

I- Overview of the “Guilty Until Proven Innocent” Report & the Arbitrary Detention Project Background:

Since 2011, with the support of the European Union Delegation, to Lebanon, ALEF – Act for Human Rights has been implementing a project titled: *‘Promoting for a better protection mechanism against arbitrary arrest, lengthy pre-trial detention and long delays in trial’*. The project aims at creating civil and communal awareness to reduce arbitrary arrest, increase the respect of the rights of detainees during pre-trial proceedings and ensure trials are held within a reasonable time while respecting international standards. A set of recommendations and an outline on protection module as well as policy reform will eventually be formulated in order to be mainstreamed into ALEF advocacy and lobbying work. Furthermore, a national awareness campaign will be launched to raise awareness on the question of arbitrary detention among the general public.

The report *“Guilty Until Proven Innocent”*, one of the project components, was published in January 2013 and is the result of a twelve month process that included data gathering and analysis based on desk research, interviews with relevant stakeholders and focus groups discussions with victims of arbitrary detention.

II- “Guilty Until Proven Innocent”: summary of scope, context, methodology & objectives:

The report aimed at shedding light on both the Lebanese legal framework governing arbitrary detention in light of international standards and on the socio-political context in which such practices occur. Thus its methodology and scope were tailored specifically to give an overview of all causes that are intertwined and exacerbating factors leading to arbitrary detention. In this respect a combination of legal, socio-political and other interlinked human rights abuses’ were analyzed and presented. It is important to note that the report was developed to reach a very wide segment of audience, one that is not exclusive only to jurists and lawyers, given the need to bolster awareness raising of the population – as per the projects’ objectives. Furthermore, concerning the content’s structure and areas of focus like the extent and scope of legal analysis, list of practices of law enforcers, selection of category of victims,¹ and case studies, they were strategically decided upon and

¹ 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 also provides insightful information on the following victimized categories of detainees: alleged terrorists, migrant workers, refugees and asylum seekers, 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

developed following an extensive mapping of literature review in this thematic area in Lebanon. In addition to the Socio-political/ legal focus and the scope of its outreach, the report strived to avoid duplication and provide new and valuable insights. Therefore, methodological limitations pertaining to details and length were inevitable. Consequently, omissions to detail further some areas were not a sign of ignorance, or unawareness rather a conscious and strategic approach that the organization opted for. Nevertheless, we deem that the report comprised a comprehensive explanation on the legal framework, that was critical to advance under each Section, and the readers were further guided to other related extensive studies in this thematic area.²

It is important to note that all of the legal sections were developed in consultation with lawyers who are professionals in their respective areas of law, such as lawyers that work with refugees, migrant workers, children, allegedly accused spies and other categories. Moreover, the information provided was constantly cross-checked with other sources and we also substantiated our sources by judges.³

The approach adopted in this study stems from ALEF's beliefs that prior to crafting a policy pertaining to human rights protection, it is primordial to have a good understanding of the multiple aspects related to such a violation and to the socio-political and historical context of the country. Once the multi layers of a violation's dimensions are unfolded, then a more precise / specialized research on each of these aspects could be carried out to strengthen the knowledge. Thus for example, when elaborating on the plight of vulnerable groups, it is critical to flag issues not strictly related to arbitrary detention but also pertaining to other legal and socio-political dimensions that could/are contributing to the vulnerability of those groups and consequently render them more exposed to such practices. Failing to do so and refraining from engaging all stakeholders of the social structures in policymaking, legal reforms will remain a tool of domination, legitimizing oppression, assimilation and discrimination. As put by Mr. Fatteh Azzam, the former Middle East Regional

policing practices as well as an analysis of human rights violations committed by non-state actors will also be discussed.

² ALEF, *Guilty Until Proven Innocent*, Beirut, January 2013, pp 29.(hereinafter referred as ALEF Report)

³ Interviews were carried out with: Mrs. Maya Mansour, Dr. Philomene Nasr, Mr. Joe Karam, Mr. Omar Nashabe, Mr. Charbel Maydaa, Mr. Mahdy Charafeddine, Mr. Wadih al-Asmar, Mrs. Marie Daunay, Mrs. Samira Trad, Father Hadi al-Aya, Mr. Saad el-Dine Chatila, Mrs. Colette Najm, Mrs. Najla Chahda, Mrs. Ghenwa Samhat, Mrs. Zeina Daccache, Mrs. Maya Jezzini, Mrs. Lara Tyan, Mrs. Farah Salka, Mr. Ali Fakhry, Mrs. Rola Badran, Mrs. Hiba Izdahmad, Mrs. Aline Osta, Colonel Marwan Rafieeh, Colonel Ziad Kaedbey, Judge Nagi el-Dahdah, Public Prosecutor Samer Younes, Mr. Joseph Aoun, Mrs. Mohanna Ishak, Mrs. Roula Lebbos, Mr. Kamal Sioufi, Mr. Carlos Daoud, and other interviewee that demanded to remain anonymous.

Representative of the Office of High Commissioner for Human Rights, in its foreword note in the report, “ *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.*”⁴

Given the unique blend it used to shed the light on both the technical/legal and the human sides of arbitrary detention, the report was deemed valuable by many stakeholders. Nevertheless, as part of any publication process, some observations have also been noted highlighting different views and / or shortcomings to what concerns the content. In this regard, ALEF is grateful to the attention of some readers to provide their significant insight to its report and believes that discussing those comments is crucial to the organizations’ growth and development and to its awareness raising efforts. Similar discussions also bolster the supposedly ultimate goal that organizations in Lebanon holding different mandates should aspire to: the protection, respect and fulfilment of human rights in Lebanon. With the aim to express equal courtesy to the *Legal Agenda’s* general comments on “*Guilty Until Proven Innocent*” report, ALEF team is hereby providing additional clarifications on the *Legal Agenda’s* article titled “*Critical Review*” and published in Arabic in May 2013.⁵

The structure below of the Comments and Responses was designed as such in order to remain loyal to the content of the “Critical Review” article, and to tie back those remarks to ALEF report analysis. Having said that, many of the comments were taken in isolation of the context and logic flow encompassed in ALEF’s report and, sometimes, advanced labelled ALEF as taking a stand with some organization or undermining some core human rights values.

Finally, we would like to renew the expression of our gratitude to all those who contributed to “*Guilty uUntil Proven Innocent*”, and to the audience that are interested in the protection of human rights in Lebanon. We stand ready to address further feedback and inputs if needed.

⁴Fateh Azzam, ‘*Guilty Until Proven Innocent*’, ‘Foreword’ALEF Report. Pp.4 ,

⁵ ANNEX 1

III- Response to the 'Critical Review' Article of the *Legal Agenda* published in May 2013:

Kindly note that the Comments of the 'Critical Review' below are not a literal translation from Arabic, rather a comprehensive summary, for more information refer to ANNEX 1.

A. Comment one: *stating that the report failed to address the difference between arbitrary detention resulting from the implementation of legal text in the Lebanese laws and the other forms of arbitrary detention; such categorization impacts significantly the identification of responses/solutions and responsibilities of key duty bearer.*⁶

ALEF response:

ALEF recognizes and acknowledges that laying down the difference between arbitrary detention based on legal texts and other forms is critical to identifying main duty bearers and to the formulation of policy-making recommendations.

Based on the report methodology,⁷ context and scope of work⁸ it was mentioned that the aim was to shed the light on many aspects related to arbitrary detention: the legal framework, socio-political context and impacts on victims. Additionally, the report audience that was targeted was an important factor in dictating the length of the information. Therefore, the methodology and content were tailored to meet this purpose and consequently limitations on the extent/length of the legal analysis were mandatory. Drawing further on the report's logic, ALEF considers that human rights are not only reflected in legal texts *per se*, but they also mirror a society's socio-political context and values. In that regard the report aimed at answering very specific questions:⁹ 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? Therefore, a *detailed* legal analysis of *all* articles in the Lebanese laws in light of international standards and resulting in arbitrary detention would have jeopardized the balance of the information this report wants to provide.

Nevertheless, to reiterate that the report is not purely legal in its nature, does not exclude the fact that a very comprehensive legal analysis and related to all categories of arbitrary detention was elaborated to lay the legal framework

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مراجعة نقدية لتقرير ألف عن الاحتجاز التعسفي: ما أضاء عليه من حالات جديدة، وما أغفله من حراك ومسؤوليات

⁷ ALEF Report, pp 16-17.

⁸ ALEF Report, pp 19-20-21.

⁹ ALEF Report, pp 13.

pertaining to this human rights violation.¹⁰ Furthermore, it was mentioned that among the root causes of arbitrary detention are the legal texts and the nature of law enforcement and /or practices.¹¹ Related analysis provided throughout the report sections, strengthen further the idea that there exist several actors responsible of arbitrary detention, with variance or / equal degrees in responsibility, whether be it law enforcers and / or the legislative power.¹² This legal analysis strived at assessing current Lebanese laws in light of international standards, most notably in comparison to the Working Group on Arbitrary Detention's (WGAD) opinions. The final section on recommendations targeting different duty bearers reflects further the different categories of arbitrary detention laid throughout the report and pertaining to various duty bearers.¹³ Additionally the report did provide an overview of the criminalization of arbitrary detention under Lebanese law, noting a difficulty in establishing a proof that could lead to establishing the criminal responsibility of the perpetrator of such the deprivation of liberty under Lebanese law.¹⁴

For the purpose of avoiding redundancy of the legal analysis in details in this specific document we encourage the reader to refer back to the full report for this purpose.

B. Comment two: *emphasizes the idea: that when the deprivation of liberty continues despite a court decision providing for the release of the individual, the actor responsible of the arbitrary deprivation of liberty is the law enforcement officials managing the deprivation of liberty. Whereas, when such a violation is a result of a legal texts, such as article 534 of the Penal Code, the actor responsible is the legislator, the community and to lesser degree the judge who could have adopted a narrow explanation of the texts and refrained from interpretation. (thus this comment considers that the Report overlooked this matter).*

ALEF response:

The report had, repetitively and throughout all its sections, made this critical difference between arbitrary detention resulting from a legal text and the one due to law enforcement practices. This is further mentioned in: in the executive summary,

¹⁰ Please refer to ALEF Report, pp 23

¹¹ ALEF Report pp. 11

¹² Please refer to the extensive legal analysis provided in all of the report sections, summarized in the Executive Summary and explanation related to the report Scope and methodology.

¹³ ALEF Report pp 130.

¹⁴ ALEF Report, pp 30

sections related to legal framework,¹⁵ vulnerable groups,¹⁶ and reiterated in the response to comment one.

Also, a reference was made to Saint Augustine: "*lex iniusta non est lex*" a legal concept that describes the problems of unjust laws and confirms that not all laws are just and some can be in violation of human rights. Furthermore, ALEF addressed the rationale behind Article 368 of the Code of Criminal Procedures (CCP) that punishes directors and guardians of penitentiaries, disciplinary institutions or re-education centre and all functionaries carrying these duties to one to three years of imprisonment should they admit an individual without warrant or judicial decision, or detain him/her beyond the time prescribed by law.¹⁷ The article reflected on another form of arbitrary detention, which is the wrongful legislation that is in itself when implemented arbitrary detention such as article 534 of the Criminal Code.

To what concerns the judge's narrow interpretation of legal texts and their discretionary powers, which could trigger a so called responsibility of arbitrary detention: ALEF considers that such a moral responsibility is the result of the lack of awareness or acceptance of human rights values (the latter is a very holistic yet specific message that the report advances). The extent of interpretation that a judge can do, in the presence of a clear – or even vague - legal text stems from the nature of beliefs a judge holds in the equality and justice that a human being is entitled to. Furthermore, the report warned from arbitrary detention caused by 'authoritarian discretion, which is essentially left to the ethics of the judicial actor':¹⁸ this advances the idea that interpretation is a double-edged sword which 'positive' outcome depend significantly on a judge's own perception and embracement of human rights values. This is the case in Lebanon as most of the domestic laws were never reformed to comply with the international protection treaties and conventions the State ratified; which makes a judge interpretation an easy subject of appeal and revocation if it strived to advance human rights values that are not clearly and specifically stipulated in the domestic law.¹⁹ Thus, ALEF agrees that such a moral "blame" exists on the level of judges adopting narrow explanation of legal texts; yet establishing a legal responsibility in this regard remains difficult.

¹⁵ Section titled ' Causes of Arbitrary Detention in Lebanon', ' Inadequate Legal Framework' p 121.

¹⁶ ALEF Report pp 74.

¹⁷ ALEF Report pp 30.

¹⁸ ALEF Report, pp122

¹⁹ An example would be the case of the nationality granted to the children of a Lebanese woman by Judge John Azzi, the Judge referred to constitutional principles of equality. For more information please refer to

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القاضي جون قزي "رحلة العمر الى الجنسية"

It is unclear what is meant by 'community responsibility' in the comments addressed by the Legal Agenda. Nevertheless, despite acknowledging that the best advocate for rights is the victim him/herself, it remains debatable to consider a community/citizen primary 'responsible' for human rights violations committed to him/her. Having said that, it does not negate the necessity of strengthening social conscious and awareness on this topic and criminalizing complicity in such acts – when it occurs and when the act itself is criminalized domestically.

C. Comment three: *stating that the report only discusses generalities for example: the report discusses the juvenile case by analysing law 422/2002. The report criticizes that the law limits the criminal responsibility age to 7 years old in contradiction to international standards (12). The report also discusses the problem in the appeal process in the juvenile law (article 44) and the lack of social workers and the problems of "separate filing" (arresting a juvenile with an adult) all these were discussed without making the link to arbitrary detention. The report also mentions that 50% of juveniles are in arbitrary detention without mentioning any reference to this figure.*

ALEF response:

The report deliberately dedicated specific sections to discuss the different forms of arbitrary detention and the experiences of different marginalized groups facing this violation. Some of these groups were selected as being under-reported, e.g alleged terrorist, LGBTQ and minor offenders, as opposed to others that were equally included despite previous related extensive studies, e.g Refugees, asylum seekers and migrant workers. The length of information to what concerns the latter groups was decided based on mapping of previous reports on arbitrary detention that dealt in depth with those vulnerable groups.

Regarding the detailed analysis of minor offenders, ALEF considers that addressing legal shortcoming or procedural abuse in the criminal justice system to what concerns these vulnerable persons is incomplete analysis without an understanding of the general workings of the system as a whole, and the plight of the marginalized individuals vis-à-vis the law. In line of this logic, the report did highlight different loopholes in the law and shortfalls in the practice and /or in a human rights abuses pertaining to this marginalized group - the juveniles - so a larger picture of the context in which arbitrary detention takes place is provided.²⁰ In order to strengthen this analysis, the link between arbitrary detention of juveniles and other

²⁰ Section titled 'Snapshot on vulnerable detainees' page 71, paragraph d) 'Minor Offenders; Major Consequences' page 82.

legal provisions and practices that govern their detention was elaborated in Section IV of the report: ‘*Snapshots On Vulnerable Detainees*’; thus sufficient and comprehensive information on the link between the situation of Juveniles and arbitrary detention was provided.²¹

To what concerns the figure 50% of juveniles being arbitrarily detained, the support for the source of the information is provided in footnote number 325 in the report: it indicates an interview with a Lebanese lawyer working closely in the Juvenile justice system.²² It is worth noting that with the aim to respect the interviewee’s wish and in compliance to research ethics, ALEF did not disclose the lawyer’s name. This figure was cross checked with other sources and approximate percentage was provided. ALEF acknowledges that official records confirming this number is nevertheless important. However, it remains a well-known fact and a shared concern among many organizations, that access to many of the official records and data is quasi-impossible for reasons evolving mainly around: 1) a culture of lack of transparency and 2) weak management of government records.

D. Comment four: stating that a major gap in the report is the lack of definition of the refugees’ status, their particularities and the adequate legal protection. For example it does not discuss the obligation to respect refugees’ and asylum seekers’ rights by refraining from prosecuting and detaining them for illegal entry according to 1951 Refugee Convention. The report considers the arrest of refugees as an administrative detention without elaborating on the concept and with no reference to the legal basis of such a detention. The report also fails to include the judicial development on this level pertaining to court decisions (in 2009-2010) whereby the detention of refugees without legal justification was considered illegal forcing the General Security (GS) to release the refugee. The report discusses the different factors that impact the duration of the refugee detention without referring to the responsibility of the GS Directorate which practice contributes directly to the arbitrary detention of refugees and asylum seekers. Such factors includes: the intervention of the embassies of the refugees nationality; the sponsor; the United Nations High Commissioner for Refugees (UNHCR); or the availability of financial resources to purchase a ticket. The report discusses the impact of the long periods of detention on the condition of detention itself, without referring to the legality of the detention itself. The comment adds that it is worth noting that some categories are protected under international law and customary law rendering their deportation illegal disregarding an embassy

²¹ Reference of section iv is in ALEF Report page 88-89-90.

²² Reference to footnote is shown in page 88 and related explanation is in page 160.

intervention or the person departure through his/her own means. The report includes also a wrong legal terminology as it confuses the GS "detention center" as a detention center which is not the case according to the prison's law. Additionally, it is mentioned that the GS 'detention center' is a temporary detention without including any further explanation.

ALEF response:

ALEF would like to reiterate on the report methodology, context and scope of work explained previously in responses to the first and third comments. A deliberate decision on the information length – pertaining to the various vulnerable groups done - was made based on: 1) a mapping of an already existing literature review on arbitrary detention-particularly to what concerns refugees and migrant workers, thus guided the reader to other extensive sources²³ and 2) on the need to balance between legal, socio-political contexts and victim's aspects. Refraining from going in depth legal analysis on the various points mentioned in the fourth comment should only be interpreted in light of the report's objective and efforts deployed to avoid duplicative work in this area.

Nevertheless, ALEF considers that a very comprehensive legal framework was presented in the report to what concerns refugees, asylum seekers and migrant workers.²⁴ This framework served the purpose of highlighting the various challenges these groups face in arbitrary detention even if no reference to the highly welcomed judicial development was mentioned or to the *jus cogen* principle of non-refoulement. ALEF enumerated the different categories of arbitrary detention in particular Category IV when asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy: which was qualified as arbitrary detention.²⁵ It was reported that 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 neither 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 report also included the presence of out-dated and inadequate legislation, that governs this category, the 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country criminalizes individuals who enter the country without proper authorization.²⁶ Accordingly law enforcement

²³ ALEF Report, pp 146.

²⁴ Section titled 'Snapshot on vulnerable detainees' page 71, paragraph b) 'Trekking between Law and Lawlessness: Migrants, Refugees and Asylum Seekers

²⁵ ALEF Report , pp 24.

²⁶ ALEF Report , pp 74.

officials, bound to implement national laws commit such human rights violations. In particular the GS responsible of the entry and stay of migrants and managing the correct documentation of refugees would be violating human rights as the law under which the office work is by itself wrongful. The report also considers that some forms of administrative detentions and deprivation of liberty witnessed by migrant workers, asylum seekers, and refugees is therefore arbitrary. In the section *“Trekkling Between Law and Lawlessness: Migrants Refugees and Asylum Seekers”* ALEF reports that, “ 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 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. Consequently this form of deprivation of liberty is arbitrary.” ²⁷

Finally, the report concluded by recommendation pertaining to the adoption of the international conventions related to these respective categories (refugees, asylum seekers and migrant workers) and that renders the Lebanese state legally bound to protect and respect these categories’ rights - beyond international customary law and jus cogen principles.²⁸

It is important to note, that to what concerns Refugee Protection Legal Framework, a very detailed study was issued in 2013 highlighting particularly the plight of Syrian Refugees in Lebanon. For further exhibit on our resources in this particular thematic area please consult our publication titled *“Two Years On: Syrian Refugees in Lebanon.”* ²⁹

On another note, and similar to the Ministry of Defence (MoD) prison and other illegal places of detention, ALEF considered the GS facilities to be retention centres run by the GS, as a temporary holding facility created by the government and highly criticized for its detention conditions.³⁰ As for the terminology used to call the GS ‘detention center’, ALEF acknowledges that this is not explicitly listed in the prison law. However and disregarding of the best terminology that could be identified, first it remains a de facto detention center” and second we consider that the purpose of a legal analysis is to highlight the poor reflection of the reality within the law and vice versa.

²⁷ ALEF Report, pp74.

²⁸ ALEF Report pp 130.

²⁹ ALEF, *Two Years On: Syrian Refugees in Lebanon*, found through <http://www.alefliban.org/node/66>

³⁰ ALEF Report, pp 75.

E. Comment five: *The report discusses the increasing trend of violations committed by Civil Society Organizations (CSOs) yet it remained in generalities. ALEF had availed an opportunity to Caritas to defend their work while failing to give clarity on the criticism related to Caritas work. The report concludes that in the event of violation in this regard the key duty bearer remains the state and ALEF as such exempt the CSOs from their responsibility.*

ALEF response

The analysis brought up in the section titled ‘*Stuck Between a Rock and a Hard Place: Caritas Lebanon Migrants Center*’ is not conducted to criticize nor defend the work of Caritas Liban Migrant Centre (CLMC) or other CSOs working in this particular field. Thus referring to previous criticism addressed to CLMC was neither an objective nor a methodological imperative.

This section 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 cause questionable practices. It was important to mention the work of CSO as it constitutes an intrinsic element of the equations governing the context in which arbitrary detention is taking place; and to provide further factual insights a case study, the one of CLMC, was examined. CLMC gracefully accepted to be thoroughly interviewed for this purpose. The capacity in which CLMC operates in 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: a clustered and tarnished legal and administrative system 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 practices have become breeding grounds for criticism, perhaps due to some shortcomings *vis-à-vis* international human rights standards. In other words, CLMC, similarly to many other CSOs, is in fact 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 leaving a gap to be filled by 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.³¹ Different and/or opposite views are possible, and welcomed in this regard, nevertheless what has been written in the report on this point does not afford an interpretation whereby ALEF is seen as making the case or promoting the work of another CSO and negating the necessity of accountability of any wrongdoing committed on their behalf. Furthermore, the last section on recommendation addressed to the Civil Society a specific one was formulated stating “Ensure that practice outcomes adhere

³¹ ALEF Report, pp 108.

to international human rights standards.”³²

F. Comment six: *Legal Agenda considering that ALEF has taken a strong position against the work of journalists due to their intervention in the judicial work and to influencing certain public opinion cases. The comment brought described that ALEF as such is discouraging the role of media and has left the previous struggle and echoes that Lebanese media had advanced, sometime along side with the judiciary, in the dark.*

ALEF response:

ALEF would like to confirm that in no place, a stance on discouraging media freedom of expression was made. Interpreting a title of a Section ‘*The New Judicial Power: Media Outlets*’ in isolation from the overall report and the message that it strives to strengthen – which is promoting the Lebanese authority’s responsibility - does not meet best practices in analytical and reporting standards.

ALEF has always been a prominent defender of right to freedom of expression, to seek, receive and impart information. ALEF 2013 annual human rights report titled ‘*The Situation of Human Rights in Lebanon: Annual Report 2013*’ is a further exhibit of our position seeking to uphold human rights value to all, including journalist and Media outlets. The Lebanese Government must continue to respect its commitment to uphold freedom of expression and the rights of citizens to access information. Nevertheless, freedom of expression must always be balanced with the duty to report in an accurate, fair and most importantly, independent and ethical manner. These standards are highly important given that 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 particularly crucial in this regard to shape a better communal awareness and system of accountability. Journalism is not only subject to a multitude of rights and liberties, but also, obligations and duties towards the public, who has a right to gain access to accurate and honest information exist. Within this framework, important principles from the International Principles of Professional Ethics in Journalism could be consulted in the report.³³

³² ALEF Report, pp 133.

³³ 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*

With the breakdown of the state apparatus, media outlets are sometimes acting as courts of law by ‘interpreting’ and releasing ‘charges’ on 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. The report enumerated different cases that highlight the dangerous impact the media has instigated to the legal process, to the victims and the defendants.

Media outlets should always balance between their right as of freedom of expression and their duty to preserve the human dignity of persons referred to. Media also 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. The media 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, anything to the contrary would only disserve the public, who may take uninformed decisions on trivial matters and important ones as well.

Having said that we consider that this analysis provides enough rational on how strongly this issues is related to the overall context in which arbitrary detention is taking place and the importance it plays in influencing public perception’s to illegal detention and victims feelings.

Comment seven: states that the report considered non-state actors acting as legislative power without explaining the ‘how’, noting that kidnapping and detaining people is not within the legislative power mandate.

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. ALEF Report, pp 110

ALEF Response:

The title of the section *'The New Legislative Power: Violent Non State Actors'*³⁴ that covers illegal acts of strong non - state actors committed on Lebanese soil aims to show that the legal framework that governs criminal activities is strongly mastered and constantly challenged by those non-actors; rendering the law content insignificant, and thus the legislative power weak. The report mentions '...they have demonstrated an ability and unequivocal power to pass, amend and repeal the laws of the state, in their own way'. When acts of kidnapping and illegal detention are arbitrary occurring without government oversight and accountability, Lebanese laws becomes void, and the legal framework that governs is 'de facto' decided by those actors. With the aim to show weak governance across all the State apparatus, the executive and judicial bodies were also shown to be 'replaced' by non - state actors: the former by CSOs and the latter by Media outlet. Admittedly, positive practices or development could nevertheless be recorded among State apparatus, but that was not the report focus.

Finally, the analogy made between non – state actors activities and the legislative power is metaphoric and should not be interpreted in a narrow and technical manner equating it strictly to the legislative power prerogatives. Slight innovation and imagination could always serve the purpose.

Comment eight: *The report main gap is that it failed to include cases brought to the judiciary where Judges ruled against the state and obliged the state to compensate. It has only highlighted the set back of the judiciary, without referring to its crucial struggle against the GS on this level. The report only mentioned one of the WGAD opinion, that of the case of 'jamil el sayyed', and failed to include 8 other opinions pertaining to migrant workers and refugees.*

ALEF Response:

The report discussed the judicial ruling against the state that was in favor of the victim of arbitrary detention thoroughly. ³⁵ Additionally ALEF analyzed the problems of compensation in Lebanon in the presence of a legal text and occasional court decisions. The report considers, based on focus group discussion with victim of arbitrary detention, that the mechanisms to claim compensation for unlawful detention and the probability to actually obtain the said damages, should a court of law award compensation and for the complaint to succeed, are lengthy: thus victims feel skeptic about such a legal recourse. Therefore, one may wonder if the right to

³⁴ ALEF Report, pp 112.

³⁵ ALEF Report, pp 41.

compensation in Lebanon, due to pragmatic and procedural issues, is efficient at all. ALEF also presented in Annex D of the report the problematic of the right to compensation under different texts of the Lebanese law.³⁶

ALEF has surely not mentioned all cases referred to the WGAD and to the related set of opinions. The case of the Four Generals, was highlighted within an overall discussion pertaining to the impediments of article 108 of the CCP. The article 108 paves the way for lengthy pre-trial detention; an unspecified period of deprivation of liberty is created that is arbitrary in nature. ALEF utilized the views of the WGAD in order to justify the analysis provided in the report that the detention of the four generals ‘falls under the parameters of Category III...and 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 ...’. Thus omitting to mention eight opinions of the WGAD pertaining to refugees is justified in light of the overall report scope and methodology that had been clarified above and given that the purpose was to highlight article 108.

Comment nine: *The report fails to provide recommendations to the judiciary body considering that the latter does not play an important role in arbitrary detention.*

ALEF response:

The report has included recommendations for the following: Lebanese Parliament, Civil Society, and the Lebanese Government.³⁷ ALEF acknowledge the gap in addressing recommendations to the judiciary as the main body exercising accountability in Democratic state system premised on the principle of separation of powers.

Comment ten: *Why didn't alef recommend the state to implement the court decisions? Also, the report provided very generic recommendation, e.g it asked to reform law 1962 without providing what articles to amend. Also, Alef uses inaccurate terminologies such as indefinite detention for migrant workers and not arbitrary detention; does Alef then consider that this category is not arbitrary detained rather indefinitely detained and what is the difference between those terminologies?*

³⁶ ALEF Report pp. 142

³⁷ ALEF Report,pp 130-134.

ALEF response:

Given that no detailed reference to the positive Jurisprudence of the Lebanese courts was referred to, no specific recommendation in this regard was formulated. Nevertheless, our general recommendation to the Ministry of Justice (MoJ) and MoI to discipline any persons who fails to protect the rights of detainees regarding legal time limits and other legal standards advances such an idea.³⁸ It actually promotes for an oversight mechanism not only on the Lebanese courts but also on law enforcers.

Regarding Law 1962, the articles that needed further examination for the purpose of reform were included in the Section “*Trekking Between Law and Lawlessness: Migrants Refugees and Asylum Seekers*”³⁹. In the latter section the report studied in particular articles 17, 18, 26 and 32 of the 1962 Law. Having said that, it was reflected throughout the analysis of that section that the 1962 as a whole triggers discriminatory practices and allows for human rights abuses.

Regarding the terminologies of ‘indefinite detention’ versus ‘arbitrary detention’, please refer to comment four where ALEF stand on migrant workers detention was elaborated in details and thus considered it as arbitrary detention.

Comment eleven: *Asking for a legal aid executed by CSOs and paid by the government why not ask for a legal aid to be paid and executed by the MoJ?*

ALEF response:

ALEF highlighted in the report that the legal aid is a crucial civil right, enshrined in article 14 of the ICCPR.⁴⁰ Accordingly the provision of a legal aid is a state obligation. However there are no international standards on the party that would be implementing the legal aid, the implementation can be decided on the discretion of the government. Despite that, providing a structured and funded legal aid system remains an obligation. ALEF acknowledges that such a recommendation could go under the section pertaining to the Lebanese Government

Comment twelve: *There are other flaws in the recommendations such as why are ALEF asking to criminalize those who rent their property to illegal aliens?*

³⁸ ALEF Report, pp 134.

³⁹ ALEF Report, pp 74.

⁴⁰ ALEF Report, pp42.

ALEF response:

This analysis was raised in the report under the Section titled ‘ *Snapshot on Vulnerable Detainees; b) Trekking between Law and Lawlessness: Migrants, Refugees and Asylum Seekers*’; thus not into the recommendation section ⁴¹ The section analyzes the WGAD category IV arbitrary detention whereby ‘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.’ The latter was highlighted as a common practice in Lebanon given the lack of legal protection framework for this category, in particular the lack of adoption of the 1951 Refugee Convention, its 1967 Protocol and Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Therefore any violations of the 1962 Law regulating the Entry and Stay of Foreigners in Lebanon could lead to ‘pre-trial detention, imprisonment and subsequent administrative detention.’

The report continues to talk about how ‘the lack of legal protection is further compounded for domestic migrant workers in the sponsorship system, otherwise known as the *kaffala* system’: leaving the migrant worker at the mercy of the employer and administrative procedures rather than being regulated by a comprehensive legal framework. While the state, of course, should be fully responsible for the immigration system. Eventually the framework that governs a migrant worker becomes a combination of – as stated by the report : ‘...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 behavior.’

Given the multiple layers of such a problem, an example was provided as a scenario that exacerbates the vulnerability of the migrant worker which is the landlord renting rooms and apartments units to migrants who have entered a country illegally. This problem could includes trafficking aspects compounded with discriminatory practices resulting from the 1962 law against illegal migrant workers; thus the report recommended that a holistic solution is adopted, an example was to prosecute in this case as well the Lebanese individual who facilitated the breach of the law.

This recommendations comes in line that all humans are equal before the law, thus law enforcement should not be partial, and illegal entries of migrants, that is most often linked to trafficking networks, should be resolved in a comprehensive

⁴¹ ALEF Report, pp 74.

approach in order to address all intertwined causes.⁴²

Comment thirteen: *ALEF asks to extend the period of detention from 2 to 4 days not allowing as such the law enforcement or the prosecutor to extend and renew the period of detention?! While in principle the deprivation should only be an exception and not the rule*

ALEF response:

The report stipulates under the recommendation related to the Lebanese Parliament and in connection to 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'

The article 32 stipulates that the period of detention might be renewed “when the investigation requires more time”.⁴³ The report specifically mentioned: “The article [32] 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.

The current practices during the arrest for investigation are that renewal occurs following the general prosecutor’s approval and instructions. ALEF recommendations, in light of the above mentioned analysis, aims to render such renewal stipulated in the law more difficult and subject to scrutiny when the report asks to include a motivation for renewal or justification in light of a very elastic terminology in article 32 ‘ when it is necessary’. This will limit the discretion of

⁴² ALEF Report, pp 76

⁴³ Lebanese Code of Criminal Procedures, Article 32.

“إذا وجد، بين الحضور شخص توافرت فيه شبهات قوية فيأمر بالقبض عليه ويستجوبه ويبقيه محتجزاً على ذمة التحقيق مدة لا تزيد عن أربع وعشرين ساعة (عدلت هذه المدة لتصبح ثمانين وأربعين ساعة وفقاً للقانون رقم 359 تاريخ 2001/8/16) ما لم ير أن التحقيق يحتم مهلة إضافية فيقرر تمديد احتجازه مدة مماثلة”

prosecutors to continue renewing detention in an arbitrary way. Thus, such a conclusion does not contradict the principle that deprivation is an exception and not the rule, it, in fact, it seeks to protect it further by working within the legal text itself.

Overall, ALEF advocates for the use of alternatives to detention, that are articulated clearly in article 111 of the CCP, however with the absence of implementing bodies to oversee the implementation of such measures, ALEF recommends to limit the discretionary power of the Judge on the deprivation of liberty. On the other hand, supporters of such discretionary powers for the Judges argue that the current flaws in the rule of law, and the degradation of the security situation in the country pushes judges to deprive suspects of their liberty to insure the continuation of the legal process. In other words, detainees might easily escape justice in peripheral areas of the country.

In the current form and with the absence of the need to justify the deprivation of liberty and the absence of any form of oversight mechanism article 32 paves the way and facilitates an arbitrary deprivation of liberty and eventually gateways for abuse.

أيار / مايو 2013 | اطبع 03

مراجعة نقدية لتقرير ألف عن الاحتجاز التعسفي: ما أضاء عليه من حالات جديدة، وما أغفله من حراك ومسؤوليات

سارة ونسا

حول "الاحتجاز التعسفي، ALEF- ما يلي تعليق على تقرير أصدرته في شهر آذار من هذه السنة جمعية ألف الاحتجاز الاحتياطي المطول وتأخر المحاكمات". وما دفع المفكرة الى نشر هذا التقرير والمراجعة النقدية عليه، هو قناعتها بأهمية خضوع الأعمال التي تصدر عن منظمات المجتمع المدني – ومن ضمنها المفكرة القانونية- لمراجعة نقدية من أجل فهم أدق وأعمق للوضع القائم واشكالياته، وطرح وسائل معالجة فعالة. وهذا ما تطلبه المفكرة من الجمعيات داعية كل المعنيين للقيام بمراجعة نقدية لأعمالها ولفت النظر الى مسائل أو مقاربات لم تتطرق اليها

مدان قبل أن تثبت براءته- تقرير عن أسباب التوقيف التعسفي، الاحتجاز الاحتياطي المطول (بانتظار المحاكمة) في بداية العام 2013. ويبدو أن هدف واضعي ALEF- وتأخر المحاكمات"، تقرير جديد صدر عن جمعية ألف التقرير هي دراسة وتعريف الاحتجاز التعسفي في لبنان وتناول أسبابه وخلفياته التاريخية والسياسية وعرض شهادات بعض الأشخاص الذين ينتمون الى فئات مهمشة وفئات خاصة مثل "المشتبهين بالإرهاب" والذين تم احتجازهم تعسفاً. وقد خلص التقرير الى توصيات موجهة الى كلا السلطتين التشريعية والتنفيذية كما الى المجتمع المدني لوضع حد لهذه الظاهرة غير القانونية

وكانت مسألة الاحتجاز التعسفي، قد طرحت بكثرة خلال السنوات الأخيرة من قبل جمعيات من المجتمع المدني وبعض المحامين، خاصة في ما يتعلق بإحتجاز اللاجئين دون أي سند قانوني (إما دون تحويلهم الى القضاء أو عندما ترفض المديرية العامة للأمن العام اخلاء سبيلهم بعد الانتهاء من تنفيذ العقوبة) وما تشكله هذه الممارسة من انتهاك كبير للحرية الشخصية وما تمثله من تعد على السلطة القضائية[1]. وما أراد التقرير معالجته انما هو المفهوم الواسع للاحتجاز التعسفي كما هو محدد في الفئات الخمس المعتمدة من قبل الفريق الأممي العامل المعني بالاحتجاز التعسفي. وبالتالي لا ينحصر اعتبار الاحتجاز تعسفياً عند غياب السند القانوني لهذا الاحتجاز، انما أيضاً اذا كانت المادة التي تشكل السند القانوني للاحتجاز ترشح عن تعسف أو عن انتهاك للحقوق الأساسية المكرسة في المعاهدات الدولية، بحيث يعد الاحتجاز على أساس مادة قانونية في حال تعارض مع مضمون المعاهدات الدولية، احتجازاً تعسفياً

ولكن، وبالمقابل، لم يتم التشديد على ابراز الفارق بين حالات التعسف التي تستند الى نص قانوني للاحتجاز والحالات الأخرى، وهذا أمر ضروري لتحديد طرق المعالجة والأطراف المعنية والمسؤولة بشكل مباشر وأولي. ففي حال استمرار الاحتجاز رغم صدور حكم قضائي، تقع المسؤولية مباشرة على المسؤول الأمني أو على مسؤول الجهاز الأمني الذي بقي هذا الشخص قيد الاحتجاز لديه في ظل التباين الحاصل بين القضاء والأجهزة الأمنية. أما

إذا كان الاحتجاز ناتجا عن نص قانوني مثل المادة 534 عقوبات (وهي مادة تجرم المجامعة المخالفة للطبيعة بالحبس حتى سنة واحدة)، فالجهة المعنية هي أولا المشرع وربما المجتمع، وبدرجة أقل القاضي الذي اعتمد تفسيراً تقليدياً للنص، واختار تالياً ألا يجتهد.

إضافة إلى ذلك، وعلى أهمية الخلاصات التي تضمنها التقرير، فإنه يقع للأسف في العموميات في توصيف حالات الاحتجاز التعسفي مما يضعف قوة هذه الخلاصات: فعلى سبيل المثال، عند تطرقه لمسألة الأحداث، يعرض التقرير القانون رقم 2002/422 وأهم ما يشوبه من عيوب ومنها أن تحديد سن المسؤولية الجزائية بـ 7 سنوات يشكل مخالفة لمعايير القانون الدولي الذي يحدد الحد الأدنى للمسؤولية الجزائية بـ 12 عاماً، أو أيضاً إشكالية حق الاستئناف التي تطرحها المادة 44 من قانون الأحداث، أو أيضاً إشكالية عدم توفر عدد كافٍ للمساعدة الاجتماعيين، أو أيضاً مسألة عدم فصل الملفات بحال تم توقيف القاصر مع الراشد، الخ. كل هذا دون ذكر الرابط بين هذه الشوائب والاحتجاز التعسفي. وقد ذكر التقرير أن ما يقارب الـ 50% من القاصرين اليوم هم محتجزون لكن لم يشر التقرير إلى أي مصدر يدعم [i]. تعسفاً لعدة أسباب منها نقص عدد القضاة أو بطء الإجراءات القضائية به هذا الرقم ولم يفصل الحالات ليثبت أنها محتجزة تعسفاً، كما لا يعرض التقرير مسألة وجود أو غياب طريقة للطعن بشرعية هذا الاحتجاز.

ونلاحظ أيضاً عدم دقة في المقاربة والتوصيف بشكل خاص في الفقرة التي يتناول بها التقرير مسألة اللاجئين واحتجازهم. فالتقرير لا يعرف هذه الفئة وخصائصها والحماية القانونية التي يفترض أن تكون متوفرة لهم. وقد تجلى ذلك بشكل واضح في تناوله لمسألة احتجازهم، حيث تجنب التقرير ذكر عدم جواز ملاحقة اللاجئين وطالبي اللجوء بسبب دخولهم البلاد خلسة، وبالتالي عدم جواز احتجازهم لهذا السبب وذلك وفقاً لاتفاقية العام 1951 الخاصة بوضع اللاجئين. كما اعتبر التقرير أن احتجاز اللاجئين هو احتجاز إداري، دون تعريف المقصود بذلك ودون تحديد ما إذا كان لهذا الاحتجاز أي سند قانوني. وفي السياق نفسه، لم يشر التقرير إلى أن القضاء سبق وأصدر أحكاماً خلال الأعوام السابقة (وتحديداً في العامين 2009 و2010) وصف فيها احتجاز اللاجئين دون سند قانوني بالتعسفي ملزماً الإدارة بالإفراج عنهم فوراً. وهذا النقص في التحليل يبدو واضحاً عند الإشارة إلى أن مدة الاحتجاز تبقى وفقاً على عوامل عديدة منها تدخل السفارات أو الكفيل أو مفوضية شؤون اللاجئين أو توفر المال لدى المحتجز لشراء تذكرة السفر، فيما لم يشر التقرير إطلاقاً إلى الجهة التي تساهم بشكل خاص في إطالة فترة الاحتجاز وهي المديرية العامة للأمن العام. كما تم التشديد على أن إطالة المدة تؤدي إلى تفاقم شروط الاحتجاز السيئة من دون أي إشارة إلى مدى قانونية الاحتجاز، وثالثاً، لم تتم الإشارة إلى أن هناك فئات لا يمكن قانوناً أن يتم ترحيلها من البلاد بتدخل السفارات أو عبر وسائلها الخاصة لأنها محمية بالقانون والعرف الدولي من الترحيل مثل طالبي اللجوء واللاجئين الذين يشكلون جزءاً من الفئات التي يعالجها هذا القسم. كما هناك لغط في المفاهيم القانونية، فيعتبر التقرير بأن نظارة الأمن العام هي "مركز احتجاز" علماً أن قانون السجون يحدد أماكن حجز الحرية ولا يذكر من ضمنها نظارات الشرطة أو نظارات الأمن العام، وتم توصيفه بمكان احتجاز مؤقت دون تحديد ما تنطوي عليه كلمة مؤقت.

أما في القسم المعنون "بخطف الدولة"، فقد عرضت ألف ما اعتبرته السلطات الثلاث الجديدة، واعتبرت أن السلطة التنفيذية متمثلة بجمعيات المجتمع المدني وقد أخذت كاريئات مركز الأجانب كمثال على ذلك بسبب وجودها في نظارة الأمن العام وبسبب إدارتها لبيوت أمان وإيواء. وأثار التقرير المخاوف الموجودة من هذه الظاهرة مع إبقائها في إطار العموميات فيما أعطيت بالمقابل كاريئات كامل المساحة لعرض رأيها دون إيضاح ما هو النقد الموجه إليها بالظبط. ويخلص التقرير في هذا الصدد إلى نتيجة مفادها أنه في حال حصول أي انتهاك لحقوق الإنسان في هذا الإطار، فلا يمكن تحميل مسؤوليته إلا للدولة مع إبراء ذمة المجتمع المدني وإن شارك أحياناً وفق بعض التقارير في عملية الاحتجاز التعسفي في بيوت الأمان والإيواء من أي مسؤولية. وبغض النظر عن مدى قناعتنا بتحول منظمات المجتمع المدني إلى سلطة تنفيذية في هذه المجالات (حيث يستند التقرير على مثل واحد)، فليس

بوسعنا موافقة واضعي التقرير لجهة تبرئة المنظمات من انتهاكها لحقوق الانسان او تغطيتها لانتهاكات تقوم بها الدولة، بحجة ان العمل الذي تقوم له اصلا هو اساسا من مسؤولية الدولة، بل على العكس نرى أن تزايد دورها في هذا المجال يوجب اخضاعها لمزيد من المحاسبة والمساءلة

أما السلطة القضائية الجديدة فاعتبرت الجمعية أن الصحافة تلعب اليوم هذا الدور. ولعله صحيح أن بعض الصحفيين اليوم يستبقون القضاء باطلاق الاحكام على بعض المتهمين أو الموقوفين، الا أن اعتماد هكذا توصيف عمومي يشكل بالواقع افتئاتا من أدوار القضاء والصحافة على حد سواء، لا سيما أن بعض القضاة والاعلاميين قد خاضوا سوية، في السنوات الاخيرة معارك نموذجية ومتكاملة ضد الاحتجاز التعسفي، الصحافة بتبنيها لحالات لاجئين محتجزين تعسفا وتوفير منبر لهم ومناصرة لقضيتهم ودعم صمودا مع قضاة كانوا قد اصدروا أحكاما (أشرنا اليها أعلاه) تقضي بإلزام الأمن العام باخلاء سبيل لاجئين محتجزين تعسفا، بعدما تقاعس هذا الأخير عن تنفيذها. ولكن لم يشر التقرير الى هذا الحراك وانما اقتصر لدعم أطروحتة الى قضيتين فقط تناولتهما الصحافة فتصرفت اذ ذلك وفق التقرير على أنها "سلطة قضائية" هما قضية ميشال سماحة وقضية المدرس في مدرسة عنتورة الذي اتهم بالتحرش، ومع ذلك لم يوضح التقرير ما هو الرابط بين ذلك واعتبار الصحافة بأنها باتت تمارس السلطة القضائية من جهة وهذين الأمرين ومسألة الاحتجاز التعسفي من جهة أخرى. وأبعد من ذلك، فقد أغفل التقرير، في خضم انتقاده لتسرع بعض الصحفيين في اطلاق الاتهامات على هذين الشخصين، الخوض في الدور الاجتماعي للاعلام في مواكبة أعمال القضاء أو القضايا التي تهم الرأي العام أو يفترض به أن يهتم بها. وأكثر ما يخشى أمام خلاصات كهذه، هو استخدامها للايحاء بأن أي تغطية اعلامية لأعمال القضاة (وهو أمر أكثر من ضروري) يشكل تدخلا في هذه الأعمال وتجاوزا لها

ومن وصفتهم بال NON STATE ACTORS وبالنسبة للسلطة التشريعية الجديدة فاعتبرت أنها متمثلة بال "الاناركيبين الجدد" و"المجرمين المعاصرين" دون تفسير ما هي الأفعال التي يقومون بها نيابة عن السلطة التشريعية (الأمثال التي تطرق لها التقرير هي خطف واحتجاز أشخاص من قبل هذه الجهات، الا أن هذه الأمور لا (تدخل ضمن مهمات السلطة التشريعية

ومن أبرز نواقص التقرير مسألة عدم تطرقه في أي لحظة الى الاحكام الصادرة عن القضاء اللبناني والتي أدان عبرها الدولة لقيامها بالتعدي على الحرية الشخصية. لا بل ذهب القضاء أبعد من ذلك وحكم على الدولة بالتعويض عن الضرر الحاصل من جراء ذلك فارضا غرامة اكراهية عن كل يوم تأخير في التسديد. إلا أن التقرير ركز أكثر على ابراز صورة سلبية عن القضاء (التأخر في المحاكمات، الابقاء على التوقيف الاحتياطي) متجاهلا المعركة الجوهرية التي خاضها هذا الاخير (ولا يزال) مع الأمن العام لتقاعس هذا الاخير عن تنفيذ الاحكام الصادرة عنه والنيل من مكانته بالذهاب الى اتهام أحد القضاة بأنه لا يعلم ماذا يفعل. كما اكتفى التقرير بذكر رأي واحد صادر عن الفريق الاممي العامل المعني بالاحتجاز التعسفي (وهو الرأي الصادر في قضية جميل السيد) علما أنه صدر عن الفريق الاممي المعني بالاحتجاز التعسفي، خلال الفترة الممتدة بين ال 2009-2011، ثمانية آراء تتصل بعشرات اللاجئين اعتبرت جميعها أن التوقيف الحاصل يقع تحت توصيف الاحتجاز التعسفي

وينسحب عدم ذكر القضاء على التوصيات، حيث توجهت التوصيات الى كل من السلطة التنفيذية والسلطة التشريعية متجاهلة القضاء بشكل كامل، وكان لا دور له على الاطلاق في موضوع الاحتجاز التعسفي (أو ربما يتوقع منه فقط أن ينفذ ما سوف تنتج السلطة التنفيذية والسلطة التشريعية في هذا الشأن) ولماذا لم تطالب الدولة بتنفيذ الأحكام القضائية المشار اليها ومحاسبة من يتقاعس عن تنفيذها؟ كما أن بعض التوصيات عامة جدا وغير واضحة مثل "تعديل قانون ال 1962" دون ذكر ما هي المواد الواجب تعديلها. كما أن مسألة عدم الدقة في توصيف الاحتجاز للأجانب بدل من (indefinite detention) "تتكرر في التوصيات حيث تستخدم ألف عبارة "الاحتجاز المطول استخدام عبارة احتجاز تعسفي؟

فهذا يعني أن الاحتجاز الذي يتعرض له الأجانب ليس احتجازاً تعسفياً (خلافاً لما ثبته القضاء والفريق الدولي للاحتجاز التعسفي) بل هو مطول فقط؟ وما الفارق بين هذين الاحتجازين؟ (وهذا ما لم يجب عنه القسم الذي تناول موضوع احتجاز اللاجئين المشار إليه أعلاه). وليس واضحاً لماذا تتوجه المنظمة إلى المجتمع المدني طالبة منه تأمين معونة قضائية ممولة من الدولة بدلاً من أن تتوجه بهذه التوصية إلى السلطة التنفيذية ووزارة العدل خصوصاً. إضافة إلى ذلك، ثمة توصيات أو اقتراحات داخل التقرير تطرح مسائل شديدة الدقة ويمكن أن تؤدي إلى نتائج خطيرة وغير مرغوبة، مثلاً عند الإشارة إلى وجوب محاكمة ومعاقبة من يقوم بتأجير غرفة لشخص لا يحوز على أو عندما تقترح تمديد مهلة التوقيف الاحتياطي من يومين إلى أربعة أيام لعدم إعطاء الضابطة العدلية أو [ii] إقامة إلا أن تمديد مدة التوقيف الاحتياطي لا تساعد في تكريس مبدأ "بريء قبل". [iii] النيابة العامة حرية تجديد التوقيف أن يثبت العكس" حيث الحرية هي السند ويجب أن يبقى حجز الحرية استثناءً ومحصوراً زمنياً ومن المعروف أن أغلب الانتهاكات تجري في مرحلة التحقيق الأولي.

إنه تقرير جديد يضاف إلى التقارير الصادرة عن الاحتجاز التعسفي ويتوسع إلى فئات أخرى، إنما وللأسف دون اعتماد الدقة والوضوح في التحليل وعرض أساليب المراجعة. إنما ما يميز التقرير هو تطرقه إلى فئة المتهمين بالارهاب والذين واجهوا ولا يزالون يواجهون من الاحتجاز التعسفي المطول سنداً لأحكام المادة 108 من قانون أصول المحاكمات الجزائية التي تسمح بالتعدي على الحرية الشخصية إلى أمد غير مسمى. وقد ألقى التقرير الضوء على ما تعانيه هذه الفئة عبر إجراء مقابلات مع بعض أفراد عائلات هؤلاء المتهمين وما يعانونه من جراء احتجاز أزواجهم (مثلاً تكاليف العيش، الضغط الاجتماعي). ولفت التقرير إلى صعوبة التأقلم التي يعانيها المحتجزون بعد إطلاق سراحهم والوصمة التي تلتصق بهم بعد خروجه من السجن.

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