebanon, whether it is the automatic deportation of those arriving at the Lebanese borders, or the deportation of Syrian refugees already present within Lebanon for “illegal” entry or stay pursuant to 1962 Law, is a violation of the non-refoulement principle by which Lebanon is bound under customary international law and as a State party to the ICCPR, the CAT and other international human rights treaties (e.g. CEDAW and the CRC in the case of women and children, respectively).

Furthermore, the restrictions on Syrian refugees present in Lebanon with respect to their residency and freedom of movement, the raids and arbitrary arrests and detentions, their extremely limited access to employment, housing, health, education and justice, as well as the hostility they experience at the hands of local municipalities and communities, may effectively force them to return to Syria, notwithstanding the fact that in Syria their lives or freedoms continue to be at serious risk. Their return in those circumstances is anything but voluntary, and in fact amounts to constructive refoulement. The ICJ is similarly concerned that may thousands of Syrian refugees have been effectively forced by the Lebanese authorities to return to Syria, notwithstanding the fact that the Lebanese authorities describe these returns as “voluntary”. Again, in light of the current circumstances, both in Syria as well as in Lebanon, and the serious concern about the nature of those returns, they are most likely to amount to violations of the non-refoulement principle.

### 5.5.4 Recommendations

In light of the above, the ICJ calls on the Lebanese authorities to strictly comply with their non-refoulement obligations, including by:

- I) Ensuring that no individual is transferred to a country where he or she faces a real risk of persecution or other forms of serious harm, such as torture or cruel, inhuman or degrading treatment or punishment;**
- II) Establishing a moratorium on all removals to Syria;**
- III) Ensuring that nobody is forcibly returned without an individualized, fair and effective procedure guaranteeing due process safeguards as required by international law and standards;**
- IV) The safeguards required for the expulsion or removal of a non-national, include the right to access to an independent and competent lawyer at all stages of the removal process:**
- V) Access to a lawyer in cases where the return is said to be voluntary is necessary to ensure that the individual’s will has not been coerced and is being exercised voluntarily;**
- VI) Migrants, refugees, asylum seekers and their lawyers should be informed of the authorities’ decision to order their removal, and of the removal procedures themselves; they should also be provided with the opportunity to prepare arguments against their removal, as it is their right to do so if they so wish:**
- VII) Summary, arbitrary, collective or mass expulsions or removals should be prohibited in Lebanese law;**
- VIII) Judges should consider the individual circumstances of every person who is facing removal with due diligence and good faith, and should ensure that adequate justification has been presented for their removal, and that the removal is not prohibited under international human rights and refugee law and standards, before issuing or validating a removal order;**
- IX) Individuals receiving a removal order or deportation decision should have the right to appeal against them; and**
- X) In the case of Syrian refugees, judges should issue temporary protection measures if needed to prevent mass expulsions at borders.**



## 5.6 The right to access to justice and effective remedy

### 5.6.1 International law and standards

Refugees and migrants, like other persons, have at all times and in all circumstances the right to an effective remedy and reparation for violations of human rights, which includes access to the courts and access to legal advice and representation.

Refugees and migrants who allege they have been victims of crimes, whomever the perpetrator, also have the right to equal access to justice and equal treatment in the process of investigation and prosecution of such crimes, as well as in any procedures for compensation or other forms of reparation.

The right to access to an effective remedy and reparation for violations of human rights, without discrimination, is recognized both under particular treaties, such as the International Covenant on Civil and Political Rights (i.e., article 2(3)), and more generally, see for example the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

These Principles affirm that States have an obligation to provide adequate, effective, prompt and appropriate remedies to victims of violations of international human rights law and international humanitarian law.<sup>241</sup>

### 5.6.2 Domestic law, policy and practice

The procedure to request legal aid in civil cases in Lebanon is addressed in articles 425-442 of the Code of Civil Procedures. According to these articles, if one of the parties cannot pay the fees of a trial, the party may apply for legal aid in order to file a lawsuit or prepare their defence before a court of first instance or court of appeal if they are being sued. Similarly, Article 78 of the Code of Criminal Procedure provides that if the defendant is unable to appoint a lawyer, the investigating Judge shall appoint one or ask the President of the Bar Association to do so. In both civil and criminal cases, the concerned court examines and approves requests for legal aid, and then the request is sent to the Bar Association.

Lebanon does not have a state-funded legal aid system. The responsibility for providing free legal aid for arrested and detained persons who cannot afford a lawyer falls on the Beirut and Tripoli Bar Associations, which do so on a pro bono basis, absent designated funding.<sup>242</sup> Both Bar Associations, however, lack sufficient resources to meet all needs. In addition, it is typically trainee lawyers, as opposed to experienced lawyers, who are commissioned to take the pro bono cases.<sup>243</sup>

As mentioned above, a 2006 MoU between the GSO and the Beirut Bar Association was signed to guarantee free legal aid for people held by the GSO. However, foreigners who are detained and prosecuted for “illegal” entry and/or stay cannot easily access this service. In 2012, the General Security issued a directive, further restricting lawyers’ access to its main detention facility.<sup>244</sup>

Refugees have some access to both civil and criminal legal aid through humanitarian agencies and actors.<sup>245</sup> However, most of the NGO legal aid initiatives are ad hoc or driven by donors’ priorities, which, in turn, gives rise to concern regarding sustainability, adequacy and capacity-building, among others. Also, NGOs can provide legal awareness and legal counseling, but only members of the Bar Associations can provide legal representation.<sup>246</sup>

As previously discussed in section (5.3.2), migrants, refugees and asylum seekers’ access to justice and effective remedies for violations of their rights is impeded to a great extent by their immigration status and the difficulties they encounter to regularize it. As described in this report,

241- Articles 2 and 3 of the UN Basic Principles and Guidelines on the right to a remedy and reparation.

242- Legal Aid and Access to Justice in Lebanon, the Institute of Law and Justice in Arab Societies, May 2018.

243- Ibid.

244- (Letter No. 27/د م /ص/ع 1 issued on 5/4/2012). See: Lebanon Immigration Detention Profile (updated in 2018).

245- Such as UNHCR, NRC, Caritas, etc...

246- Security and Justice Sector Wide Assessment, UNDP Lebanon, March 2016.

non-citizens, whose status in the country is “illegal”, risk arrest, detention and deportation.<sup>247</sup> As a result, fearing that their “illegal” status may be disclosed, non-citizens are often extremely reluctant to approach the authorities and official institutions in Lebanon, even when they have become victims of human rights violations and abuses, and despite the fact that their right to access to justice and effective remedies does not depend on their immigration status under domestic law. In addition, Lebanese official institutions including the justice sector, like many others, have a reputation for being influenced by politics, sectarianism, clientelism and corruption.<sup>248</sup> Another reason why migrants, refugees and asylum seekers are reluctant to seek justice is that very often the human rights violations and abuses they suffer stem from their informal contractual relationships.

For all the above reasons, and because of financial and administrative barriers, the lack of awareness about the justice sector, it is common for migrants, refugees and asylum seekers to resort to informal channels to seek justice or to entirely avoid seeking it.<sup>249</sup> A study reported that, out of 807 lawsuits involving Syrian nationals between 2012 and 2015, none was filed by a Syrian plaintiff against a Lebanese defendant. In addition, only four per cent of Syrian refugee respondents to a survey have filed lawsuits during their time in Lebanon, and only half of those who had were satisfied with the outcome.<sup>250</sup>

### 5.6.3 Analysis and assessment in light of international standards

The ICJ is concerned that the lack of a State funded legal aid system deprives many individuals, including migrants, refugees and asylum seekers, whose rights have been violated, from having access to justice and effective remedies. Having the burden of legal aid falling solely on the two Bar Associations, who lack the required resources and capacity to provide the needed legal services, leaves a significant number of disputed issues and legitimate claims unaddressed, especially among migrants, refugees and asylum seekers. Furthermore, the ICJ is concerned that migrants, refugees and asylum seekers detained by the General Security are deprived of legal representation to challenge their detention and guarantee their right to a fair trial.

The ICJ is further concerned that the criminalization of “illegal” entry and stay and the various obstacles to obtain and renew legal residency, fundamentally impede refugees and asylum seekers from seeking justice through formal justice institutions, for fear of arrest and deportation. Informal justice mechanisms to which refugees and asylum seekers commonly have resort are inherently unable to provide justice and effective remedies in many cases.

### 5.6.4 Recommendations

In Light of the above, the ICJ calls on the Lebanese authorities to:

- I) Ensure that migrants, refugees and asylum seekers have access to justice and effective remedies for human rights violations and abuses, without discrimination.**
- II) Ensure that migrants, refugees and asylum seekers have at all times and regardless of their immigration status under domestic law, the right to access courts, to claim and be granted effective remedy and reparation for violations of civil, political, economic, social and cultural rights recognized under international law.**
- III) Ensure that migrants, refugees and asylum seekers have access to quality and free of charge legal advice and representation in claiming their rights or defending themselves against civil or criminal charges.**
- IV) Ensure that refugees, asylum seekers and migrants are not removed from the Lebanon for asserting their right to access to justice and effective remedies.**

247- Section (5.3.2) and section (5.4.2)

248- Security and Justice Sector Wide Assessment (2016).

249- Enhancing Community Security and Access to Justice in Lebanon Host Communities, a project overview, UNDP Lebanon.

250- Justice for stability, Addressing the impact of mass displacement on Lebanon’s justice system, Policy Brief, International Alert, February 2017.

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