



Guilty until Proven Innocent

REPORT ON THE CAUSES OF ARBITRARY ARREST, LENGTHY
PRE-TRIAL DETENTION AND LONG DELAYS IN TRIAL



This project is funded by
The European Union



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ALEF - Act for Human Rights

WHY GUILTY UNTIL PROVEN INNOCENT?

The presumption of innocence is enshrined in various international instruments. For example, article 11(1) of the Universal Declaration of Human Rights says: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense." This fundamental standard in all cases of detention means that the burden of proof lays on the prosecuting body and the benefit of the doubt on the accused. Being presumed innocent until proven guilty imposes on authorities the duty to treat defendants as such and not prejudge the outcome of the criminal proceedings. However, in Lebanon, rates of pre-trial detention are exorbitantly high and are one of the reasons why prisons across the country are overcrowded. Additionally, law enforcement practices sometimes reveal a perverse understanding of the purpose of detention. These factors, among many others, pave the way for a twisted understanding of human rights in criminal justice proceedings sparking the thought that in Lebanon, you are guilty until proven innocent.

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Lebanon

ALEF- Act for Human Rights
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FOREWORD

Oftentimes, research reports in the human rights field tend to be legalistic, rather dry, and difficult to get through. Writers correctly emphasize the 'rights' side of the equation, focusing on legal protections and safeguards and highlighting violations and the State's responsibility to respect, protect and fulfil human rights. After all, 'rights' can only be enjoyed when we have laws and effective mechanisms and procedures to protect them. However, rarely do we see the 'human' side of human rights brought out.

This comprehensive report by ALEF-Act for Human Rights on the problems of arbitrary detention in Lebanon breaks that mould. It does an excellent job of analysing and identifying the problems and gaps in the laws and in the administration of justice and the implementation of due process and in Lebanon. At the same time, it reminds us that we're talking about human beings. It helps us understand - through the voices of the victims themselves - what the implications of inadequate protection are and how that reflects in people's lives.

The study is also important and to a large degree unique in that it puts the legal framework and daily practice relevant to arbitrary detention in their historical and political context. Clearly, nothing can be properly understood out of context, and for Lebanon, this is an absolute necessity given its complicated social and political history and structure. This complexity informs everything in the country, from social organization to political dynamics to the multiplicity of actors who are directly or indirectly responsible.

The context described in this research helps explain why Lebanon, with such a good reputation for democratic practice and with a wealth of good legal minds, suffers such a shocking state of affairs when it comes to due process and the effective administration of justice. One of the most damning conclusions one draws from this research is that, given Lebanon's current judicial and political state, people are in reality not treated equally before the law - of the most important tenets of human rights. When people, no matter what alleged crimes they may have committed, are treated as categories rather than as individual human beings equal before the law, their rights are automatically violated. Moreover, the reputation of the State and its institutions is tarnished and those institutions lose confidence and trust.

The problem of arbitrary detention described in this study is only one of many that the country faces as a result of its fragmented society and the lack of

willingness to make the institutions of State work equally for all people in accordance with the law. Like any other country in the world, the laws in Lebanon need constant revision and improvement, the implementing procedures and regulations need to be streamlined and made more effective, and the institutions of the State need to be more accountable to the Constitution and to the population at large.

It is not out of reach for Lebanon to renew itself in the direction of respect for human rights for all. It can correct the problems of arbitrary detention and other problems, but that requires political will and a clear vision for what needs to be done. The ALEF study meticulously points out a number of recommendations at the legislative, judicial and procedural levels that, should they be well implemented, can change or at least incrementally improve the situation. Lebanon's many influential actors in the political and legal spheres have a legal and moral responsibility to take these recommendations seriously. It is in their interest, and in the interest of their communities that share this small country, to work diligently and honestly towards making these changes.

A campaign is needed that brings together all the stakeholders and affected – and non-affected – sectors of the population to advocate for implementing the important recommendations in this study. In the mosaic of Lebanon, it is only the law that can guarantee each individual and each community's interests, provided those interests include Lebanon as a whole. Each community needs to remember that the protection of all people in the country from arbitrary detention will result in the protection of each member of that and any other particular community.

Congratulations to the team of ALEF for undertaking this valuable and detailed study, and for pointing the way forward.

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Human Rights Expert
Former Middle East Regional Representative,
Office of the U.N. High Commissioner for Human Rights
Chairman of the Board, Arab Human Rights Fund

PREFACE

Around the world, people are far more apt to be harmed by their own than by other governments. Harm results from numerous forms of misgovernment—political and military repression, graft, judicial corruption, economic discrimination against minorities and so on. Such behaviour clearly offends against the norm of sovereignty. The norm nevertheless protects abusive governments and corrupt elites, who can appeal to sovereignty and insist on non-interference in their internal affairs whenever they face international pressure to reform. For this reason, some have called sovereignty a “refuge for scoundrels”.¹ (Donald Rothchild)

For decades, Lebanon’s historical monuments, rich heritage, diverse landscape and heterogeneous inhabitants have been at the forefront of international news. Conversely, it has also received wide media coverage for its many years of war and long track record of internal strife and violence between its different religious, social and political constituencies. Since the fifteen year civil war ended in 1990, Lebanon has been on what seems to be a continuous transitional phase of instability which lies at the epicentre of unfinished war and superficial peace. This is “characterized by [an] unachieved state-building process, weak rule of law and [—] violence on the socio-political and cultural levels.”² All of these have undoubtedly threatened the right to life and security of every person, weakened trust in the state and its institutions and finally, strengthened impunity and upheld lawlessness. On the ground, this has translated into poor law enforcement practices and inadequate criminal legislation to protect rights and freedoms. These problems have been further compounded by nepotism and corruption, creating an iron wall behind which crooked officials can seek refuge.

In engaging in a discussion about the debris of the various conflicts that have asphyxiated the country, it is possible to explore the following question: could the lack of a sustainable state building process be one of the root causes of arbitrary detention?³ Whereas *root causes* may be limited, *causes*, or *symptoms* of arbitrary detention are multiple and can range from: tarnished perceptions about criminal justice procedures, lack of communal awareness about the rights of suspects, corruption, impunity, inadequate legislation, to crumbling infrastructure and institutions. In diagnosing these symptoms, it may be possible to remedy arbitrary detention and other human rights violations that plague Lebanon, such as torture, discrimination and violence against women and children. Nonetheless, the quintessential precondition for reforming these abuses remains the same: public will.

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EXECUTIVE SUMMARY

An amalgamation of the debris from the fifteen year civil war, compounded with the present status quo have paved the way for poor law enforcement practices and inadequate legislation to protect rights and freedoms of the suspect, accused and convicted, particularly regarding the right to liberty. Today, research has revealed that there is a trend of arbitrary detention, in the form of arbitrary arrest, lengthy pre-trial detention and long delays in trial. Suspects are deprived of their liberty for weeks and some for years before a verdict is reached in their case and pre-trial detainees drift along an undetermined status, where they are perceived as the perpetrator, but have not been found guilty by a court of law. Moreover, former detainees describe a 'survival of the fittest' environment in overcrowded correctional institutions, a dog-eat-dog world from the first moments of detention, until their transfer to prisons like Roumieh.

Arbitrary detention not only shatters public confidence in the state, but also symbolizes weak rule of law and tramples the dignity of individuals seeking to access justice. The first cause has been identified as the ruined legal culture, which can be attributed to two anomalies. Law enforcement practices reveal that the right to be presumed innocent until proven guilty does not exist. Also, there is a perverse understanding of the purpose of detention, which causes indiscriminate use of deprivation of liberty. The second cause has been identified as corruption in the criminal justice system, which has translated into the interference of the criminal justice process on different levels by various actors. Corruption can be used for the purposes of accelerating or decelerating the court process, to influencing the outcome of a trial. An inadequate legal framework has also been detected to cause arbitrary detention. On a statutory level, laws are not calculable and there are articles in the Code of Criminal Procedure that legalize arbitrary detention and violate various rights of detainees, such as the right to a fair trial. On a procedural level, some arbitrary detentions occur out of a blatant disrespect and ignorance of the law. There is also a lack of procedural safeguards and mechanisms to overview whether or not the detention is just and reasonable in the given circumstances. Finally, a crumbling infrastructure and crippled institutions are also to blame. Since the *Taif* Agreement, the government has failed to fix the judicial system and conduct the necessary reforms. In order for the judiciary to be independent, functional and transparent, reforms are needed for the following issues: legal aid, lack of oversight mechanisms, lack of resources and a lack of training and continuing education for law enforcement officials.

National protection mechanisms, reforms and rehabilitative efforts are required, not only to remedy procedural abuses, but to uphold the dignity of marginalized individuals, including those suspected or accused of engaging in criminal behaviour. In this regard, Lebanon's ultimate challenge is to constantly measure law's effectiveness on the ground, amongst the people it seeks to protect and more importantly, *punish*.

WHY GUILTY UNTIL PROVEN INNOCENT?

The presumption of innocence is enshrined in various international instruments. For example, article 11(1) of the Universal Declaration of Human Rights says: “[e]veryone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.” This fundamental standard in all cases of detention means that the burden of proof lays on the prosecuting body and the benefit of the doubt on the accused. Being presumed innocent until proven guilty imposes on authorities the duty to treat defendants as such and not prejudge the outcome of the criminal proceedings.⁴ However, in Lebanon, rates of pre-trial detention are exorbitantly high and are one of the reasons why prisons across the country are overcrowded. Additionally, law enforcement practices sometimes reveal a perverse understanding of the purpose of detention. These factors, among many others, pave the way for a twisted understanding of human rights in criminal justice proceedings sparking the thought that in Lebanon, you are guilty until proven innocent.

RESEARCH METHODOLOGY

ALEF – Act for Human Rights, with generous support from the European Union, has embarked on a three year project entitled: *Promoting for a better protection mechanism against arbitrary arrest, lengthy pre-trial detention and long delays in trial*. The project, which began in January 2011, aims to create civil and communal awareness to reduce arbitrary arrest, increase the respect of the rights of detainees during pre-trial proceedings and ensure trial within a reasonable time. Finally, protections mechanisms and an outline of a reformed draft law have and will be recommended to remedy the abovementioned issues.

This report is based on a twelve month desk review that ended in October 2012. It synthesizes findings into a clear overview of the causes of arbitrary arrest, lengthy pre-trial detention and long delays in trial. It is centred on detainees in Lebanon suspected and/or convicted of crimes ranging from misdemeanours to felonies and will discuss the specific victimization of female detainees and Palestinians alike. It will also provide insightful information on the following victimized groups: alleged terrorists, migrant workers, refugees and asylum seekers,⁵ members of the Lesbian, Gay, Bisexual, Transsexual/Transgender and Queer community (LGBTQ) and juvenile delinquents. An overview of the Military Tribunal, legal reforms, prison condition improvements, insights about policing practices as well as an analysis of human rights violations committed by non-state actors will also be discussed.

The quest for information gathering required engaging various actors and institutions that have a direct and indirect hand in the criminal justice system. Numerous questions were asked to frame the findings and understand the trends of arbitrary detention in Lebanon such as: what is the socio-political context today in Lebanon? Is an individual accused of a certain crime more susceptible to arbitrary deprivation of liberty? Is there a pattern beyond the law and embedded within culture that facilitates arbitrary detention?

The first step required an extensive desk research. This entailed collecting qualitative information via interviews⁶ with non-governmental organizations (NGOs), lawyers, law professors, judges, law enforcement officials and criminologists to name a few. An examination and analysis of international standards and Lebanese legislation regarding the deprivation of liberty were also conducted. Quantitative data was collected through literature reviews based on NGO reports, human rights journals, international jurisprudence, ministerial reports and recommendations for correctional institutions, as well

as an examination of media screenings done through ALEF's Monitoring and Advocacy Program staff. The conclusions also stemmed from recurrent patterns that were extracted from previous research and surveys conducted by ALEF. Based on the findings listed above, ALEF created an intricate tactical map of the deprivation of liberty,⁷ to identify the actors and institutions who are directly and indirectly involved in violating the rights of detainees.

The second step was field research, which required visiting courthouses, attending trials of various detainees, visiting prisons to assess the living conditions, etc. It also required conducting further in-depth interviews, examining case-studies screened by ALEF and the preparation of a series of focus groups and one on one interviews, executed with the help of the Lebanese Center for Policy Studies (LCPS). This research sought to assess the plight of former Lebanese male, female and Palestinian detainees, alleged terrorists, families of ex-detainees and service providers working in various correctional institutions. The objective of the focus groups and one on one interviews was to provide powerful insights, in-depth information and perceptions concerning arbitrary arrest, lengthy pre-trial detention and long delays in trial. ALEF, alongside LCPS, also sought to understand the effect of deprivation of liberty on former detainees and families of ex-detainees and discuss the possible corrective interventions and sustainable reforms.

The third step was the compilation of the abovementioned findings into a concise report which will also be the foundation for a national advocacy campaign to combat arbitrary arrest, lengthy pre-trial detention and long delays in trial.

CONTEXT AND SCOPE

When Lebanon gained its independence from France, it also inherited a relatively independent, impartial and competent judicial system. However, the socio-political climate in the new state destabilized this image in a few landmark instances. A noteworthy case is that of Antoun Saadeh. The founder of the Syrian Socialist Nationalist Party was convicted of insurrection by the Military Court (not to be confused with the modern Military Tribunal, founded in 1968). His trial lasted a few hours, was closed to the public – except for some journalists – with a military officer acting as a defence lawyer after the appointed civilian lawyers were declined the time they requested to prepare their defence.

The Saadeh case exemplifies a prevailing trend of human rights violations since 1943 with several cases in which the right to legal counsel, the right to appeal, the right to an impartial and independent tribunal were denied. With the creation of the modern Military Tribunal in 1968, the denial of the right to a fair trial, arbitrary arrests and detentions, including *incommunicado* detention were facilitated in the judicial apparatus.

During the civil war years (1975-1990), there were mass politically motivated arbitrary arrests and detentions (particularly in the form of lengthy pre-trial detention and long delays in trial), torture and ill-treatment, violations of the right to a fair trial and executions, whether judicial or extra-judicial, following politically motivated acts of violence. For many years, accounts of individuals in Lebanon have revealed arbitrary detentions at the hands of various actors: Lebanese, non-Lebanese (Syrian, Israeli, Palestinian, etc.), state and non-state (political parties for example in legal and illegal places of detention). These detentions have resulted from religious ties to political affiliation, criminal activity or sometimes personal vendettas.

When the war ended in 1990, waves of political and security based arbitrary detentions by state and non-state actors—including Lebanese and non-Lebanese armed forces or paramilitary groups—continued. Human rights violations included the detention of prisoners of conscience (arrested in connection with political opposition groups or activities), arrests, detentions and interrogations outside the established legal procedures.

The period between 1990-2005 was marked by mass arrests for exercising the right to freedom of expression and association and for “disrupting public order and security” for instance.⁸ Those targeted were reporters, human

rights activists, politicians, demonstrators and trade unionists to name a few. Notable events that sparked a wave of arbitrary arrests and detentions were the Sayidet al Najat church bombing of 1994, the Tabarja mini-bus bombing of 1996, raids against Islamic groups in Northern Lebanon in 2000, as well as the crackdown against Christian opposition groups in August 2001. Most of the individuals detained in connection with these events were arrested based on their political affiliation as opposed to the evidence discovered (since many were released without charge), linking them to the crimes. The majority of the arrests were not carried out with warrants, and *incommunicado* detention was widely practiced. Over seventy individuals were arrested for the 1996 bombing. None of the detainees were interrogated by judges and none were formally charged. Conversely, hundreds of individuals were arrested in connection with the 1994 church bombing and many were released after a few days or months. Suspects were held at the Ministry of Defense (MoD) –an illegal place of detention–and were not brought promptly before a tribunal to challenge the legality of their detention. Twenty-two people were charged with the church attack and eight of them were referred to a court of law, including Samir Geagea, Hanna Challita, Antoinette Chahine and several others, whose arrests and detentions would receive wide scrutiny on the national and international level for accounts of torture and ill-treatment, which may have resulted in statements given under duress and subsequently introduced as evidence. It was also held that the detainees were denied prompt access to legal counsel and their families. Challita spent eight years in solitary confinement without a trial, a clear violation of article 9(3) of the International Covenant on Civil and Political Rights (ICCPR).⁹ Geagea for example did not benefit from the right to a judicial review of the conviction and subsequent sentence; a contravention of article 14(5) of the ICCPR.

On April 9, 1998, the first rebellion since the civil war erupted in Roumieh, as a result of an alleged attack by a police officer¹⁰ on a prisoner during questioning. It was claimed that he had poured surgical alcohol on the inmate and then set him on fire. When word about the incident spread through the cells, inmates began to riot. With the arrival of the Minister of Interior, prisoners voiced their demands: faster trials for inmates, as some had been held for months without a trial. One prisoner was heard saying: “I have been under arrest for two years, accused of collaborating in a robbery and until now I have not been referred to court for trial.”¹¹

More than a decade later, these demands are still echoed in Roumieh and other prisons across the country. The last major set of Roumieh rebellions erupted again in 2011, ironically also in April.¹² The riots were provoked by many factors, such as gross mistreatment and the right to appear before a

court within the time limits prescribed by law.¹³ Numbers released by various NGOs through 2010-2011 showed that only an average of 20 per cent of inmates in Roumieh prison and Tripoli's Qobbeh prison had been sentenced.¹⁴

On April 5, 2011, Minister of Interior Marwan Charbel released a statement regarding Roumieh prison, Lebanon's largest correctional institution. Out of the estimated 3,700 detainees, only 721 had been tried and sentenced by a court of law. There were still 2,757 detainees awaiting trial and an alarming 222 foreigners that had finished serving their time in prison.¹⁵ A few days later, Minister Charbel denounced the prison conditions and criminal justice process by stating that some judges do not follow up on prisoner files, referring to an example where an individual would be sentenced to three years of imprisonment, disregarding that this person may have been in pre-trial detention for four to five years in unbearable conditions.¹⁶

Today, the deplorable state of correctional institutions and the criminal justice process remain the rallying force behind the riots that have erupted across the country. Thus far, there have been no sustainable measures implemented to remedy the violation of the rights of defendants to a fair trial and horrific prison conditions to name a few.

SCOPE AND CONTENT OF ARBITRARY DETENTION IN INTERNATIONAL LAW

a) Definition of Arbitrary Detention in International Law

Many legal instruments, whether national or international, define the deprivation of liberty in various ways. The most commonly used terms are: arrest, detention, incarceration, prison, custody, etc. It is for these reasons that the United Nations Commission on Human Rights¹⁷ coined the term 'deprivation of liberty'. This concept was chosen since it "relates to the protection of individuals against arbitrary deprivation of freedom in all its forms, and its mandate extends to deprivation of freedom either before, during or after the trial [—], as well as deprivation of freedom in the absence of any kind of trial (administrative detention)."¹⁸

Detention is used to serve many purposes and may be practiced in many ways.¹⁹ The United Nations High Commissioner for Refugees (UNHCR) guidelines on detention state that it is "confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed."²⁰ Whereas the United Nations Standards and Norms in Crime Prevention and Criminal Justice defines detention as: "the condition of being a detained person under investigation for having committed a criminal offence, having been accused of a criminal offence, or during trial; under administrative detention; or for any other reason other than as a consequence of a criminal conviction."²¹

There is an abundance of international norms which guarantee the right to liberty and security of the person and are available to all individuals and not strictly citizens of state parties. Therefore individuals in criminal detention and administrative detention, such as migrants, refugees and asylum seekers are also protected if they are on the territory. The most widely referred to instruments in this regard are the Universal Declaration of Human Rights (UDHR) (articles 3, 8, 9 and 10) and the International Covenant on Civil and Political Rights (articles 2(3), 4, 5, 9, 10(1), and 14 (1)).²³ Regional standards also codify the scope of protection against arbitrary detention, such as: the Council of Europe, European Union, Inter-American System, African System, etc.²⁴

In fact, the term 'arbitrary detention' has not been clearly defined in international law. The Working Group on Arbitrary Detention (WGAD)²⁵ refers to it as a deprivation of liberty that is contrary to human rights provisions enshrined in major international human rights standards and instruments,

such as the ones enumerated above. It defines a deprivation of liberty as being arbitrary if it falls within one of the following categories:

- When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (Category I);
- When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);
- When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III);
- When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV);
- When the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).²⁶

b) Scope and Commentary on Arbitrary Detention in International Law

International law and jurisprudence have come a long way from the first series of European texts (the Magna Carta, the Habeas Corpus Acts of England, and the French Declaration of the Rights of Man and the Citizen) that introduced the concept of freedom from arbitrary arrest and detention.²⁷ The purpose of the early European texts was to protect citizens from 'unlawful' arrest or detention and not from arbitrary laws. This lacuna has been narrowed with the developments that have come from the UDHR and ICCPR.²⁸

When article 9(1) of the ICCPR refers to the requirement that deprivation of liberty be prescribed by law, it means that "the law must be accessible, understandable, non-retroactive, applied in a consistent and predictable way to everyone equally, including authorities, and be consistent with other applicable law."²⁹ Hence, domestic and international legal standards must abide by the standard of lawfulness enshrined in the ICCPR.³⁰ While an illegal or unlawful arrest or detention is almost always arbitrary, an arrest or detention which is in accordance with law may nevertheless be arbitrary if it contains "elements of injustice, unpredictability, unreasonableness, capriciousness and un-proportionality."³¹ These elements may be measured according to the following procedural safeguards, established in international law and compiled by the International Commission of Jurists:

- Inform detainee: Detainees must be promptly informed of the grounds for arrest and detention (ICCPR article 9(2)) and of their rights and how to avail themselves of those rights, including safeguards against torture or other ill treatment. Indefinite detention without charge is prohibited.
- Inform others: *Incommunicado* detention is strictly prohibited and detainees must be kept in a recognized place of detention. "In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours." Registries of both detainees and responsible officials must be accessible to those concerned, including doctors, lawyers, relatives and friends
- Facilitate access to lawyers: A detainee must be given prompt and regular access to legal counsel within 24 hours of arrest.
- Ensure judicial control: A detainee must be brought promptly before a judge or other competent authority (ICCPR, art. 9(3)) and has a right to have a court determine the lawfulness of the detention (ICCPR, art. 9(4)).
- The habeas corpus writ or similar remedy must not be limited or restricted under any circumstances. Any delay of judicial scrutiny beyond 48 hours would be hard to justify under international law.

- Provide human treatment: All persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person (ICCPR, art.10) and have access to prompt medical care.
- Ensure right to fair trial: If charges are brought, the detainee is entitled to a fair trial by a competent, independent and impartial tribunal established bylaw within reasonable time or release (ICCPR, art. 9(3), art.14). The trial must be conducted in accordance with international fair trial standards.³²

The duty to inform the detainee of the reasons for arrest and the charges against him/her, listed above, is also a prerequisite to the right to a fair trial. The United Nations Human Rights Committee (HRC) has held that “one of the most important reasons for the requirement of ‘prompt’ information on a criminal charge is to enable a detained individual to request a prompt decision on the lawfulness of his or her detention by a competent judicial authority.”³³ Furthermore, if the individual who is being arrested does not speak the language of the authorities or has limited understanding, he/she is entitled to be promptly informed of the reasons for the arrest and charges against him/her in a language that he/she understands.³⁴

The ability to give prompt and regular access to legal counsel coincides with the right of the individual to defence by legal counsel of his/her choice or to be informed of this right and have legal assistance appointed to the case.³⁵ The right to defend oneself in person or through a lawyer of choice, enshrined in article 14(3)(d) of the ICCPR, must be effectively available in order to challenge accusations brought against the defendant. The HRC has held that when the right to access legal assistance is not respected, article 14(3) is violated.²⁶ For example, a violation would occur when an individual does not have access to legal assistance for the first ten months of his/her detention. The right to choose one’s legal counsel is not applicable to those assigned free of charge, however once counsel is appointed to a case, he/she must provide “effective representation in the interest of justice [including] consulting with, and informing, the accused if he intends to withdraw an appeal or to argue, before the appellate instance, that the appeal has no merit.”³⁸

Judicial control, as stated above, is enshrined in article 9(3) and (4) of the ICCPR. The ability to challenge the lawfulness of the detention before a court of law is of utmost importance and applies equally to criminal and administrative detentions alike. The right to challenge the legality of detention must be effectively available,³⁹ therefore, “the court must have the power to review both the procedural and substantive grounds for deprivation of liberty and be empowered to make a binding order for release of the detained person in the event that his or her deprivation is unlawful.”⁴⁰ For example,

if an individual has been held in *incommunicado* detention, this would effectively bar him/her from challenging the arrest and/or detention.⁴¹ The purpose of bringing an arrested or detained individual promptly before a judicial authority is to bring the detention under judicial control.⁴² If the delay between the arrest and the time the accused is brought before a judicial authority exceeds a few days, then this is not prompt⁴³ and would contravene the first sentence of article 9(3) of the ICCPR. The right to a trial within a reasonable time or to release pending trial coincides with the belief that any individual charged with the crime has the right to be presumed innocent until proven guilty. It also coincides with the belief that the deprivation of liberty must be the exception as opposed to the rule.⁴⁴ A case by case analysis is adopted when determining what constitutes 'reasonable time'.⁴⁵

Finally, the right to a fair trial, enshrined in article 14 of the ICCPR, also holds that a detainee is entitled to trial within a reasonable time or be released (article 9(3) of the ICCPR) and that all individuals are equal before the courts and tribunals. Equality before the courts also entails accessibility. Thus, no law, administrative procedure or lack of material resources must deny an individual the ability to vindicate his/her rights before the courts. Women and men are afforded the same protection equally.⁴⁶ Any individual who has been detained has the right to a fair and public hearing by a tribunal that is independent and impartial. The right to a fair trial is respected when the accused is given, at all times, the possibility to answer the charges against him/her, challenge evidence and cross-examine any witnesses. Any shortcomings or violations in the process of the criminal investigation may hinder the right to a fair trial and also impedes on the right to be presumed innocent until proven guilty.⁴⁷ Moreover, the right to a public hearing must be available in the first instance and at all appeal levels, if the latter is awarded to re-evaluate facts and law. The right to a public hearing also entails that a judge's sentence must be made public, except in specific cases.^{48 49}

From the course of criminal investigations, to the judicial proceedings, the universal right to be free from torture and other inhuman or degrading treatment or punishment must be upheld and respected at all times and without exception. Humane treatment can be as simple as not being subjected to any form of duress or intimidation during preliminary questioning with judicial police. The rights enumerated above are numerous, non-exhaustive and all are equally important to shape a criminal justice system that fully respects human rights and upholds the rule of law. Notwithstanding the fact that these principles and standards are enshrined in the international legal realm, they must also be guaranteed on a domestic level as well.

SCOPE AND CONTENT OF ARBITRARY DETENTION IN NATIONAL LAW

a) Definition of Arbitrary Detention in National Law

Lebanese law does not define the term 'arbitrary detention', but various provisions in different sources of law, such as the Constitution and many sections in the Criminal Code (CC) and Code of Criminal Procedure (CCP) allude to it by referring to terms such as 'infringement on liberty', 'deprivation of individual/personal liberty' and 'unlawful detention', for example.

In 1972, Lebanon acceded to the ICCPR⁵⁰ but did not ratify the Optional Protocols to the International Covenant on Civil and Political Rights. The Constitution, one of the most important sources of law, recognizes the supremacy of international instruments over domestic law; therefore Lebanon has an obligation to implement procedures that respect the principles upheld in international law, particularly those found in treaties that have received ascension or ratification. This may be examined through a reading of the Constitution's preamble:

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 covenants. Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception.

The Constitution upholds equality before the law for all Lebanese as well as the protection of civil and political rights (article 7). The Constitution also guarantees and protects individual liberty. In this regard, article 8 is of particular importance: "[i]ndividual 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."

The right to be free from arrest, imprisonment or custody except in accordance with the law, as stated in the Constitution, is also protected through the criminalization of unlawful deprivation of liberty in a number of articles. Upon reading them, it is possible to understand how Lebanese law qualifies arbitrary detention.

In article 367 of the CC,⁵¹ a civil servant may be sentenced to hard labour for an infringement on liberty, if he/she arrests or detains an individual beyond the cases specified by law. Article 368 punishes directors and guardians of penitentiaries, disciplinary institutions or re-education centres and all functionaries carrying these duties to one to three years of imprisonment should they admit an individual without a warrant or judicial decision, or detain him/her beyond the time prescribed by law. This article may be applied in the case where an individual is held in detention after a competent authority decides to release him/her. Nowhere is this example more evident than in the case of migrants, refugees and asylum seekers who languish in administrative detention. Another example would be when an individual is held in police custody under an arrest warrant for a period exceeding the deadline for bringing him/her before an investigating judge or public prosecutor. Dr. Philomène Nasr explains in her book *قانون العقوبات الخاص: جرائم وعقوبات* (The Code of Criminal Procedure: Crimes and Penalties),⁵² that in order for this article to be applied in a court of law, there must be criminal intent, otherwise known as *mens rea*.^{53 54} Finally, article 569 of the CC reads: “[a]nyone who deprives another person of his individual liberty by kidnapping or by any other means, will be punished by hard labor.”⁵⁵ Since the article refers to ‘anyone’ as the possible perpetrator, this opens the door for public officials, individuals acting with such authority or even a civilian to be criminally liable for deprivation of liberty.

Hence, national law recognizes these human rights violations on the occasion where the said detention occurs beyond the legal limits prescribed by law and/or without legal grounds or judicial decision justifying the detention.⁵⁶ As mentioned above, the terms used in national legislation, such as ‘unlawful detention’, have a very restrictive meaning and only refer to an act of detention prescribed by law, regardless of whether or not the law is unjust, despotic or capricious. This shortcoming is further demonstrated through the following legal analysis.

b) Commentary on Arbitrary Detention in National Law

The revised Code of Criminal Procedure came into effect in August 2001.⁵⁷ It combines statute law, discusses guiding principles and has a table summarizing the new time limits laid down by the Code. The CCP describes the different series of actions to be followed and by whom, from investigation procedures, to periods of pre-trial detention, depending on whether a crime is committed *in flagrante delicto*⁵⁸ or not, if the crime is qualified as a misdemeanour or felony, etc.⁵⁹ Equally important to note is that the principle ‘innocent until proven guilty’ is nowhere to be found. Although the revised Code widens the spectrum of rights guaranteed to suspects,⁶⁰ such as the right to a medical examination for example,⁶¹ it is still possible to detect loopholes and powers governed by unstructured discretion that create an environment favourable to arbitrary detention. Below is an examination of some of the most problematic CCP articles in this regard.

i. *Selected Articles from the Code of Criminal Procedure*

◦ Article 32: Who Keeps Count?

If an offence was discovered during its commission or immediately afterwards and there is a person present who seems strongly suspicious, he/she may be arrested for questioning by the public prosecutor or his deputy. Before the 2001 amendments of the CCP, this form of detention was limited to twenty-four hours and renewable once by the prosecution, as amended by Act No. 359/2001. Today, an individual may be held in police custody for the purposes of the investigation for a period of forty-eight hours, unless the investigation requires additional time, in which case the period of custody may be renewable for another forty-eight hours. The article does not specify that the reasons for the arrest must be given — a strong suspicion suffices. Moreover, the factual and material grounds that would warrant *strong suspicions* are not enumerated. It is equally important to note that article 32 does not require the public prosecutor or his deputy to justify the precise reasons for extending the period of custody for an additional forty-eight hours, it only specifies the extension for the purposes of the investigation. In such a case, there is no oversight mechanism over the quality of his/her work by the appeal court prosecutor. The inexistent justification and oversight mechanism may present a gateway for abuse. This fact is important to highlight when comparing it to the procedures established in article 42 of the CCP, which require a reasoned decision, in writing, after the appeal court prosecutor examines the file and reviews the justifications for the extension.

It is interesting to note that if the public prosecutor decides to interrogate the suspected offender, he/she may request the presence of a lawyer *during the questioning*. This statement is further supported by article 49 of the CCP, which states that: “[t]he Public Prosecutor may carry out the preliminary investigation himself. If he does, the suspect’s advocate may be present with his client during the questioning.” This privilege is not granted in article 47 of the CCP, which stipulates the measures to be taken by the judicial police in connection with offences that are not *in flagrante delicto*.

- Article 47: Fancy Rights, Fake Protections

The first moments of detention are in fact the most critical. Unfortunately in Lebanon, this is also when the rights of the suspect to contact his/her family or a lawyer for example, are violated. It is at this initial phase of detention that an individual is the most vulnerable to human rights abuses, particularly torture.^{62 63}

Article 47 of the CCP states that a suspect or a person who is the subject of a complaint has the following rights from the moment of the arrest for investigation purposes: “[t]o contact a member of his family, his employer, an advocate of his choosing or [emphasis added]an acquaintance.” It is important to notice the conjunction used in the formulation of this sentence. The word ‘or’ is used when one refers to an alternative, equivalent or substitutive.⁹⁴ Therefore, the suspect or person complained of has a choice between contacting a member of the family, *or* employer, *or* an advocate *or* an acquaintance. If the individual decides to communicate with his/her family, then the ability to contact a lawyer is moot, as a result, depriving him/her of a fundamental protection enshrined in international human rights law.

Article 47 is also silent about whether or not a lawyer can attend preliminary questioning with the judicial police. In practice, the lawyer cannot attend the preliminary questioning with judicial police. Under the framework of article 47, it is possible for a suspect or person complained of to be held at the police station for hours before he/she is granted the right to contact his/her advocate. In Lebanon, a lawyer who goes to the police station cannot meet with his/her client until he/she is brought before the public prosecutor and formally charged. The simple presence of a lawyer during the preliminary questioning or even at the police station can be an effective way of monitoring, reducing and even preventing procedural abuses, corruption and ill-treatment. If the right to contact a lawyer was denied, this must be taken into account by the judge as it impedes on the right to a fair trial.

It is also important to note that if the suspect does not know any lawyers, or does not have the sufficient funds to appoint one, he/she must have the right to free legal aid. Article 47 also does not require the judicial police to inform the individual that should he/she have limited means to appoint a lawyer, that one may be assigned to him/her through the Bar Association, whether in Beirut or Tripoli. The fundamental right to legal representation must be available in an effective fashion. By ensuring that the suspect is at least aware of the right to legal aid and subsequently has access to legal aid, the Lebanese criminal justice system would be ensuring that defendants are given the opportunity to develop an effective defence.

The Ministry of Interior and Municipalities (MoI), under Minister Ziad Baroud, launched a campaign to display the rights of suspects in a visible location in every police station in Lebanon. This campaign was not effectively implemented in all locations as some posters enumerating the rights were either hung in places not visible or accessible to suspects, or were not posted at all.⁶⁵ If the rights of the suspect are not dictated to him/her and the suspect is interrogated, then anything that the suspect says should ideally be deemed inadmissible at trial according to many international practices. Article 47 does not state that if the judicial police fail to inform the suspect of his/her rights upon arrest, that the answers would be kept out of evidence in any resulting trial. It simply says that if the suspect is informed of his/her rights, that it should be inscribed in the record. This lacunae can be remedied through article 73(7) of the CCP which says that before the questioning of the defendant, "one or more investigative measures" may be nullified. The investigating judge would not nullify the whole investigation but only the parts that he/she deems may hamper the proper administration of justice.

Interestingly, no article in the CCP imposes a duty on law enforcement officials to inform individuals that they have the right to remain silent. Many articles, such as article 47, simply state that if the individual being questioned refuses to make a statement or remains silent, that this should be recorded and that the detainee cannot be "coerced to speak or to undergo questioning, on pain of nullity of their statements." The inexistent duty to inform a suspect of the right to remain silent may be a *laissez-passer* for law enforcement officials to create an atmosphere favourable to the suspect's self-incrimination or the confession of guilt. Article 14(3)(g) of the ICCPR guarantees the right of everyone "not to be compelled to testify against himself or to confess guilt." From this right, stems the right to remain silent under police questioning; both rights are recognized in international standards. "By providing the accused with protection against improper compulsion by the authorities

these immunities contribute to avoiding miscarriages of justice and to securing the aims of [a fair procedure].”⁶⁶

It is also essential to closely examine the following section of article 47:

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.

Of particular concern regarding the measures that can be taken by the judicial police in connection with offences that are not *in flagrante delicto* is the following: nobody can be certain that the information relayed to the public prosecutor regarding the extension of the period of detention by the judicial police is accurate or even true. This is particularly worrisome if the information relayed to the public prosecutor is done through the telephone as opposed to in person. The procedure is further exacerbated by the fact that the information given by the authorities may be false, extracted under torture or the result of a bribe. All that is required for the forty-eight hour extension is consent. The article also does not state that the judicial police must relay the reasons and justifications for the custody renewal, nor does it say in what form.

It is important to note that with regards to the abovementioned articles – as with a few others – the Lebanese legislature should have directly established the maximal period of custody without having to award judicial police or public prosecutors the discretion to renew the initial period of detention. For example, article 47 should have been formulated in the following way: “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 four days.” Should the information required for the investigation be gathered before the four days have elapsed, then the authorities must immediately release the suspect from custody. With this formulation, the detention period is clearly defined, limited and not subject to the sometimes capricious and despotic behaviour of authorities when they apply their discretion. In essence, if the Lebanese legislature wanted the periods of custody to be automatically doubled (four days vs. forty-eight hours renewable once), the provisions would have been formulated accordingly.

- Article 107: (Pre-Trial) Detention

The CCP recognizes that pre-trial detention may only be used in exceptional measures. However in Lebanon, pre-trial detention has been used in an unnecessary and indiscriminate fashion. Article 107 of that code states that a person may be issued an arrest warrant if the “offence with which the defendant is charged is punishable by more than one year’s imprisonment or if he has a previous criminal conviction or has been sentenced to more than three months’ imprisonment without suspension.” Criminal conviction⁶⁷ in this case refers to felonies, which are subject to imprisonment for a minimum of three years and can lead to the death penalty. In essence, an individual accused of dealing drugs, theft or of writing a bad check⁶⁸ can be detained pending trial. Although pre-trial detention is not mandatory in the law, Lebanese enforcement practices and proceedings utilize detention in cases that can be handled without resorting to depriving an individual of his/her liberty.

Article 107 further states that there must be factual and material grounds to support the issuance of the arrest warrant and lists the following as examples: preservation of evidence, preventing the suspect from escaping, preventing another crime from occurring, etc. Article 107 does not state that judicial authorities are required to take into account the nature and gravity of the offence the individual is charged with, the evidence, the sentence that may be given should he/she be found guilty and lastly, the personal and social circumstances of the individual and his/her community ties. These mitigating factors in ordering pre-trial detention may be remedied in article 110 of the CCP which stipulates that: “[t]he Investigating Judge may decide, in the course of the investigative proceedings, irrespective of the nature of the offence, to withdraw the arrest warrant issued in respect of the defendant with the consent of the Public Prosecutor.” This provision can be used as a gateway to take into consideration for example, the specific circumstances of the suspect. If the individual is too old, physically ill or mentally unstable, despite the gravity of the offence he/she is charged with, the arrest warrant may be withdrawn. The importance of mitigating factors in ordering pre-trial detention are evident in Judge Khaled Akkari’s⁶⁹ example where an individual with a physical and mental disability was arrested and detained for a felony (that was impossible for him to commit because he did not have the mental or physical ability and capacity to do it). He also cites the case of an eighty year old man arrested for car theft, who would not have been able to bare the harsh conditions of the police station, or the Tripoli prison.⁷⁰

International standards also state that if pre-trial detention is to be ordered, it must be reasonable. Reasonableness is determined on a case by case basis in light of the following criteria: the severity of the offence, the risk of flight, the risk of influencing witnesses and conspiring with co-defendants, the accused's behaviour, the national authorities' conduct in the handling the case and the degree of complexity of the investigation. At all times throughout the investigation, the accused must be presumed innocent until proven guilty.⁷¹ In other words, if the pre-trial detention would be disproportionate to the alleged offence and sentence affiliated with the crime, then it should not be ordered. Pre-trial detention should also be substituted with alternative measures to detention.⁷² Furthermore, an individual who is placed in pre-trial detention should be informed of: the right be assisted by legal counsel of his/her choice or be informed of this right and have legal aid appointed to the case. The detainee must be informed of the right to challenge the lawfulness of the detention by *habeas corpus*,⁷³ *amparo*,⁷⁴ or other means and released if the detention is not lawful. The pre-trial detainee also has the right to communicate and be visited by family. The pre-trial detention should be reviewed by a court of law at short periods and should not be enforced if it does not comply with the abovementioned guidelines. The proceedings should be conducted without undue delay and while the court determines the sentence, should the detainee be found guilty, the time spent in pre-trial detention should also be deducted from the sentence given or be considered in reducing the length of the sentence.⁷⁵

None of these standards are clearly outlined in article 107 of the CCP, although some are listed elsewhere, such as in article 117 of the CC and article 406 of the CCP, which mention the requirement to reduce the time served in pre-trial detention, from a term of imprisonment. It is also important to recall that no information regarding the right to legal aid is mentioned (it is usually done at the trial stage) and the duty to inform defendants of the abovementioned right is not imposed on the investigating judge at this stage. In practice, during the questioning with the investigating judge (before the arrest warrant to hold the individual in pre-trial detention), the defendant will be asked if he/she has a lawyer and if so, if he/she would like the lawyer present during the interrogation. If the defendant answers in the positive, the judge will have to delay the session and will most likely issue an arrest warrant (pre-trial detention) for the individual. This is due to a few reasons. First, because the individual will have been in custody for forty-eight hours renewable once and keeping the defendant under this form of custody beyond the time limit prescribed by law is unlawful. Second, the investigating judge cannot release the defendant because he/she was not interrogated. Also, article 107 does not impose a duty to inform the detainee of the right to

challenge the lawfulness of the detention. This responsibility falls on the appointed lawyer. In this regard, article 107 of the CCP grants the defendant the right to file an appeal against the judge's arrest warrant.

- Article 108: Indefinite Detention

Article 108, is the prime culprit for arbitrary detention for a few reasons. It reads:

With the exception of a person previously sentenced to at least one year's imprisonment, the period of detention for a misdemeanour may not exceed two months. This period may be extended by, at a maximum, a similar period where urgently necessary.

With the exception of homicide, felonies involving drugs and endangerment of state security, felonies entailing extreme danger and crimes of terrorism, and with the exception of persons with a previous criminal conviction, the period of custody may not exceed six months for a felony. This period of custody may be renewed once on the basis of a reasoned decision.

The article starts by enumerating the exceptional case that warrants a defined period of custody, stating that an individual accused of a misdemeanour may be held in pre-trial custody for a period of two months, renewable once if it is 'urgently necessary'. This does not apply to individuals previously sentenced to imprisonment for one year or more. The terms 'urgently necessary' are not defined or explained in further detail, leaving interpretation to the discretion and ethics of the investigating judge. This article does not specify that the judge should, through his/her initiative, order the release of an individual who has been detained for two or six months renewable once. Essentially, if the detainee has not appointed a defence lawyer or if he/she is not aware that he/she can put forth a request for release on bail, he/she can languish in detention for months. Lengthy pre-trial detention without the possibility of bail would breach article 9(3) of the ICCPR, therefore, it must be justified and subject to a period review.⁷⁶

If the judge does not want to grant the request for release and the time limit for pre-trial detention is close to expiry, he/she can unreasonably raise the amount of bail to pay, knowing that the defendant does not have the sufficient funds. This can be demonstrated in the case where two individuals are accused of using drugs, one would be ordered to pay bail set at LBP 200, 000 while the other would be ordered to pay bail set at LBP 2 million. Equally important to note is that article 108 is being used as a legal loophole to breach article 113 of the CCP which states that: "[w]here an offence is a misdemeanour carrying a maximum penalty of two years' imprisonment and

the defendant is Lebanese and resident in Lebanon, he is entitled to be released five days after the date of his arrest provided that he has not previously been convicted of a heinous crime or sentenced to imprisonment for at least one year.” When judges are presented with a request for release under article 113, they refer to article 108’s pre-trial detention period for misdemeanours (two months renewable once) as justification to reject the request.

Then, article 108 lists the crimes and cases that warrant indefinite pre-trial detention and states that individuals accused of a felony may be held in pre-trial detention for a maximum period of six months, also renewable once, however this time, there must be a reasoned decision (to be compared with the case of a misdemeanour, which does not require a reasoned decision). It is important to note that there is no established criterion to guide the decision for renewing the pre-trial detention.

The very fact that pre-trial detention for crimes of “homicide, felonies involving drugs and endangerment of state security, felonies entailing extreme danger and crimes of terrorism” is not limited is arbitrary, even if the article legalizes indefinite pre-trial detention.⁷⁷ A highly controversial and mediatized example of the application of article 108 is the case of the four officers suspected of assassinating former Prime Minister Rafik al-Hariri. Generals Jamil al-Sayed, Raymond Azar, Ali al-Haj and Mustapha Hamdan were held in custody for a total period of three years and eight months.⁷⁸ In a communication addressed to the Lebanese Government, the WGAD stated that the Generals’ detention falls under the parameters of Category III and added that “the detention [—] for indefinite periods without charge or trial violates the most basic forms of the right to a fair trial, as guaranteed by international standards, and gives the detention an arbitrary character.”⁷⁹

Lastly, the range of homicides in the Lebanese Criminal Code is quite wide and article 108 does not define what kind of homicide would warrant indefinite pre-trial detention. Would a murder committed out of honour⁸⁰ fall within that bracket? What about the homicide that is committed in self-defence?⁸¹ What exactly constitutes a felony entailing extreme danger? The amount of discretion that is given to the investigating judge in these cases is very large and may lead to an abundance of human rights abuses and inconsistencies in jurisprudence.

- Article 111: Obsolete Measures

To carry on with the analysis of article 107, article 111 of the CCP specifies the following:

After consulting the Public Prosecutor's Office, the Investigating Judge may, irrespective of the nature of the offence, release the defendant and place him under judicial supervision, with one or more of the following conditions that such supervision requires, notably:

- a) To reside in a specified town, borough or village, not to leave it and to elect a domicile therein;
- b) Not to frequent certain establishments or places;
- c) To deposit his passport with the registry of the Investigation Department and to notify the Directorate-General of Public Security thereof;
- d) To undertake not to move outside the area of supervision and to report regularly to the supervisory office;
- e) Not to engage in certain occupational activities that the Investigating Judge has prohibited during the period of supervision;
- f) To undergo regular examinations by physicians and experts during a period specified by the Investigating Judge;
- g) To deposit surety, the amount of which shall be determined by the Investigating Judge. The Investigating Judge may vary the supervisory obligations as he sees fit. If the defendant breaches one of the supervisory obligations imposed on him, the Investigating Judge may decide, after consulting the Public Prosecutor's Office, to issue an arrest warrant against him and to forfeit the surety to the Treasury.

Alternatives to pre-trial detention are many and vary in each country. In Lebanon, alternative measures to imprisonment range from restricting movement to a specified region, to depositing a surety. However, a closer look at article 111 reveals a few pragmatic issues. First, subsections a) and b) are not applied effectively because there is no oversight mechanism and no way for law enforcement officials to follow-up on an individuals' whereabouts, or know for a fact that the individual is complying with the area restrictions. In developed states, an electronic device is used to monitor the accused. In Lebanon, such technology is not available for many reasons, mainly due to a lack of financial resources and technical knowledge. Subsection c) regarding passport handovers is effective and widely practiced. Subsection d) requires the accused to report to the supervisory office in a regular fashion: there is no such supervisory office established with the mandate to receive and record

such reports. Finally, it is possible to state that subsections e) f) and g) are also being implemented in practice and are working effectively.

Despite the abovementioned measures, some law enforcement officials, public prosecutors and investigating judges fear that if the accused is not held in pre-trial detention, he/she may abscond or further investigations may confirm suspicions that he/she is the culprit. These are a few reasons why pre-trial detention is being practiced indiscriminately and disproportionately. In many industrialized countries, the authorities may take the abovementioned risks rather than detain an individual and violate his/her right to be presumed innocent until proven guilty.

- Articles 161: Capricious Arrest⁸²

Article 161 is a prime example of a capricious arrest. It states that:

If a misdemeanour occurs during a court hearing before the Single Judge, he shall record it forthwith, question the perpetrator and, if applicable, hear the witnesses. He shall impose the penalty applicable to the misdemeanour at the same hearing. If he decides to impose a term of imprisonment, he may issue an arrest warrant against the convicted person to be executed forthwith. This decision is open to appeal.

If the act committed during the hearing constitutes a felony, he shall order the arrest of the perpetrator and compile a report setting out the facts for transmission to the Public Prosecutor's Office, together with a notice regarding the perpetrator's arrest.

There are many issues that present themselves upon examining this article. Should the judge decide to impose a term of imprisonment, the arrest/detention occurs instantly, therefore there is no possibility or mechanism that allows the individual to contact a lawyer (article 47 of the CCP) or have one immediately assigned to him/her to assist in the sudden proceeding. Therefore, the right to defence is non-existent. In this case, the misdemeanour is considered to be *in flagrante delicto* and the judge automatically imposes a sentence. The judge in this scenario plays the role of public prosecutor for the purposes of the investigation and single criminal judge for the purposes of the sentencing. In the case of a felony, the individual is automatically arrested and sent forthwith to the public prosecutor for the normal criminal justice procedure.

ii. *The Right to Compensation*

The right to compensation enshrined in article 9(5) of the ICCPR, applies to arrests and/or detentions that are either unlawful or arbitrary. Madagascan jurisprudence for instance, has held that states have a duty to: remedy human rights violations of individuals who are arbitrarily arrested and detained, grant compensation for the suffering and take proactive measures to prevent such human rights violations from occurring again.⁸³ In Lebanon, the right to compensation is guaranteed in civil and criminal law. A claim for compensation in civil law would be based on a tort, according to article 122 of the Civil Code and may be awarded for monetary or non-monetary damages.

There is no provision in criminal law that specifically grants a victim of unlawful or arbitrary arrest and/or detention, the right to claim compensation. However, recourse is available for an aggrieved individual in a few articles. Article 68 of the CCP allows the victim to file a complaint personally during the course of the criminal proceedings for example. There is also a remedy in articles 197 and 198 of the CCP, before the single criminal judge. Article 197 states that if the evidence brought forth against the defendant is inadequate, the defendant will be found not guilty and will be released from detention. The defendant can file a claim for damages, during or after the criminal proceedings, on the grounds that the civil party abused his/her right to bring an action. It is important to note that the recourse in this case is not against a judicial actor, but against the civil party. Article 198 adds that if the charge is not deemed to be a criminal offence, or the action has been extinguished, etc., that the defendant shall be discharged and released from detention and may subsequently seek redress in the form of damages according to the provisions of article 197. The same can be said for article 277 of the CCP, which also allows the victim to file a claim for damages for having acted in bad faith, abused the right to bring an action, or committing an error in exercising the former right. It is important to note that the recourses mentioned above are against a civil party and not all criminal cases involve a civil party. Articles 333 of the CCP says that if the individual is acquitted or the proceedings have been discontinued, that the judgement shall be retroactive and on the basis of a claim from the victim, the court may award him/her with damages for the prejudice brought on from the previous judgment. In this scenario, the state would be liable for the damages awarded. The state can also be responsible for damages under article 352 of the CCP, which establishes the following:

The party harmed by the offence attributed to the Judge may claim damages pursuant to the public prosecution.
He may not bring a direct action initiating a public prosecution.

Where the offence committed did not arise from the performance of or in connection with judicial duties, he shall claim damages against the defendant Judge. However, where it arose from or in connection with the performance of such duties, the aggrieved party may bring an action against the State, the Judge, or against both of them.

Despite these mechanisms to claim compensation for unlawful detention, the probability of actually obtaining the said damages, should a court of law award them and the time it takes to lodge the complaint and succeed, are lengthy. Therefore, one may wonder if the right to compensation in Lebanon, due to pragmatic and procedural issues, actually exists at all.

iii. Legal Aid

The right to free legal aid is enshrined in article 14(3)(d) of the ICCPR and is given if the detainee does not have the financial means to appoint a lawyer and if the interests of justice require it. In Lebanon, defendants have the right to be represented by a lawyer during their proceedings; however there is no state-funded legal aid. The Beirut Bar Association (BBA) and the Tripoli Bar Association offer this service through the Legal Aid Committee, composed of lawyers who are willing and able to take on cases for litigants who do not have sufficient finances to appoint a lawyer of their choice. At the BBA for example, every Friday, the Legal Aid Committee, composed of a President, Vice-President, Secretary and lawyers, convenes to study the legal aid requests from the courts; whether to accept and assign a lawyer or refuse.⁸⁴ According to one lawyer interviewed, legal aid is usually granted to suspects accused of committing felonies and denied if there are insufficient funds to support the lawyer.⁸⁵

At the BBA, criminal cases are referred to the Legal Aid Committee in two ways. First, the application may come from the court seized of the cases, which can be: the Criminal Court, the Justice Council, the Criminal Appeal Court, the single criminal judge or the examining magistrate. In this case, the accused has already appeared before a judge and declared his/her inability to pay for a lawyer. A letter requesting legal assistance for the accused is sent from the examining court via mail to the Bar Association.⁸⁶ In certain cases, the families of the detainees are highly involved in the judicial proceedings and will volunteer to take the letter from the examining court and hand deliver it to the Bar Association to reduce the waiting period.⁸⁷ Second, the request may come from the prison commander, where the accused is currently imprisoned. This is known as a personal application where the detainee sends, through the prison commander, a standard letter to the Bar Association requesting legal assistance.⁸⁸

There are however, a few important observations to make regarding the functioning of legal aid in Lebanon. There are approximately three hundred lawyers, many of which are trainees, registered in the Legal Aid Committee of the Beirut Bar Association. The BBA receives approximately fifteen hundred requests per year for legal aid between the civil and criminal courts. The bureaucratic process of getting a legal aid lawyer appointed to a criminal case and keeping the lawyer engaged in the file is problematic for a few reasons:⁸⁹ When a lawyer does accept, the criminal proceedings do not start immediately since the lawyer needs time to study the detainee's file. In one court hearing, the detainee's trial was delayed for another month to allow the newly appointed legal counsel to study the file.⁹⁰ Moreover, the quality of the defence and ability to advocate for the human rights of the defendant with regards to detention can be hampered if the case proves to be complex and is handled by a trainee or junior lawyer. This is worsened by the lack of public awareness about the right to request legal aid. It is important to note that there are evaluations solicited by the Beirut Bar Association to determine the performance of their lawyers and monitor their work once a file is closed. Legal aid lawyers receive approximately USD\$200 per case from the Bar Association, no matter how complicated or how long it takes to settle⁹¹ and usually do not get paid until the case is closed.⁹² The meagre salary that lawyers receive (barely enough to cover some administrative costs) can have an impact on their motivation and professional integrity.

Lawyer Mohana Ishak says that the follow-up on legal cases is very slow, and more often than not, inexistent since lawyers do not reap from the benefits "especially if there are additional expenses needed for the case, such as an interpreter or a forensic doctor. Sometimes the case will just have to stop if the lawyer can't cover the expenses themselves. The quality is not good; the whole system is not good."⁹³ Many lawyers interviewed point to the need to establish a state-funded legal aid system to remedy the shortcomings of the Bar Associations in terms of salary for instance. However, this is an unrealistic goal says one lawyer, because there are simply no resources to fix the infrastructure, or develop the system.⁹⁴ Quality legal services provided for clients are not systematic in Lebanon and the burden of this shortfall falls squarely on the defendants. These issues and factors will prove to be problematic in combatting arbitrary arrest, lengthy pre-trial detention and long delays in trial.

THE JUDICIAL AND CRIMINAL JUSTICE SYSTEMS IN LEBANON

a) The Hierarchy of the Courts

In Lebanon, the structure of the judiciary is the result of the historical evolution of its legal institutions and the diversity of its legal sources. Lebanon was largely inspired by the French model for both its civil and administrative (State Council or Conseil d'Etat) courts. With regard to religious tribunals, on the other hand, it has preserved the existing structures inherited from Ottoman law or subject to developments from external sources.⁹⁵ (Maya Mansour and Carlos Daoud)

It is possible to divide the structure of the Lebanese judiciary on a horizontal level into two main multilevel court systems: the Judicial and Administrative Courts. Alongside these courts also operate the Religious⁹⁶ and Military Courts as well as the Judicial Council, Arbitral Labor Council and other exceptional councils. For the purposes of this report, only the Judicial and Military Court systems will be discussed.

i. The Judicial Court System

The Judicial Court system has jurisdiction to hear criminal and civil cases. The civil courts examine civil and commercial matters, and are composed of three levels: the First Instance Court, the Court of Appeal, which is competent on a regional level, and the Court of Cassation, which holds several chambers in Beirut.⁹⁷

The criminal courts, which are regulated by the 2001 Code of Criminal Procedure are composed of two chambers. The criminal courts adjudicating misdemeanours is housed by a single criminal judge in the first instance level, the Court of Appeal (for misdemeanours), the Assizes Court and the Criminal Chamber of the Court of Cassation. The criminal courts that adjudicate felonies hold assize courts (first level) and the Criminal Chamber of the Court of Cassation (appeal cases).⁹⁸

ii. The Military Court System

The Military Court system is an exceptional court system, under the jurisdiction of the Ministry of Defense. It is composed of the Military Cassation Court, the Permanent Military Court (which houses one criminal court that adjudicates misdemeanours and one criminal court that adjudicates crimes) and the single military judge. The courts' proceedings are structured by the Code of

Criminal Procedure and the Code of Military Justice of 1968.⁹⁹ Specifically, the Permanent Military Court is headed by a military officer assisted by four other judges, three of which are military officers. In addition, the military judges are appointed by the Minister of Defence based on the recommendation of the affiliated military body. The appointment of the military judges does not require any previous legal studies or a law degree.

The Permanent Military Court, also commonly referred to as the Military Tribunal, is competent to try crimes of spying, treason, illegal connections with the enemy,¹⁰⁰ as well any conflict between civilian and military personnel. It also has jurisdiction to try a member of the military such as the Army, Internal Security Forces (ISF), General Security (GS) and MoD officials if the crime in question occurred during their duties.¹⁰¹ The modus operandi of the Military Tribunal as described above raises several concerns with regard to the right to a fair trial. This includes the right to be tried before a competent, independent and impartial court established by law and the right to a public hearing, which cannot be guaranteed by the Military Tribunal, especially for civilians. For example, the procedure to appoint the judges clearly undermines its independence, which, in turn, creates an atmosphere of impunity.

Due to the nature of the procedures at military tribunals in almost all cases, there is a serious risk of detentions becoming arbitrary in nature. The occurrence of arbitrary detention could be reduced if courts abided by article 8 of the UDHR and article 9(4) of the ICCPR on a legal and practical level.¹⁰² The former states that: “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law,” whereas the latter says that: “[a]nyone 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.”

The WGAD does recognize the fact that article 14 of the ICCPR does not rule out trials that appear before military tribunals, however it does stress that the standards of a fair trial (article 14) should apply. Moreover, states must provide serious and objective justifications for trying civilians before these exceptional courts, only occurring when the civilian courts are not able to judge a specific class of people or offences.¹⁰³ “Even if such courts are not in themselves specifically prohibited by the [ICCPR], the Working Group has nonetheless found by experience that virtually none of them respects the guarantees of the right to a fair trial enshrined in the [UDHR] and the said Covenant.”¹⁰⁴ The Military Tribunal in Lebanon is no exception to the findings of the WGAD.

Desk research, particularly through daily news screenings, have revealed that the Military Tribunal in Lebanon does not comply with the rules that have been established by the WGAD, should a form of military justice continue to exist:

- It should be incompetent to try civilians;
- It should be incompetent to try military personnel if the victims include civilians;
- It should be incompetent to try civilians and military personnel in the event of rebellion, sedition or any offence that jeopardizes or involves risk of jeopardizing a democratic regime; and
- It should be prohibited [from] imposing the death penalty under any circumstances.¹⁰⁵

It has been reported that between the 2010-2012 period, approximately one hundred individuals were arrested for terrorism, espionage and treason to name a few. Some of the accused or convicted have occupied senior posts in the army and in prominent telecommunication companies.¹⁰⁶ Rule number one that forbids trying civilians has been violated in the following cases:

- In March 2012, the court sentenced a Syrian man to twenty days in jail and a LBP 200,000 fine and a Lebanese man to a LBP 170,000 fine after they unsuccessfully bribed a member of the military to ignore a violation.¹⁰⁷
- In June 2012, Hussein Allous was sentenced to one year in prison after robbing Prince Sultan bin Turki bin Badr bin Abdel-Aziz in Dbayeh in 2011 and threatening him with knives. Two others were sentenced to seven years of hard labour *in absentia*.¹⁰⁸
- After acquiring Israeli citizenship—considered a form of contact with Israel—Joumana Hasbani was sentenced *in absentia* in July 2012, to ten years of hard labour and was stripped of her civil rights as well.¹⁰⁹
- In August 2012, six people were charged with “forming an armed gang aimed at carrying out terrorist acts and manufacturing explosive material.” The six, five of whom have been captured and detained, were also accused of possessing and transporting arms.¹¹⁰
- At the end of August 2012, over a handful of people were detained following suspicions of their involvement in the deadly Tripoli clashes between the Sunni and Alawite districts. A military prosecutor charged seven men with attempting to kill army officials and possessing illegal arms. Should the men be convicted, they could face up to twenty years of imprisonment with hard labour.¹¹¹

Rule number two, which states that the tribunal should be incompetent to try military personnel if the victims include civilians has also been violated. In March 2012, the Military Tribunal sentenced a soldier to two weeks in jail for harassing a female tourist.¹¹²

The incompetence to try civilians and military personnel alike in cases of rebellion, sedition or any offence that jeopardizes or involves risk of jeopardizing a democratic regime, rule three, has also been violated in the following cases:

- In early 2012, an arrest warrant was issued for a retired Ogero employee after he was charged with spying for Israel, while two employees working for Alfa were charged with the same crime.¹¹³
- In March 2012, Hussein Mohammad Ali Musa was sentenced to seven years of hard labour and Jaafar Halawi to three years of hard labour. In a separate trial, Saeb Mohammad Aoun was sentenced to hard labour for life while Mohammad Hasan Abdallah and Nabil Zaytoun received seven and three years of hard labour respectively. The men were sentenced for collaborating with Israel and sharing information about Hezbollah's strongholds in the South. All the men have been stripped of their civil rights.¹¹⁴
- Also in March 2012, Shawqi Zantout and Walid Qaddoura, both Ogero employees, were charged with collaborating with Israel and demanding rewards in exchange for information on a missing Israeli Army officer.¹¹⁵
- Elie Khoury was found guilty of collaborating with Israel in July 2012 and sentenced to three years in prison with hard labour. He is said to have contacted Mossad officers and revealed sensitive information for monetary compensation. Khoury was also stripped of his civil rights and ordered to pay LBP 500,000.¹¹⁶
- In July 2012, Arza Saad, the daughter of Saad Haddad, founder of the South Lebanon Army, was charged with collaborating with Israel.¹¹⁷
- In August 2012, Antoun Joseph was sentenced *in absentia* to fifteen years of imprisonment with hard labour, for "dealing with the Israeli enemy by entering occupied Palestine and marrying there."¹¹⁸
- In August 2012, former Minister of Information, Michel Samaha was detained with his secretary, driver and two body guards, following authorities' discovery of his plans to carry out bomb attacks across the country.¹¹⁹ Samaha was referred to the Military Tribunal following incriminating evidence of his alleged involvement in the plot.¹²⁰ That month, media outlets reported that his interrogation ended. Samaha, alongside two other men were charged with "creating an armed group aimed at committing crimes against the people and undermining

the state's authority." Judge Sami Sader also accused Samaha of planning to "incite sectarian fighting through preparations to carry out terrorist attacks with explosives [—] planning to kill religious and political figures and working with the intelligence of a foreign state [Syria] to carry out aggression against Lebanon." The former minister was also accused of possessing unlicensed weapons.¹²¹

The last rule, number four, which prohibits the Military Tribunal from ordering death sentences has also been violated:

- In March 2012, Ahmad Hussein Abdallah was sentenced to death *in absentia* for collaborating with Israel and revealing information about political figures and about Hezbollah's bases in Southern Lebanon.¹²²
- In April 2012, Military Judge Fadi Sawwan requested the death penalty for twenty-six of the twenty-nine suspects involved in the abduction of seven Estonian cyclists in 2011 for over four months. The suspects were "indicted with forming a mob aimed at carrying out criminal acts against people, undermining the state's authority, kidnapping the seven Estonians in 2011 and establishing ties with "terrorist organization Fatah al-Islam.""They are also accused of using unlicensed military weapons, the killing of ISF member Rashid Sabri and shooting at members of the police.¹²³ As of April 2012, nine suspects had been apprehended and the following month, several suspects were handed over by Syrian authorities, who were arrested following coordinated work between the GS and Syrian security agencies.¹²⁴
- Also in April 2012, a death sentence *in absentia* was issued against Fouad Shaaban for collaborating with Israel.¹²⁵

The Working Group on Arbitrary Detention¹²⁶ and the United Nations Human Rights Committee expressed concerns about the tribunal's competence to prosecute civilians¹²⁷ and adjudicate in cases beyond disciplinary measures. The HRC has said that "[Lebanon] should review the jurisdiction of the military courts and transfer the competence of military courts, in all trials concerning civilians and in all cases concerning the violation of human rights by members of the military, to the ordinary courts."¹²⁸ These factors create a favourable atmosphere for the violation of the rights of the defendants as well as an environment of lawlessness, impunity and blatant contempt for the rule of law. Moreover, the lack of oversight mechanisms, accountability and transparency open the door for various human rights violations in addition to arbitrary detention such as: torture, *incommunicado* detention, the right to a trial within a reasonable time, etc.¹²⁹

b) Monitoring Places of Detention

Monitoring places of detention is codified in various texts of the law, such as Decree-Law No. 14310 and article 402 of the CCP. Article 402 of the CCP states that every month, remand centres and prisons should be visited by the appeal court prosecutor, the financial prosecutor, the investigating judge and the single criminal judge to examine the situation. Of particular importance is article 403 of the CCP, which states that if during the abovementioned visit, there is “knowledge [of] unlawful detention of any person, [the judicial authority] shall release the person after verifying whether the detention is unlawful.”

In Lebanon, important visits to correctional institutions have been seemingly non-existent as many prisons have yet to be visited by a judge. As of October 2, 2010, no judge had ever visited the prison in Halba¹³⁰ and as of November 5, 2010, no judge had ever visited the prison in Jbeil.¹³¹ This was also the case in the Rachaya prison. According to ISF officials, there were twenty-nine foreign prisoners who had completed their sentence and had yet to be released. Baalbek prison¹³² had not been visited since 2005.¹³³ In Baabda’s women prison for example, there were ten detainees whose sentences had been completed, but remained in custody. Approximately fifty out of sixty-three prisoners were held in pre-trial detention and no judge had visited the prison to help expedite these women’s cases.¹³⁴

Finally, within the framework of the campaign undertaken by the relevant ministries for the rehabilitation and improvement of prison conditions in Lebanon, judicial officials began to visit prisons across the country. In March 2012, the prisons in Roumieh, Zahle, Sour, Baalbek and Rachaya were visited by various authorities from the Ministry of Justice (MoJ) and MoI. In this framework, prison conditions were inspected and prisoners were able to voice their concerns, requests and demands, which included decreasing the prison year to nine months. During their visits, judicial authorities noted the following: the need to accelerate trials, the need to follow up on prisoner files since some were eligible for release and to no longer send prisoners to Zahle, because the prison was overcrowded.¹³⁵ Despite this paradigm change, monitoring places of detention has not been consistent and fully implemented due to neglect, a lack of oversight mechanisms, and resources, all of which impede on the effective and efficient functioning of the criminal justice system.

c) Effectiveness and Efficiency of the Criminal Justice System

The budget for the Ministry of Justice in 2011 was LBP 115, 821 673 (around USD\$77 million); this included LBP 47, 000 000 (USD\$31 million) allocated to the funding of the Special Tribunal for Lebanon.¹³⁶ On the ground, the abovementioned insufficient budget translates into the following: the MoJ lacks an approximate fifteen hundred employees, including judicial and technical assistance in all judicial branches across the country. Where each branch should have around eight employees, they all struggle to keep one. In Beirut, there are approximately 15, 000 to 20, 000 complaints lodged for approximately seven public prosecutors. Mount Lebanon records between 60, 000 to 80, 000 complaints for approximately seven public prosecutors. There are around 450 judges registered while the justice system requires 900 to function effectively and efficiently.¹³⁷

Also, most police stations are not properly equipped with computers and photocopying machines and the filing system is disorderly. Some still use typewriters. District centre police stations such as the one in Jounieh fare better than the other stations in size and equipment. However the detention quarters are not up to par with international standards. One focus group participant asks how a police officer is supposed to provide a detainee with a mattress and hot water when he does not have access to these basics. Issues related to prison capacity, health and safety guidelines for detention centres require large government expenditures.¹³⁸ Not only do they impede on law enforcement personnel's ability to carry out their mandate efficiently and effectively; they also psychologically intensify the experience of the arrest and/or detention.¹³⁹

Moreover, many judges do not follow up on their own cases and the criminal files are not properly administered and delegated in the courts. One judge may have 150 cases while another may have 950.¹⁴⁰ The lack of judges in felony cases causes months of delays between trials, usually around five to six months according to interviews and court observations. The same delay has also been confirmed by a single criminal judge who cites the complexity of the crime as another reason. For example, if five individuals are suspected of committed a felony together and not all of the suspected criminals appear for trial, then the trial is delayed for another date.¹⁴¹ In 2011, a young adult was wanted for questioning at the Hobeiche police station. However, at the time, the young man was seeking drug abuse treatment at a rehabilitation centre. The judicial police sought him at his residence and despite being informed of his whereabouts by his mother, did not go to the centre. The investigation progressed and an arrest warrant was later issued. When the young man was released from treatment, he was arrested for drug trafficking, in a case

involving thirty-five others, some of whom were accused of using drugs and/or trafficking. In early 2012, some of the individuals had yet to be arrested. As a result, this inmate has been in detention since 2011 and by the end of October 2012, had only been able to appear for one trial.¹⁴² The trials in this particular case are always delayed because it is highly difficult to secure the appearance of all the accused at once. Rare are the cases where a judge will order فصل الملفات (the separation of files) when a case contains charges against more than one accused, says his lawyer. Moreover, when the request to separate the files is put forth, the judge tends to require that more than one defendant request the separation and that the defendants confess their guilt. These conditions are not prescribed by law and violate many rights. In a few cases, the accused who may not be guilty, will confess guilt to end the proceedings and prepare for his/her subsequent release from prison once the sentence is handed down. This scenario usually occurs in crimes involving drugs, where bail is rarely granted.

Article 14(3)(c) of the ICCPR guarantees the right to be tried without undue delay, in other words, within a reasonable time period. The HRC stated in its General Comment No. 13 that this guarantee "relates not only to the time by which a trial should commence, but also the time by which it should end and judgment be rendered; all stages must take place without undue delay."¹⁴³ The Committee has come across numerous cases that violate this right. In one example, the Committee held that a twenty-nine month delay from the time of arrest to the time of trial was contrary to article 14(3)(c) of the Covenant,¹⁴⁴ as well as a delay of two years.¹⁴⁵

The overload at the criminal courts is also compounded by the fact that approximately one third of the cases are actually litigation matters, according to a legal expert.¹⁴⁶ With regards to misdemeanours, a single criminal judge interviewed says that there are no systematic trial delays; he cites a general delay of seven to ten days between trials. If there are delays in the trial process, he says, it would usually be caused during the investigation process. By the time a single criminal judge receives the criminal file, the detainee could have been in custody for over three months and the single criminal judge is forced to work in record time as to not violate the law regarding the pre-trial time limits established by law (article 108 of the CCP). Technically, after four months have elapsed, the accused should be released on bail.¹⁴⁷

Furthermore, the court hearings are taken down by hand and some judges use their personal laptops to draft decisions. This is concerning since a personal laptop can be easily hacked and therefore court decisions are not secured and subject to changes.¹⁴⁸ The abovementioned issues certainly contribute to

problems in ensuring the rule of law and the right to a fair trial. Additionally, clerks, particularly court reporters, play a crucial role in creating verbatim transcripts of legal proceedings. Technically, each judge should have one court reporter but since the courts are understaffed, one may be responsible for two or three judges' cases.¹⁴⁹ The case overload can certainly affect the reporter's ability to transcribe spoken speech during court hearings and official proceedings in an accurate and complete manner, without any grammatical and orthography errors. One can imagine the commotion that would occur should a reporter make a mistake while noting the amount of a fine or length of a prison sentence for example. The lack of staff is also causing these clerks, who should be solely responsible for drafting court judgments, to take on a new role: that of the bailiff who is responsible for the service of the legal process such as serving documents or notices.¹⁵⁰ The lack of resources not only hinders the proper functioning of the criminal justice system, it undermines judicial actors' ability to fulfil their mandates efficiently and effectively. It also severely impacts the rights of detainees and opens the door for corruption.

Furthermore, there is convergent information that some judges may take bribes to influence other judges, or sentence the accused in a particular way. In one candid interview, a lawyer revealed that clients of his law firm insisted on paying three judges in the Court of Appeal tens of thousands of dollars to confirm the lower court's decision for release pending trial. In another case, an investigating judge and middleman were allegedly paid a total of USD\$60, 000 to reduce charges of drug trafficking to illegal drug use.¹⁵¹ There have been disciplinary measures in the past under several ministerial mandates to curb this form of behaviour. During the scope of this research, ALEF detected that in July 2012 for instance, Minister of Justice Chakib Qortbawi suspended four judges for their wrong-doing, ranging from bribery to ethical misconduct. An additional ten judges were being investigated at the time for professional misconduct as well. These suspensions came after a 2011 hike in judges' salaries which was according to the minister, "necessary and fundamentally important" as many have blamed the corruption on the magistrates' financial conditions.¹⁵²

Some lawyers, may also participate in unethical legal practice by "conveying the wishes of the parties to judicial officers or [vice versa] or by failing to act when the conduct of the court suggests that there was corruption."¹⁵³ At other times, lawyers may reap the monetary fruits of corruption by promising clients that their file will be processed quicker for example, or by transferring their case to a sympathetic judge. Litigants may also be keen on paying additional fees or engaging in corruption if they do not trust that justice will be rendered

or doubt the judge's competence and ethics in the courtroom.¹⁵⁴ The level of connection could play a role in persuading "law enforcement personnel to be lenient with violators of the law or to work on a case harder than others or even to release or improve the incarceration conditions of detained persons."¹⁵⁵ One lawyer said that many practitioners often pay the bailiff, sometimes LBP 50, 000 to LBP 100, 000 to simply delay relaying a notice to the opposing party for example.¹⁵⁶ This form of bribery can have severe consequences. "Even the notification to lawyers and parties in a case can take months, and if someone is not notified, then the trial is further delayed," said one lawyer.¹⁵⁷ This regular delay does not take into account the additional and intentional delays caused by bribery.

Corruption may also be found in the ranks of the assistants to the judges. The head of the law clerks may decide to which judge he/she wants a case referred; this may be done purposively, given that the head knows which judge is lenient towards certain crimes.¹⁵⁸ Court administrators have also been seen engaging in corruption. For example, on a court hearing observation day in Jdeideh Courthouse in January 2012, it appeared that in order to get access to a court file, lawyers, more often than not, needed to bribe the clerk. These employees should not be taking money directly from lawyers to perform tasks that are a part of their functions as court administrators. Yet, should a lawyer not bribe the clerk, he/she will experience a difficult time getting access to the file, or will have to wait unnecessarily.¹⁵⁹ This occurrence has also been confirmed by another lawyer who was interviewed. She stated that in order to get access to a case or file at the court, "you need to bribe the clerk, otherwise you drown in piles of cases, that are only identified by subject, year and file number and stacked on top of each other in a disorderly manner. There is no centralized system."¹⁶⁰

THE LIVED EXPERIENCES OF ARBITRARY DETENTION

Every day, people are detained on suspicions of engaging in criminal behaviour. These individuals, as the focus groups and court observations have revealed, are deprived of their liberty for weeks and some for years before a verdict is reached in their case. Particularly distressing is the case of pre-trial detainees, who drift along an undetermined status, where they are perceived as the perpetrator, but have not been found guilty by a court of law. Moreover, these individuals, along with other detainees who have been sentenced, face enormous social stigma associated with their incarceration. Perceived as social deviants, these men and women face the harsh realities and conditions of correctional institutions, undergo economic strain and family pressure and experience severed community ties. Not only are they law's outcasts, but society's outcasts as well.

a) Detention Facts and Figures

In 2009, Minister of Interior and Municipalities Ziad Baroud stated, in response to the Tripoli riots that occurred in January of that year, that the maximum capacity for all Lebanese prisons is 3,653. However, the number of prisoners had reached 4,918 as of January 27, 2009.¹⁶¹ At one point in 2010, there was an estimated 5,876 prisoners,¹⁶² which exceeded prisoner capacity by 1.6 times. Also in 2010, there was a recorded 4,020 pre-trial detainees (68 per cent of the prison population across the country) who languished in prison while awaiting their trials. This is a clear indication that pre-trial detention was being used excessively.¹⁶³ Statistics released by the MoI revealed that out of Roumieh's 3,700 detainees, only 721 were serving sentences, the rest were still languishing in pre-trial detention.¹⁶⁴ Earlier in 2012, MTV¹⁶⁵ reported the latest statistics which depict progress and improvement regarding the incarceration situation in Lebanese prisons:

Status	2010	2011
Convicted (serving an imprisonment sentence)	32.29 per cent	42.64 per cent
Pre-trial detention	63.59 per cent	57.11 per cent
Completed their sentences & still imprisoned	4.12 per cent	0.25 per cent (18 detainees)

In June 2012, an ISF source claimed that of the 5,100 detainees currently in Lebanese prisons, 3,744 were in pre-trial detention, while a source from the Ministry of Justice claimed it was at 2,780, with many having been released following prison riots across the country.¹⁶⁶ A single criminal judge also commented on the inaccuracy of the abovementioned pre-trial/convicted rates. The rates of pre-trial detention he says, have included detainees who have been convicted and sentenced to ten years in prison for example and have subsequently been found to have committed another less serious crime while they are imprisoned (facts and evidence of the new crime are discovered later). Therefore this individual is paraded back to court for an entirely separate and unrelated crime. In this scenario, the detainee should still fall within the convicted category (as opposed to the pre-trial category) because he/she has already been convicted and is thus already serving a sentence.¹⁶⁷ In August 2012, a judicial expert interviewed also added that currently, there are less pre-trial detainees than convicted detainees held in Lebanese prisons.¹⁶⁸

The new statistics revealed by MTV demonstrate an improvement in conviction and release rates. Since pre-trial detention should only be an exceptional measure, it is possible to state that the rate of pre-trial detainees that exceeds the convicted detainees rate, or approaches it, raises doubts about the respect for the right to be presumed innocent until proven guilty.

b) Revelations from the Voices of the Detained

Court observations, field research and tales from ex-detainees (Lebanese men and women charged with common crimes, Palestinians charged with common crimes and alleged terrorists), the families of ex-detainees and NGO representatives, revealed that many of the arbitrary detention cases fell within the parameters of Category III.

The focus group discussions and one on one interviews revealed the inner workings of correctional institutions and criminal justice practices, both of which are endemic of corruption, inequality, favouritism and ignorance of basic rights and procedures, to name a few. Former detainees describe a 'survival of the fittest' environment, a dog-eat-dog world from the first moments of detention, until their transfer to prisons like Roumieh. Moreover, participants explained that justice is applied arbitrarily, depending on those who have 'backing' or could wield some power. The level of abuse was also affected by socio-economic class, ethnicity, gender, etc. Arbitrary detention, they said, was the norm.¹⁶⁹

i. Corruption

When police officers, prison administration staff, judicial civil servants, judges, public prosecutors and lawyers approach individuals deprived of their liberty varyingly, depending on whether or not bribes or other irregular payments or favours have been received, then the whole system of guarantees becomes devoid of any content, empty and meaningless; it renders defenseless all those who cannot or refuse to pay the amounts that are asked from them and in turn further reduces the credibility of the entire system of administration of justice.¹⁷⁰ (Report of the Working Group on Arbitrary Detention)

The previous accounts of corruption in the criminal justice system were also corroborated by ex-detainees. In prison, if a detainee wanted to appear at a trial within a reasonable time or apply for release, a *wasta* ('who you know' or connection) with senior prisoners (also called '*shawishs*'¹⁷¹) or the law enforcement officials (working outside or inside the prison) was required.¹⁷² Many who were released received help from senior prisoners in exchange for money or cigarettes,¹⁷³ or through an intervention; either through a *wasta* with a high ranking official or through a financial arrangement that the family reached with the victims in the case of fatal car accident or a physical quarrel.¹⁷⁴ For example, a Palestinian ex-detainee claims that the underlying reason for his arbitrary detention was because the fight he got into was with a Lebanese family, who happened to be well connected to the political party responsible for his abduction. The participant describes his ordeal and states that he was blind folded, physically abused, tortured and humiliated in Haret Hreik police station for a few days, before being transferred to Roumieh for nine months. "I left after nine months without seeing a judge or entering the court. I had some connections with a senior prisoner who himself had connections with one of the officers in prison."¹⁷⁵

The wives of ex-detainees also confirmed the need for a *wasta* and connections with judges and law enforcement officials to secure the eventual release of their spouses.¹⁷⁶ The wife of one prisoner explained that on one occasion, when she went to visit her husband, a police officer approached her and said: "if you fix me outside, I can fix your husband inside."¹⁷⁷ NGO representative at the focus group session said that "until politics cease to be the criteria for employing police officers, we will continue to have problems."¹⁷⁸ This, like many other deficiencies in the criminal justice system and particularly the security apparatus have become a breeding ground for abusing and violating fundamental rights and freedoms. Another NGO representative claimed he "know[s] a person who stayed in prison for years, while he was supposed to be someone else [clear case of mistaken identity]. He was arbitrarily detained while the real supposed prisoner was let loose!"¹⁷⁹ The corruption and

impunity not only cause arbitrary detention but arbitrary implementation of criminal law where, for example, “people are kept in prison for years because they were using drugs while dealers roam the streets because they are covered politically.”¹⁸⁰

Focus group participants also describe a run down, dehumanizing social space over which they could not exert any control.¹⁸¹ Privileges were given to prisoners depending on the services they provided senior prisoners, the money they possessed or the alliances they forged. The exchange currency inside all prisons was none other than cigarettes, drugs and at times, sexual favours.¹⁸² For example, prisoners would be able to place calls outside the prison, in exchange for cigarettes with the senior prisoners, who often had mobile phones in their possession. Some focus group participants would have to give senior prisoners between twelve to fifteen boxes of cigarettes in exchange for safety, a cleaner environment and less demeaning jobs (such as cleaning the toilets).¹⁸³ Interestingly, alleged terrorists interviewed reported that they used the money they received from their families to renovate their cells (toilets, paint, etc.) whereas other cellmates used the money to buy cigarettes, drugs, or sex in the form of services.¹⁸⁴

The sex trade business was also bustling. Senior prisoners are known to “sell gay prisoners” said one participant, from one cell to another for approximately forty boxes of cigarettes.¹⁸⁵ *Shawishs* also have a monopoly over the drug business; they are able to smuggle drugs inside the facilities through their connections with police officers, which they then sell to other prisoners. According to many ex-detainees, pleasing and complying with the requests of the *shawishs* was important if they wanted to survive, stating that they were more powerful than police officers at times. This was also reiterated by NGO representatives who work inside the correctional institutions.¹⁸⁶ According to them, Roumieh prison requires 500 officers to be properly managed, but it only staffs 200; this too creates a gateway for senior prisoners to gain power, therefore increasing corruption.¹⁸⁷

*“I got inside, and I didn't know anything. Thank God I had made some friends inside and a 'shawish' said that my case was not fair so he put a 'wasta' for me and I got out after filing for a release.”*¹⁸⁸ (Palestinian ex-detainee)

*“The older prisoners are more important than the police officers over there. Every prisoner had to pay boxes of Marlboro. I had to pay twelve boxes so that they would leave me alone and so that I could relax.”*¹⁸⁹ (Lebanese ex-detainee)

ii. *Inequality and Favouritism*

Inequality and favouritism were rampant inside the prison according to the ex-detainees. Discrimination was based on ethnic or political background; it was also based on seniority. At the head of the cell pyramid lays the *shawish*/ senior prisoner, followed by Fateh al-Islam detainees, Lebanese prisoners, other Arab prisoners such as Palestinians, followed by racialized inmates and inmates accused of sexually motivated crimes, despite their ethnic or political background. Among these prisoners, those who have money experience less discrimination.¹⁹⁰

Palestinian ex-detainees described themselves belonging to the bottom of the 'food chain' in prison. This meant having to carry out demeaning tasks assigned by the *shawish*. According to one Palestinian interviewed, "in Roumieh, Lebanese prisoners can touch their parents across the bars in the wall, we Palestinians have one meter separating us from our families."¹⁹¹ Another Palestinian confirmed this by saying that they have less access and visibility with their visitors, even reduced visiting hours.¹⁹² They did however feel like they fared better than the Sudanese and Iraqis. According to another participant, "[a]s a Palestinian I had to clean the toilets, I was so happy when a Sudanese came in, only then [would] the *shawish* [—] let me relax."¹⁹³ Senior prisoners on the other hand receive preferential treatment since they help run the prison and keep inmates in line; they have better cells and management tends to be lenient with them said one ex-detainee.¹⁹⁴

The majority of the ex-detainees said that Fateh al-Islam detainees also received preferential treatment: "the Islamists had a separate quarter; [—] they had everything, because you know how it works in Lebanon, they were supported by the Saudis. They had televisions, better food, fans and even their wives used to come in to visit them."¹⁹⁵ When asked about the abovementioned privileges, alleged terrorists replied in the one on one interviews that their solidarity pushes them to demand more rights and privileges. They would go on hunger strikes to exert pressure on administrative personnel to schedule specific times for family visits.¹⁹⁶ However, alleged terrorists claimed that they were beaten and tortured more than the other prisoners, due to the nature of their crimes, unless there was political interference or the detainee was a *Sheikh*, in such a case, the treatment differs "out of respect for his attire," described one participant.¹⁹⁷

"I was working in the field of statistics. I was in Baabdat, the state security stopped us. The problem was that I was Palestinian. They put a black sack on my head, made me stand some four hours on the wall. The interrogator would

*ask 'what were you doing up there? Palestinian and you work... you are less than mosquitoes, less than mosquitoes you understand?'*¹⁹⁸ (Palestinian ex-detainee)

iii. *Lawlessness and Abusive Procedures*

All ex-detainees described the procedures regarding their detention as abusive, violent and discriminatory. The stories and the timeline of events they describe from the initial detention to prison and then to trial—if they even appeared before a judge—reveal a criminal justice process governed by capriciousness and lawlessness.¹⁹⁹ These issues may be due to numerous reasons. An NGO representative who participated in the focus groups said that “[w]henver detention occurs by the intelligence, or inspection or the police station, problems occur there. There is no discipline. The officers are not trained and the guidelines are lost and neglected. Generally interrogation needs objectivity and this is absent.”²⁰⁰ Another participant also said that the security forces are not adequately trained to handle cases of detention and often times, security branches overlap, causing a detainee to bounce from one branch to another, leading to chaos.²⁰¹

Although the Ministry of Interior and Municipalities had given every police station a poster describing a suspect's rights, many participants claimed that they were not informed of their rights during the initial phase of detention. This poster was meant to be placed in a visible location. According to one NGO representative, this bill of rights was “either put in a police officer’s office or neglected in some corner.”²⁰² How then were the ex-detainees informed of their rights? Ironically, most focus group participants said that senior prisoners informed them about the legal channels and procedures for release. One ex-detainee added that information about the law is cultivated from prison. Senior prisoners also helped other cellmates by giving them access to cell phones in their possession to place phone calls to their families. Communications to lawyers were also only made through these sneaked cell phones or when family members would visit. The *shawishs* also gave guidance to the detainees with their applications for release by spreading the word to prison management; this was supposed to help speed up the process.²⁰³

“[S]ometimes, detainees are just forgotten due to negligence, lack of follow up or in order to hide signs of torture.”²⁰⁴ According to an NGO representative, police officers tend to extend the time of imprisonment to conceal any signs of torture. This means a detainee might be held unlawfully under police custody for a few weeks.²⁰⁵ The focus group interviews of the ex-detainees revealed

that the majority “were detained for [—] months [—] without any trial or [—] charges [laid] against them.”²⁰⁶ These catastrophic situations are caused by the lack of proper management of correctional institutions; “[t]he biggest problem facing us is not the law, but its application, how can we discipline the various security forces to follow the law?”²⁰⁷

Interestingly, the focus group with female ex-detainees revealed that women were treated better during the initial detention; the delays between their trials were quicker and they claimed less physical abuse at the hands of law enforcement officials. However, they did cite more sexual and verbal abuse than their male counterparts.²⁰⁸ Almost across the board, ex-detainees claimed that they were not aware of their basic rights, particularly regarding legal aid,²⁰⁹ did not have a fair trial and some did not even appear before a court of law.²¹⁰ Alleged terrorists described additional human rights violations. None of those interviewed claimed that they were informed of their rights upon arrest and/or detention and many applied for release pending trial, but all were denied. The manner in which they are taken into custody is not the only human rights violation, they also experienced secret detention. One interviewee claims that he was held in solitary confinement for two months, handcuffed for days and sleep deprived. Another alleges he was pushed and kicked numerous times while another describes how he was electrocuted and experienced the *balanco*, a method of torture.²¹¹ The abuse is intensified by the fact that there is paranoia and stigma associated with their crimes. There is also a different form of procedural abuse they say, because additional charges are fabricated against them during their time spent in custody. One ex-detainee said that he was charged with a new offence two years following his detention. These detainees also deal with a different security apparatus than those charged with common criminal offences; they become wards of the Information Branch of the Internal Security Forces and the Intelligence Services within the Lebanese Army.²¹²

Alleged terrorists also said that they experienced difficulties in accessing their lawyers while being detained in Noura Palace (under the authority of the military police). One former detainee waited three weeks to see his lawyer and could not communicate with him in private, while another had to wait until he was transferred to Roumieh, to contact his family (paid a *shawish* USD\$100 to contact them) who then appointed a lawyer.²¹³ One ex-detainee claims that a security officer informed him that there was no need for legal representation because the charges against him were extremely serious and if he was found innocent for one charge, he would be found guilty for the rest.²¹⁴ All interviewees – except for one who was apprehended at home in his family’s presence – claimed they had to wait approximately three weeks

to little over one month until they called their families, whereas ex-detainees charged with common crimes were able to communicate with their families earlier.²¹⁵ Ex-detainees accused of terrorism claim that they were first detained either at the ISF headquarters or in the MoD, thereafter they were handed over to the military police and jailed in Noura Palace. None were released until a verdict was handed down.²¹⁶

Many of the interviewees said that the charges were fabricated by the Intelligence Services to support the government's crackdown on terrorism. Some of the ex-detainees accused of terrorism said that they were never informed of the evidence collected to support the charges laid against them.²¹⁷ Human rights abuses are not unusual when an individual is charged with terrorism, in the examples cited above, there was no access to legal counsel, detention was not accompanied by concrete charges, individuals were not brought before a judicial authority in a reasonable time period, etc. The ex-detainees charged with such crimes said that their arbitrary detention was political rather than judicial; it is how the Lebanese Government proves to the international community that it has control of terrorist activities and cells in the country.²¹⁸

*"When I was arrested, I was In Beirut for an appointment with the dentist; the Information Branch at ISF attacked me, pointed the gun at my head and directly covered it with a black bag; they did not even introduce themselves nor did they tell me anything about my rights."*²¹⁹ (Alleged terrorist)

*"No one told me about my rights, like what happens in the movies; but torture and abuse are worse than in movies."*²²⁰ (Alleged terrorist)

iv. Lengthy Pre-Trial Detention and Long Delays in Trial

Wives of ex-detainees cited the following examples of detention, many of which are arbitrary in nature:²²¹

- Wife of a prisoner whose husband was accused of embezzlement and stayed in jail for one year and two months. He was released on bail and had to pay LBP 30 million.
- Wife of a prisoner who was accused of petty theft went to prison for a total of one year and only went to trial after six months of detention.
- Wife of a prisoner who was accused of aggravated assault with a weapon and was detained for five months and was released through a *wasta*.
- Wife of a prisoner who was accused of possessing drugs claims her husband languished in prison for one year and three months before going to trial.

- A Lebanese ex-detainee accused of assault spent ten days in a police station. His trials were speedy because he was processed in the Military Tribunal; the individual he fought with was a police officer.
- A Lebanese ex-detainee who was accused of aggravated assault with a weapon was imprisoned for four months before going to trial. When his sentence was complete, he was not released for another month because he had to pay a LBP 500, 000 fine that he could not afford.
- One female ex-detainee accused of assault spent two weeks in a police station.
- One Palestinian ex-detainee accused of dealing drugs spent twelve days in a police station.
- One Palestinian ex-detainee accused of aggravated assault with a weapon had two trials in two months.
- One Palestinian ex-detainee accused of assault spent three months in prison with no trial and was released through a *wasta*.

Many focus group participants claimed that they were not able to attend their trials due to a lack of transportation. One NGO representative mentioned that the problem in Roumieh prison is the lack of drivers as opposed to vehicles.²²² In Tripoli's prison however, this is not the case. In January 2012, Legal Agenda – a Lebanese NGO that monitors law and public policy in Lebanon and the Middle East – revealed that two thirds of the court hearings for detainees did not occur because the transport vehicles at the Tripoli prison were not functioning. In a March 2012 court proceeding, Judge Helena Skandar requested that a letter be sent to the General Directorate of the ISF and prison director demanding Tripoli prison officials to transport a detainee to court, since he had not been present for the last three proceedings.²²³ A judicial expert also confirmed the abovementioned issues by revealing that in one month in 2012, approximately 1000 detainees in Lebanon did not go to their trials because of transportation problems.²²⁴

Many detainees who are fortunate to attend trial do not shy away from expressing their discontentment about the legal procedures they must go through. At the Beirut Courthouse, one detainee complained about having to go to another court, shouting out “شو هل خبصة!” (what a mess). He had spent five years in jail and had yet to receive a verdict. His wife and mother abruptly interrupted the session and also expressed their disgruntlement about his case. Another detainee at the court said that he had been attending trials for three years and had yet to be sentenced.²²⁵ Most alarming of all, on a few occasions, detainees were heard asking the judge what they were charged with; one stating that he had been detained for six months and did not know the content of the indictment.²²⁶

Below are highlights of some of the interviews of alleged terrorists detained in 2008:²²⁷

- Case 1: Alleged terrorist was arrested by the army intelligence, without an arrest warrant. He was immediately taken to the Qobbeh military bureau where he was detained for twenty-four hours, unable to contact anyone. He was then transferred to the MoD for four days. Once he was before an investigating judge at the Military Tribunal, he was made aware that he was charged with having terrorist ties. He was held at the Military Tribunal for nine days, then taken to Roumieh where he spent twenty additional days. He had his first trial after approximately four months of detention, then waited another month and a half for his next trial. After nine months of detention he received a verdict but he alleged that no evidence was presented at trial.
- Case 2: An ex-detainee was accused of engaging in guerrilla training for his deployment to Iraq. He was requested by the military intelligence bureau for questioning and then taken to the General Directorate of the ISF in Beirut. He was then detained in Roumieh for three years and five months. He appeared in court for the first time after eight months in detention and claims he was made aware of the charges one year and two months following his detention. His trials were spread between three to five months.
- Case 3: An interviewee was accused of developing chemical weapons and was accused of a crime committed in 1974 (he was born in 1972). He was kept in Noura for six months, after which he was served with an arrest warrant. He spent an additional month in Noura, then was taken to the MoD for twenty-two days, where authorities, he says, would go to extreme lengths to extract a confession. He was then transferred to Roumieh where he spent sixteen days. Throughout his transfers, he was not aware of his previous or next location. He had his first trial after five to six months of detention and was later declared innocent.

“Sometimes there are technical issues. We found out that the file of one of the prisoners was missing. Also, a penal judge was giving out seventy verdicts per day, while he should be giving five.”²²⁸ There are not enough judges, not enough police officers and not enough facilities.”²²⁹ (NGO representative)

v. *Prison Conditions*

The disengagement of the State obliges the detainees to find other means to ensure their security, nutritional and health needs. As a result, prisons are abandoned to the control of gangs or “mafia” groups, composed mainly of prisoners but also of guards. And what can be witnessed in these detention facilities or prisons are horrifying human rights violations, going from modern forms of slavery to the murder of detainees.²³⁰ (Report of the Working Group on Arbitrary Detention)

Incarceration facilities should not aggravate or further exacerbate the punishment handed down by a court of law, nor should they be a place where suspects turn into career deviants. Moreover, ‘innocent until proven guilty’ means that individuals accused of committing a criminal offence must be treated according to their un-convicted status. On the ground, this translates into segregating them from individuals who have been sentenced to imprisonment, should the accused not be eligible for release pending trial. The separation of the two classes of prisoners is highly important: first, it serves to protect vulnerable individuals, such as juveniles. Second, it limits the probability of turning an accused into a career deviant, by learning the tricks of the trade from hard knock felons.

The lack of segregation between prisons creates an environment of exploitation, where police officers and senior prisoners exploit new prisoners. The proliferation of drugs and criminal networks inside the prison, lack of speedy trials, the impunity, exploitation and the social stigma outside, push the detainees to engage in further deviant behaviour.²³¹ On that note, the focus group discussions revealed that all male adult prisoners were mixed together, regardless of their status, pre-trial detainees were mixed with sentenced detainees, detainees charged with misdemeanours were mixed with convicted felons, etc. One participant pointed out that “drug dealers were put together with users and criminals were put together with those who went in because of a street fight.”²³² A participant who spent seven years in prison, said: “I learned some bad stuff inside, so when I came out, I became an addict, I tried to get out, but I couldn’t. It became a cycle and a way of life.”²³³

All ex-detainees claimed experiencing a process of dehumanization while in detention. The focus group participants, mainly the male ex-detainees, regardless of their crime or nationality described prison as a dark tunnel, a nightmare that begins with the initial detention, compounded by torture and then spiralling further into horrific living conditions and ending in social stigma. Many ex-detainees felt uncomfortable when asked about the problems they experienced in more detail and what they would do about it if they had the opportunity to change the status quo.²³⁴

Except for alleged terrorists, most of the ex-detainees interviewed say that they were offered drugs and pills during their detention. Female ex-detainees claim that they were offered illegal substances almost immediately upon entering prison, “so that you may forget what happens outside and inside,”²³⁵ according to one participant. To survive their detention periods, many ex-detainees claimed having to forge alliances with other cellmates and senior felons. Consequently, this meant being involved in the drug trade and the exchange of cigarettes and other services.²³⁶ Conversely, the female ex-detainees’ remarks regarding the prison conditions also revealed that food may be withheld if the detainee does not obey senior prisoners’ or prison guards’ requests. They commented greatly on the quality of the food being served, the lack of hygiene, the overcrowding and the sexual harassment they experienced from other cellmates or prison guards.²³⁷

*“Hygiene inside the prison and quality of food, hot water and crowdedness, these are the most important issues facing us.”*²³⁸ (NGO representative)

vi. NGO Presence and Rehabilitation

Ex-detainees interviewed consistently failed to mention NGO presence in prisons. Many participants were not aware that brochures about their rights were being distributed in prison. Those who saw them said that these brochures were insufficient since they did not possess the tools through which to apply these rights. Many ex-detainees who were imprisoned for a period of six months or longer that had not been to court did not have any legal representation and did not receive any counselling from the NGOs working inside the prison. In response to these allegations, NGO representatives interviewed said that they simply did not have enough resources. Nonetheless, NGO representatives seemed committed and demonstrated a cultured knowledge of prison conditions and the conduct of some police officials.²³⁹

All of the ex-detainees who participated in the focus groups agreed that rehabilitation was an essential need inside prisons; drama therapy and other social activities are helpful but not enough.²⁴⁰ One Lebanese ex-detainee who spent a total of seven years in prison on different occasions had participated in drama therapy and other rehabilitation activities and according to him, “NGOs are helpful [—] but the issue remains bigger and more complicated than what NGOs could offer us in prison.”²⁴¹ Another ex-detainee who was detained in Roumieh poignantly says, “if you go inside sane, you leave crazy; the stuff you learn inside will [mess] you up.”²⁴² Hence, in most instances, the participants’ lived experiences in prison were not rehabilitative at all;

they needed to build alliances with hard knock criminals, abuse drugs and engage in more illicit activities in prison for survival.

*“Listen, in seven years I’ve seen everything. I know all the NGOs which work there. I participated in a play and it got famous. But I tell you the problem is too big. It’s not about NGOs.”*²⁴³ (Lebanese ex-detainee)

vii. *Effects of Deprivation of Liberty*

Adjusting to post-prison life can be challenging for detainees, regardless of whether they are convicted or not. The dysfunctional experience of imprisonment can vary, but generally an individual who is adapting to post-prison life can carry with him/her psychological effects that can range from: alienation, social withdrawal, incorporating prison norms to daily life, post-traumatic stress, a diminished sense of self-worth, etc. These effects can severely hinder the ex-detainees’ social reintegration by interfering in various circles, such as employment, family life and social networks. The real and damaging punishment is not served inside prison, where punishment is limited in time, says one public prosecutor; it is when an individual is released. His/her post-prison experience is in and of itself, a punishment that lasts forever. Not only is the criminal record tainted upon prosecution, but the ‘social record’ can also be severely tarnished.²⁴⁴ In some cases, family ties rupture and community bonds sever.

Upon leaving prison, participants claim experiencing a hostile environment and would refer to themselves as a “*مخرج سجون*” (prison graduate). Others said that they were not ashamed, particularly the ex-detainees who were never convicted. Some were indifferent and replied, “I am strong and I don’t care.”²⁴⁵ The participants who were the most affected by social stigma upon release were the families of ex-detainees. The wives of ex-detainees describe immense pressure from family and relatives—even sexual advances—and described the turmoil that affected their marriages. Some of the wives were forbidden by their families to visit their incarcerated spouses. According to them, having an incarcerated husband tarnishes the family’s image, which resulted in smaller social circles as friends drifted away and acquaintances disappeared. Participants accused of crimes involving drugs and murder experienced more problems upon leaving prison than those involved in aggravated assault.²⁴⁶

Only one alleged terrorist said that his social life remained unaffected upon his release because he is a reputable *Sheikh* and people do not perceive him as a criminal.²⁴⁷ For the others, life after prison was particularly hard since they

feared being arrested again without being informed about the reasons for their arrest. One alleged terrorist claims being visited by the Intelligence Services of the Lebanese Army twice a week for more than a year after his release from prison. A high profile politician, he says, intervened for the visits to stop.²⁴⁸ Another alleged terrorist says that his detention ruined his life; his wife asked for a divorce and he can no longer see his son. His parents were forced to sell his business and the ability to start another one is very difficult. "I don't feel that I am thirty years old, I am actually three months old, which is the period since I got out of [—] prison," he says.²⁴⁹ NGO participants also confirm the post-prison struggles, highlighting the social and economic pressure and strain felt by ex-detainees, which break up families. This is the most evident when detainees are imprisoned for long periods of time and require a significant amount of money to survive inside prison (buy cigarettes, get access to phone calls, live in better conditions, etc.). The NGOs participants also noted the inexistent support given to families of the detained by the Ministry of Social Affairs.²⁵⁰

"I'll tell you how the society deals with me. Would you let your sister marry me? You wouldn't would you?" ²⁵¹ (Lebanese ex-detainee)

"People do not want to deal with you anymore. No one says anything, but you feel it. Some people start distancing themselves and you stop seeing them." ²⁵² (Wife of ex-detainee)

SNAPSHOTS ON VULNERABLE DETAINEES

a) Terrorizing Alleged Terrorists

Alleged terrorists are a group of individuals who are very vulnerable to capricious practices of the state when it deprives individuals without charging them or granting them the right to appear before a court within a reasonable time. They also risk having an array of procedural guarantees violated in the name of the state's fight against terrorism. Some of the practices they are subjected to, from the first moments of arrest, are not codified and subject to the discretion of authorities.

No state should allow secret deprivation of liberty for potential or actual indefinite periods, beyond the protectionist scope of the law and without recourse to legal procedures, such as *habeas corpus*.²⁵³ However, the revelations from the alleged terrorists during the one on one interviews have revealed the exact opposite. Fitting squarely within the parameters of Category I arbitrary detention, secret detention is said to occur:

if State authorities acting in their official capacity, or persons acting under the orders thereof, with the authorization, consent, support or acquiescence of the State, or in any other situation where the action or omission of the detaining person is attributable to the state, deprive persons of their liberty; where the person is not permitted any contact with the outside world ("*incomunicado* detention"); and when the detaining or otherwise competent authority denies, refuses to confirm or deny or actively conceals the fact that the person is deprived of his/her liberty hidden from the outside world, including, for example, family, independent lawyers or non-governmental organizations, or refuses to provide or actively conceals information about the fate or whereabouts of the detainee.²⁵⁴

Moreover, the deprivation of liberty does need to be in a secret place of detention to be considered a secret detention. The detention can take place in an illegal or legal place of detention, as well as in a section or wing that is not officially recognized, but also in a legal place of detention. The qualifying factor in determining whether a detention is secret or not is by its character as an *incomunicado* detention and also by the fact that state authorities do not reveal the place of detention or information about the detainee. This means, that the detention can occur in a prison, police station, government building, military facility, house, hotel, plane, etc.²⁵⁵ Also important to note is that in

most cases, the secret detention can also imply that the detainee is not aware of the duration of the detention itself, because it depends on the discretion of the holding authorities. This inevitably leads to potential or actual indefinite periods of deprivation of liberty, which adds to the arbitrary nature of the detention.

Secret detention violates the right to personal liberty and impinges on the right to be free from arbitrary arrest and/or detention. It also violates the right to be presumed innocent until proven guilty, deprives the detainee of the right to a fair trial and violates articles 9(1)(2)(3)(4) and 14 of the ICCPR. Moreover, “secrecy and insecurity caused by the denial of contact to the outside world and the fact that family members have no knowledge of their whereabouts and fate [—] are conducive to confessions obtained under torture or other forms or ill-treatment.”²⁵⁶ Sufferings of the family of the detainee may also constitute torture or other forms of ill-treatment.²⁵⁷ Even short periods of *incommunicado* detention can be a violation by the state, as per article 10(1) of the ICCPR. The HRC has said that “prisoners should be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, by correspondence as well as by receiving mail.”²⁵⁸

Secret detention is also a case of enforced disappearance, which is defined in article 2 of the International Convention for the Protection of all Persons from Enforced Disappearance as:

The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

It is equally important to note that the abovementioned definition is applied irrespective of the intent to hold the individual outside the protectionist scope of the law. The definition refers to enforced disappearance as the objective result of the “the denial, refusal or concealment of the whereabouts and fate of the person.”²⁵⁹ Because of these realities, which were also supported by the accounts revealed from the one on one interviews, the WGAD has set a list of principles and safeguards in line with articles 9, 10 of the UDHR and 9 and 14 of the ICCPR which relate to the deprivation of liberty of individuals accused of terrorism,²⁶⁰ many of which have been violated in the cases described above.

- a) Terrorist activities carried out by individuals shall be considered as punishable criminal offences, which shall be sanctioned by applying current and relevant penal and criminal procedure laws according to the different legal systems;
- b) Resort to administrative detention against suspects of such criminal activities is inadmissible;
- c) The detention of persons who are suspected of terrorist activities shall be accompanied by concrete charges;
- d) The persons detained under charges of terrorist acts shall be immediately informed of them, and shall be brought before a competent judicial authority, as soon as possible, and no later than within a reasonable time period;
- e) The persons detained under charges of terrorist activities shall enjoy the effective right to *habeas corpus* following their detention;
- f) The exercise of the right to *habeas corpus* does not impede on the obligation of the law enforcement authority responsible for the decision for detention or maintaining the detention, to present the detained person before a competent and independent judicial authority within a reasonable time period. Such a person shall be brought before a competent and independent judicial authority, which then evaluates the accusations, the basis of the deprivation of liberty, and the continuation of the judicial process;
- g) In the development of judgments against them, the persons accused of having engaged in terrorist activities shall have a right to enjoy the necessary guarantees of a fair trial, access to legal counsel and representation, as well as the ability to present exculpatory evidence and arguments and arguments under the same conditions as the prosecution, all of which should take place in an adversarial process;
- h) The persons convicted by a court of having carried out terrorist activities shall have the right to appeal against their sentences.²⁶¹

Improvements in law enforcement practices with this category of individuals is pressing so that Lebanon may adhere to its international human rights obligations. However, alleged terrorists are not the only ones who are prone to being arbitrarily detained, as the following section will demonstrate.

b) Trekking between Law and Lawlessness: Migrants, Refugees and Asylum Seekers

In Lebanon, violations of Category IV detentions are common place. According to the WGAD, criminalizing illegal entry into the country would serve to exceed a state's legitimate interest to control and regulate illegal immigration and would thus cause unnecessary deprivations of liberty.²⁶² In Lebanon this frowned upon practice exists; migrants, refugees and asylum seekers are exposed to human rights abuses as Lebanon has not ratified the 1951 and 1967 Convention and Protocol relating to the Status of Refugees nor the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country (1962 Law) criminalizes individuals who enter the country without proper authorization. Individuals who overstay the time limit prescribed in their visas are also at risk of being criminally prosecuted and administratively detained. Anyone accused of breaching the 1962 Law is subject to a financial penalty, imprisonment and finally, deportation according to article 32.²⁶³ Article 18 states that a foreigner who is to be deported may be arrested and detained for the period required to complete their travel formalities. However, deportation should only apply to cases where the individual would represent a threat to public safety, as per article 17 of the 1962 Law. Although article 26 of the 1962 Law grants foreign nationals the right to request political asylum in cases where for example, the individual is subject to prosecution or conviction by a non-Lebanese authority, or if his/her life or freedom is threatened, these asylum seekers can also be subject to the same treatment as irregular migrants. According to article 89 of the CC, a foreigner against whom a deportation order has been issued must leave Lebanese territory by his/her own means within fifteen days. Any breach of a judicial or administrative deportation measure shall be punishable by imprisonment between one and six months. Therefore, foreigners who are deemed to have breached the 1962 Law may also be charged with criminal offences that will consequently lead to their pre-trial detention, imprisonment and subsequent administrative detention.

The administrative detention of this category of individuals is served at the detention facility in Adlieh, where they are held for months until they are released or deported. Administrative detention of foreigners in Lebanon is not based on any judicial grounds that would justify the detention at the end of the criminal incarceration, save for the argument that it is required until the processing and completion of the papers. Should foreigners be released from detention, pending the processing of their

file, they become at risk of being caught again by law enforcement officials and subject to the same criminal proceedings. Lebanese law does not provide a time limit for administrative detention.

As mentioned, the subsequent detention of migrants, refugees and asylum seekers is served in the Adlieh retention centre, run by the GS, as a temporary holding facility has been subject to wide criticism for its detention conditions. The centre is located underground in the heart of Beirut, where detainees suffer from severe overcrowding, no ventilation or natural light, since there are no windows. There is also a lack of access to indoor and outdoor exercise. The periods of detention range from a few weeks to several months, all depending on many factors such as: embassy commitment, employer involvement, the UNHCR, the detainees financial status, etc.²⁶⁴ Sometimes, embassies are unresponsive and employers uncooperative and this exacerbates the conditions of detention for this category of detainees. At other times, these individuals languish unnecessarily, not having the sufficient funds to pay for their tickets back to their homeland, in which case, civil society organizations (CSOs), like Caritas Lebanon Migrants Center (CLMC) get involved.²⁶⁵ As of September, 2012, according to CLMC, there was an average of 450 detainees detained in Adlieh. This number has fluctuated in recent years, hitting an all-time low of 300 to an all-time high of approximately 600 people. Although the maximum capacity is around 400, CLMC executives say that this threshold is too high.²⁶⁶ A lawyer who has worked extensively with migrants, refugees and asylum seekers, says that if Adlieh is overcrowded, officials keep the detainee in prison after he/she has finished serving the criminal sentence, until the retention centre has more space.²⁶⁷

In 2010, the Beirut based Human Rights NGO, Centre Libanais des Droits Humains (CLDH), released a report revealing that between the months of April and September 2009, 415 out of the 5,154 individuals incarcerated had been arrested for illegal entry/stay in Lebanon. A staggering 15 per cent of those detained had completed their criminal sentence but remained in prison.²⁶⁸ In Jezzine for example, out of forty foreign detainees, twenty-nine had completed their sentences, according to ISF records on September 30, 2010.²⁶⁹

In Lebanon, this category of individuals is processed in a multi-tier system, where criminal justice and administrative justice become entangled, each one within the jurisdiction of different actors and ministries. The lack of legal protection is further compounded for domestic migrant workers in the sponsorship system, otherwise known as the *kaffala* system.²⁷⁰ At the base of this system lay administrative rules and legal regulations arising from the Lebanese Criminal Code, the 1962 Law, to the Ministry of Labor

requirements to name a few. The system has the employer acting as the powerbroker regarding the migrants' immigration status, whereas the state should be entirely responsible for immigration matters.

There are a few important observations to make regarding the impact of the *kaffala* system on domestic migrant workers. For example, the renewal of administrative papers is the responsibility of the domestic worker according to the 1962 Law. However, in many cases, the worker's papers are confiscated by his/her employer in fear that the worker might flee the house (employers tend to use this as a form of leverage to maintain control over the worker's movement). The first question that arises is the following: how then would the domestic worker renew his/her paperwork? In the case the domestic worker's living conditions become unbearable (e.g. abuse or sexual harassment, unpaid wages) and he/she flees the household and is subsequently caught for expired documents, the judge can hold the domestic worker responsible for breaching the law (not taking into account the circumstances regarding possession of the documents). Moreover, if the domestic worker is caught without the proper documentation, this would be considered a breach of the administrative regulations and punishable under article 770 of the CC. After the investigations and administrative process are completed and supposing the sponsor provides an airplane ticket, the migrant is then repatriated back to his/her homeland. In this case, like many others, the migrant may not have had access to a lawyer, his/her embassy or consul, an interpreter and will have been detained temporarily. The rights of this individual in this case have been completely stripped away and dictated by the discretion of the GS on one hand and by the fluid rules and regulations of administrative justice on the other.

These examples, which are not far-fetched, raise ethical dilemmas in a few regards: the servitude relationship between the employer and employee under the *kaffala* system, the amount of control that the GS possess over labour issues, the out-dated 1962 Law which does not reflect current realities, the inexistent legal framework specifically implemented for migrant workers that grants the right to freelance work for example, the inexistent middle ground between and most importantly, the legal responsibility of employers who directly and indirectly encourage illegal work and/or behaviour. An example of this would be the landlord who rents rooms and apartment units to migrants who have entered the country illegally. Prosecution in this case should not only be directed towards the migrant, but the Lebanese individual who in this case, facilitated the breach of the law.

“While administrative detention of asylum-seekers and illegal immigrants is not prohibited a priori by international human rights law, it can amount to arbitrary detention if it is not necessary in all circumstances of the case.”²⁷¹ In this regard, the WGAD has established criteria in order to determine whether or not the custody, or retention (in other words, detention) of aliens, asylum seekers or immigrants²⁷² is arbitrary. These guidelines include but are not limited to the right to appear promptly before a judicial or other authority upon being taken into custody, the necessity to set by law a maximum period for the deprivation of liberty, the existence of clear and exhaustive grounds for the detention; hence the legality by the law and also by a duly authorized authority, etc.²⁷³ When these guarantees do not exist or are violated, circumvented or not implemented accordingly, the WGAD may determine that the deprivation of liberty is in fact arbitrary.²⁷⁴ In the focus group discussions, one ex-detainee added that “[t]here are some Indian refugees who were detained for two years. They were just forgotten in the system.”²⁷⁵ ‘Forgotten’, to quote the focus group participant, is a word that also fittingly describes the plight of members from the Lesbian, Gay, Bisexual, Transsexual/Transgender and Queer community, who like migrants, refugees and asylum seekers, are further victimized by discriminatory domestic legislation.

c) LGBTQ: 'Bi-Victimization'

The prosecution of members of the LGBTQ community²⁷⁶ falls within the parameters of Category V arbitrary detention defined by the WGAD. This is due to the deprivation of liberty resulting from discrimination based on grounds of sexual orientation.

The victimization of the LGBTQ community is twofold in the Lebanese criminal justice system. First, these individuals are legally prosecuted for consensual homosexual relations between adults, according to article 534 of the Criminal Code, which reads: “[a]ny sexual intercourse contrary to the order of nature is punishable by imprisonment for up to one year.”²⁷⁷ Members of the community who face these charges can be subject to anal and penile examinations by a forensic doctor to prove the homosexual acts, which are tantamount to torture, cruel and inhuman or degrading treatment or punishment. Second, their experience in detention is exacerbated by the stigma they face because of their sexual orientation. The criminalization of homosexuals not only opens the door for the invasion of privacy, discrimination, extortion, torture but it also renders them more vulnerable to arbitrary arrest, let alone the usual lengthy delays in pre-trial detention and long delays in trial.

However, it is important to note that there have been cases where prosecution according to article 534 of the CC was not based on acts but rather on sexual orientation. The most infamous case occurred in 2009, when a woman reported her adult son to the authorities, who according to her, was acting like a woman, subsequently prompting the assumption that he was a homosexual. The son was declared innocent due to a lack of evidence.²⁷⁸

A 2009 study released by Doctor Wahid Al Farchichi and Lawyer Nizar Saghieh entitled “Homosexual Relations in the Penal Codes: General Study Regarding the Laws in the Arab Countries with a Report on Lebanon and Tunisia” states that suspects are detained for long periods of time, from six days to a month, which is a clear breach of article 113 of the CCP which provides for temporary custody for a maximum period of five days for misdemeanours carrying a maximum penalty of two years of imprisonment. Those who are prosecuted can be incarcerated for a few months and in one case, up to one year.²⁷⁹ The charges, swiftness of procedures and sentences all depend on the judicial police, public prosecutors and judges (investigating or single) involved in the case.

Helem, the first above-ground LGBTQ organization in the Middle East and North Africa, monitors human rights violations of individuals who are arrested or detained through various means. Most of the time, individuals will call their helpline or drop by their office to inform them that someone has been detained or taken in for questioning. In these cases, Helem informs lawyers in their network to accompany the suspect. At least once a month, Helem says,²⁸⁰ a member of the LGBTQ community is either threatened, robbed or assaulted on the grounds of sexual orientation.

These hate crimes instil fear in the victims, paralyzing them to the point of shuddering the thought of lodging a complaint at the local police station. This, they fear, will render them more vulnerable to prosecution, should it be known that they are members of the LGBTQ community. These hate crimes happen everywhere in Lebanon, Helem says. The intimidators usually pretend that they are law enforcement officials and provide fake identification cards to dissuade the victim from reporting the crime. Helem has not seen any great improvements in law enforcement practices and cites victims being taken to the Military Tribunal for their “perceived crimes” (if the member is from the military).²⁸¹ This exacerbates the human rights violations in many ways: first, there is the criminalization of homosexuality in article 534 of the CC, second there is the trend of arbitrary arrest/detention in criminal justice practices and third, procedural safeguards and guarantees tend to be violated at the Military Tribunal.

Recent cases have raised alarms in the public, while others slip under the radar. After raiding a porn cinema in Bourj Hammoud in July 2012, the vice squad (subdivision of the judicial police) detained thirty-five men and forced them to undergo anal tests at the Hobeiche police station after which three were charged under article 534 of the CC.²⁸² The arrests in Bourj Hammoud prompted a wide campaign denouncing homophobia, bigotry and racism. The raid was prompted following an MTV episode of *Enta Horr* (you are free/at liberty), which aired secret video footage in movie theatres that featured pornographic movies. The secret footage also revealed sexual activities in these types of establishments in Hamra and Tripoli.²⁸³ The episode and subsequent raid and arrests garnered the attention of various human rights organizations and activists. Human rights lawyers also contacted both the Ministry of Justice and the Order of Physicians urging them to end the practice of conducting anal probes on detainees, which violate human dignity and the right to privacy to name a few. The tests, conducted against the suspects also violate the right to be presumed innocent until proven guilty, since they are conducted before any charges have been laid down.²⁸⁴

After mounting pressure and advocacy, the Order of Physicians has deemed the practice of anal examination to determine homosexuality a gross violation of human rights. The circulation, signed by the head of the Order, Sharaf Abu Sharaf, stated that the “techniques do not give the desired result” and deemed the practice “torture in violation of the [United Nations] Convention Against Torture.”²⁸⁵ The circulation also stated that disciplinary prosecution will be carried out should any similar practice be carried out. The MoJ, on the other hand, has been criticized for its inadequate response. The MoJ has held that prosecutors should obtain consent prior to conducting the test but adds that refusal can be considered evidence of homosexuality, according to a copy on Legal Agenda’s website.²⁸⁶ Since the raids, the press has reported that two Lebanese men, aged forty-two and twenty-two, were caught and detained for “carrying out indecent acts” in a vehicle.²⁸⁷ The fate of their detention has not been publicized, however their case, alongside the following ones flagged by Helem, are still endemic of a culture of impunity and noteworthy to mention:

- Case 1: In 2012, a victim of theft and aggravated assault went to the police station to file a complaint. The culprits were caught but in retrospect, they accused the plaintiff of homosexuality. After mounting pressure from the police, the focus became about the plaintiff’s sexual orientation. The investigation was dropped on both ends, but the victim claims he was harassed for approximately two weeks after the incident by police.
- Case 2: Also in 2012, three men were apprehended in their vehicle by police. After brief questioning, they were transferred to Hobeiche police station for illegal drug use. One of the suspects looked a bit effeminate and according to the suspects, this prompted the public prosecutor to request an anal exam, which came back negative. One of the suspects, a Lebanese national, was freed after forty-eight hours of detention and a *wasta*. The two others, both foreigners, remained in police custody. The first individual was kept in Hobeiche for five days and transferred to the GS where he remained in detention for an additional ten days. The second was released after three months, having spent five days in Hobeiche and the remainder with the GS until he was repatriated to a country of asylum. The charges were dropped for all three individuals.
- Case 3: In 2009-2010, neighbours, who often complained about a transgender’s (male to female transgender) conspicuous demeanour and attire, convinced the woman that she was wanted by the police for questioning for a certain incident. Under pressure, she confessed to authorities that she had engaged in homosexual relations. She was subsequently charged under article 534 of the CC and was sentenced to

three months of imprisonment. However, she languished in prison for nine months because she could not afford to pay her fine. After pressure from various organizations, she was released.

The experiences of members of the LGBTQ community in the criminal justice system tend to be concealed from criticism and opposition since many do not come forward publicly for fear of further discrimination and prosecution. As mentioned earlier, their human rights violations begin in the Criminal Code, within the parameters of article 534 of the CC and then with cases of arbitrary deprivation of liberty, hence the 'bi-victimization'. However, this category of individuals is not the only one to suffer in silence. Like the LGBTQ, the plight of juvenile delinquents is also to a large extent, hidden from the public.

d) Minor Offenders; Major Consequences

i. *Profile of Juvenile Delinquents*

Interviews and desk research have revealed that a majority of the crimes committed by juveniles are petty offences or less serious crimes. Theft is the most common crime, occurring 70 per cent of the time. Approximately 90 per cent of the crimes committed by juveniles are due to their socio-economic backgrounds. These youth most often come from impoverished backgrounds, with little to no education or parental support/supervision.²⁸⁸ Their crimes are often unplanned, opportunistic, and reflect attention seeking in some cases. When children commit crimes as individuals and not part of a group, this indicates an impulsive tendency, that is not pre-meditated. However, juveniles also commit crimes as part of gangs, which raises new concerns: exploitation. There is about a 30-40 per cent recidivism rate according to one lawyer who works in juvenile justice.²⁸⁹ This rate is an indicator of the effectiveness of the Lebanese criminal justice system's interventions targeted towards juvenile offenders with regards to rehabilitation, education, skills-training (depending on their age, sex and personality), etc.²⁹⁰

ii. *Law 422*

On July 6, 2002, Law No. 422,²⁹¹ entitled "Protection of Children in Violation of the Law or Exposed to Danger" (Law 422) was enacted by the Lebanese Parliament. It overhauled the juvenile justice system by creating juvenile courts, focusing on education, rehabilitation and protection as opposed to punishment. These improvements respect the international human rights standards that require recognizing the special treatment of juveniles due to their age and that all measures should address rehabilitation.

Before 2002, legislation did not properly address juvenile delinquency and authorities responsible for administering juvenile justice did not understand the specific needs of this category of delinquents.²⁹² With the adoption of Law 422, the interests of the juvenile are of utmost importance (article 2) and incarceration is regarded as an exceptional measure. Hence, measures taken by the court can include reprimands, protection, supervised freedom, victim reparation, etc.²⁹³ The new alternatives to detention also improve Lebanon's compliance with article 37 of the Convention on the Rights of the Child's (CRC), which states that "[t]he arrest, detention or imprisonment of a child shall be [—] used only as a measure of last resort and for the shortest appropriate

period of time.” Preventive detention is still applied, but only for specific crimes and must correspond to specific criteria. Should detention be ordered, it must be carried out in the appropriate facility, the juvenile must undergo a physical and psychological examination, after which a social and medical file must be prepared.²⁹⁴ The juvenile benefits from the protectionist scope of Law 422 until he/she reaches the age of twenty-one.²⁹⁵ Despite its breakthroughs and legal innovations, the law has been praised by many to be good in theory, but redundant in practice due to a lack of resources. Others on the other hand, shudder at very important legal gaps and disregard the practice. Below are some of the main loopholes that were detected through desk and field research.

First, there is an issue with the minimum age of criminal responsibility. “In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.”²⁹⁶ International practice has set the bar between twelve and fourteen years of age; anything below this would be incompatible with the legal and social implications associated with criminal responsibility.²⁹⁷ In Lebanon, the minimum age of criminal responsibility has been set at seven years old; a child at this age cannot comply with the moral and psychological components of criminal responsibility and does not have the capacity to fully discern and understand his/her actions, nor can he/she be held responsible for his/her anti-social behaviour.²⁹⁸ The minimum age of criminal responsibility in Lebanon is not only too low according to international practice but most importantly, it contravenes the CRC. There has been lobbying to increase the age of criminal responsibility and during the 2010-2011 period, a draft law was proposed in Parliament to increase the age to ten years old.²⁹⁹ However, some practitioners do not agree with raising the age of criminal responsibility, due to the current status quo in Lebanon (absence of the rule of law and accountability) and because the state is in dire need of curbing juvenile criminal activity. To illustrate, the Association for Protection of Juveniles in Lebanon (UPEL)³⁰⁰ explains that there are very young children who deal drugs and are fully aware of the illegality of their actions, there are also children who are responsible for blocking the airport road and children that were involved in the Naher al-Bared conflict, which led to their detention at the MoD.³⁰¹ Mandated by the Ministry of Justice, UPEL works directly with the juvenile courts and its personnel accompanies juveniles throughout the judicial process, by providing psychosocial care and legal assistance.³⁰² A child who is in conflict with the law, can also become a protection case for UPEL.³⁰³

Second, the right of appeal in article 44 of Law 422 is problematic. In misdemeanor cases of حق العام (the right of the state to seek justice), decisions of the juvenile judge are final. However, the sentence can be reviewed (not a usual course of appeal) by an application for retrial according to the circumstances enumerated in article 328 of the CCP. In felony cases, an appeal of the decisions of the Juvenile Court is only available at the Court of Cassation.³⁰⁴ Judgments from the Juvenile Court should be appealed to the Courts of Appeal, which differs from the Court of Cassation (the last court of appeal and the highest court), in that it reviews the case on its legal and factual aspects. This court may also request a retrial. When the Court of Cassation is seized with a verdict from the lower courts, its jurisdiction is limited to a legal one; it determines if the rule of law was correctly applied based on the facts assessed by the lower court. In other words, this unique court does not rule on the merits of the case but whether the verdict is lawful or not. If the Court of Cassation determines that the verdict is not lawful, it will overrule the lower court's decision, request a retrial and adjudicate using the same procedures as the lower court. The right to appeal at the first instance, to a higher court is one of the tenants that coincides with the right to a fair trial in criminal proceedings. Appeals before the Court of Appeal are accepted according to the time limits prescribed by criminal procedural law in cases where there was a complainant and the juvenile was ordered to pay damages. These damages can be the subject of an appeal to the Court of Appeal. As such, it is possible to state that article 44 of Law 422 does not fully respect article 40(2)(b)(v) of the CRC.

Third, according to article 34 of law 422, authorities must contact a social worker (usually from UPEL), in order to be present during the first six hours of detention for the police interrogation. This procedure is applied in cases of offences discovered during their commission or immediately afterwards. The authorities, such as the judicial police or the public prosecutor should also notify the child's parents or legal guardians, or other caretaker. Should a social worker not be able to appear for the interrogation, the authorities should contact the social workers mandated by the Ministry of Social Affairs, who should automatically begin a background check on the child (social environment that the child comes from). In the case that a social worker does not accompany the child during the interrogation session, this does not nullify the questioning according to Law 422. However, if a social worker is not contacted once the child is detained, then disciplinary measures against the authorities will follow suit. According to one lawyer, 40 per cent of the interrogations with juveniles occur in the absence of the social worker. This is due to a lack of social workers available and because authorities do not contact them. There have also been accounts of social workers being

replaced by the suspect's parents during investigations in remote locations in the country, with the authorities and parents signing off on the preliminary record. This is partly due to a lack of social workers available and the distance the social worker has to travel. In this way, the authorities can claim that there was oversight of the interrogations. Interestingly, some legal practitioners are weary about the presence of a social worker during the preliminary questioning as opposed to a lawyer, believing that the lawyer is better equipped than the social worker—who has no legal background—with the tools to identify abuse in legal procedure. Conversely, proponents of the presence of the social worker contend that under the parameters of article 47 of the CCP, the lawyer is barred from being present during questioning. In practice, the suspect is only allowed to notify a lawyer about his/her circumstances,³⁰⁵ therefore the presence of the social worker is key in protecting the child from any abusive procedures.³⁰⁶

Fourth, article 50 of Law 422 has received criticism from many lawyers. When the judge hands down a criminal sentence (such as imprisonment as opposed to community service, etc.), it goes into the juvenile's criminal record. Lawyers contend that the judge can issue a *تدبير* (an alternative measure/remedy) which does not taint the criminal record and negatively impact the child's future job prospects for example. This alternative remedy does not change the outcome of the verdict, it is simply a way to avoid affecting the criminal record.³⁰⁷

Fifth, if the juvenile is caught for a crime with an adult, he/she is transferred to the ordinary courts (article 33). There, the judge will have the jurisdiction for purposes of the investigation, determining the child's involvement in the crime and the nature thereof. This judge will also determine if the juvenile is guilty of the crime in question. However, the sentence will be handed down by the juvenile judge. Before the juvenile judge gives his sentence, the juvenile can request an appeal of the ordinary court's verdict via the ordinary criminal procedures. In this case, the juvenile can get access to the Court of Appeal and then the Court of Cassation (to be compared with the juvenile justice process for appeals which are more restrictive in nature). Processing the case in the ordinary courts, which are already suffering from a backlog, is an opening for long delays in trial, which would exacerbate the conditions of detention of the child. Some jurists contend that this practice is not acceptable and that the files must be completely separated because there is a juvenile involved. Others say that the transfer to the ordinary courts is perfectly acceptable because a criminal case cannot be split into separate courts and legal procedures.³⁰⁸

Other shortages in the law have been noted by Dr. Nidal Jurdi,³⁰⁹ who points for the need to have greater child participation in the proceedings and mediation for example. He also notes that there is no protection from: corporal punishment, torture, child labour, prostitution, and so on (article 25), which remains general and determined at the discretion of the judge. The law also does not state that there must be intervention by social and/or public institutions prior to the judge's intervention in the case. Finally, a sentence of imprisonment as a measure of last resort is indicated in article 2 but not reiterated in article 5, which enumerates the measures and penalties associated with offences and crimes committed by juveniles.³¹⁰

Improvements and positive notes about Law 422 have been numerous. First, the law takes into account the special needs and treatment of this group of offenders, who must be afforded special protection and whose best interests must always prevail. It has also made way for alternative measures to the deprivation of liberty and given the juvenile judge broad discretion for the best interests of the child (article 26). Since the law came into force, the number of juveniles in prison has been greatly reduced according to many lawyers and NGOs.

iii. Detention Conditions

While imposing one of the measures and sanctions listed in article 5 (public blame, probation, protection, supervised freedom and providing labour to benefit the public or compensate the victim, rehabilitation, disciplinary measures, reduced penalties), the juvenile judge needs to take into account the age of the child, as of the date when the crime was committed, in the following circumstances, according to article 6:

- Seven to twelve years old: The judge might issue all of the measures and sanctions except the disciplinary measures and the reduced penalties.
- Twelve to fifteen years old: The judge might issue all measures and sanctions except the reduced penalties. However, in the case of a felony, اللوم (public blame) is insufficient.
- Fifteen to eighteen years old: The judge might issue all of the measures and sanctions in the case of a felony, unless the juvenile is accused of murder, punishable by the death penalty, in which case, a reduced penalty will be imposed.

In Lebanon, juveniles boys are detained in Roumieh's juvenile correctional centre (block C)³¹¹ and in UPEL's correctional facility in Fanar. Juveniles held

in Roumieh are usually fifteen years old and above and are usually accused of murder, drugs, theft with weapons or assault, all of which are deemed serious crimes punishable by imprisonment.³¹² Below the age of fifteen, they are off to UPEL for rehabilitation and/or to serve a sentence of a maximum period of two years.³¹³ They can also be sent to Mouvement Social for example to benefit from alternatives to imprisonment, such as engaging in community service. Juveniles who are first time offenders, admit to their offence and are under the age of fifteen can benefit from this alternative.³¹⁴ The establishment of these facilities is very important since states must establish a minimum age where juveniles suspected of committing a crime cannot be deprived of their liberty. If this cannot be avoided, special institutions, independent of prisons and under the jurisdiction of the appropriate authorities, with appropriate judicial supervision, should be provided.³¹⁵

The living conditions of juveniles in Roumieh are much better than those of their adult counterparts. The walls are clean, painted, each detainee has a bed and there is no overcrowding according to a lawyer from Fondation Père Afif Osseiran (FPAO).³¹⁶ However, it is important to note that there is no specialized personnel guarding the juveniles; this task falls on the ISF. Conversely, UPEL's facility suffers from chronic overcrowding. The facility used to house juveniles on three floors, whereas now, there is only one functional floor, which crammed approximately twenty-six children at the end of August 2012. This, UPEL says, is strictly due to a lack of resources.³¹⁷ Because of the lack of space, it is possible to find juveniles below the age of fifteen in Roumieh, which makes respecting the abovementioned guidelines a challenge.³¹⁸

On the other hand, girls are detained in the Daher al-Bashek centre. In July 2012, there were approximately a dozen girls in the facility, usually detained for prostitution or drug related charges. One was serving time for murder. However In Daher al-Bashek, there is no rehabilitation programs for girls.³²⁰

Despite having ratified the 1989 Convention on the Rights of the Child in 1991, Lebanon's criminal justice system is still stunted by a lack of resources, which makes compliance with the CRC a challenge in certain areas. The state still has no rehabilitation or re-integration programs for juveniles once released. This task falls on various NGOs, such as FPAO for example. The organization has re-insertion centres and halfway houses for juveniles who cannot go back to their families after serving a sentence. There, the juvenile will be provided with shelter, education, rehabilitation and vocational training to overcome his/her socio-economic obstacles.³²¹ According to many, prison administration should fall squarely within the authority of the MoJ; who would have staff that is adequately trained to deal with detained juveniles. On a positive note,

Roumieh's juvenile wing opened its social affairs centre in the summer of 2012, aiming to provide awareness and individual therapies for underage prisoners. Eight professional social workers are available to counsel inmates on the everyday problems they face while incarcerated and discourage them from drug dealing and drug abuse. The Minister of Interior Marwan Charbel and Minister of Social Affairs, Wael Abu Faour inaugurated the centre and promised similar centres in all prisons across the country.³²²

Although the juvenile wing is separate from the adults, there is still some contact between these categories of detainees, which violates article 37(c) of the CRC that states that any child arrested, detained or imprisoned "shall be separated from adults" with rare exceptions. The juveniles should not only be separated from adults but also from convicted juveniles as well.³²³ In Roumieh, separation between juveniles is done at the cell level, where hard-line offenders are separated from juveniles accused of committing less heinous crimes. However, the different classes of offenders do mix in the common areas. On the other hand, juveniles come into contact with adults when they go to the medical centre for treatment or during visiting hours. This situation is however a great improvement according to a lawyer who works with juveniles, since there used to be about 80 per cent contact with adults in the past. Improvements still need to be made, since juveniles not only come into contact with adults in prison, but in police stations as well.³²⁴

iv. Criminal Justice and Arbitrary Detention

Arbitrary detention of juveniles in Lebanon is no exception to the trend, however many practitioners have seen an improvement in detention practices. Today, about 50 per cent of children processed in the criminal justice system are arbitrarily detained and this can be due to a number of reasons (such as the lack of judges, slowness of legal procedures etc.) and can materialize in a number of ways. Arbitrary detention can be due to the complexity of the crime, the number of culprits, the lack of oversight mechanisms regarding judicial police behaviour, etc. Conversely, some juveniles, stay in prison beyond the term of their sentence, unable to pay their fine.³²⁵ Detention beyond the prison term has also been noted by the juvenile correctional centre's director.³²⁶ Some juveniles are detained beyond the prescribed time for questioning, under article 32 of the CCP. Another reason a child might be arbitrarily detained is within the parameters of article 33 of Law 422; should the child be charged with committing a crime with an adult, he/she may end up experiencing long delays in trial.³²⁷

It is important to note that the law does not require the judge to impose a fine, but most order the payment. According to one lawyer, this is utter abuse.³²⁸ Ordering bail or other financial guarantees in the case of juveniles is inappropriate, because it is highly unlikely that juveniles would have the means to be released pending trial. Any law that stipulates the necessity to pay bail is incompatible with the principle that detention should be exceptional for juveniles.³²⁹ On that note, many legal practitioners and other professionals working in this field claim that only a minority of judges are aware of the special needs and circumstances of the child. Judges are also not an exception; interviewees point to the blatant disregard for the law by other actors, such as judicial police, lawyers and public prosecutors in some cases, who are simply not specialized or trained enough to deal with juveniles. Accounts from interviewees reveal that there have been cases of children getting abused in police stations. Judicial police, they say, tend to detain a juvenile who has been abused for a few additional days before transferring them to the investigating judge (until signs of abuse, such as bruises fade away). Approximately 30 per cent of juveniles abused at the hands of the authorities, usually between the ages of fifteen and eighteen, inform the investigating judge, says one lawyer.³³⁰ These cases, along many others illustrate the imperative need for professional specialization in juvenile justice to ensure the respect for human rights and proper administration of justice.

Members of the police force, prosecutors, judges, social workers and other child representatives should receive systematic human rights and awareness about mental, physical, psychological and social development. Continuing education for these professionals must also address the special needs of children according to sex, age, socio-economic status, disability, civic status, etc. Particularly important is training geared towards the girl child, who makes up a small percentage of the correctional facility population and has particular needs. Should the girl child be convicted of prostitution, then health care, abuse counselling, etc., must be incorporated into her rehabilitation. All actors that operate in the juvenile justice system must at all times behave in a manner that protects the child and serves his/her best interests. In doing so, this would reinforce the respect of their human rights and pave the way for the child's social reintegration, as per article 40(1) of the CRC.

How speedy are their trials? In general, between the moment of arrest and the conviction, it takes approximately one year for the juvenile's case to be processed according to one lawyer's experience. This is much faster than with the adults. The pre-trial phase, say interviewees, depends on the dedication of the lawyer, the complexity of the case (number of culprits) and the crime itself (was it committed with an adult?).³³¹ In a report released by the Ministry of

Interior and Municipalities, it was reported that at the end of 2010 in Roumieh, ninety-four juveniles were in pre-trial detention. This number is alarming since these juveniles were amongst 104 imprisoned.³³² This is not the only form of victimization experienced by juveniles in the Lebanese criminal justice system, as one lawyer recalls the following cases in 2012:³³³

- Case 1: A child was accused of theft for having eaten a piece of cake at the supermarket, which he did not pay for. The public prosecutor warranted the detention of the child and charged the child with theft. After mounting pressure from outraged lawyers, the public prosecutor dropped the charges, however, the investigating judge did not agree. Finally, the child was fostered by FPAO for one year for education purposes.
- Case 2: A fifteen year old child was reportedly taken from one police station to another and abused in all. He spent fifteen, ten, seventeen and finally seven days in each police station respectively, before he was transferred to Roumieh.
- Case 3: A fifteen year old child was charged with attempted theft when he barged into a woman's home. The woman dropped her complaint when the juvenile's mental incapacity became known, however, the juvenile was still subject to *حق العام* (the right of the state to seek justice). The child was detained for approximately twenty days, bouncing from police stations to investigative bureaus, after which he was transferred to the Baabda Courthouse.

Briefly, the first and last case are essentially problematic because public prosecutors in Lebanon are vested in discretionary functions that give them the authority to decide whether or not to prosecute a juvenile. In exercising their discretionary functions, they should be considerate of the nature and gravity of the offence, the background of the child, his/her personality and the protection of society. The public prosecutor should make an effort to prosecute juveniles only in cases that are strictly necessary.³³⁴ The second and third case are blatant examples of arbitrary detention (article 37(b)) and the second depicts a flagrant breach of article 37(a) of the CRC that prohibits "torture or other cruel, inhuman or degrading treatment or punishment." The last scenario is also a clear example of a violation of article 37(c), where the needs of the child (mental disability) were not taken into account while he was deprived of his liberty. This class of detainees are at particular risk of suffering from human rights violations, such as ill-treatment and arbitrary detention. These abuses can serve to counter-effect the aims of Law 422 regarding social reintegration and rehabilitation. Social reintegration is not only severely affected with regards to juveniles but also with regards to detainees such as the ones who participated in the focus groups and one on one interviews.

HALF-BAKED SOLUTIONS: PRISON UNREST, REFORMS AND POLICING

As seen in earlier sections, precarious and degrading living conditions negatively impede on the rights of legal defence. This renders pre-trial detainees vulnerable and impacts the principle of 'equality of arms', in turn affecting the right to a fair trial. Pre-trial detainees have the right to be presumed innocent until proven guilty and in the case of convicts, their punishment should be strictly limited to the deprivation of liberty and not encompass threats to their life, security or physical integrity.³³⁵ It is also possible to state that pre-trial detention can become arbitrary in nature where "the conditions are such as to create an incentive for self-incrimination, or – even worse – to make pre-trial detention a form of advance punishment in violation of the presumption of innocence."³³⁶ All of the above serve to hamper the effective administration of justice, with the increase in the number of detainees who await their trials and the amount of proceedings before the courts. This becomes a gateway for forgotten files and a lack of effective control over criminal cases which can be attributed to many factors, such as the unsatisfactory legal aid system.

The deprivation of liberty of the detainees is also exacerbated by the fact that many of the officials responsible for prison administration do not want to work in prisons. This reality is also compounded by their policing attitudes. These officials essentially got the "short end of the stick" and are not working in these facilities by will. For them, "working in prisons is already a punishment how are they then supposed to treat the prisoners who have their own survival to deal with?" says one interviewee in October 2012. This criticism is not limited to members of the ISF. In a visit to the prison in Aley, a single criminal judge recalls how a sick prisoner informed him that he did not have medication for his illness because the contracted nurse had not visited the prison in six months.³³⁷ This is where the recruitment of qualified, motivated and eager staff to run prisons and oversee the wellbeing of detainees becomes critical, particularly for rehabilitation purposes (such as encouraging good behaviour). Rehabilitation is an important prison policy that simply does not exist in Lebanon; prison has become a place where an accused or convict is literally locked up and punished.

The disillusionment with the present status quo is being echoed by many through different outlets. In April 2012, a six hour long riot broke out in Baalbek's prison. Inmates burnt their mattresses and threatened self-immolation in a bid to protest the long delays in trial and authorities' slackness in releasing detainees who have finished serving their sentences.³³⁸

In June 2012, law enforcement officials successfully concluded negotiations with Roumieh detainees who broke out of their courtroom holding confine at the Baabda Courthouse. Fourteen of the fifty detainees reportedly smashed a window and waved shattered pieces of glass. They also threatened to harm the presiding judge and at least two of them deliberately cut themselves with glass. The judge and lawyers were not harmed during the standoff, while the men were protesting the delays in their legal proceedings. The detainees surrendered when Judge Claude Karam promised to speed up their trials.³³⁹ A month later, a Yemeni Fateh al-Islam inmate tried to escape from Roumieh but was unsuccessful. Alleged terrorists with links to Fateh al-Islam have been detained for several years without trial following clashes with the Lebanese Army in Naher al-Bared in 2007. It was reported that a total of approximately 570 people were sought for their involvement in the conflict and since then, it is estimated that 147 detainees have been released. Approximately ninety-eight remain in custody.³⁴⁰ In June 2012, a total of fourteen alleged terrorists were released,³⁴¹ seven of which whose LBP 500, 000 bail was paid by Prime Minister Najib Mikati's office. Upon their release, the detainees blasted judicial authorities for detaining them for several years without trial. Many relatives of those detained began protests for faster trials across the country, mainly in Tripoli.³⁴² The following month, four more Palestinian detainees were released, but the men were handed over to the GS.³⁴³

Pressure and protest from families has not been strictly limited to the Naher al-Bared inmates. In August 2012, the relatives of Alfa telecommunications engineer Tarek Rabaa, accused of collaborating with Israel, protested near the Military Tribunal where he was being held for questioning.³⁴⁴ Rabaa was summoned on July 12, 2010 for questioning by the Ministry of Defense. Rabaa only had access to his lawyer thirty-two days after his arrest. He was held at the MoD's detention centre for 108 days, where he was allegedly tortured and subject to ill-treatment before being transferred to Roumieh prison.³⁴⁵ His detention at the MoD violated Lebanon's Code of Criminal Procedure, which provides for a maximum custodial detention of forty-eight hours, renewable once.

In September 2012, another riot broke out in Roumieh prison. The detainees are reported to have burnt bed sheets and set trash cans on fire before holding ten policemen hostage. The prisoners released the law enforcement personnel after authorities promised to convey their demands for amnesty to the relevant officials.³⁴⁶

On October 12, 2012, the escape of three Fateh al-Islam inmates from Roumieh prison was discovered. The jailbreak, which is believed to have happened over a month before the discovery, caused an uproar with various ministries and politicians. A raid subsequently ensued at the block – where inmates have access to the internet and a television – where the Fateh al-Islam detainees were being held. Cell phones and sharp objects among other items were confiscated.³⁴⁷ It is believed that the three escapes, with the help of some security personnel at the prison, used fake identification documents. It was also revealed that the cells where these inmates were being held had not been inspected since 2010.³⁴⁸ As a result, eighteen policemen, all members of the ISF, were charged by a military prosecutor for crimes including negligence to complicity. Nuhad Jabr, president of the Beirut Bar Association, said in a statement that “there must be an end to this chaos in Lebanese prisons and the bribery and the prejudiced method of dealing with the prisoners.”³⁴⁹

a) Legal Reforms and Prison Condition Improvement

In a positive light, it is noteworthy to mention some of the improvements and developments that have made headlines across the country in terms of legal reforms and prison condition improvement:

- In July 2012, approximately sixty volunteers from the Joy of Giving organization began renovating Aley prison. The work has involved expanding the exercise yard, administration offices and the two detention rooms which hold more than eighty inmates in unsanitary conditions. The renovations also include building a kitchen and lavatories. The work is being coordinated alongside the ISF General Directorate.³⁵⁰
- In 2012, a two yearlong project implemented by the International Committee of the Red Cross (ICRC) has resulted in a water supply increase for Roumieh prison by roughly 50 per cent. Alongside Lebanese authorities, the ICRC also provided medical supplies and equipment for the prison's medical centre and administered first-aid training for staff.³⁵¹
- In September 2012, the Qobbeh prison in Tripoli opened its new dental clinic and sewing workshop, which aim to rehabilitate detainees. The Restart Center for Rehabilitating Victims of Violence and Torture inaugurated the workshop alongside the Minister of Interior. The inmates will also reap the monetary rewards since the ISF uniforms that they will make will be sold by the ISF General Directorate to its personnel. These workshops will also serve to train inmates and help them develop a skill that they can use to support themselves upon their release from prison.³⁵²
- In October 2012, shortly after the discovery of the Roumieh jailbreak incident, the Minister of Interior Marwan Charbel and Minister of Justice Chakib Qortbawi inaugurated a new courtroom in Roumieh, which aims to expedite the trials of the Fateh al-Islam detainees.³⁵³

One NGO in Lebanon, the Association of Justice and Mercy also known as AJEM, has been working on a project to prevent individuals with schizophrenia from being incarcerated if they committed their crimes under hallucination. Should this project make headway, it would be an important and much needed development in the legal system. Currently, the courts do not psychologically assess individuals accused of crimes, leading to the incarceration of people who suffer from psychological problems as opposed to providing them with treatment in an asylum for example.³⁵⁴ A study conducted by the World Health Organization in 2010 revealed that between 6-10 per cent of inmates suffer

from psychosis, a mental state where the individual loses contact with reality. The mental health of these detainees is therefore further exacerbated in prison because of the absence of diagnosis and the lack of services for the mentally ill. According to one lawyer from AJEM, legislation regarding criminal insanity has not been reviewed since 1943. A psychologist with the association also notes that when a mentally ill individual is incarcerated, it becomes virtually impossible to refer him/her to a psychiatric hospital for treatment because reopening the case is very time consuming and subject to bureaucratic hurdles. Additionally, recidivism amongst this class of detainees is very likely because of their undiagnosed condition.³⁵⁵ Therefore, legal steps such as the ones initiated by AJEM, alongside the training of legal practitioners in mental health awareness, are some of the initiatives required to help tackle this issue.

Earlier in 2012, around two dozen inmates were released from prison pending the expiry of their sentence after philanthropists donated to pay the fines that they could not afford. Between LBP 300,000 and LBP 28 million were given to each of the sixteen inmates who were released from prisons in the Bekaa region. The project to free inmates in all Lebanese prisons who have already completed their sentences but cannot afford to pay their fines began in March 2012 and is conducted in collaboration with Minister of Interior Marwan Charbel. Donors are also flying foreign nationals formerly detained in Adlieh back to their homelands.³⁵⁶ Also in March 2012, the Lebanese Parliament passed a draft law that would shorten the prison year from twelve months to nine months. Inmates who are sentenced to less than one year of imprisonment will serve one month in a period of twenty days. However, this excludes inmates who have been sentenced to death or to life in prison, alongside those who are convicted of recommitting their crime. At the time, Minister of Justice Qortbawi said that approximately eighty prisoners would benefit from the reduction, the goal of which is not to reduce overcrowding but to be a form of rehabilitation. According to the Minister, approximately 37 per cent of all inmates are charged with one crime while the remainder are charged with multiple crimes or convicted of one and awaiting trial for another one.³⁵⁷ Up until August 2012, approximately 400 prisoners benefited from the reduced imprisonment year. However, some prisoners are still disgruntled, unable to pay the fine to complete their release upon the expiry of their sentence.³⁵⁸ Despite the intentions behind the reforms, critics claim that the law enables the early release of criminal deviants accused of serious crimes into society, hence, a murderer can be released in a matter of a few years. Second, the reduction does not take into account the victims, as the law is open for all crimes, regardless of the gravity or gruesomeness, save for those sentenced to death or life in prison. The solution, says one interviewee, is not in reducing the prison year, but in building more prisons.³⁵⁹

b) Good Cop Bad Cop: Policing in Lebanon

In 2012, the ISF had approximately 30,000 members. This force represents double the number in 2005 and requires around USD\$500 million a year to support. State officials say the ISF has been successful in deterring criminality, particularly in the current political status quo, whereas critics contend that the ISF is corrupt and responsible for human rights violations that include abuse and arbitrary detention. In the last five years, reform projects have poured in through large donations from the European Union, the United States and the United Kingdom to name a few. These have included creating a Code of Conduct for the ISF (CoC), building a military training facility worth USD\$10 million, recruiting a large number of female police officers and participating in many seminars such as those related to torture. Some of the projects are on-going, therefore their effect and success have yet to be seen.³⁶⁰ ISF members have also been trained abroad, however, according to a brigade commander, the training of ISF abroad does not always reflect the current Lebanese landscape. What is needed is an internal audit of the work to identify the underlying problems faced by the force. The solution does not lie in importing outside practices that do not reflect the socio-political reality in Lebanon.³⁶¹

The CoC for the ISF was launched in January 2012 and distributed to ISF personnel in December 2011. The small booklet, drafted with the assistance of the Office of the High Commissioner for Human Rights (OHCHR) and the support of the British Embassy, contains professional and ethical standards of behaviour that officials must abide by to guarantee the respect and protection of human rights and public freedoms, all of which were drafted in line with Lebanon's Constitution, legislation and international human rights obligations. The CoC is used as "a means to reach the true objective, which is to reinforce the role of security forces in actively and effectively protecting human rights in Lebanon" said Fateh Azzam, former Middle East Regional Representative at the OHCHR.³⁶² Professional duty, the duty of superiors, honesty and integrity, impartiality, conduct, discipline, the use of force and firearms and lastly, the rights of suspects and detainees are all addressed.

The CoC also aims to show the ISF's transparency, accountability, good governance and respect for human rights; in essence, it regulates behaviour that should already be regulated. The booklet privatizes international human rights norms through codification, seemingly to give the norms a sense of existence and validity. The articles in the booklet are not new, they are enshrined in various legislative texts, rules and regulations and have simply

been combined into one document. In ALEF's review of the Code of Conduct, important discrepancies were identified with regards to the conflict with domestic legislation, the mechanisms of implementation and the terminology used in the booklet. Although the present Code's objectives do not include measures for any law reform, it has become clear that in order to rightfully respect the spirit of the document, law reforms must be developed. Another important note to add is that the Lebanese Armed Forces, who in practice have been playing the role of law enforcement officials – as the one on one interviews with alleged terrorists have revealed – are not governed by the CoC. Their critical mandate in contributing to maintaining the state's security and most importantly, its stability must also be regulated and respect international human rights standards. Therefore an adoption of a code of conduct such as the one used by the ISF, or the implementation of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in current practices is pressing.

In June 2012, an unofficial meeting was held by the British Embassy which brought together the ISF, NGOs representatives and police experts from other countries such as South Africa. The meeting covered the issue of police corruption and sought to determine how to improve law enforcement practices, since results from a poll indicated that the public does not trust the police.³⁶³ These results have also been reaffirmed by Lieutenant Colonel Ziad Kaedbey, head of the Human Rights Department within the General Directorate of the Internal Security Forces.

This disconnect between law enforcement officials and the public says a brigade commander, is due to a rift within society; the social contract is ruptured. This, he says, is sparking upheaval and chaos on the streets. Moreover, the culture of impunity has not only increased criminality but has also impacted law enforcement personnel in terms of motivation and ability to carry out their mandate effectively. The problem is not always with the law enforcement per se, but with society that has been disillusioned.³⁶⁴ Sometimes, law enforcement officials may feel like they are targets, where the force may have minutes to enter an area and apprehend a wanted criminal. In that minute, where the rule of law does not exist, members of the force actually become subject to capture themselves and get caught in the crossfire. A recent example of this paralysis occurred at the end of August 2012, when ISF Sergeant Ali Nasrallah was killed and his partner wounded in Baalbek. Their patrol car was ambushed by armed members of the Jaafar Clan after the patrol detained two of the clan's members.³⁶⁵

The commander adds that at times, the ISF has to resort to the use of force to protect someone from harming themselves for example.³⁶⁶ Lt Col Kaedbey

confirms this and adds that judicial police engage in perceived excessive force with good intentions, usually when they want to stop a person from harming themselves or someone else. The main goal, both interviewees say, is protection.³⁶⁷ Conversely, hard-line criminals with gruesome records, says the commander, raise dilemmas when it comes to applying human rights *à la lettre*. Therefore, the rights and freedoms of criminals are limited to the point where they start to impede on the rights, freedoms and most importantly, security of others.³⁶⁸

However, both interviewees affirm that the rights of suspects are being respected by law enforcement officials, particularly during the first hours of detention when the suspects are subject to questioning. On the backside of the record sheet, article 47 of the CCP is imprinted and the rights enshrined must be communicated to the individual in custody.³⁶⁹ However, the commander adds that often times, the detainees misinterpret their rights, citing how many of them understand the right to communicate with the lawyer as the right to meet with him/her.³⁷⁰ In retrospect, the judicial police are often accused of taking on roles that do not fall within their mandate. On that note, the investigation should be the responsibility of the public prosecutor, says one legal expert, and the role of the judicial police in this respect should be limited to preliminary questioning only.³⁷¹

The head of the Human Rights Department at the ISF states that there is no arbitrary detention in Lebanon; it is not systematic and it simply should not exist. If there are such cases, they must be addressed through the complaints mechanism and such behaviour must be punished according to article 367 of the CC. These human rights violations he adds, should not be covered up or condoned in any way.³⁷² However, none of the interviewees that ALEF has spoken to were able to cite a criminal suit by virtue of article 367 of the CC. According to one lawyer, the reason why victims of arbitrary detention do not file suits in court or follow a specific complaint mechanism process is due to financial restraints and the lack of motivation.³⁷³ An added reason can be the difficulty in attributing liability/responsibility for the said deprivation of liberty (due to the inefficient and ineffective criminal justice system). The lack of motivation can be attributed to numerous factors, such as the lack of confidence in the judiciary to take the complaint seriously on one hand and prosecute perpetrators on the other.

Detention beyond the time prescribed by law is not due to capricious or discretionary behaviour on the part of the ISF, nor is it due to a deliberate contempt of the law, says the Lt Col, but rather it is due to circumstances beyond their control, such as the lack of resources. For example, he cites a

case where a suspect must be held at the police station beyond the forty-eight hours, renewable once, having been transferred back by the public prosecutor because there is no room in the holding cells at the courthouse while he/she awaits to appear before a judge. This has also been confirmed by a lawyer who cites that many of his clients have to languish at the police station for days until space is available at the holding cells at the Baabda Courthouse for instance. At this point, it is important to remember that this detainee is still considered a suspect and has yet to be formally charged. Once the criminal file is transferred to the investigating judge or single criminal judge (in the case of a misdemeanour), he/she has twenty-four hours to request the presence of the defendant for interrogations. Up until this point, says the lawyer, it is very likely that over twenty-four hours will have elapsed before the defendant is seen by the judge. This can be due to many reasons: there is an overload of cases, the judge has left for the day or because of the lengthy and complex file transfer system. Once the defendant's criminal file is released by the public prosecutor, it is handed to the clerk for registration, who then transfers it to the clerk of the first investigating judge for registration. The file is then passed onto the first investigating judge who is entrusted with delegating the criminal files to the other investigating judges.³⁷⁴

Hence, the issues plaguing the criminal justice system are the lack of resources (e.g. need to build more prisons and detention centres) and logistics to conduct each department's mandate efficiently and effectively. Overall improvement in work ethics across the board are also necessary amongst all actors who play a role in the criminal justice system.³⁷⁵ The brigade commander also cites the chronic inexistence of resources as an underlying issue. These much needed resources can be used to develop a centralized computer system that would facilitate information retrieval and research. Having an efficient IT system would also facilitate correspondences between departments. Sometimes, he says, a full day is needed to gather background information on a suspect, while he/she waits in custody. Many of these tasks need to be completed while corresponding with decentralized authorities and using out-dated techniques. There are trivial administrative tasks and investigations that must be completed by resorting to rudimentary measures which subsequently cause unnecessary delays. At the trial stage, delays are also due to a lack of technology and in certain cases, delays in trial are triggered by a suspect who has self-inflicted wounds and must be taken to the hospital for treatment, where he/she could stay for a week before being released.³⁷⁶ As the next section will demonstrate, state actors are not the only ones subject to scrutiny and criticism.

KIDNAPPING THE STATE

a) State Responsibility in Ensuring Human Rights vis-à-vis Non-State Actors

“Under general international law and specific human rights covenants, states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.”³⁷⁷ Since the state is the main protagonist in the international system, threats also arising from non-state actors, violent or non-violent should be the state’s responsibility. The state must be held accountable for failing to prevent human rights abuses (with or without its knowledge or consent), or adequately preventing them, investigating them and most importantly, prosecuting non-state actors. The HRC holds responsible any state that fails to do the above mentioned in an adequate manner:³⁷⁸ “for example a receiving state is not responsible, as such, for the acts of private individuals in seizing an embassy, but it will be responsible if it fails to take all necessary steps to protect the embassy from seizure, or to regain control over it.”³⁷⁹

The civil war not only destabilized the country, but it also had a devastating and paralyzing impact on the country’s development, promotion and protection of human rights. A culture of impunity rose, where the domestic legal order became dysfunctional and operated on a discretionary basis. Today, minimum legal security required seems to be subject to the whimsical decisions of statesmen and constantly hijacked by opposing forces, legitimate and non-legitimate. The state has in fact, inadvertently reinforced the power of non-state actors, violent and non-violent. This includes CSOs, political parties, armed gangs, tribes, etc. Since 1990, successive governments have embarked on plans to reconstruct state institutions, stimulate the economy and promote the respect for human rights. Despite the difficult legacy the government inherited, it has not halted efforts to promote a culture of human rights on institutional and legislative levels alike. Lebanon hosts the OHCHR, has cooperated with Special Rapporteurs who wish to visit and has established a human rights department at the General Directorate of the ISF. Lebanon has also acceded and ratified important human rights treaties and instruments as well. Today, the protection of human rights in Lebanon remains a strategic choice towards the path to peace and security.

b) Rise of the 'New Government Order'

i. *The New Executive Power: Civil Society Organizations*

Civil Society Organizations have gained prominence following the civil war, faced with the state's inability to penetrate society, use resources in efficient ways for sustainable development and maintain a solid social contract with its citizens. Through the services and advocacy they engage in, CSOs have managed to act—as the sole authority in some areas—as the Lebanese Government should, in the daily administration of the state. A prime example of this has been the key role of service providers in correctional facilities across the country.

Individuals who advocate for the respect of human rights by the state should also comply with the same standards for which they lobby. This is where CSOs can be the subject of wide scrutiny and criticism from other organizations in the field. Their activities are questioned and public doubt about the legality and ethics of their projects can cause backlash. A brief example would be the case of UPEL, who has received criticism for having to transfer juveniles that should be under its mandate to Roumieh, due to chronic overcrowding. Another contentious case is the one surrounding Caritas Lebanon Migrants Center's work with migrants, refugees and asylum seekers in detention.

◦ Stuck Between a Rock and a Hard Place: Caritas Lebanon Migrants Center

Worldwide practices regarding deprivation of liberty in shelters and safe houses tend to be the subject of concern for a few reasons. Some shelter operators face accusations of arbitrarily detaining individuals and using these facilities as illegal and alternative places of detention. Another concern is that these facilities enjoy some form of autonomy in their operations; usually not accessible to law enforcement officials, families, embassies and so forth. Due to the confidential nature of their locations and the restricted access, monitoring these facilities becomes a concern on a transparency level. There have also been questions surrounding the freedom of consent of individuals in these facilities, which would then raise questions about freedom of movement. In response to these general concerns, CLMC will be used as a current and local example to shed light on the legal and policy narratives surrounding the uncommon practice of deprivation of liberty in non-governmental institutions.

Since Adlieh opened its doors in 2000, CLMC—a specialized department of Caritas Lebanon—³⁸⁰ has in fact been the sole CSO to gain full access in offering social, medical and legal services to the detainees. CLMC has been operating shelters since 1994 and today, it operates one safe house for victims of trafficking and three shelters.

The CLMC safe house “receives trafficked women to protect them from their abusers and allow them to escape from their slave-like conditions. [It] provides them with humanitarian assistance, social, medical and psychological assistance until their voluntary repatriation or, in exceptional cases, their contract switching.” As of September 2012, the safe house had an average of thirty women.³⁸¹ CLMC adopts the Palermo Protocols for trafficking;³⁸² on the ground, this means that victims of trafficking includes migrants who have been forced into labour. An example would be a migrant worker who has completed his/her labour contract with the employer, but is still forced to work. Another example would be a case where the migrant worker is not receiving his/her remuneration (one migrant worker who sought CLMC’s help had an eight month salary backlog, while some had backlogs of two years and ten years). The women who seek refuge at the safe house are either reported by their embassies, or the subject of anonymous tipoffs by concerned neighbours or other individuals who suspect that the migrant is the victim of various criminal activity.³⁸³ Conversely, the shelters are used to house “vulnerable detained migrants under the General Security’s approval and upon the detainee’s consent only.”³⁸⁴ To be considered a vulnerable migrant, the following criteria are canvassed: “families, pregnant women or with children, elderly people, physically and/or mentally disabled people, people needing serious medical treatment, victims of physical abuse or violence, victims of trafficking in persons, people who have been in detention for a long period.”³⁸⁵ Migrants who are ill-treated and have been physically or sexually abused also seek refuge from their employers at the shelters. Migrants come to the shelter through a few channels as well. They are either transferred from the GS (who deems them unfit for Adlieh), handed over by their employers who can or will no longer employ them, or they come willingly. Other times, the embassies send them.³⁸⁶ As of September 2012, there was approximately 200 migrants in total in all the shelters.³⁸⁷

Interestingly, CLMC facilities are open to their donors and some monitoring missions from external stakeholders who monitor activities and conditions inside. The stakeholders also conduct interviews with the women. The Special Rapporteur on contemporary forms of slavery has also visited CLMC facilities. Embassies in general have access to the shelters and for confidential purposes, embassies can contact and communicate with the women from the safe house

at the headquarters, with the exception of the Embassy of the Philippines for example, who has access to the safe house. Families of the migrants can also contact and visit migrants at the shelters, with the exception of the safe house for security purposes, since sometimes, family members are responsible for trafficking the women.

In its work, CLMC considers detention to be arbitrary if the migrant remains in prison, after completing his/her criminal sentence. A distinction needs to be made according to interviewees in this case, between arbitrary detention in a criminal setting and administrative detention, which is subject to the rules of the GS. CLMC states that there is no migrant that remains in the retention centre when his/her paperwork is completed and if travel tickets are available.³⁸⁸ The vulnerable migrants stay at the shelter until they have the sufficient funds required to pay for their ticket back home (sometimes, migrants languish for months before an employer purchases a ticket). Also, migrants must await the completion of the administrative paperwork with the GS, which would either order the release of the migrant, or have him or her expelled (however there have been accounts of women staying for months in the shelters because their files 'disappear'; an indication of some form of corruption). Should the migrants be released by CLMC pending the completion of their paperwork, they could be caught and liable to further prosecution at the hands of the GS. For CLMC, keeping vulnerable migrants at the shelter is an important safety and security measure.³⁸⁹ Their locations are confidential for the safety of residents and staff alike: "we cannot reveal its location nor have residents coming and going." The rules regarding CLMC shelters have been implemented in accordance with IOM shelter manuals and with the participation of the residents themselves according to CLMC. At the safe house, victims of trafficking are at high risk of suffering further human rights abuse because there is an on-going criminal investigation, therefore the women usually leave when the judge approves the release and repatriation. In some cases some victims can leave the safe house once the investigation is completed, in which case the lawyer proceeds with the criminal prosecution and informs the client regularly about the progress of the criminal case. Moreover, every migrant who arrives at the shelter and safe house must read and sign protection forms (written in their native language) with full consent and comprehension (there is always an interpreter assisting the migrant, should there be a language barrier). The form essentially explains the nature and conditions of their stay. Women are in fact free to leave these facilities if they wish, "CLMC cannot force any migrant to stay at the shelter," according to executives. However, they are advised by CLMC that they run the risk of being apprehended by the GS, if they chose to leave the shelter, without the proper documentation. In such a case, CLMC then has the responsibility of informing the authorities if the vulnerable migrant was referred to it by the

GS and not if the migrant comes alone.³⁹⁰

- Legal and Policy Narratives for Shelters and Safe Houses ³⁹¹

The Recommended Principles and Guidelines on Human Rights and Human Trafficking (hereinafter, the Principles and Guidelines on Trafficking) specifically state that the detention of victims of trafficking is inappropriate and implicitly, it is also illegal. These principles and guidelines call upon states to ensure that victims of trafficking are not held in retention centres or other forms of custody (this would include shelters and safe houses).³⁹² Interestingly, state parties are not obliged to provide shelter and support for victims of trafficking according the UN Trafficking Protocol, which Lebanon ratified in 2005. They are however required consider adopting measures to provide the victims with physical, psychological and social rehabilitation, which would include providing appropriate housing, educational opportunities, etc.³⁹³ The detention of victims of trafficking in shelters should only be an exceptional measure and in cases where for example, there is credible reason to believe that the victim's life or safety is threatened. Even in this scenario, procedural safeguards should still be available, particularly with regards to judicial oversight of the detention to periodically determine if it is in fact legal at that given moment, and most importantly, necessary. The ability to challenge the legality of the detention in the shelters/safe house should never be out of reach. Moreover, the detention of victims of trafficking should always be justified on a case-by-case basis if it meets the following international principles: necessity, legality and proportionality.³⁹⁴

To determine whether or not these specific cases of detention are justified, it is necessary to discuss a wide array of standards and international human rights safeguards, such as the right to freedom of movement, the right to liberty and the prohibition on arbitrary detention, since the detention of victims of trafficking is not specifically addressed in international human rights law. The right to freedom of movement, which is enshrined in the ICCPR and in guideline 1.5 of the Principles and Guidelines on Trafficking. The latter states that: “[s]tates should consider protecting the rights of all persons to freedom of movement and ensuring that anti-trafficking measures do not infringe on this right.” The United Nations Human Rights Committee has said that any restriction on the right to freedom of movement “must be consistent with all other rights [and] must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.”³⁹⁵ Hence, this requires a balance between the detention with the right

to liberty and most importantly, the right to be free from arbitrary detention which applies to all victims of deprivation of liberty, regardless of whether they are held as migrants for immigration purposes or as victims of crime. The right to be free from arbitrary detention has been analysed thoroughly in previous sections, hence it is important to add the following:

Deprivation of liberty provided by law must not be 'manifestly disproportional, unjust or unpredictable'. The manner in which a decision is taken to deprive someone of his or her liberty must be capable of being deemed appropriate, and proportional in view of the circumstances of the case.³⁹⁶ Importantly, a detention which was originally not arbitrary, might become arbitrary if it continues over time without proper justification.³⁹⁷

Under international human rights law, states must ensure procedural guarantees, such as those enshrined in article 9(5) of the ICCPR. In a study on international legal standards on detaining victims of trafficking, Gallagher and Pearson enumerate guidelines to determine when detention in shelters can be arbitrary and unlawful. This is in cases where:

[D]omestic law does not provide for such detention or if the detention is imposed contrary to law; detention is provided for or imposed in a discriminatory manner; detention is imposed for a prolonged, unspecified or indefinite period; detention is unjust, unpredictable, or disproportionate; or detention is not subject to judicial or administrative review that confirms its legality and continued necessity under the circumstances, with the possibility for release where no grounds for its continuation exist.³⁹⁸

Another important dimension to consider is that of consent (by signing the agreement of terms and conditions explained above), which is an argument for rejecting the claim that the migrants are being unlawfully detained, particularly in the case of those who are awaiting the finalization of their immigration status. It is important to ask how and what circumstances is this consent given, particularly for those who are victims of trafficking, given that they often suffer from trauma and a lack of autonomy. Are the migrants and victims fully aware of their rights? Have other options been explained to them? When no other option is offered, it is hard to foresee how they would decline the assistance of service providers. Should the form be signed, is the consent revisited at regular intervals? "If the victim has freely agreed to stay in a shelter, she or he is not in fact being detained, provided that the victim has an option to leave the shelter at any time. The moment that a victim who has agreed to stay in a shelter cannot freely exercise the option to leave, however, that person's situation becomes one of detention."³⁹⁹

In brief, victims of trafficking cannot be deprived of their liberty in law enforcement facilities, closed shelters or welfare institutions (unless they agree to this arrangement, in which case they are not detained), for any reason other than their immediate needs, such as physical safety, and only for the shortest period of time possible.⁴⁰⁰ All cases must comply with the requirements of necessity, legality and proportionality. Should the detention be applied as a measure of last resort, it must at all times comply with the human rights safeguards listed above. Finally, every detention must be studied on a case by case basis.

This analysis is not conducted to criticize the work of CLMC or other CSOs working in this particular field. It serves to shed light on current practices geared towards helping these vulnerable categories of people, whilst balancing complex legal and policy narratives, that often times conflict with one another and materialize in such a way that may unintentionally and inadvertently lead to questionable practices. The capacity in which CLMC operates is two-fold. It is first granted directly, by gaining full access to Adlieh. This allows CLMC to be fully involved in the social, medical and legal welfare of the individuals in question. It is also granted indirectly, by essentially working with the present status quo: under clustered and tarnished legal and administrative systems. CLMC's main purpose is to protect these groups of people, with the resources available to them and more importantly, within the capacity that the state has granted them. CLMC has been successful in designing and implementing projects to improve the lives and working conditions of migrants, reduce their exploitation, marginalization and exclusion in society, defend their rights on many levels, and finally, raising awareness about them in the wider community. While attempting to defend the rights of migrants, refugees and asylum seekers (on levels that the state cannot guarantee), through safe havens for these victimized groups, some of CLMC's well-intentioned practices have become breeding grounds for criticism, perhaps due to some shortcomings *vis-à-vis* international human rights standards. In other words, CLMC, like many other CSOs, is stuck between a rock and a hard place. However, this reality can be strictly attributed to the state, whose shortcomings in promoting, respecting and ensuring the implementation of human rights practices, is falling on overwhelmed CSOs. Should the state fail to prevent human rights violations by its agents or non-state actors, then this would invoke its legal responsibility and nobody else's.

ii. *The New Judicial Power: Media Outlets*

Freedom of expression is an essential cornerstone of democracy and a fundamental human right. When freedom of expression is violated, it also impacts the rights to freedom of association and assembly for instance. One of the ways in which freedom of expression can be impeded on is by impinging on the freedom of the press.

In countries all across the world, the press' freedom of expression is violated: publications are censored, newspaper directors and editors are fined, photographers and reporters are attacked, journalists are harassed, detained, and in some countries, murdered. Public officials will attempt to curb freedom of expression through various forms of informal censorship, adopting privacy laws, banning media outlets from reporting on certain conflicts which is critical in exposing humanitarian issues and human rights abuses. Structural restrictions on the press which would pave the way for excluding the publication of certain content is also another way in which the freedom of expression, particularly that of the press, can be suppressed. In light of these realities, the Lebanese Government must continue to respect its commitment to uphold freedom of expression and the rights of citizens to access information, while ensuring that proper criminal and disciplinary measures are taken against unethical and unprofessional reporting by the media. The freedom of expression through the press must always be balanced with the duty to report in an accurate, fair, and most importantly, independent manner. It can only be restricted in specific circumstances, such as, but not limited to: protect public order, morals, rights and reputations and to preserve the administration of justice.

With the breakdown of the state apparatus, media outlets are sometimes acting as courts of law by interpreting and prosecuting individuals in the name of the state, through their reporting practices. In 2012, they have allegedly distorted facts of sensitive events and disrupted the administration of justice by publishing confidential legal documents.

In June 2012, Collège Saint Joseph in Aintoura called on media outlets to report with precision and accuracy when reporting about the incident regarding the teacher who was under investigation for allegedly molesting eleven of his underage female students (between the ages of six to eight years old) and engaging in indecent acts. "[M]any media outlets [highlighted this matter], but some of them twisted the facts and dealt with the subject flippantly and unprofessionally, as if the sole aim was to defame [others] and stirring sentiments without taking into consideration," said the school's administration.

Some outlets had reported that the girls had been raped for example. The school claims that the media reporting caused further emotional distress for the victims' families and tarnished the school's reputation.⁴⁰¹ Lawyer Maroun Abou Sharaf, who represents some of the victims, had stated that parents of the girls had been further angered when the names of their children were revealed on national television in the MTV show *Enta Horr*. He also added that he would be taking legal action in the matter, since the show violated "the sacredness of childhood."⁴⁰² In early July 2012, the teacher was charged under articles 519, 520 and 523 of the Criminal Code. The sexual harassment at the school was deemed a felony, punishable by six to ten years of imprisonment.⁴⁰³

In other news, as mentioned earlier, Lebanese forces arrested and detained Former Minister of Interior, Michel Samaha and charged him in early August 2012 for plotting terrorist attacks in Lebanon. Soon after, *Al-Joumhouriah* newspaper leaked documents of the preliminary investigation with Samaha. His lawyer, Malek al-Sayyed, said that the media leaks violated his client's right to be presumed innocent until proven guilty and violated the secrecy of the investigation. "How did they invite journalists [to that meeting] and how was the document [of the investigation] handed over?," the lawyer asked. He also added that he would suspend his participation in the investigation sessions unless the security officials involved in the media leaks were questioned.⁴⁰⁴ Shortly after the publication of the documents, Military Judge Riad Abou Ghayda summoned the newspaper's editor-in-chief, after he heard the testimonies of the managing editor and director.⁴⁰⁵

The fundamental principles of freedom of the press should also comply with ethical standards on reporting. These standards are very important because the information and methods of communication that are being conveyed to the public play an extremely important role in shaping opinions and personal attitudes. In Lebanon's socio-economic and political environment, the role of the media is crucial in this regard. Journalism is not only subject to a multitude of rights and liberties, but most importantly, numerous obligations and duties towards the public who has a right to gain access to accurate and honest information. It is also important to mention some principles from the International Principles of Professional Ethics in Journalism that correspond fittingly with the cases described above:

Principle III: The journalist's social responsibility

Information in journalism is understood as a social good and not as a commodity, which means that the journalist shares responsibility for the information transmitted and is thus accountable not only to those controlling the media but

ultimately to the public at large, including various social interests. The journalist's social responsibility requires that he or she will act under all circumstances in conformity with a personal ethical consciousness.

Principle VI: Respect for privacy and human dignity

An integral part of the professional standards of the journalists is respect for the right of the individual to privacy and human dignity, in conformity with provisions of international and national law concerning protection of the rights and the reputation of others, prohibiting libel, calumny, slander and defamation.⁴⁰⁶

The media reports in the abovementioned cases have had some consequences. First, in the Aintoura case, it has caused irreparable personal harm to the victims and the parents, regarding accounts of what had happened and even more so, when the victims' identities were revealed on national television. The media should be mindful and exercise discretion when publishing the name of a victim of crime or publishing information that could lead to the discovery of the individual's identity (when a minor is the victim for example). Media reports should not obstruct the proper administration of justice. Second, the Samaha case is the perfect example of how the media's integrity and credibility can be tarnished, particularly in on-going criminal investigations. It too should respect and uphold the fundamental right to be presumed innocent until proven guilty. In all cases, readers and listeners alike have the right to receive accurate reporting, and anything to the contrary would only disserve the public, who may take uninformed decisions on trivial matters and important ones as well.

iii. The New Legislative Power: Violent Non-State Actors

The state's impotence in providing and preserving human rights can be attributed to numerous factors. For one, the culture of impunity and weak rule of law cause individuals and organized groups to take the law into their own hands. In Lebanon, there has always been a strong presence of powerful non-state actors, but recently, these actors have made headlines for their violent tactics and gross breaches of the law through kidnappings, arbitrary arrest and gang warfare, often targeting bystanders, journalists and law enforcement personnel. These violent non-state actors have ironically assumed the role of the government in terms of legislation, since they have demonstrated an ability and unequivocal power to pass, amend and repeal the laws of the state, in their own way.

Contemporary assassins, modern-day anarchists, and entrepreneurs of impunity, can be some of the terms used to sum up non-state actors, particularly violent ones. Their presence on the podium symbolizes a complete breakdown between the public and private divides, which creates a vertical version of justice. This new version of justice is subject to the forces of supply and demand which can be best understood with the surge of kidnappings of wealthy business men for large ransoms for instance. These non-state actors possess great access to networks and resources, dominate in drugs, trafficking, laundering activities and weapons trade to name only a few. Usually armed – some with private armies – they turn to collective violence and aggression to pursue their goals. It is possible to state that the most important catalyst in the rise of these groups is in fact the state's failure, in governance, protection, ensuring security and valuing human rights. The state has inadvertently become an enabler.

The presence of these violent non-state actors on an already unstable socio-political scene has had many consequences. First, their presence and successful tactics are misleading and redirecting public confidence in groups who are assuming roles that the state and only the state should have. Second, loyalty to the state is at a flat line. This can be dangerous in Lebanon, a land where intersecting identities (religious or political affiliation for example) form identity. The fragmentation of certain parts of the country, governed by non-state actors, political parties or clans paves the way for conflicting power blocs along converging and diverging philosophies of fundamentalism. This micro-fundamentalism entangles security and insecurity to the point where archaic practices of retributive justice seem legitimate (i.e. kidnapping foreigners for the safe return of nationals abroad). Some of these groups are so established and organized, that they manage to create a 'subnational identity', such as

the Meqdad Clan. Third, state authority is challenged and vacuumed into different pockets. There is in fact, a complete reallocation of power and authority: a hijacking. The lines are blurred when legal actors seem to stand idle and illegitimate power holders, such as the ones discussed below take on the role of justice seekers or protectors.

- Meqdad Clan

In August 2012, the military wing of the Meqdad family, a Baalbek-Hermel clan, kidnapped dozens of Syrians on the airport road, allegedly in front of reporters, in response to the kidnapping of a relative, Hasan Meqdad, in Syria (supposedly by the rebel Free Syrian Army).⁴⁰⁷ The situation further escalated when news broke that a number of Lebanese Shiite pilgrims abducted in Syria in May 2012 were killed during airstrikes. Their relatives blocked the airport road with burning tires in response to the government's inaction. The clan's military wing then kidnapped a Turkish national.⁴⁰⁸ The intelligence information needed to carry out the string of kidnappings is said to be provided by family members occupying top posts in security bodies. The Meqdads, a 17,000-member strong clan is said to have "kept arms for centuries and fought Ottoman rule and later on French forces during the mandate era."⁴⁰⁹ Spokesperson Maher Meqdad admitted that the military wing operated rather frantically but added that if the relative was to be killed, the first person to die would be the Turkish national. The Meqdads are said to have followed the example of the Jaafars, who in May 2012 abducted thirteen Syrian men following the kidnapping of their relatives and orchestrated a successful swap deal. They said they wanted to ensure the release of Hasan Meqdad rather than follow the diplomatic and unsuccessful path that Hezbollah and Amal had paved for the families of the eleven Lebanese who were abducted near Aleppo in May 2012.⁴¹⁰

After mounting pressure from the Lebanese Army, the clan released the Turkish national on September 11, 2012, after having kidnapped him for nearly a month. An additional four Syrian hostages were also released by the Lebanese Army that week. Another Turkish citizen was also released two days later by Al Mukhtar Al-Thaqafi, who handed him over to the GS after detaining him for almost a month as well.⁴¹¹

On September 19, 2012, a Military Tribunal judge issued arrest warrants for five out of six captured members of the clan after the Lebanese Army raided Beirut's southern suburbs. The sixth member had been kept in custody for further investigations. The army was able to free the remaining Syrian hostages. A military prosecutor filed charges against Maher Meqdad on September

20, 2012, who, was detained a week prior⁴¹² for “forming an armed group to hit the prestige of the state, kidnap citizens and threaten to kill them as well as possession of unlicensed weapons and explosives.” Two other members also received similar charges.⁴¹³ Maher Meqdad told reporters at the time, “[w]e wanted to put pressure by kidnapping people. It’s the only way when you live in a jungle.”⁴¹⁴ The Meqdad Clan’s actions further demonstrate the public’s demand for a different form of justice, according to one public prosecutor.⁴¹⁵

However, the Lebanese Government has been criticized by officials and politicians for not cracking down on the clan quick enough, since it publicly claimed responsibility for the kidnappings during press conferences. It took several weeks before the army raided the hostage locations and, conducted arrests, and for the military prosecutor to file charges against the offenders. The slowness in bringing perpetrators to justice is indicative of the paralysis within the criminal justice system which negatively impedes on public confidence in the state’s ability to protect human rights.

- Hezbollah

In July 2012, it is alleged that Hezbollah detained three men, two of its own members and a member of a Bekaa village municipal council, for spying for Israel.⁴¹⁶

On August 30, 2012 journalist Rami Aysha and two other men were apprehended at gunpoint by Hezbollah forces. The men were in the southern suburbs of Beirut, for research on alleged arms smuggling in the area. The men were allegedly arrested by Hezbollah for several hours and beaten according to a letter sent from journalists to the Committee to Protect Journalists, citing information from Aysha’s lawyer.⁴¹⁷ After his brief detention with Hezbollah forces, Rami was transferred to the Military Intelligence, where he was arbitrarily detained for approximately thirty-five days, during which he was held in *incommunicado* detention and was subject to torture.⁴¹⁸ “[Lebanese authorities] took me to a nearby place where they put a pistol to my temple and asked me on which side I wanted the bullet [—] they laughed, then yelled at me. They broke my camera on my head,” he told Reporters Without Borders. He was released on bail on September 27, 2012.⁴¹⁹

In these cases, it is possible for the state to be held liable for violations of international law when it does not punish private actors for arbitrarily arresting and detaining individuals.⁴²⁰ Moreover, the acts by these groups and others can be associated with common concepts of terrorism, where violence is used to “coerce or intimidate governments or societies, in order to achieve

political, religious, or ideological objectives.”⁴²¹ Another point to be made is that the common denominator in the cases described above has been kidnappings, defined by the UN Economic and Social Council as unlawful detention of an individual against his/her will, for illicit, economic gains or any other material benefit; in order to force someone or not to do something in exchange for the victim’s liberation.⁴²²

Kidnappings in Lebanon are not new, particularly in the Bekaa region which has been a hotspot for criminal behaviour. Some kidnappings have also been defined as acts of terrorism, when groups engaged in violence target innocent civilians.⁴²³ This crime can be conducted by various groups: gangs, professional kidnappers who have made a career out of it, rebels and insurgents, state security forces, terrorist organizations, common criminals, etc. States who experience a high kidnapping rate are often characterized as failed or failing; trust in the rule of law and in public institutions are weak, corruption is rife and governance is decentralized and fragmented.⁴²⁴

Kidnapping has evolved from constituting a means/weapon of warring gangsters, tribes, family feuds, or other groups to forming an actual profession/end in itself. The principal consequence of this change is the shift from targeting persons affiliated with these groups to civilians on account of perceived wealth.⁴²⁵
(Ceclilia M. Bailliet)

Kidnapping is also considered a gross violation of international human rights and humanitarian law according to the United Nations Secretary-General⁴²⁶ and it violates the following human rights: article 1 of the United Nations Charter, articles 2, 6, 7 and 9 of the ICCPR, articles 3, 4, 5, 9 and 12 of the UDHR and article 2 of the International Covenant on Economic, Social and Cultural Rights. “The failure to prevent or adequately investigate, punish and redress the kidnapping would entail violation of the state’s duty to exercise due diligence in ensuring enjoyment of the rights infringed upon in the context of kidnapping.”⁴²⁷ The failure to prevent or adequately respond to the kidnappings is also equivalent to an abandonment of the rule of law.⁴²⁸ Although Lebanese authorities have failed to prevent a string of kidnappings in 2012, it has had success in catching some of the perpetrators, as noted above. Not only is the apprehension of these perpetrators important, so is their subsequent prosecution. Should the criminals responsible for kidnappings go unpunished, this would not only further inflict suffering on the victims, but it would also trample on society’s dignity as a whole, consequently solidifying and upholding the culture of impunity.

CAUSES OF ARBITRARY DETENTION IN LEBANON

The inability to effectively combat arbitrary detention erodes [—] confidence in [—] Government and [—] the rule of law, promote good governance and protect human rights. It also exacerbates overcrowding in [the] detention system and strains already limited resources, which further places in jeopardy the dignity and access to justice of all detainees.⁴²⁹ United Nations Mission in Afghanistan

As mentioned, some categories of detainees experience human rights violations on different levels and in different ways. However, regardless of the nationality, gender, age, sexual orientation, etc., individuals that are suspected of committing a crime, accused and/or convicted, experience arbitrary arrest, lengthy pre-trial detention and long delays in trial due to one or more of the following main causes:

a) Cause 1: Legal Culture in Ruins

In general, one of the causes of arbitrary detention in Lebanon is the culture in ruins—legal culture, to be exact. One may identify legal culture via certain parameters, such as the ideologies of jurists, the Constitution which dictates how autonomous the judicial system is, norms such as codes, statutes, precedents and/or customary law, the legal actors and the infrastructure of the law.⁴³⁰ In Lebanon, the ruined legal culture can be attributed to two anomalies: the tarnished concept of the right to be presumed innocent and a perverse understanding of the purpose of detention.

i. *Tarnished Concept of the Right to be Presumed Innocent*

In Lebanon, there are competing and conflicting concepts of justice that act as forces and contra-forces to one another. First, there is the formal justice system, which was previously explained, and an informal justice system; the result of many societal developments, namely the lack of a sustainable state building process. This latter system has been infiltrated with political influences, tarnished by a culture of violence and perceptions of justice and accountability amongst common folk that are perverse. All of these forces boil down to one seemingly common presumption when a suspect is vacuumed into the criminal justice system: *guilty until proven innocent*. Consequently, this principle triggers various forms of detention and iron curtains and gives unqualified actors (at times despotic and authoritarian) the power to detain. The 2001 amended Code of Criminal Procedure

does not make any reference to the principle ‘innocent until proven guilty’, despite the sacredness of this concept in international law. In current policing and criminal justice practices, the above mentioned principle tends to be reversed, where suspects and accused are presumed guilty until proven innocent. “Presuming guilt prejudices the criminal justice system towards detaining the accused pre-trial, corrodes respect for the detainees’ rights, and renders ineffective many procedural protections,”⁴³¹ which may in fact lead to detentions becoming arbitrary.

Some suspects that are taken in for questioning by judicial police are foreseen as the offenders of the crime in question. No distinction is made between individuals who are suspects, those awaiting trial and individuals who have been convicted of committing an offence. The distinction between these groups is particularly important in law enforcement practices since each category of individuals is entitled to different freedoms. When the suspect is perceived as the perpetrator of the crime, human rights violations such as torture and ill-treatment easily become the weapons of choice to extract confessions, which may be false, but end up incriminating the individual in a court of law. The presumption of *guilty until proven innocent* decreases the chances of an individual being released pending questioning by law enforcement officials; hence, it is directly linked to a perverse understanding of the purpose of detention.

ii. Perverse Understanding of the Purpose of Detention

“Under the formal justice system and international standards, pre-trial detention generally is a mechanism to prevent further harm to others’ rights or evidence, flight of the suspect or accused, or reoccurrence of the crime and is to be minimized in light of the presumption of innocence.”⁴³² In reality, pre-trial detention has been used to prematurely punish the accused who is automatically perceived as the criminal offender. Detention in Lebanon in no way reverberates rehabilitation but rather a punitive, dehumanizing deprivation of liberty which, as seen in previous sections, has proven to expose detainees to harsher realities, greater danger and more criminality.

Some judicial police, public prosecutors and investigating judges also carry with them a different set of beliefs regarding the purpose of detention and a blatant disregard for the rights of detainees. For example, some judicial police may think that a longer detention period will enable them to obtain a confession, will give them more time to investigate or prove that the suspect in detention is the sought after offender. Law enforcement officials have a duty to prevent a suspect from

fleeing the scene of a crime, obstructing justice and even reoffending, however, they must *always* outweigh these interests in relation to the right to liberty. Certain law enforcement officials perceive detainee rights as hindrances to the investigation process and later on, the conviction. This perception is a reflection of the incarceration rates, particularly in the form of pre-trial detention, which also symbolize widespread and indiscriminate use of detention, notwithstanding the guidelines enumerated in domestic and international laws and standards. Unfortunately in Lebanon, some alternative measures to detention are not enforced due to a lack of resources and the ease of resorting to detention to ensure that the accused will appear at his/her trial, for example. In this regard, all legal professionals have an essential role under international law to protect human rights; their competence is instrumental. For example, the judge not only has a duty to address any indications of torture or ill-treatment, but he/she has a duty to ensure that a defendant has legal representation or is informed of the availability of legal aid. The perverse understanding of the purpose of detention is caused not only by erroneous beliefs about law enforcement practices, but it is further compounded by various forms of corruption and impunity.

b) Cause 2: Corruption, Impunity and the Whole Nine Yards

The fifteen year civil war has caused a significant amount of damage in terms of government institutions, particularly the internal security institutions which were not adequately reformed and rebuilt in terms of ethical standards and inspection/accountability mechanisms during the post-war phase. An economic crisis loomed over the country and this paved the way for further corruption, where officials in the ranks of the Internal Security Forces, the General Security and State Security “became involved in innovative deviant methods to collect money from the citizens.”⁴³³ The *wasta* phenomenon gained momentum within different facets of society, including the security sector. On the ground, this has translated into the interference of law enforcement by religious and sectarian ties, as well as political and ideological relations.⁴³⁴ As previously discussed, corruption has been found to occur during the police investigations or during the sentencing hearing. Various forms of corruption are used for the purposes of accelerating or decelerating the court process, to influencing the outcome of a trial. Consequently, this impedes on the detainee’s right to be tried by a competent, independent and impartial tribunal, as well as the right to a fair trial. These violations also undermine the impartiality of the actors in the judicial system.

When the institutions and functionaries that operate within these institutions engage in corrupt practices or do not rectify them, they automatically cease to function according to the rule of law and breach their own rules, regulations and most importantly, their mandates.⁴³⁵ Should corruption go unaddressed, no amount of legal reform, capacity-building and institutional revamping can remedy arbitrary detention. The level of impunity in the criminal justice system has become normalized to a point where officials responsible for arbitrarily detaining individuals, whether directly or indirectly, are not held accountable for their practices. This too exacerbates the problem of arbitrary arrest, lengthy pre-trial detention and long delays in trial.

Corruption not only cripples the proper functioning of the judiciary but it also tarnishes its image to the point where competing concepts of justice emerge and where people begin to lose faith in authority, the law enforcement practices and the courts’ ability to render justice. Because the judiciary is crippled and legal concepts are misconstrued, people begin to rely on individualized and decentralized forms of justice. With justice in their own hands, cases like the Meqdad Clan kidnappings emerge and can become more rampant. Widespread corruption and impunity not only weaken the justice system but also cause the widening gap between law and practice.

c) Cause 3: Inadequate Legal Framework

The glaring disconnect between law and practice is not only marginalizing detainees from society, but it is also marginalizing them from the system as a whole. In this sense, the law and Lebanese institutions are compounding inequality and injustice. Moreover, when ignorance about the law's scope and its limits are not recognized, the law morphs into a tool of domination and becomes an instrument that legitimizes oppression, assimilation, discrimination and corruption to say the least. The disharmony and more importantly, the gap between theory and practice in Lebanon is indicative of how law may be entrenched into corruptible stretches and consequently becomes corrupt itself. For legal and regulatory frameworks to be operable, there must not only be efficient and transparent legal institutions, but on a statutory level, laws must above all, be calculable. For law to be calculable, people must be able to calculate state action or be able to predict a certain action upon reading the text of the law. The inability to predict state action, due to the gap between law and practice, is due to various reasons in Lebanon.

On a procedural level, some arbitrary detentions occur out of a blatant disrespect and/or ignorance about the law, compounded by the belief that the suspect is guilty until proven innocent. Other times, they occur or are maintained due to a lack of procedural safeguards and mechanisms to review whether or not the detention is just and reasonable in the given circumstances. A perverse understanding of the purpose of detention is also a factor. Despotic and capricious behaviour at the hands of judicial police also create conditions that are favourable to arbitrary detention. This behaviour is also compounded by various practices of corruption and bribery. Moreover, many individuals are not aware of their rights; many who languish in detention either do not have sufficient resources or social influence to set in motion the procedures for their release or defend their rights.

On a statutory level, arbitrary detentions occur for numerous reasons, which have been discussed in previous sections. At the forefront, the legal analysis demonstrates the gap between national law and international standards in protecting the rights of detainees in the criminal justice process. In Lebanon, some detentions that may be legal in nature are actually arbitrary because their periods are unreasonable or simply not defined by a limited time period; this is the case of article 108 of the CCP for example. The legal framework is also inadequate since some articles lack clarity and their language is ambiguous; this may be the case for article 47 of the CCP. The latter is also a prime example of the legislature's inability to preserve

the fundamental right of detainees to a fair trial, e.g. full access to a lawyer. Arbitrary detention is also caused by authoritarian discretion, which is essentially left to the ethics of the judicial actor. The level of discretion is two-fold: it is a pathway to prematurely release dangerous offenders and it prematurely incarcerates accused individuals who may or may not be dangerous, let alone guilty, because the law justifies indefinite incarceration for certain crimes. It is also caused by a lack of transparency in the legal statute (reasons for extending custody may not be given for example, as is the case of article 32 of the CCP). Obsolete provisions can also be gateways to arbitrary deprivations of liberty, such is the case for article 111 of the CCP regarding alternatives to pre-trial detention.

d) Cause 4: Crumbling Infrastructure and Crippled Institutions

There is a dire need to create a functional correctional institution.⁴³⁶ Since the *Taif* Agreement, the Lebanese Government has failed to fix the judicial system and conduct the necessary reforms.⁴³⁷ In order for the judiciary to be independent, functional and transparent, reforms are needed for the following issues:

i. Legal Aid

The right to legal assistance, whether the counsel is chosen or appointed, is essential in preserving the human rights of detainees, in determining the criminal charges against the person and in upholding the right to be presumed innocent until proven guilty. Access to counsel must be given early in the criminal proceedings in order to mount a solid defence. Moreover, the legal assistance available to the detainees must be effective. Therefore a simple appointment to the case is not enough.⁴³⁸ The lawyer appointed to the case must also be qualified and fully willing to represent the interests of the detainee. The legal counsel must also advocate in the detainee's favour and object to any procedures that may violate the rights of the detainee. He/she must also request release pending trial, particularly if the detainee is not fit to be held in detention. On the other hand, the Bar Associations also have an obligation to take pro-active measures in ensuring that legal aid lawyers provide an effective and meaningful representation for the defendant. Because there is no state-funded legal aid system, the Beirut and Tripoli Bar Associations, alongside some NGOs, carry the responsibility of ensuring that detainees have access to legal representation. However, this mandate is not functioning properly because of the bureaucratic process of appointing legal assistance, and the lack of resources to motivate lawyers in their line of work.

ii. Inexistent Oversight Mechanisms

Inexistent oversight mechanisms to hold authorities accountable for their actions and to monitor places of detention may lead to arbitrary detention. As explained above, many correctional institutions had not been visited by judicial authorities, although it is provided for in Decree Law No. 14310, and article 402 of the CCP. This contributes to evaluate prison conditions, communicate with detainees to determine their needs, meet with correctional

staff to uncover any misconduct and finally, to determine if there is anyone who is being unlawfully detained (article 403 of the CCP). Oversight mechanisms in the form of monitoring places of detention, is vital in preserving human rights and must always be done by impartial and competent authorities who have an inherent interest in ensuring that detainees, whether convicted or not, are treated humanely and are not subject to ill-treatment. It is also important for these authorities to be well versed in national law and particularly international human rights law. Ensuring that the detainees' human rights are protected is a duty that Lebanon has an obligation to adhere to according to the ICCPR.

iii. Lack of Resources

Law enforcement officials, public prosecutors, judges and other actors in the criminal justice system must fulfil their mandates with the highest degree of professionalism and integrity, while complying with international human rights standards. Ministries and institutions who operate in the criminal justice system must be adequately funded and have sufficient resources and assistance on a technical and financial level if they are to provide an effective and efficient framework to protect human rights and remedy violations and grievances regarding arrests and/or detentions, and judicial proceedings. Unfortunately, the preconditions necessary to have an efficient and functional judicial system are absent in Lebanon. Inadequate capacity in the form of: a lack of judges, court staff and scarce detainee transport vehicles are some examples that impede on the timeliness of judicial proceedings, therefore prolonging the deprivation of liberty and further impeding on the rights of detainees. The lack of resources is also problematic with regards to the amount of physical space in holding cells at the various courthouses for example. As mentioned earlier, the lack of resources not only hinders the effective and efficient administration of justice but it also becomes a gateway for corruption and impedes on law enforcement officials' ability to carry out their mandates in line with human rights principles.

iv. Lack of Training and Continuing Education for Law Enforcement Officials

Judicial police in general, also seem to be caught between a rock and a hard place; they are expected to be tough on crime and protect society while also respecting and protecting the human rights of detainees. The culture of impunity has not only increased the level of crimes in the country but it has affected judicial police motivation and ability to serve and protect effectively.

These tasks become particularly difficult when some judicial police have limited to no knowledge about human rights and how to enforce the principles in their day to day patrolling and law enforcement activities. With little training and on-going education programs that may not adequately reflect policing realities in Lebanon, awareness levels will remain low and human rights abuses will become more common place. Human rights violations by judicial police consequently alienate society from them, causing distrust in their mandate, civil unrest and reprisal. Human rights violations by these officers also create: the preconditions for reactive law enforcement rather than preventative, authoritarian enforcement of the law and a force riddled with a superiority complex. Human rights violations by law enforcement officials are not only limited to torture, discrimination or obstruction of justice. They also extend to detention practices that may become arbitrary in nature. As discussed above, judicial police have very limited tools and techniques for investigating as well as interrogating suspects and witnesses. Therefore, recourse to violence or threats of violence are widely used during questioning. Accounts revealed by the focus groups and one on one interviews are indicative of how essential training programs and continuing education are for officials to be cultured in human rights and minimum standards for the treatment of detainees. The refined techniques will not only improve investigation skills, but also equip personnel with the capacity to properly assess whether or not a suspect poses a threat to the public and will also sharpen their supervisory abilities, ideally reporting any mistreatment they witness by other officials. However, improvement in policing practices via training and continuing education would not be possible without a significant amount of resources, which members of the ISF interviewed believe is the underlying problem.

The abovementioned causes of arbitrary arrest, lengthy pre-trial detention and long delays in trial indicate that the issue of arbitrary detention is systematic and is experienced on different levels. These causes further prove that arbitrary deprivation of liberty is “not a consequence of rogue elements in the security forces or an anomaly in the functioning of the security apparatus.”⁴³⁹ It is a chronic human rights violation, which is today, largely due to a legal culture in ruins, corruption, impunity, an inadequate legal framework, crumbling infrastructure and crippled institutions. In addressing the listed causes, it would be possible to first, respect international human rights principles and second, uphold the rule of law.

CONCLUDING THOUGHTS

No country in the world has a pristine human rights record. Some have been applauded and revered as pioneers in upholding human rights and protecting the inherent dignity of all. Others have been met with great criticism and some have even regressed. In Lebanon, various state practices seem to indicate that human rights violations have in fact been institutionalized, particularly in the criminal justice system. Today, the dynamics of the system as a whole and capricious procedures revolving around detention have rendered national legislation and most importantly, international human rights law – that Lebanon has an obligation to adhere to – obsolete.

Quantitative and qualitative research have revealed that individuals are constantly arbitrarily arrested, remain in pre-trial detention for lengthy periods of time and suffer from long delays in trial. These symptoms are further exacerbated by the appalling and degrading conditions of prisons across the country. These conditions have not only caused overcrowding, but have fuelled prison riots, protests and calls for change. Various causes of arbitrary arrest, lengthy pre-trial detention and long delays in trial have also been detected: a legal culture in ruins, corruption and impunity, an inadequate legal framework, crumbling infrastructure and crippled institutions. Respecting and implementing international standards for safeguarding the rights of detainees is not the only solution. National protection mechanisms, reforms and rehabilitative efforts are required, not only to remedy procedural abuses, but also to uphold the dignity of marginalized individuals, such as individuals suspected of engaging in criminal behaviour or criminal offenders.

To embark on the path towards reform and justice, it is important to consider the following question: what insight does it give human rights activists to look at contemporary issues and what does it tell them about the challenges they face? The first challenge is looking beyond the written law, which has been unfortunately used as a tool for ‘business’ transactions. The second challenge is recognizing that half-baked solutions; tainted with insincere agendas, have normalized human rights violations in the country, subsequently crippling the path to peace, security and sustainable development. The last challenge is remembering that the law does not speak, but the crafters of the law do. As such, it is their responsibility to maintain law’s authority over unethical behaviour and more importantly its ability to suppress impunity.

Unfortunately, reform does not take into effect overnight; it is a *process* of change that requires targeting various levels of society and different stakeholders. The synthesis of human rights as a precursor to combat arbitrary detention will always be under construction and met with various obstacles. What it will look like in its definite form remains unknown to jurists and human rights activists alike. What is certain though, is CSOs' continuous duty to highlight state violations, flag human rights abuses and push for sustainable change. In this regard, Lebanon's ultimate challenge is to constantly measure law's effectiveness on the ground, amongst the people it seeks to protect and more importantly, *punish*.

ALEF'S RECOMMENDATIONS

ALEF calls on the following stakeholders in Lebanon to take action:

To the Lebanese Parliament

- Ensure consistency of national laws with the ICCPR and other international obligations. All of which must be effectively available by law and in practice. The procedural safeguards must also be available for every detainee without discrimination.
- Adopt the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in law enforcement practices (including military practices).
- Reform the 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country.
- Undertake all measures aimed at ensuring human rights of migrant workers, refugees and asylum-seekers by ratifying the following:
 - The 1951 and 1967 Convention and Protocol relating to the Status of Refugees.
 - The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
 - The Optional Protocols to the International Covenant on Civil and Political Rights.
- Ensure that the Military Tribunal applies due process procedures that are recognized according to international law, such as the right to a fair trial.
- Restrict the jurisdiction of the Military Tribunal; it should be incompetent to try civilians, and military personnel if the victims include civilians. It should also be incompetent to try civilians and military personnel in the event of rebellion, sedition or any offence that jeopardizes or involves risk of jeopardizing a democratic regime. Finally, it should be prohibited from imposing the death penalty under any circumstances.

- Strengthen provisions in the Code of Criminal Procedure.
 - To include the principle ‘innocent until proven guilty’.
 - To allow the separation of criminal files when a crime is committed with numerous individuals.
- Amend the following articles:
 - article 32 of the CCP:
 - To include reasons for the arrest and factual and material grounds that would warrant strong suspicions.
 - To require the public prosecutor or deputy to motivate the decision for renewing the period of custody for an additional forty-eight hours.
 - article 47 of the CCP:
 - Reformulate the rights of a suspect or a person who is the subject of a complaint to the following wording: “To contact a member of his family, his employer, an advocate of his choosing and an acquaintance.”
 - Add a paragraph requiring the judicial police to inform the suspect that he/she has the right to remain silent.
 - Amend the article to make it clear that once the lawyer is contacted, he/she is able to attend the questioning with the suspect.
 - Add a paragraph stating that the judicial police have a duty to inform the detainee that should he/she not have the sufficient funds to appoint a lawyer, that he/she can have one appointed by the Beirut or Tripoli Bar Associations’ Legal Aid Committee.
 - Add a paragraph that specifically states that if the judicial police fail to inform the suspect of his/her rights upon arrest, that the investigation forthwith is null.

- article 107 of the CCP:

Include a paragraph that states that when the decision to order pre-trial detention is made, the suspect should be informed of the following rights:

- The right to be assisted by legal counsel of his/her choice or be informed of the right to have legal aid appointed to the case.
- The right to challenge the lawfulness of the detention and be released if the detention is not lawful.
- The right to communicate and be visited by family.
- The right to have the pre-trial detention reviewed by a court of law at short periods.
- The right to have proceedings conducted without undue delay.

- article 108 of the CCP:

- Establish a maximum period of pre-trial detention in cases of homicide, felonies involving drugs and endangerment of state security, felonies entailing extreme danger and crimes of terrorism.
- In establishing this maximum period of pre-trial detention, the state should evaluate the maximum incarceration period for the crime and determine an proportionate duration for pre-trial detention.

- Strengthen provisions in the Criminal Code.
 - Criminalize 'arbitrary detention' (expand notion of unlawful detention) and discipline and prosecute violators accordingly.

To Civil Society

- A state-funded legal aid system should be established.
- In the process of establishing a state-funded legal aid system, measures to reform the Bar Associations by raising salary paid to legal aid lawyers should be implemented.

- As far as possible, put in place a clear and public mechanism for regular monitoring of the judicial system, a detailed calendar for the reforms to be achieved, a regular evaluation of the implementation and regular and systematic consultations with human rights NGOs.
- Ensure that practice outcomes adhere to international human rights standards.

To the Lebanese Government

- Develop a centralized system used by the relevant ministries who are competent in matters of criminal justice to retrieve information about court decisions, laws, criminal files, etc.
- Transfer the management of prisons from the MoI to the MoJ pursuant to 1964 Decree-Law No. 17315.
- Close the MoD prison and detention facilities.
- Upgrade prison conditions so that they meet international standards and set up external monitoring mechanisms. This includes undertaking proper renovations and infrastructural improvements, as well as separating pre-trial detainees from convicted criminals who must also be separated according to severity of the crime.
- Build additional detention facilities to house pre-trial detainees.
- Build additional holding cells at the various courthouses.
- Establish mobile courts: in the North, South and Bekaa valley.
 - These courts would resolve the issue of transportation and ensure quicker trials.
- Review as a matter of urgency, the alternatives available to indefinite detention of foreigners by opening the doors for temporary settlement or any other appropriate means to respect human dignity, especially for refugees from war torn regions.
- Monitoring places of detention every month, according to article 402 of the CCP.
- The MoI and MoJ should have an independent committee on arbitrary

detention that serves as an internal oversight mechanism to assess the effectiveness in identifying and combatting arbitrary detention and develop a plan to strengthen the mechanisms accordingly.

- The MoI and MoJ must quickly discipline any individual responsible for failing to protect and respect the rights of detainees, regarding legal time limits and other legal standards.
- Adjust training and capacity building initiatives to the Lebanese reality by taking into account the current concepts of justice and the need to develop better mechanisms and tools.
- Raise public awareness regarding the rights of suspects in the criminal justice system.
- Lawyers, judicial police, public prosecutors and judges should gain a better understanding of the following:
 - Concepts of justice in the formal and informal systems
 - Role and function of detention and the rights of suspects
 - The roles of the lawyer, judicial police, public prosecutor and judges
 - The function and content of criminal procedural law related to detention
 - Alternative investigation and interrogation methods
 - Definition of arbitrary detention and remedies available
 - Internal oversight mechanisms

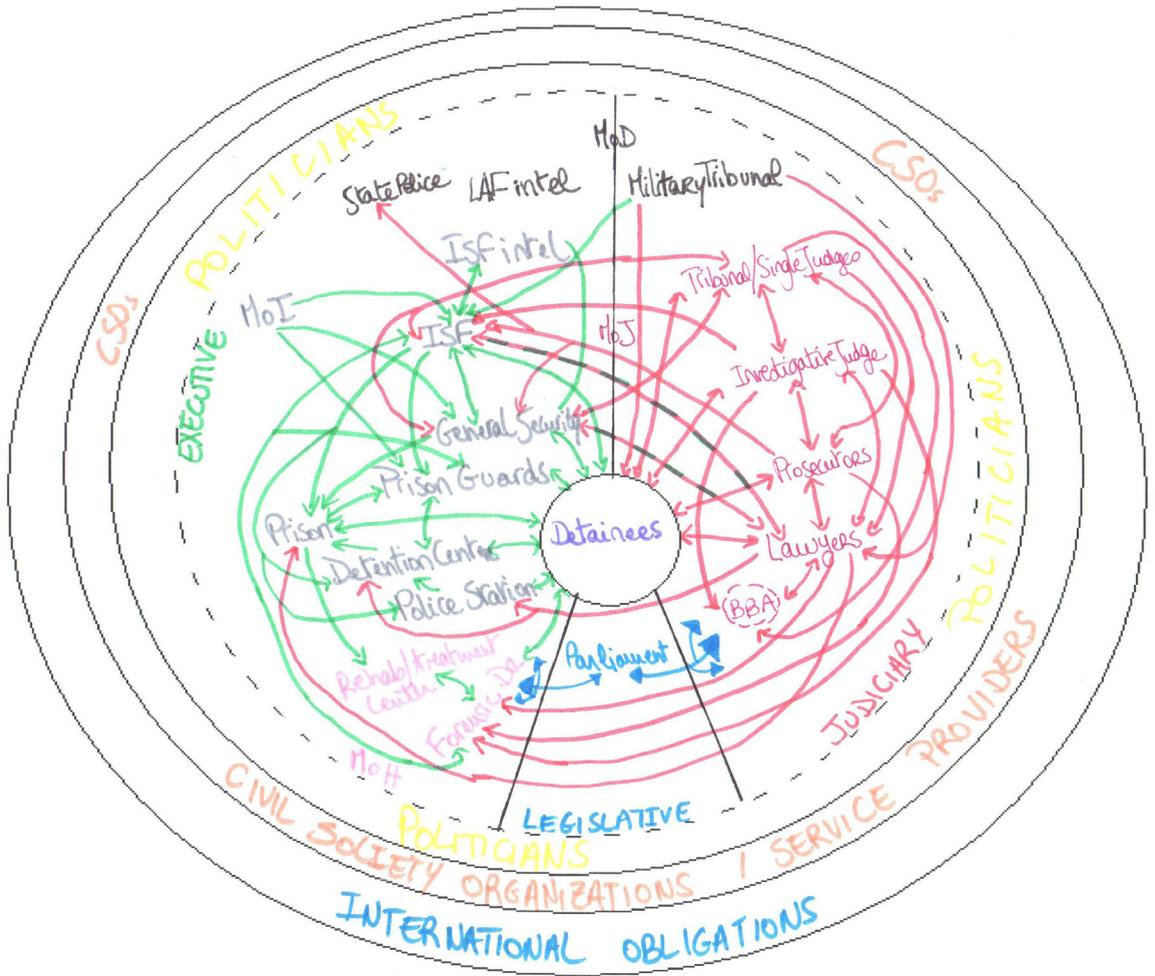
Lastly, the Lebanese Government must allocate the necessary budgetary and other resources to implement the abovementioned recommendations.

ANNEX A: TACTICAL MAP OF DEPRIVATION OF LIBERTY

The tactical map below was developed to enable a clearer visualization of the institutions and actors that have a direct and indirect impact on detention practices in Lebanon. The tactical map demonstrates the nature (one-way or two-way) of the tactics and will serve as a preliminary tool to monitor the impact and assess the dynamics of arbitrary detention in Lebanon. Moreover, this map also allows the viewer to determine where one can implement change and reform by identifying the links that need to be disrupted or strengthened.

The tactical map below stemmed from identifying the victim of deprivation of liberty, and then inserting the different institutions, social groups and other actors that are engaged in deprivation of liberty, whether in a positive or negative manner. Arrows were then used to identify the nature of the relationship; two arrows indicate a reciprocal connection, while the arrow pointing at the receiving entity indicates an oncoming force/impact from the entity from which the arrow stems. The further the entities are from the detainees, the further their influence and/or impact is on the deprivation of liberty.

Once the mapping of arbitrary detention is complete, it is possible to diagnose the key relationships, the impact of arbitrary detention on the detainee, and where it is possible for civil society organizations to intervene. Thus far, the tactical map has been an exceptional tool to identify perpetrators, potential allies and spaces for reform.



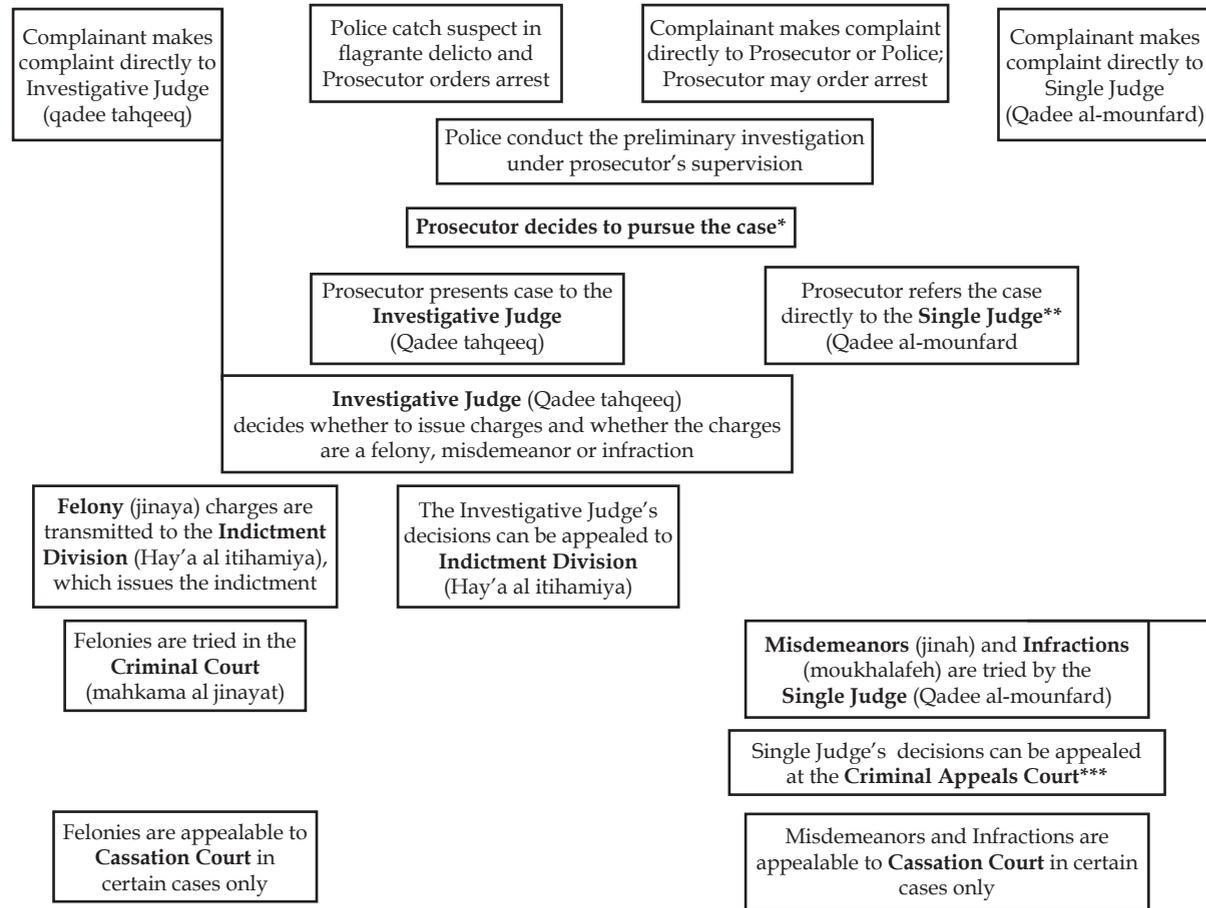
The amount of convoluted arrows in the tactical map and the dynamic relationships between the various actors within the criminal justice system and beyond reveals a few conclusions: the instances where a detainee's human rights may be violated are numerous, there is more than one practice in more than one institution or branch that requires reform.

ANNEX B: DIFFERENT TYPES OF DEPRIVATION OF LIBERTY

Type of deprivation of liberty	Detaining authority	Place of deprivation of liberty	Characteristics
Holding in custody before charges	Police and security forces	Cells in police stations, security force stations	<ul style="list-style-type: none"> • The first place of detention after arrest • Detention there must be of short duration, between 24 and 48 hours • Those deprived of their liberty have limited access to the outside world • These are generally places where interrogations are held • The conditions of detention are often most basic here • An emotionally very difficult stage of detention for those experiencing it • The risks of abuse against people deprived of their liberty- torture, ill-treatment and humiliating and degrading treatment- are very high during this phase of detention if the system of protection, as described above, is deficient.
Holding in custody after charges and before trial (pre-trial detention)	The penal administration, which generally depends on the Ministry of Justice, more rarely on the Ministry of Interior	<ul style="list-style-type: none"> - Custody facilities — the exact name varies from country to country - Sections reserved for persons remanded in custody, in prisons for convicted detainees 	<ul style="list-style-type: none"> • Persons in pre-trial detention are waiting for a court to try them and give a verdict on their case; it is a period of psychologically painful uncertainty, all the more so if the persons concerned are not informed regularly of how their case is progressing • The penal regime applied to them is in practice more often restrictive than that applied to those who have already been convicted (contacts with the outside world, activities, etc.) • Pre-trial detention facilities are often overcrowded
Imprisonment (or serving a prison sentence after a definitive verdict has been passed)	The penal administration, whether independent or integrated into the Ministry of Justice	<ul style="list-style-type: none"> - Prisons for persons serving out their sentences — the exact appellation varies from country to country - Sections in pre-trial detention facilities can receive persons with short-term sentences 	<ul style="list-style-type: none"> • The penal regimes governing the organization and conditions of detention of the prisoners can vary depending on different factors such as the type and gravity of the offence or crime • The regimes are: high security, progressive, semi-open, open • They also depend on: • The doctrines on imprisonment as defined in legislation and their actual application by the penal administration • The staff numbers and their training • The size of the establishment
Administrative internment	Ministry of the Interior or other		<ul style="list-style-type: none"> • Persons deprived of their liberty by an administrative measure can be: <ul style="list-style-type: none"> ◦ Political detainees who are arrested or incarcerated without charges ◦ Foreign nationals who entered a State's territory illegally and are awaiting an administrative decision regarding admission or expulsion • The length of deprivation of liberty is not determined
Psychiatric internment	Ministry of Health	Psychiatric hospitals, specialized institutions, psychiatric hospitals in prisons	<ul style="list-style-type: none"> • Persons who are ill or mentally handicapped are particularly vulnerable • Persons can be interned non-voluntarily and as a matter of course in accordance with civil law or in the context of a criminal procedure

Source: Annette Corbaz, Monitoring Places of Detention: A Practical Guide for NGOs, (Association for the Prevention of Torture, Geneva, December 2002), 18-19.

ANNEX C: CASE FLOW IN THE LEBANESE CRIMINAL JUSTICE SYSTEM



Cases with juvenile defendants and in absentia trials are not included in this chart

* The Prosecutor may file the case if there is no evidence of a crime. The suspect may sue the complainant for indemnity. The complainant may re-present the case before the Investigative Judge or Single Judge and, if there is new evidence, may present a request to expand the investigation

** In simple cases and only for misdemeanors (jinah) or infractions (moukhalafeh), the Prosecutor may refer the case directly to the Single Judge (Qadee al-mounfard).

*** Judgments on infractions are only appealable in certain circumstances.

ANNEX D: RIGHTS OF THE SUSPECT IN LEBANESE LAW

<u>Rights of the suspect</u>	<u>Public Prosecutor/ red handed offence</u>	<u>Public Prosecutor/ Non-red handed offence</u>	<u>Judicial Police/ Red handed offence</u>	<u>Judicial Police/ Non-red handed offence</u>	<u>Investigating Judge</u>	<u>Single Criminal Judge</u>	<u>Criminal Court</u>
Right to a lawyer during investigation/period of custody	Yes; article 32 CCP	Yes; article 49 CCP	No; article 41 CCP	No; article 47 CCP	Yes; article 76 CCP; article 78 (suspect declines legal representation) CCP; article 80 CCP (exceptional case where the judge may interrogate the suspect in the case of red handed offence)	Not mandatory to contact a lawyer; article 180 CCP	Yes; articles 237 CCP and 238 CCP during the preparation for proceedings; articles 240 CCP and 251 CCP, it is mandatory that a lawyer is present; articles 261 CCP and 275 CCP; no lawyer present.
Right to remain silent	No legal text	No legal text	Yes; article 41 CCP (should not compelled to speak)	Yes; article 47 CCP (may not be coerced to speak)	Yes; article 77 CCP (may not compel to speak)	Yes; article 180 CCP (may not compel to speak)	Yes; article 253 CCP (may not compel to speak)
Right to a medical examination	Yes; article 32 CCP	No legal text	Yes; Article 42 CCP	Yes; article 47 CCP	Yes; article 77 CCP	No legal text but yes in practice	Yes; article 253 CCP
Inform the accused of the charges/ indictment against him or her	No legal text	No legal text	No legal text	No but he should be informed of his rights; article 47 CCP	Yes; article 76 CCP without the legal characterization of the facts	No text legal, but yes in practice	Yes; article 252 CCP
Access of the lawyer to documents in the criminal file	No legal text	No legal text	No legal text	No legal text	Yes; article 78 CCP	Yes; in practice	Yes; in practice
Arrest/detention	Yes; article 32 CCP	No legal text	Yes; articles 41 CCP and 42 CCP	Yes; article 47 CCP	Yes; article 107 CCP	Yes; article 161 CCP (arrest: felony occurs during a court hearing); article 188 CCP (detention: false testimony of a witness); article 193 CCP (detention: a sentence of imprisonment of one year or more, handed to the accused in his/her presence)	Yes; articles 246 CCP and 276 CCP
Protection from forced confession	No legal text	No legal text	Yes; article 41 CCP	Yes; article 47 CCP	Yes; article 77 CCP	Yes; article 180 CCP	Yes; article 253 CCP
Right to contact a family member	No legal text	No legal text	No legal text	Yes; article 47 CCP	Yes; article 83 CCP (with exceptions)		
Right to contact a lawyer	Yes; as long as the lawyer has the right to be present during the investigation	Yes; as long as the lawyer has the right to be present during the investigation	No legal text	Yes; article 47 CCP (and seeing the lawyer)	Yes; article 83 CCP (and seeing the lawyer)	No legal text	No legal text
Prosecution of officials for violating the suspect's right	No legal text	No legal text	Yes; article 48 CCP	Yes; article 48 CCP	Yes; article 107 CCP	No legal text	No legal text
Right to compensation	No legal text	No legal text	No legal text	No legal text	No legal text	Yes; articles 197 CCP and 198 CCP	Yes ; article 277 CCP and 333 CCP (Court of Cassation)

Source: Lawyer Carlos Daoud, 2012.

*Please note that the articles reflected in this table have not all be analyzed in the report and that some of these articles are subject to exceptions and different interpretations.

Endnotes

¹ Donald Rothchild, "Responding to Africa's Post-Cold War Conflicts," in Edmond Keller and Donald Rothchild, eds., *Africa in the New International Order: Rethinking State Sovereignty and Regional Security* (Boulder: Lynne Rienner Publishers, 1996), 231, quoted in International Council on Human Rights Policy, *Duties Sans Frontiers: Human Rights and Global Social Justice* (Geneva, 2003), 48.

² ALEF, *Report on the Socio-Political & Cultural Contexts of Violence & their Impact on the Acceptance of Torture in Lebanon*, (Lebanon, May 2011), 7.

³ The term 'arbitrary detention' will be widely used in the report. When arbitrary arrest, lengthy pre-trial detention and long delays in trial are the subject of analysis, they will be specifically referred to.

⁴ United Nations Human Rights Committee, "General Comment no. 13: Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law," HRI/GEN/1/Rev.1 (April 14, 1984) art. 14, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563ed0049dfbd?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument).

⁵ For in-depth research, see Centre Libanais des Droits Humains, *Arbitrary Detention and Torture: The Bitter Reality of Lebanon* (Lebanon, January 2011).

⁶ Most of the interviews were conducted in confidentiality and the names of interviewees are withheld by mutual agreement.

⁷ For more about the tactical map, see *annex a*.

⁸ "Lebanon: Human Rights Developments and Violations," Amnesty International, October 8, 1997, <http://www.amnesty.org/en/library/asset/MDE18/019/1997/fr/88f73445-e9d9-11dd-a490-5f9258d9f20e/mde180191997en.html>. "In July 1995 Muhammad al-Zughbi and Ibrahim Sannu, two members of the Lebanese Popular Congress (LPC), a Nasserist-oriented organization, were arrested and briefly detained for distributing leaflets calling for a boycott of elections for a vacant parliamentary seat. About 25 members of the LPC were arrested on different occasions throughout 1996. For example, six LPC members were arrested in February 1996 for displaying placards criticizing government policies and were charged with disrupting public order and security. They were tried and acquitted by the court. Five other LPC members were arrested for distributing the Congress's newspaper, Sawt Beirut, and released on the same day without charge in March 1996."

⁹ Amnesty International, "Lebanon: Eight Years Solitary Confinement without Trial," press release, August 29, 2002, <http://www.amnesty.org/ar/library/asset/MDE18/011/2002/ar/00ff6a5c-f7f5-11dd-8935-051395860c48/mde180112002en.pdf>.

¹⁰ Name undisclosed.

¹¹ "Roumieh's Prisoners Steep Revolt in Blood," *The Daily Star*, April 9, 1998, <http://www.dailystar.com.lb/News/Politics/Apr/09/Roumiehs-prisoners-steep-revolt-in-blood.ashx#axzz21Qcz4YHD>.

¹² There have been a few incidents and riots that have erupted since April 2011, however, the ones sparked in Roumieh at that time can be perceived as the catalysts for prison reforms and legal change.

¹³ Van Meguerditchian, "Special Forces Put Down Roumieh Riots," *The Daily Star*, April 6, 2011, <http://www.dailystar.com.lb/News/Local-News/Apr/06/Special-forces-put-down-Roumieh-riots.ashx#axzz1cXGMPeBh>.

¹⁴ Percentage calculated by ALEF based on released numbers from various NGOs.

¹⁵ "Lebanon: Prison Deaths, Injuries Need Independent Investigation," Human Rights Watch, April 8, 2011, <http://www.hrw.org/news/2011/04/08/lebanon-prison-deaths-injuries-need-independent-investigation>.

¹⁶ Translation by ALEF “ شريل يتجر قبيلة المسجون في مجلس النواب - محمد نزال ” *Al-Akhbar*, August 11, 2011, <http://www.al-akhbar.com/node/18835>.

¹⁷ “Commission on Human Rights,” Office of the United Nations High Commissioner for Human Rights, accessed February 14, 2012, <http://www2.ohchr.org/english/bodies/chr/index.htm>. “The United Nations Commission on Human Rights was established in 1946 to weave the international legal fabric that protects our fundamental rights and freedoms. On 15 March 2006, the General Assembly adopted resolution A/RES/60/251 to establish the Human Rights Council.”

¹⁸ The Working Group on Arbitrary Detention, *Fact Sheet No.26*, (Geneva: Office of the United Nations High Commissioner for Human Rights, 2000), 5.

¹⁹ For a table depicting the different types of deprivation of liberty, see *annex b*.

²⁰ Ophelia Field et. al., *Legal and Protection Policy Research Series: Alternatives to Detention of Asylum Seekers and Refugees*, United Nations High Commissioner for Refugees (Geneva: POLAS, April 2006), <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=4474140a2&query=alternatives%20to%20detention>.

²¹ Centre for Human Rights Crime Prevention and Criminal Justice Branch, *Human Rights and Pre-Trial Detention: A Handbook of International Standards relating to Pre-Trial Detention*, Professional Training Series no. 3, (New York and Geneva: United Nations, 1994), 6, quoted in United Nations Publication, Sales No. E.92.IV.1.

²² Alfred de Zayas, “Human Rights and Indefinite Detention,” *International Review of the Red Cross* 87, no. 857 (March 2005): 18, http://www.icrc.org/eng/assets/files/other/irrc_857_zayas.pdf.

²³ Other international instruments and standards are: Convention Related to the Status of Refugees of 1951; International Convention on the Elimination of All Forms of Racial Discrimination; Body of Principles for the protection of All Persons under Any Form of Detention or Imprisonment; United Nations Rules for the Protection of Juveniles Deprived of their Liberty; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”); Convention on the Rights of the Child; Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Standard Minimum Rules for the Treatment of Prisoners; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Basic Principles on the Role of Lawyers; International Convention for the Protection of All Persons From Enforced Disappearances; General Assembly Resolution 34/178 (*habeas corpus*) and Commission on Human Rights Resolution 1992/35 (*habeas corpus*) and Resolution 1993/36 (para. 16).

²⁴ 1. Council of Europe: Convention for the Protection of Human Rights and Fundamental Freedoms; Council of Europe Guidelines on Human Rights and the Fight Against Terrorism: Recommendation No. R (79) 6 concerning the search for missing persons; Recommendation Rec (2000) 21 on the freedom of exercise of the profession of lawyer; European Prison Rules. 2. European Union: Charter of Fundamental Rights of the European Union; Inter-American System: American Declaration of the Rights and Duties of Man; American Convention on Human Rights; Inter-American Convention on Forced Disappearance of Persons. 3. African System: African Charter on Human and Peoples’ Rights; Principles and guidelines on the right to a fair trial and legal assistance in Africa; Guidelines and Measures for the Prohibition and Prevention of Torture or Degrading Treatment or Punishment in Africa (Robben Island Guidelines). 4. Arab Charter: Arab Charter on Human Rights. 4. Others instruments: United Nations Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile; United Nations Draft Third Protocol to the International Covenant on Civil and Political Rights; Syracuse Principles about the Limitation and Derogation of Rights in the International Covenant on Civil and Political Rights.

²⁵ The Working Group on Arbitrary Detention, Fact Sheet No.26, 37. The WGAD, established by resolution 1991/42 of the former Commission on Human Rights is a non-treaty based body, mandated to investigate cases of arbitrary detention, seek and receive information about such detentions from governments, NGOs, individuals etc.

²⁶ United Nations Human Rights Council, A/HRC16/47, "Report of the Working Group on Arbitrary Detention," January 19, 2011, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-47.pdf>.

²⁷ Laurent Marcoux, Jr., "Protection from Arbitrary Arrest and Detention Under International Law," *Boston College International and Comparative Law Review* 5 (1982): 346, <http://lawdigitalcommons.bc.edu/iclr/vol5/iss2/3>.

²⁸ *Ibid.*, 348.

²⁹ International Commission of Jurists, *The Definition and Scope of Arbitrary Deprivation of Liberty in Customary International Law*, 62nd Session of the Working Group on Arbitrary Detention (United Nations Human Rights Council, February 2012), 4, <http://documents.icj.org/ICJ-WGAD-deliberationsubmission.pdf>.

³⁰ *Ibid.*,

³¹ Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (Kehl am Rhein: N.P. Engel, 1993), 172-73.

³² International Commission of Jurists, *Arbitrary Deprivation of Liberty*, 5.

³³ *G. Campbell v. Jamaica*, Communication No. 248/1987, U.N. Doc. GAOR, /A/47/40 (March 30, 1992), 246. quoted in Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Professional Training Series no. 9 (New York and Geneva: United Nations, 2003), 181.

³⁴ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, 43 U.N. GAOR, Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), at principle 14.

³⁵ International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR, Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, art. 14(3)(d).

³⁶ *B. Weismann Lanza and A. Lanza Perdomo v. Uruguay*, Communication No. R.2/8, U.N. Doc. GAOR, A/35/40 (April 3, 1980), 118, quoted in Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 172.

³⁷ *I. Weinberger v. Uruguay*, Communication No. R.7/28, U.N. Doc. GAOR, A/36/40 (October 29, 1980), 119.

quoted in Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 271.

³⁸ *T. Collins v. Jamaica*, Communication No. 356/1989, U.N. Doc. GAOR, A/48/40 (vol. II) (March 25, 1993), 89, quoted in Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 271.

³⁹ *H.G. Dermit on behalf of G.I. and H.H. Dermit Barbato*, Communication No. 84/1981, U.N. Doc. GAOR, A/38/40 (October 21, 1982), 133, quoted in Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 198.

⁴⁰ Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 207.

⁴¹ *H.G. Dermit on behalf of G.I. and H.H. Dermit Barbato*, Communication No. 84/1981, 133.

⁴² *V. Kulomin v. Hungary*, Communication No. 521/1992, U.N. Doc. GAOR, A.51/40 (vol. II) (March 22, 1996), 80, quoted in Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 185.

⁴³ L. Stephens v. Jamaica, Communication No. 373/1989, U.N. Doc. GAOR, A/51/40 (vol. II) (18 October 18, 1995), 9, quoted in Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 185.

⁴⁴ Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 190.

⁴⁵ N. Fillastre v. Bolivia, Communication No. 336/1988, U.N. Doc. GAOR, A/47/40 (November 5, 1991), 306 quoted in Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 191.

⁴⁶ Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 258.

⁴⁷ *Ibid.*, 257.

⁴⁸ Specific cases may include: in the interest of minors, matrimonial disputes, the guardianship or custody of children, etc.

⁴⁹ Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 267.

⁵⁰ The ICCPR was adopted and opened for signature, ratification and accession by the General Assembly in its resolution 2200 A (XXI) of December 16, 1966 and entered into force on March 23, 1976. For more information about other country ascensions, successions and ratifications, see United Nations Treaty Collections, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

⁵¹ An example of a civil servant in this case would be the judicial police, since they are state employees. However, it is interesting to note that the magistrate employees are not state employees (Law on the Judicial Magistrate, article 132), since the judiciary is said to be independent (Code of Civil Procedure, article 1). In order for public prosecutors and judges for example to be held accountable for illegal detention, one must refer to the Statute on Functionaries, Decree Law No. 112 of 12/06/1959, which states that in the event there is no conflict between the Magistrate Law and the Statute on Functionaries, the Statute applies to the magistrates. Hence, article 367 of the Criminal Code does apply to public prosecutors, judges, etc.

⁵² .د. فيلومين بواكم نصر، "قانون العقوبات الخاص جرمات وعقوبات: دراسة مقارنة وتحليل" (Sader Publishers, 2009).

⁵³ One of the fundamental elements of criminal responsibility alongside *actus reus*, is *mens rea* which is found to exist where the individual committing the act does so with criminal intent, wilfulness or a guilty mind. This person must be aware that his/her conduct is criminal.

⁵⁴ . نصر 493، "قانون العقوبات"

⁵⁵ Translation by ALEF.

⁵⁶ These qualifications are also frequently used in the Code of Criminal Procedure (articles 48 and 107 for example). Article 107 of the CCP states: "if he is held for more than 24 hours without being brought before the Public Prosecutor, the custody shall be deemed wrongful and the responsible officer shall be prosecuted for the offence of deprivation of personal liberty." The term wrongful in this case is synonymous with wrong, unjust, unlawful or legally unfounded. Therefore if the detainee's custody surpasses twenty-hour hours without being brought to the public prosecutor, this is considered a wrongful deprivation of personal liberty.

⁵⁷ New Code of Criminal Procedure, Act No. 326 of August 7, 2001, (Beirut: 2001).

⁵⁸ Otherwise known as *in flagrante delicto* or *red-handed*, the offence discovered during its commission or immediately afterwards according to article 29 of the Code of Criminal Procedure is: a) an offence discovered as it occurs b) an offence where the perpetrator is apprehended during or immediately after its commission c) an offence following which the suspected perpetrator is chased by hue and cry d) an offence detected immediately after being committed with clearly discernable signs of its commission e) an offence where a person is caught in possession of articles, weapons or documents indicating that he is the perpetrator within twenty-four hours of the commission of the offence.

⁵⁹ For a table of the case flow in the Lebanese criminal justice system, see *annex c*.

⁶⁰ For a table of the rights of the suspect in Lebanese law, see *annex d*.

⁶¹ For more information about the appointment of forensic doctors, see ALEF, *Alternative Report: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment* (Lebanon, October 2011).

⁶² It is also important to state that other fundamental human rights are at stake when one is arbitrarily deprived of his/her liberty. Arbitrary detention most often than not, paves the way for torture and inhuman or degrading treatment of punishment, disappearances, as well as violates the guarantee of fair and public trial before a competent tribunal, a trial without undue delay, the right to be presumed innocent, and so forth. Arbitrary detention often serves as a gateway for corruption practices within institutions where the rule of law is hindered. These violations have been widely documented by various international and national human rights organizations.

⁶³ Centre for Human Rights Crime Prevention and Criminal Justice Branch, *Human Rights and Pre-Trial Detention*, 26. "Related to torture and ill-treatment is the information obtained by it: statements found to have been procured by torture should not be used as evidence against anyone. Accordingly, allegations of torture must be vigorously investigated and the perpetrators of torture prosecuted. Practical steps, such as the exclusion of evidence found to have been procured by torture and keeping records of interrogations, are necessary to secure the right to freedom from torture and ill-treatment."

⁶⁴ Merriam Webster, "or", accessed February 27, 2012, <http://www.merriamwebster.com/dictionary/or?show=1&t=1333017215>.

⁶⁵ Joe Karam, "Arbitrary Detention in Lebanon: Context and Causes" (ALEF Training, Rotana Hotel, November 28-29, 2011).

⁶⁶ John Murray v. the United Kingdom, Reports 1996-I (Eur. Court HR, February 8, 1996), 49, quoted in Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 241.

⁶⁷ A Petty offence/infraction is punishable by a maximum prison term of ten days, whereas the misdemeanour is punishable by a minimum prison term of ten days to a maximum of three years. The felony is punishable by a minimum prison term of three years to life in prison, and the death penalty (Chapter I, Title II of the Criminal Code).

⁶⁸ Khaled Akkari, "Detention Process in Lebanon: Monitoring and Reporting," (ALEF Training, Golden Tulip, March 5-6, 2012). Judge Khaled Akkari says that when the law was initially implemented, checks were rarely used and their amounts were significant; hence writing a bad check was deemed a crime due to the widespread occurrences of fraud in society. Nowadays, fraud has a lesser impact than it did some fifty years ago, therefore the law and enforcement practice regarding the offence of writing bad checks should be revised accordingly.

⁶⁹ Judge Akkari presides in Tripoli and is active in the field of human rights. He has worked on a draft law to criminalize torture. In addition to his work as a civil servant, he is on the Legal Committee of Restart Center, a local NGO that works on rehabilitation for victims of torture.

⁷⁰ Akkari, "Detention Process in Lebanon."

⁷¹ Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 196.

⁷² "Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders," Report prepared by the Secretariat, United Nations Publication, Sales No. E.91.IV.2 (Havana, August 27-September 7, 1990), chap. I, sect. C., http://www.asc41.com/UN_congress/8th%20UN%20Congress%20on%20the%20Prevention%20of%20Crime/026%20ACONF.144.28.Rev.1%20Eighth%20United%20Nations%20Congress%20on%20the%20Prevention%20of%20Crime%20and%20the%20Treatment%20of%20Offenders.pdf.

⁷³ A Common Law legal action through which an arrested individual must be brought before a court of law. This mechanism is usually used to protect individuals from illegal detention.

⁷⁴ A proceeding comparable to *habeas corpus*.

⁷⁵ "Eight United Nations Congress," chap. 1, sect. C.

⁷⁶ United Nations International Human Rights Instruments, "International Human Rights Instruments: Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies," U.N. Doc. HRI/GEN/1/Rev.7 (2004), 131, [http://www.unhchr.ch/tbs/doc.nsf/0/ca12c3a4ea8d6c53c1256d500056e56f/\\$FILE/G0441302.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/ca12c3a4ea8d6c53c1256d500056e56f/$FILE/G0441302.pdf), quoted in de Zayas, "Human Rights and Indefinite Detention," 18.

⁷⁷ For the difference between the terms 'illegal', 'unlawful' and 'arbitrary', see *Scope and Content of Arbitrary Detention in International Law*.

⁷⁸ Nadim Houry, "The Four Generals and the Three Thousand Detainees," Human Rights Watch, May 14, 2009, <http://www.hrw.org/news/2009/05/14/four-generals-and-three-thousand-detainees>.

⁷⁹ "Communication Addressed to the Government on April 27, 2007," United Nations Working Group on Arbitrary Detention Document Search, Opinion no. 37/2007 (Lebanon), accessed February 8, 2012, [www.unwgdatabase.org/un/Document.aspx?id=1970&terms=\(+lebanon+\)](http://www.unwgdatabase.org/un/Document.aspx?id=1970&terms=(+lebanon+)).

⁸⁰ Code Pénal, Décret-Législatif 340/Ni du 1er mars 1942, (Librairie Antoine, 2009), article 562.

⁸¹ *Ibid.*, 563.

⁸² Article 246 of the CCP presents the same criticisms.

⁸³ *MonjaJaona v. Madagascar*, Communication No. 132.1982, U.N. Doc. GAOR, A/40/40, (April 1, 1985), 186, quoted in Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 209.

⁸⁴ "Legal Aid," Beirut Bar Association, last modified February 10, 2010, <http://www.bba.org.lb/subpage.php?cat=Mzg0>.

⁸⁵ Interview with lawyer, August 2, 2012.

⁸⁶ "Legal Aid."

⁸⁷ Interview with lawyer, February 2, 2011.

⁸⁸ "Legal Aid."

⁸⁹ Karam, "Arbitrary Detention in Lebanon."

⁹⁰ Courtroom observations by ALEF (Beirut Courthouse, March 8, 2012).

⁹¹ Interview with lawyer, December 19, 2011.

⁹² Interview with lawyer, November 16, 2011.

⁹³ Hannah Ellis-Petersen, "Lack of State-Funded Legal Aid Hampers Justice," *The Daily Star*, September 30, 2011, <http://www.dailystar.com.lb/News/Local-News/2011/Sep-30/150084-lack-of-state-funded-legal-aid-hampers-justice.ashx#axzz1h4DW7x2Z>.

⁹⁴ *Ibid.*,

⁹⁵ Maya W. Mansour and Carlos Y. Daoud, *Lebanon The Independence and Impartiality of the Judiciary*, (Copenhagen: Euro-Mediterranean Human Rights Network, February 2010), 13.

⁹⁶ *Ibid.*, 14-16. The Religious Courts manage the personal status laws of the various religious confessions in Lebanon. "Article 19 of the Constitution grants the heads of legally recognized religious communities the right to consult the Constitutional Council to examine the constitutionality of laws related to personal status, the freedom of belief and religious practice and the freedom of religious education." The Ecclesiastical Courts regulate the Catholic and Orthodox rites whereas the Shari'a Courts are comprised of the Sunni and Shiite Courts as well as the Druze Courts.

⁹⁷ "Judicial Inspection Authority," Ministry of Justice, Republic of Lebanon, accessed February 21, 2012, <http://www.justice.gov.lb/CP/viewpage.aspx?id=246&language=2>.

⁹⁸ Mansour and Daoud, *The Independence and Impartiality of the Judiciary*, 14.

⁹⁹ *Ibid.*, 18-19.

¹⁰⁰ ALEF, *Military Tribunal: A Breach in the Integrity of the Judicial System*, (Lebanon: 2009-2010), 1.

¹⁰¹ *Ibid.*,

¹⁰² United Nations Commission on Human Rights, "Report of the Working Group on Arbitrary Detention," E/CN.4/1996/40(December 15, 1995), 27, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G95/148/44/PDF/G9514844.pdf?OpenElement>.

¹⁰³ United Nations Human Rights Committee, "General Comment no. 32: Right to Equality Before Courts and Tribunals and to Fair Trial," CCPR/C/GC/32 (August 23, 2007), art. 14, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>.

¹⁰⁴ United Nations Commission on Human Rights, E/CN.4/1996/40, 26.

¹⁰⁵ United Nations Commission on Human Rights, "Report of the Working Group on Arbitrary Detention," E/CN.4/1999/63, (December 18, 1998), 22, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/052/52/PDF/G9805252.pdf?OpenElement>.

¹⁰⁶ "Two Men Sentenced *In Absentia* for Collaborating with Israel," *The Daily Star*, April 24, 2012, <http://www.dailystar.com.lb/News/Local-News/2012/Apr-24/171204-2-men-sentenced-in-absentia-for-collaborating-with-israel.ashx#axzz1zeNvZIGW>.

¹⁰⁷ "Military Court Jails Soldier for Harassing Female Tourist," *The Daily Star*, March 14, 2012, <http://www.dailystar.com.lb/News/Local-News/2012/Mar-14/166577-military-court-jails-soldier-for-harassing-female-tourist.ashx#axzz23QNa07Q3>.

¹⁰⁸ "Lebanese Sentenced for Robbing Saudi Prince," *The Daily Star*, June 29, 2012, <http://www.dailystar.com.lb/News/Local-News/2012/Jun-29/178688-lebanese-sentenced-for-robbing-saudi-prince.ashx#axzz1zeNvZIGW>.

¹⁰⁹ "Women Receives Jail Term over Israel Citizenship," *The Daily Star*, July 27, 2012, <http://dailystar.com.lb/News/Local-News/2012/Jul-27/182212-women-receives-jail-term-over-israel-citizenship.ashx#axzz21nax0EOT>.

¹¹⁰ "Lebanon Judge Indicts Six on Terrorism Charges," *The Daily Star*, August 6, 2012, <http://dailystar.com>.

[lb/News/Local-News/2012/Aug-06/183595-lebanon-judge-indicts-six-on-terrorism-charges.ashx#axzz22wvYv6Od](http://www.dailystar.com.lb/News/Local-News/2012/Aug-06/183595-lebanon-judge-indicts-six-on-terrorism-charges.ashx#axzz22wvYv6Od).

¹¹¹ "7 Charged with Attempting to Kill Soldiers in North Lebanon Clashes," *The Daily Star*, August 31, 2012, <http://dailystar.com.lb/News/Local-News/2012/Aug-31/186258-7-charged-with-attempting-to-kill-soldiers-in-north-lebanon-clashes.ashx#axzz25OA8cKml>.

¹¹² "Military Court Jails Soldier," *The Daily Star*.

¹¹³ "2 More Ogero Employees Charged as Israeli Collaborators," *The Daily Star*, March 2, 2012, <http://www.dailystar.com.lb/News/Local-News/2012/Mar-02/165265-2-ogero-employees-to-be-referred-to-military-tribunal.ashx#axzz23QNa07Q3>.

¹¹⁴ Youssef Diab, "Tribunal Sentences Lebanese Collaborators to Death, Hard Labor," *The Daily Star*, March 20, 2012, <http://www.dailystar.com.lb/News/Local-News/2012/Mar-20/167320-tribunal-sentences-lebanese-who-collaborated-with-israel.ashx#axzz23QNa07Q3>.

¹¹⁵ "2 More Ogero Employees Charged," *The Daily Star*.

¹¹⁶ "Courts Jail Man for Collaborating with Israel," *The Daily Star*, July 14, 2012, <http://www.dailystar.com.lb/News/Politics/2012/Jul-14/180554-court-jails-man-for-collaborating-with-israel.ashx#axzz20oO9tOuO>.

¹¹⁷ "Lebanon Accuses SLA Founder's Daughter of Collaborating with Israel," *The Daily Star*, July 16, 2012, <http://dailystar.com.lb/News/Politics/2012/Jul-16/180771-lebanon-accuses-sla-founders-daughter-of-collaborating-with-israel.ashx#axzz20rPuntzz>.

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¹¹⁹ Youssef Diab, "Former Lebanese Minister Detained after Discovery of Bomb Plot," *The Daily Star*, August 9, 2012, <http://www.dailystar.com.lb/News/Politics/2012/Aug-09/183967-former-mp-and-cabinet-minister-michel-samaha-arrested.ashx#axzz28FAxsFu34>.

¹²⁰ Hussein Dakroub, "Samaha to be Referred to Military Tribunal over 'Terror' Plot," *The Daily Star*, August 11, 2012, <http://www.dailystar.com.lb/News/Politics/2012/Aug-11/184251-samaha-to-be-referred-to-military-tribunal-over-terror-plot.ashx#axzz23QNa07Q3>.

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¹²⁴ "Syria to Hand Over Suspects in Estonian Kidnapping: Security Chief," *The Daily Star*, May 17, 2012, <http://www.dailystar.com.lb/News/Local-News/2012/May-17/173712-syria-to-hand-over-suspects-in-estonian-kidnapping-general-security-chief.ashx#axzz26vFjuXjb>.

¹²⁵ "Two Men Sentenced *In Absentia*," *The Daily Star*.

¹²⁶ "Communication Addressed to the Government on 11 October 2007," United Nations Working Group on Arbitrary Detention Document Search, Opinion no. 27/2009 (Egypt), accessed May 8, 2012, <http://www.unwgadatabase.org/un/Document.aspx?id=2351&terms=%28+Opinion+No.+27%2f2008+%29>.

¹²⁷ ALEF, et al., "Lebanon: Promptly Investigate Torture and Arbitrary Detention Allegations in the Case of Mr. Tarek Rabaa," press release, November 8, 2011. Tareq Rabaa, an Alfa Telecom employee, was summoned on July 12 2010 for questioning by the Ministry of Defense. Accused of collaborating with Israel, Mr. Rabaa only had access to his lawyer thirty-two days after his arrest. He was held at the Ministry of Defense detention centre for 108 days, where he was allegedly tortured and subject to ill treatment before being transferred to Roumieh prison. His detention at the Ministry of Defense violated Lebanon's Code of Criminal Procedure, which provides for a maximum custodial detention of forty-eight hours, renewable once. On February 7, 2011, Mr. Rabaa appeared before the Military Tribunal and was expected to appear again on December 12, 2011.

¹²⁸ United Nations Human Rights Committee, "Concluding observations of the Human Rights Committee: Lebanon," CCPR/C/79/Add.78, (April 1, 1997), <http://www.unhchr.ch/tbs/doc.nsf/0/4ae80fec81d794e8025648900322921?Opendocument>.

¹²⁹ *Ibid.*,

¹³⁰ Office of the Minister of Interior & Municipalities, *The Comprehensive National Report on Prison Conditions in Lebanon Conclusions and Recommendations*, (The Lebanese Republic: 2011), 59.

¹³¹ *Ibid.*, 82.

¹³² *Ibid.*, 39.

¹³³ *Ibid.*, 55.

¹³⁴ *Ibid.*, 90.

¹³⁵ "صقر وقضاة يتفقدون أوضاع السجناء," *Al Mustaqbal*, (March 6, 2012), <http://www.almustaqbal.com/storiesv4.aspx?storyid=511418>.

¹³⁶ "Annual Budget Documents and Process," Ministry of Finance, Republic of Lebanon, accessed July 24, 2012, <http://www.finance.gov.lb/en-US/finance/BudgetInformation/Pages/AnnualBudgetDocumentsandProcess.aspx>.

¹³⁷ Karam, "Arbitrary Detention in Lebanon."

¹³⁸ The Lebanese Center for Policy Studies, *Arbitrary Detention Focus Group Report*, (Lebanon, April 2, 2012), 17.

¹³⁹ *Ibid.*, 7.

- ¹⁴⁰ Akkari, "Detention Process in Lebanon."
- ¹⁴¹ Interview with single criminal judge, October 16, 2012.
- ¹⁴² Interview with lawyer, October 31, 2012.
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- ¹⁴⁴ J. Leslie v. Jamaica, Communication No. 564/1993 U.N. Doc. GAOR,A/53/40 (vol. II) (July 31, 1998),28, quoted in Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 268.
- ¹⁴⁵ C. Smart v. Trinidad and Tobago, Communications No. 672/1995, U.N. Doc. GAOR, A/53/40 (vol. II) (July 29, 1998), 149, quoted in Office of the High Commissioner for Human Rights and International Bar Association, *Human Rights in the Administration of Justice*, 268.
- ¹⁴⁶ Interview with legal expert, August 1, 2012.
- ¹⁴⁷ Interview with single criminal judge, October 16, 2012.
- ¹⁴⁸ Interview with criminal justice expert, December 13, 2011.
- ¹⁴⁹ Interview with lawyer, January 19, 2012.
- ¹⁵⁰ Interview with single criminal judge, October 16, 2012.
- ¹⁵¹ Interview with lawyer, March 6, 2012.
- ¹⁵² Youssef Diab, "Qortbawi Suspends Judges Amid Efforts to Limit Corruption," *The Daily Star*, July 28, 2012, <http://www.dailystar.com.lb/News/Politics/2012/Jul-28/182361-qortbawi-suspends-judges-amid-efforts-to-limit-corruption.ashx#axzz28twpduS2>.
- ¹⁵³ Mansour and Daoud, *The Independence and Impartiality of the Judiciary*, 36-37.
- ¹⁵⁴ *Ibid.*,
- ¹⁵⁵ Omar Nashabe, "Security Sector Reform in Lebanon: Internal Security Forces and General Security," *The Arab Reform Initiative*, January 2009, http://www.arab-reform.net/sites/default/files/PDF_SECURITY_SECTOR_Lebanon.pdf.
- ¹⁵⁶ Interview with lawyer, March 6, 2012.
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- ¹⁵⁸ Interview with lawyer, January 19, 2012.
- ¹⁵⁹ Courtroom observations by ALEF (Jeideh Courthouse, January 26, 2012).
- ¹⁶⁰ Interview with lawyer, August 2, 2012.
- ¹⁶¹ Office of the Minister of Interior & Municipalities, *Report on Prison Conditions*,122.
- ¹⁶² *Ibid.*, 131.
- ¹⁶³ *Ibid.*,
- ¹⁶⁴ "Baroud Warns of Time Bomb in Lebanon's Penal System," *Lebanon Wire*, April 4, 2011, <http://www.lebanonwire.com/1104MLN/11040405DS.asp>.
- ¹⁶⁵ MTV, "جولة لوزيري الداخلية والعدل على سجين روميه," *Prime Time News*, 19:52, February 8, 2012, <http://mtv.com.lb/News>.
- ¹⁶⁶ Olivia Alabaster, "Most Lebanese Prisoners Still in Pretrial Limbo," *The Daily Star*, June 22, 2012, <http://dailystar.com.lb/News/Local-News/2012/Jun-22/177714-most-lebanese-prisoners-still-in-pretrial-limbo.ashx#axzz1yWNLzhWV>.
- ¹⁶⁷ Interview with single criminal judge, October 16, 2012.
- ¹⁶⁸ Interview with legal expert, August 1, 2012.
- ¹⁶⁹ The Lebanese Center for Policy Studies, *Focus Group Report*, 9.
- ¹⁷⁰ United Nations Human Rights Council, A/HRC/10/21, 22.
- ¹⁷¹ The Lebanese Center for Policy Studies, *Focus Group Report*, 2012. A *shawish* is a senior prisoner who has many connections inside the correctional institution with other prisoners and law enforcement officials. The *shawish* may be compared to a kingpin or pimp, having a monopoly on drug distribution, sex trade, and the ability to control other prisoners and delegate tasks to them in exchange for services or protection.
- ¹⁷² The Lebanese Center for Policy Studies, *Focus Group Report*, 7-8.
- ¹⁷³ *Ibid.*, 12.
- ¹⁷⁴ *Ibid.*, 6.

- ¹⁷⁵ Ibid.,
- ¹⁷⁶ Ibid., 10.
- ¹⁷⁷ Ibid., 11.
- ¹⁷⁸ Ibid., 18.
- ¹⁷⁹ Ibid.,
- ¹⁸⁰ Ibid.,
- ¹⁸¹ Ibid., 8.
- ¹⁸² Ibid., 21.
- ¹⁸³ Ibid., 13.
- ¹⁸⁴ Ibid., 9.
- ¹⁸⁵ Ibid., 13.
- ¹⁸⁶ Ibid.,
- ¹⁸⁷ Ibid., 17.
- ¹⁸⁸ Ibid., 15.
- ¹⁸⁹ Ibid., 11.
- ¹⁹⁰ Focus Group Sessions, discussions by LCPS, December 28-29,2011.
- ¹⁹¹ The Lebanese Center for Policy Studies, *Focus Group Report*, 10.
- ¹⁹² Focus Group Sessions, LCPS.
- ¹⁹³ The Lebanese Center for Policy Studies, *Focus Group Report*, 10.
- ¹⁹⁴ Ibid., 12-13.
- ¹⁹⁵ Ibid., 8.
- ¹⁹⁶ Ibid., 8-9.
- ¹⁹⁷ Ibid., 7.
- ¹⁹⁸ Ibid., 11.
- ²⁹⁹ Focus Group Sessions, LCPS.
- ²⁰⁰ The Lebanese Center for Policy Studies, *Focus Group Report*, 20.
- ²⁰¹ Ibid., 7.
- ²⁰² Ibid.,
- ²⁰³ Ibid., 12. Ironically, as opposed to being informed of their rights and human rights guarantees by judicial police at the first moments of detention, these prisoners acquired the information much later, where it would be too late to request any remedies.
- ²⁰⁴ Ibid., 17.
- ²⁰⁵ Ibid.,
- ²⁰⁶ Ibid., 16.
- ²⁰⁷ Ibid., 17.
- ²⁰⁸ Ibid., 10.
- ²⁰⁹ Focus Group Sessions, LCPS.
- ²¹⁰ The Lebanese Center for Policy Studies, *Focus Group Report*, 12.
- ²¹¹ One on One Sessions, discussion by LCPS, March 5-6, 2012.
- ²¹² The Lebanese Center for Policy Studies, *Focus Group Report*, 6-7.
- ²¹³ One on One Sessions, LCPS.
- ²¹⁴ The Lebanese Center for Policy Studies, *Focus Group Report*, 13.
- ²¹⁵ Ibid., 10-11.
- ²¹⁶ Ibid., 7.
- ²¹⁷ Ibid.,
- ²¹⁸ Ibid., 9.
- ²¹⁹ Ibid., 12.
- ²²⁰ Ibid., 16.
- ²²¹ Focus Group Sessions, LCPS.
- ²²² The Lebanese Center for Policy Studies, *Focus Group Report*, 16-17.
- ²²³ Beirut Courthouse, March 8, 2012.

- ²²⁴ Interview with legal expert, August 1, 2012.
- ²²⁵ Beirut Courthouse, February 16, 2012.
- ²²⁶ *Ibid.*, and Beirut Courthouse, March 8, 2012 and Jdeideh Courthouse, January 26, 2012.
- ²²⁷ One on One Sessions, LCPS.
- ²²⁸ Please note that the figures in this quote are reflected as is.
- ²²⁹ The Lebanese Center for Policy Studies, *Focus Group Report*, 17.
- ²³⁰ United Nations Human Rights Council, "Implementation of General Assembly Resolution 60/251 of 15 March 2005 Entitled "Human Rights Council: Report of the Working Group on Arbitrary Detention," A/HRC/4/40 (January 9, 2007), 25, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/101/21/PDF/G0710121.pdf?OpenElement>.
- ²³¹ The Lebanese Center for Policy Studies, *Focus Group Report*, 23.
- ²³² *Ibid.*, 21.
- ²³³ *Ibid.*,
- ²³⁴ *Ibid.*,
- ²³⁵ *Ibid.*,
- ²³⁶ *Ibid.*,
- ²³⁷ Focus Group Sessions, LCPS.
- ²³⁸ The Lebanese Center for Policy Studies, *Focus Group Report*, 19-20.
- ²³⁹ *Ibid.*, 14.
- ²⁴⁰ Focus Group Sessions, LCPS.
- ²⁴¹ The Lebanese Center for Policy Studies, *Focus Group Report*, 14.
- ²⁴² *Ibid.*, 22.
- ²⁴³ *Ibid.*, 15.
- ²⁴⁴ Meeting with public prosecutor, October 23, 2012.
- ²⁴⁵ The Lebanese Center for Policy Studies, *Focus Group Report*, 22.
- ²⁴⁶ *Ibid.*, 23-24.
- ²⁴⁷ *Ibid.*, 23.
- ²⁴⁸ *Ibid.*, 22.
- ²⁴⁹ *Ibid.*, 23.
- ²⁵⁰ *Ibid.*, 22.
- ²⁵¹ *Ibid.*, 24.
- ²⁵² *Ibid.*,
- ²⁵³ United Nations Human Rights Council, "Report of the Working Group on Arbitrary Detention," A/HRC/16/47 (January 19, 2011), 18, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-47.pdf>.
- ²⁵⁴ United Nations Human Rights Council, "Joint Study on Secret Detention of the Special Rapporteur on Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on the Promotion and Protection of Human Rights & Fundamental Freedoms while Countering Terrorism, the Working Group on Arbitrary Detention & the Working Group on Enforced or Involuntary Disappearances," A/HRC/13/42, (February 19, 2010), 11, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>.
- ²⁵⁵ *Ibid.*, 12.
- ²⁵⁶ United Nations Human Rights Council, A/HRC/16/47, 18.
- ²⁵⁷ United Nations Human Rights Council, "Joint Study on Secret Detention." 3.
- ²⁵⁸ Miguel Angel Estrella v. Uruguay, Communication No. 74/1980, U.N. Doc. GAOR, A/38/40 (March 29, 1983) quoted in United Nations Human Rights Council, "Joint study on secret detention," 18.
- ²⁵⁹ United Nations Human Rights Council, A/HRC/16/47, 17.
- ²⁶⁰ United Nations Human Rights Council, A/HRC/10/21, 21.
- ²⁶¹ *Ibid.*,

²⁶² United Nations Human Rights Council, “Report of the Working Group on Arbitrary Detention,” A/HRC/7/4 (January 10, 2008), 20, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/100/91/PDF/G0810091.pdf?OpenElement>.

²⁶³ *Ibid.*,

²⁶⁴ Interview with Najla Chahda, September 3, 2012.

²⁶⁵ Interview with lawyer, August 2, 2012.

²⁶⁶ Interview with Najla Chahda, September 3, 2012.

²⁶⁷ Interview with lawyer, August 2, 2012.

²⁶⁸ Centre Libanais des Droits Humains, *Prisons in Lebanon: Humanitarian & Legal Concerns* (Lebanon, 2010), 52, 61.

²⁶⁹ Office of the Minister of Interior & Municipalities, *Report on Prison Conditions*, 26.

²⁷⁰ For an in depth read, see, Kathleen Hamill, *Trafficking of Migrant Domestic Workers in Lebanon: A Legal Analysis*, Kafa (enough) Violence and Exploitation (Lebanon, March 2011), <http://www.kafa.org.lb/StudiesPublicationPDF/PRpdf37.pdf>.

²⁷¹ United Nations Human Rights Council, A/HRC/7/4, 18.

²⁷² Terms officially used by the WGAD.

²⁷³ United Nations Commission on Human Rights, E/CN.4/1999/63, 19-20.

Guarantee 1: To be informed, at least orally, when held for questioning at the border, or in the territory concerned if he has entered illegally, in a language which he understands, of the nature of and grounds for the measure refusing admission at the border, or permission for temporary residence in the territory, that is being contemplated with respect to him.

Guarantee 2: Decision involving administrative custody taken by a duly authorized official with a sufficient level of responsibility in accordance with the criteria laid down by law and subject to guarantees 3 and 4.

Guarantee 3: Determination of the lawfulness of the administrative custody pursuant to legislation providing to this end for:

The person concerned to be brought automatically and promptly before a judge or a body affording equivalent guarantees of competence, independence and impartiality;

Alternatively, the possibility of appealing to a judge or to such a body.

Guarantee 4: To be entitled to have the decision reviewed by a higher court or an equivalent competent, independent and impartial body.

Guarantee 5: Written and reasoned notification of the measure of custody in a language understood by the applicant.

Guarantee 6: Possibility of communicating by an effective medium such as the telephone, fax or electronic mail, from the place of custody, in particular with a lawyer, a consular representative and relatives.

Guarantee 7: To be assisted by counsel of his own choosing (or, alternatively, by officially appointed counsel) both through visits in the place of custody and at any hearing.

Guarantee 8: Custody effected in public premises intended for this purpose otherwise, the individual in custody shall be separated from persons imprisoned under criminal law

Guarantee 9: Keeping up to date a register of persons entering and leaving custody, and specifying the reasons for the measure.

Guarantee 10: Not to be held in custody for an excessive or unlimited period, with a maximum period being set, as appropriate, by the regulations.

Guarantee 11: To be informed of the guarantees provided for in the disciplinary rules.

Guarantee 12: Existence of a procedure of holding a person *incommunicado* and the nature of such a procedure, where applicable.

Guarantee 13: Possibility for the alien to benefit from alternatives to administrative custody.

Guarantee 14: Possibility for the Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and specialized non-governmental organizations to have access to places of custody.

Where the absence of such guarantees or their violation, circumvention or non-implementation constitutes a matter of a high degree of gravity, the Working Group may conclude that the custody is arbitrary.

²⁷⁴ United Nations Commission on Human Rights, E/CN.4/1999/63, 20.

²⁷⁵ The Lebanese Center for Policy Studies, *Focus Group Report*, 19.

²⁷⁶ For more information see Nizar Saghieh and Walid Al Farchichi, *Homosexual Relations in the Penal Codes: General Study Regarding the Laws in the Arab Countries with a Report on Lebanon and Tunisia*, Helem (Lebanon, 2009), <http://www.helem.net/sites/default/files/2.pdf>.

²⁷⁷ Translation by ALEF.

²⁷⁸ Decision 746/2009 on 8/4/2009, Baabda Single Criminal Judge, Unpublished.

²⁷⁹ Saghieh and Farchichi, *Homosexual Relations in the Penal Codes*, 52-53.

²⁸⁰ It is important to note that this statement only reflects cases that are known to Helem; many more slip under the radar or go unreported for various reasons.

²⁸¹ In 2011, a military officer and two civilians were charged under article 534 of the CC. The military officer's conversation over the phone sparked suspicions amongst his comrades of his sexual orientation and prompted the investigation. The three individuals were all brought in for questioning by military forces. They paid a fine and were subsequently released.

²⁸² Emma Gatten, "Anal Probes to Determine Homosexuality," *The Daily Star*, August 2, 2012, <http://dailystar.com.lb/News/Local-News/2012/Aug-02/183083-ngo-urges-end-to-use-of-gay-tests.ashx#axzz22NK8gvaD>.

²⁸³ Anne-Marie El-Hage, "Nouveau tests de la honte au Liban : la MTV au coeur de la polémique," *L'Orient-Le Jour*, August 1, 2012, http://www.lorientlejour.com/category/%C3%80+La+Une/article/771288/Nouveau_tests_de_la_honte_au_Liban+:_la_MTV_au_coeur_de_la_polemique.html.

²⁸⁴ Emma Gatten, "NGO Urges End to Use of Gay Tests," *The Daily Star*, August 2, 2012, <http://dailystar.com.lb/News/Local-News/2012/Aug-02/183083-ngo-urges-end-to-use-of-gay-tests.ashx#axzz22NK8gvaD>.

²⁸⁵ "Two Lebanese Detained on Suspicion of Engaging in Homosexual Acts," *The Daily Star*, August 17, 2012, <http://www.dailystar.com.lb/News/Local-News/2012/Aug-17/184923-two-lebanese-detained-on-suspicion-of-homosexuality.ashx#axzz23hGoQkIV>.

²⁸⁶ Emma Gatten, "Doctors Ban Anal Exam used to Charge Men with Homosexuality," *The Daily Star*, August 8, 2012, <http://dailystar.com.lb/News/Local-News/2012/Aug-08/183813-doctors-ban-anal-exam-used-to-charge-men-with-homosexuality.ashx>.

²⁸⁷ *Ibid*

²⁸⁸ Interview with lawyer, September 19, 2012.

²⁸⁹ *Ibid.*,

²⁹⁰ "Arab-African Seminar on Criminal Justice and Penal Reform, Recommendations," (Tunis, December 2, 1991) quoted in Centre for Human Rights Crime Prevention and Criminal Justice Branch, *Human Rights and Pre-Trial Detention*, 45.

²⁹¹ Legal rules governing minors are codified in the CCP, CC, and Law 422, but there are specific articles in Law 422 that would trump some matters of procedure for example (interrogation in the presence of a social worker as opposed to contact with the lawyer).

²⁹² Alex Schmid and Ralph Riachy, "Juvenile Justice Initiatives in Lebanon," *Forum on Crime and Society* 3, no. 1-2, (December 2003): 107, http://www.unodc.org/pdf/crime/forum/forum3_note2.pdf.

²⁹³ *Ibid.*, 111.

²⁹⁴ *Ibid.*, 112.

²⁹⁵ Interview with Roula Lebbos, August 27, 2012.

²⁹⁶ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), G.A. res. 40/33, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985), art. 4.1.

²⁹⁷ Horst Schuler-Springorum, *Report on the Standard Minimum Rules for the Administration of Juvenile Justice and the Handling of Juvenile Offenders*, Unpublished Draft (Summer 1983), e-mail message to author, May 2002, quoted in Don Cipriani, *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective*, (Sussex: Ashgate Publishing Limited, 2009), 51-52.

²⁹⁸ The Beijing Rules, article 4.1 Commentary.

²⁹⁹ Meeting with lawyer, September 19, 2012.

³⁰⁰ According to Roula Lebbos, UPEL began its work in 1936 with the MoJ for the protection of minors in conflict with the law. In those days, minors were being targeted like adults and went to prison with adults; they would also get abused. In 1983, Law 119 was introduced and paved the way for social worker involvement. Judicial protection for maltreated children began in 1998.

³⁰¹ Interview with Roula Lebbos, August 27, 2012.

³⁰² Michael Frey, "Lebanese Laws for Juveniles 'Good' on Paper but 'Poor' in Practice," *The Daily Star*, November 5, 2008, <http://www.dailystar.com.lb/News/Local-News/Nov/05/Lebanese-laws-for-juveniles-good-on-paper-but-poor-in-practice.ashx#axzz2DK2v38pJ>.

³⁰³ Interview with Roula Lebbos, August 27, 2012.

³⁰⁴ Nidal Jurdi, "Child Protection - The Current Legal Status in Lebanon: How to Move Forward?" September 2009, <http://www.atfalouna.gov.lb/Files/nidaljerde.doc>.

³⁰⁵ Interview with lawyer, September 19, 2012.

³⁰⁶ Interview with Roula Lebbos, August 27, 2012.

³⁰⁷ Interview with lawyer, September 19, 2012.

³⁰⁸ *Ibid.*,

³⁰⁹ Dr. Nidal Jurdi is a representative of the OHCHR.

³¹⁰ Jurdi, "Child Protection."

³¹¹ Frey, "Lebanese Laws for Juveniles."

³¹² Interview with lawyer, September 19, 2012.

³¹³ Frey, "Lebanese Laws for Juveniles."

³¹⁴ *Ibid.*,

³¹⁵ "Arab-African Seminar Recommendations," quoted in Centre for Human Rights Crime Prevention and Criminal Justice Branch, *Human Rights and Pre-Trial Detention*," 45.

³¹⁶ Interview with lawyer, September 19, 2012.

³¹⁷ Interview with Roula Lebbos, August 27, 2012. The lack of resources is also glaring in the number of staff at UPEL: there are only two social workers for the whole of Mount Lebanon. UPEL only gets involved with the tip off from the public prosecutor; judicial police cannot act without thistip off. Social workers work during the day and night so that juveniles do not sleep at the police station.

³¹⁸ Interview with lawyer, September 19, 2012.

³¹⁹ *Ibid.*,

³²⁰ Interview with Roula Lebbos, August 27, 2012.

³²¹ Interview with lawyer, July 18, 2012.

³²² "New Social Affairs Center for Juveniles Opens in Roumieh," *The Daily Star*, July 14, 2012, <http://www.dailystar.com.lb/News/Local-News/2012/Jun-14/176777-new-social-affairs-center-for-juveniles-opens-in-roumieh.ashx#axzz20IpaYfGJ>.

³²³ United Nations Commission on Human Rights, "Application of International Standards Concerning the Human Rights of Detained Juveniles," Report prepared by Mary Concepcion Bautista, Special Rapporteur on the Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1991/24, quoted in in Centre for Human Rights Crime Prevention and Criminal Justice Branch, *Human Rights and Pre-Trial Detention*," 45.

³²⁴ Interview with lawyer, September 19, 2012.

³²⁵ *Ibid.*,

- ³²⁶ Office of the Minister of Interior & Municipalities, *Report on Prison Conditions*, 95.
- ³²⁷ Interview with Roula Lebbos, August 27, 2012.
- ³²⁸ Interview with lawyer, September 19, 2012.
- ³²⁹ United Nations Commission on Human Rights, "Application of International Standards," quoted in Centre for Human Rights Crime Prevention and Criminal Justice Branch, *Human Rights and Pre-Trial Detention*, 45.
- ³³⁰ Interview with lawyer, September 19, 2012.
- ³³¹ *Ibid.*,
- ³³² Office of the Minister of Interior & Municipalities, *Report on Prison Conditions*, 96.
- ³³³ Interview with lawyer, September 19, 2012.
- ³³⁴ "Guidelines on the Role of Prosecutors," Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF.144/28/Rev.1 at 189 (Havana, August 27 – September 7, 1990) art. 19, <http://www2.ohchr.org/english/law/prosecutors.htm>.
- ³³⁵ United Nations Human Rights Council, "Implementation of General Assembly Resolution 60/251," 25.
- ³³⁶ United Nations Commission on Human Rights, "Civil and Political Rights, Including the Question of Torture and detention: Report of the Working Group on Arbitrary Detention," E/CN.4/2005/6(December 1, 2004), 22, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/167/19/PDF/G0416719.pdf?OpenElement>
- ³³⁷ Interview with single criminal judge, October 16, 2012.
- ³³⁸ "Security Forces end Baalbek Prison Riot," *Lebanon Now*, April 19, 2012, <http://www.nowlebanon.com/NewsArchiveDetails.aspx?ID=387772>.
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- ³⁷⁵ Interview with Lt Col Ziad Kaedbey, September 27, 2012.
- ³⁷⁶ Ibid., and interview with brigade commander, September 24, 2012.

³⁷⁷ United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), "General Recommendations Nos. 19 and 20: Violence Against Women," U.N. Doc. A/47/38, (January 29, 1992), para. 9, <http://www.unhchr.ch/tbs/doc.nsf/0/300395546e0dec52c12563ee0063dc9d?Opendocument>.

³⁷⁸ August Reinisch, "The Changing International Legal Framework for Dealing with Non-State Actors," chap. 2 in Philip Alston, ed., *Non-State Actors and Human Rights*, (Oxford: Oxford University Press, 2005), 79.

³⁷⁹ Nirmalan Wigneswaran, "Judicial Leadership in International Human Rights: Developments in the Law of State Responsibility in Human Rights, in *The SYLFF 2007 Regional Forum Selected Papers on Human Rights and Creative Leadership*, The Tokyo Foundation (Tokyo, 2009), 156.

³⁸⁰ Caritas Lebanon is engaged in numerous activities, which are related to the following fields: health, social programs, economic development and the migrants centre.

³⁸¹ Interview with Najla Chahda, September 3, 2012.

³⁸² The Palermo Protocols refers to the three protocols (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime) that were adopted by the U.N. in 2000, in Palermo, Italy. They were adopted alongside the Convention against Transnational Organized Crime and fall within the jurisdiction of the United Nations Office on Drugs and Crime.

³⁸³ Interview with Najla Chahda, September 3, 2012.

³⁸⁴ "Detention Center for Foreigners," Caritas Lebanon Migrants Center, accessed September 3, 2012, http://english.caritasmigrant.org.lb/?page_id=838.

³⁸⁵ *Ibid.*,

³⁸⁶ Interview with Najla Chahda, September 3, 2012.

³⁸⁷ *Ibid.*,

³⁸⁸ Interview with Caritas Lebanon Migrants Center, November 4, 2011.

³⁸⁹ *Ibid.*,

³⁹⁰ Interview with Najla Chahda, September 3, 2012.

³⁹¹ It is also important to recognize the special legal situation of children in this context, a subject too broad for the present piece.

³⁹² United Nations Office of the High Commissioner for Human Rights, "Recommended Principles and Guidelines on Human Rights and Human Trafficking," U.N. Doc. E/2002/68/Add.1 (May 20, 2002), Guidelines 2.6, 6.1.

³⁹³ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/55/49 (Vol. I) (2001), art. 6(3).

³⁹⁴ Van Alphen v. The Netherlands, Communication No. 305/1988, U.N. Doc. A/45/40, vol. II, (July 30, 1990), and A v. Australia, Communication No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993 (April 3, 1997).

³⁹⁵ United Nations Human Rights Committee, "General Comment no. 27: Freedom of Movement," CCPR/C/21/Rev.1/Add.9 (November 2, 1999) art. 12, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6c76e1b8ee1710e380256824005a10a9?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6c76e1b8ee1710e380256824005a10a9?Opendocument).

³⁹⁶ Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, 2nd ed. (Kehl am Rhen: NP Engel, 2005), 225 quoted in Anne T. Gallagher and Elaine Pearson, "The High Cost of Freedom: A Legal and Policy Analysis of Shelter Detention for Victims of Trafficking," *Human Rights Quarterly* 32 (February 2010): 14.

³⁹⁷ *Ibid.*,

³⁹⁸ Gallagher, and Pearson, "The High Cost of Freedom," 95.

³⁹⁹ *Ibid.*, 105.

⁴⁰⁰ Articles 9 and 12 of the International Covenant on Civil and Political Rights.

⁴⁰¹ "Aintoura's Collège Saint Joseph Demands Media Accuracy," *Now Lebanon*, June 3, 2012, <http://www.nowlebanon.com/NewsArchiveDetails.aspx?ID=404835>.

⁴⁰² Wassim Mroueh, "Diab Announces Plan for School Counselors," *The Daily Star*, June 7, 2012, <http://www.dailystar.com.lb/News/Local-News/2012/Jun-07/176007-diab-announces-plan-for-school-counselors.ashx#axzz27kmYsuEY>.

⁴⁰³ "Aintoura's Sexual Harassment Case: Teacher Confesses and Students Testify," *LBC International*, July 11, 2012, <http://www.lbcgroup.tv/news/40545/aintouras-sexual-harassment-case-teacher-confesses>.

⁴⁰⁴ "Samaha's Lawyer: Media Leaks Contravene Investigation's Principles," *Now Lebanon*, August 11, 2012, <http://www.nowlebanon.com/NewsArchiveDetails.aspx?ID=427011>.

⁴⁰⁵ "Military Judge Summons Editor Over Samaha Leak," *The Daily Star*, September 5, 2012, <http://www.dailystar.com.lb/News/Politics/2012/Sep-05/186775-military-judge-summons-editor-over-samaha-leak.ashx#axzz25gtDkIsj>.

⁴⁰⁶ "International Principles of Professional Ethics in Journalism," Ethicnet, accessed September 3, 2012, http://ethicnet.uta.fi/international/international_principles_of_professional_ethics_in_journalism.

⁴⁰⁷ "Total Paralysis," *The Daily Star*, August 17, 2012, <http://dailystar.com.lb/Opinion/Editorial/2012/Aug-17/184901-total-paralysis.ashx#axzz23naZ9w9A>.

⁴⁰⁸ *Ibid.*,

⁴⁰⁹ Mirella Hodeib, "Lebanon's Baalbek-Hermel Clans take the Law into their Own Hands," *The Daily Star* August 17, 2012, <http://www.dailystar.com.lb/News/Politics/2012/Aug-17/184897-lebanons-baalbek-hermel-clans-take-the-law-into-their-own-hands.ashx#axzz23hGoQkIV>.

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⁴²⁵ *Ibid.*, 583.

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⁴³¹ United Nations Assistance Mission in Afghanistan, *Arbitrary Detention in Afghanistan*, 15.

⁴³² *Ibid.*, 16.

⁴³³ Nashabe, “Security Sector Reform in Lebanon.”

⁴³⁴ *Ibid.*,

⁴³⁵ *Ibid.*,

⁴³⁶ Office of the Minister of Interior & Municipalities, *Report on Prison Conditions*, 13. On February 11, 1949, Decree-Law No. 14310 was passed. The Decree was set to regulate detention centers, juvenile reformatory centers and prisons, the latter of which was under the Ministry of Interior’s jurisdiction. Since theories of incarceration’s purpose evolved from depriving an individual of liberty to rehabilitation – Decree No. 17315 was passed on August 28, 1964. This Decree served to create a prison administration bureau into the Ministry of Justice. Decree No. 151 which was passed on September 16, 1983, was set to regulate the Ministry of Justice and stated in article 19 that the General Directorate of that Ministry would be in charge of the Directorate of Prisons. The latter would be responsible for the administration of prisons and implementation of prison rules and regulations.

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