



# POSITION PAPER ON SOLUTIONS TO THE SYRIAN REFUGEE CRISIS IN LEBANON

*LEBANON'S CHALLENGING  
PRIORITY FOR SOLUTIONS  
SECURING THE RIGHTS OF  
SYRIAN REFUGEES*

ALEF Position Paper on Solutions to the Syrian Refugee Crisis in  
Lebanon

Lebanon's challenging priority for solutions securing the rights of  
Syrian refugees

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- ALEF-act for human rights, is a Lebanese non-governmental human rights organization which aims at monitoring, protecting and promoting Human Rights through education, training, advocacy and lobbying activities.
- PAX, works together with involved civilians and partners in areas of war, to protect human security, to prevent and end armed violence and to build peace with justice.

## EXECUTIVE SUMMARY

Statistics on the Syrian refugee situation in Lebanon alone defy comprehension and give a sense of the scale of the crisis. Lebanon is the country with the highest concentration of refugees per capita and ranks at the first place in absolute number of Syrian refugees. As of 11 November 2014, 1,128,125 Syrian refugees were registered with the UNHCR, the equivalent to more than a quarter of Lebanon's resident population. The international community and UN agencies have acknowledged the huge and manifold impact this crisis has on Lebanon as a country, praising Lebanon for its solidarity and resilience.

In this context, there is a compelling necessity to design rights based solutions to address the numerous problems Syrian refugees face in Lebanon, solutions that take into account Lebanon's specific challenges resulting from this acute humanitarian crisis. Considering this reality, and based on ALEF's previous and ongoing work documenting the plight of Syrian refugees in Lebanon, this policy paper focuses on the solutions to be envisaged and provides a framework for relevant stakeholders, notably the Lebanese authorities, to implement such solutions. This is particularly critical as there is no end in sight to the war in Syria, and the persistent lack of progress for alternative solutions increases the risk of Lebanese authorities taking decisions undermining refugees' rights and protection. However, to date some may see the discussions over solutions to the Syrian refugee crisis in Lebanon as an attempt to square the circle due to a combination of factors.

ALEF considers it essential to take into account the lessons learnt from previous State practice in cases of mass influx in order to rethink the current debate on solutions to the refugee crisis in Lebanon. Furthermore, the limited applicability of international refugee law makes the reference to other bodies of norms, notably international human rights law (IHRL) even more relevant in the case of Lebanon. Most importantly, the present statu quo is not sustainable and bears the risk of undermining Lebanon's social cohesion and of creating conducive environment for extremism. It is paramount to stress that the situation of mass influx cannot be invoked by Lebanon to violate the principle of non-refoulement and core IHRL obligations. Equally important, the international community has a responsibility to assist Lebanese authorities and host communities in dealing with this crisis. Such assistance should take the form of out of the box solutions such as temporary evacuation or resettlements as previous mass influx crisis have showed. Accommodating such responsibilities, UNHCR should intensify the efforts and the advocacy to insure the satisfaction of durable solutions to the crisis.

This policy paper reviews existing legal and policy frameworks pertaining to the protection of refugees that are relevant to design a principled and rights based approach to solutions to the Syrian refugee crisis. It analyses some of the past experiences of mass influx, including the concept of temporary protection, to inform the key components of the national policy supported by the international community that ALEF calls for.

## Introduction

On 29 August 2014 the UN High Commissioner for Refugees (UNHCR) announced that “Syrians are now the world’s largest refugee population under UNHCR care, second only in number to the decades-long Palestinian crisis” and that “[t]he Syria operation is now the largest in UNHCR’s 64-year history”.<sup>1</sup> Statistics on the Syrian refugee situation in Lebanon alone also defy comprehension and give a sense of the scale of the crisis. It is a picture of statistics breaking records: Lebanon is the country with the highest concentration of refugees per capita and ranks at the first place in absolute number of Syrian refugees. As of 11 November 2014, 1,128,125 Syrian refugees were registered with the UNHCR, the equivalent to more than a quarter of Lebanon’s resident population.<sup>2</sup> The UNHCR projection is expected to be of 1,500,000 Syrian refugees by 31 December 2014.<sup>3</sup>

By itself this quantitative overview suffices to show how unsustainable this situation is for Lebanon. In addition, the qualitative challenges are not less daunting: this crisis is characterized by the dispersed presence of refugees in more than 1,700 locations countrywide as well as the high proportion of refugees under 18 (53%).<sup>4</sup> The international community and UN agencies have acknowledged the huge and manifold impact this crisis has on Lebanon as a country, praising Lebanon for its solidarity and resilience. UNHCR stressed for example that the “cumulative economic, social and security consequences are profound and enduring”.<sup>5</sup>

In this context, there is a compelling necessity to design rights based solutions to address the numerous problems Syrian refugees face in Lebanon, solutions that take into account Lebanon’s specific challenges resulting from this acute humanitarian crisis. Considering this reality, and based on ALEF’s previous and ongoing work documenting the plight of Syrian refugees in Lebanon<sup>6</sup>, this policy paper focuses on the solutions to be envisaged and provides a framework for relevant stakeholders, notably the Lebanese authorities, to implement such solutions. This is particularly critical as there is no end in sight to the war in Syria, and the persistent lack of progress for alternative solutions increases the risk of Lebanese authorities taking decisions undermining refugees’ rights and protection.

However, to date some may see the discussions over solutions to the Syrian refugee crisis in Lebanon as an attempt to square the circle due to a combination of factors. Firstly it is essential to stress the numerous challenges Lebanon faces due to this crisis. In particular, any effort to design solutions must take into account the very limited resources Lebanon has and the additional burden they may create on the host country. Other factors include the way the terms of the debate are at times framed, the protracted character of the Syrian refugee crisis, and some issues specific to Lebanon. For the purpose of refugees, the term “solutions” commonly consists of three types of durable solutions, which are at the forefront of UNHCR’s work worldwide: voluntary repatriation to the country of origin, local integration in the host country, and resettlement in a third country.<sup>7</sup> While the Syrian refugee crisis does not amount yet to a “Protracted Refugee Situation” (PRS) in the technical meaning of the term defined by UNHCR<sup>8</sup>, its foreseeable prolonged nature combined with its magnitude make those solutions complicated to implement, like for PRS, not least because they require reaching a balance between the efforts from host country and those from the international community.<sup>9</sup>

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<sup>1</sup> UNHCR, “Needs soar as number of Syrian refugees tops 3 million”, 29 August 2014, available at: <http://www.unhcr.org/53ff76c99.html>

<sup>2</sup> UNHCR, Syria Regional Refugee Response, Inter-agency Information Sharing Portal, available at: <http://data.unhcr.org/syrianrefugees/country.php?id=122>

<sup>3</sup> UNHCR 2014 planning figures for Lebanon, available at:

<http://www.unhcr.org/pages/49e486676.html>

<sup>4</sup> UNHCR, 2014 Syria Regional Response Plan – Strategic Overview – Mid-Year Update, p. 60, available at: <http://www.unhcr.org/syriarrp6/midyear/docs/syria-rrp6-midyear-full-report.pdf>

<sup>5</sup> UNHCR, 2014 Syria Regional Response Plan – Lebanon, p. 2, available at: <http://www.unhcr.org/syriarrp6/docs/syria-rrp6-lebanon-response-plan.pdf>

<sup>6</sup> ALEF, Two Years On: Syrian Refugees in Lebanon, September 2013, available at: <http://www.alefliban.org/node/66>

<sup>7</sup> UNHCR Global Appeal 2014-2015, p. 49, available at: <http://www.unhcr.org/528a0a13b.html>

<sup>8</sup> This UNHCR classification used to require “a crude measure of refugee populations of 25,000 persons or more who have been in exile for five or more years in developing countries” UNHCR, ‘Protracted Refugee Situations’, Executive Committee of the High Commissioner’s Programme, Standing Committee, 30<sup>th</sup> Meeting, UN Doc. EC/54/SC/CRP.14, 10 June 2004, p. 2). The criterion of 25,000 persons was later excluded from the definition.

<sup>9</sup> Francesca Hansen, Jean Jacques Mutabaraka, and Priscila Ubricao, Repatriation, Resettlement, Integration: A study of the three refugee solutions, The Niapele Project, 2008, p. 4, available at: <http://www.theniapeleproject.org/files/Niapele-ScPo-Study2008.pdf>.

Against this backdrop ALEF's view is that it is critical to put the search for solutions into a more comprehensive framework. Solutions to the Syrian refugee crisis in Lebanon and regionally for that matter should consider the crisis as an ongoing and complex set of problems that durable solutions would only address in part. For example the current questions of the legal status of Syrian refugees in Lebanon, protection issues, delivery of humanitarian assistance, living conditions of refugees and relationships with host communities are to be addressed through immediate measures that come in complement to long-term solutions. Furthermore, the Syrian refugee crisis in Lebanon clearly constitutes a situation of mass influx and must be addressed as such. This dimension influences not only the type of solutions but also the relevant legal and policy frameworks to be applied in that context. In this regard the fact that Lebanon is not party to the main international instruments on the protection of refugees, notably the 1951 Convention relating to the Status of Refugees and its 1967 Protocol affects the legal status and rights of Syrian refugees entering the country.<sup>10</sup> But this is not decisive. As shown in past experiences of mass influx, like during the "boat people" crisis in South East Asia, the receiving States were not exempted from respecting certain fundamental rights of refugees even if they were not party to the 1951 Convention. This stems from the customary nature of those rights under international human rights law outside the specific refugee law framework.

Accordingly, ALEF considers it essential to take into account the lessons learnt from previous State practice in cases of mass influx in order to rethink the current debate on solutions to the refugee crisis in Lebanon. Furthermore, the limited applicability of international refugee law makes the reference to other bodies of norms, notably international human rights law (IHRL) even more relevant in the case of Lebanon.

Most importantly, the statu quo is not sustainable in the absence of a rights based approach to the protection of Syrian refugees and related solutions; and without an appropriate support to Lebanon's host communities. It also bears the risk of undermining fundamental principles and standards. Recent statements or decisions and measures adopted by the Lebanese authorities show that in the absence of a comprehensive national policy for coordinated solutions and greater international solidarity, Lebanon is likely to take additional drastic steps, such as closing the border with Syria, that contravene its international obligations, in particular with regard to the principle of non-refoulement. The ad hoc nature of policies adopted by Lebanon<sup>11</sup> enhances such risk, creating further gaps and discrepancies in the management of the crisis and increasing the uncertainty around the regulatory frameworks.

This policy paper reviews existing legal and policy frameworks pertaining to the protection of refugees that are relevant to design a principled and rights based approach to solutions to the Syrian refugee crisis. It analyses some of the past experiences of mass influx, including the concept of temporary protection, to inform the key components of the national policy supported by the international community that ALEF calls for. It is highly needed to avoid the continued risk Lebanon faces of "trade-off between respecting the legal rights of SRL [Syrian refugees in Lebanon] and avoiding tensions with the competing rights of Lebanese nationals".<sup>12</sup> This could only be achieved through combining respect for legal principles and norms with increased solidarity and burden sharing by the international community.

#### 1. Background on solutions to the Syrian refugee crisis in Lebanon: Squaring the circle?

Addressing solutions to mass influx of refugees seems in appearance about squaring the circle, even more so in the context of Lebanon. This equation is incredibly difficult to solve.

On the Lebanese side, scarcity of resources limits the ability to implement comprehensive solutions. The presence of so many Syrian refugees risks affecting the already fragile political and security situation and worsening the current divide in Lebanese politics between the pro-Syrian

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<sup>10</sup> Syria Needs Analysis Project, Legal status of individuals fleeing Syria, June 2013, p. 3, available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/legal\\_status\\_of\\_individuals\\_fleeing\\_syria.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/legal_status_of_individuals_fleeing_syria.pdf)

<sup>11</sup> Interview with official at the Ministry of Social Affairs conducted in Beirut on 19 March 2014 by researchers for the Akram Report, op. cit., p. 29, footnote 156.

<sup>12</sup> Ibid., p. 28.

regime and the opponents to the Syrian authorities. The recent clashes between the Lebanese army and Syrian Islamist militants from Syria in the northeast town of Arsal and Northern Tripoli illustrate the deteriorating security situation and the concerns over the presence in Lebanon of members of jihadist groups in or around refugees settlements. This led to the Lebanese authorities questioning the maintenance of an open border policy amidst growing security risks. It also raises concerns over the conduct of military operations in close proximity of or inside refugees inhabited areas.

Additionally, the fear to see a repetition of the case of Palestinian refugee mixed with the official policy of “disassociation” vis-à-vis the conflict in Syria also resulted in a sharp opposition to any solution leading directly or indirectly to Syrian refugees settling in Lebanon, a presence seen as having the potential to affect the fragile local balance of religious communities. As a result, Palestinian refugees fleeing Syria and who are not falling within the UNHCR mandate but under UNRWA, face even greater difficulties.<sup>13</sup>

More importantly those policy considerations lead to what a Lebanese expert called “the disastrous policy of no policy” with regard to the official Lebanese response to the crisis.<sup>14</sup> While the need for the Lebanese authorities to secure international funds to cope with the mass influx of refugees is understandable, this focus resulted in the lack of a proper plan to govern the status and living conditions of Syrian refugees. This was best exemplified by the question of whether or not to set up camps at the beginning of the crisis. Lebanese authorities dismissed the option whereas “the negative decision no longer mattered as ‘unofficial’ camps were flourishing in a disorganized manner in the North and the Bekaa, while international aid organizations were struggling with a growing catastrophic humanitarian disaster”.<sup>15</sup> The recent statement by the Lebanese Foreign Minister equating establishing camps or legitimizing existing informal ones with a violation of sovereignty shows the persistence of this dubious line of arguments when addressing the Syrian refugee crisis. Furthermore, while some representatives of the Lebanese authorities may have recognized the need to set up camps, there is still a strong opposition from many other state official, even within the government as demonstrated by the announcement of the Social Affairs Minister in mid-September that an agreement had been reached to build two pilot refugee camps on the border, one at the Masnaa crossing and the other at Abboudieh, a northern crossing, followed by a fierce debate and the change of position from the same Ministry few days later.<sup>16</sup>

An additional complicating element lies in the fact that there is a long history of migration flows between Syria and Lebanon with thousands of Syrian economic migrants working in Lebanon and regularly travelling back to Syria. While Syrian migrants working in Lebanon prior to the conflict would not qualify as refugees, they cannot all be excluded. Indeed it is reported that within the Syrian refugee population some Syrian migrants working in Lebanon prior to the Syrian conflict brought their families as a result of the war<sup>17</sup>, and their relatives could still meet the criteria to be registered as a refugee. This being said, there are also reports of abuses in the registration process with some long-term Syrian migrant workers registering as refugees.<sup>18</sup>

On the part of the international community, although the UNHCR had set a goal of securing 30,000 places for Syrian refugees globally on resettlement, humanitarian admission, or other forms of admission deemed to support countries hosting large number of Syrian refugees and provide urgent safety and protection measures for the most vulnerable from 2013 to the end of

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<sup>13</sup> Human Rights Watch, “Lebanon: Palestinians fleeing Syria denied Entry”, 8 August 2013, available at: <http://www.hrw.org/news/2013/08/07/lebanon-palestinians-fleeing-syria-denied-entry>

<sup>14</sup> Karim El Mufti, “Official response to the Syrian refugee crisis in Lebanon, the disastrous policy of no-policy”, Civil Society Knowledge Centre, 10 January 2014, available at:

<http://cskc.daleel-madani.org/paper/official-response-syrian-refugee-crisis-lebanon-disastrous-policy-no-policy>

<sup>15</sup> Idem.

<sup>16</sup> Nadia Massih, “The new lens: The Arsal crisis is reshaping how Lebanon views the refugee influx, and what to do about it”, Executive Magazine, 29 October 2014, available at:

<http://www.executive-magazine.com/economics-policy/refugee-the-new-lens>

<sup>17</sup> Sam van Vliet, Guita Hourani, “Regional differences in the conditions of Syrian refugees in Lebanon”, Civil Society Knowledge Center, Lebanon Support, 23 April 2014, p. 13, available at:

[http://cskc.daleel-madani.org/sites/default/files/papers/vliet\\_hourani\\_syrefugees\\_regdiff.pdf](http://cskc.daleel-madani.org/sites/default/files/papers/vliet_hourani_syrefugees_regdiff.pdf)

<sup>18</sup> L’Orient le Jour Newspaper, Interview with the Minister of Social Affairs, 12 August 2014, available at: <http://www.lorientlejour.com/article/880556/derbas-a-loj-une-fermeture-des-frontieres-libano-syriennes-est-possible-et-bientot-html>

2014<sup>19</sup>, the response to meet that rather modest figure has been considered “limited”.<sup>20</sup> In this context, the three main durable solutions in the Lebanese context seem in principle either extremely difficult to implement or insufficient to address the current crisis.<sup>21</sup>

On the other hand, the common focus of current interventions is on financial aid in support to countries hosting Syrian refugees such as the UNHCR’s 2014 Syria Regional Response Plan. Some experts increasingly challenge this approach as “a containment paradigm that is unsustainable and dangerous” and insist on “an approach that more equitably shares the responsibility towards the individual refugees among the wider community of states outside the current host region”.<sup>22</sup> With the exception of Germany and few other initiatives, the same holds true for the European response seen as intended “to contain the crisis in the countries neighbouring Syria”.<sup>23</sup> The UN High Commissioner for Refugee himself called for this shift of approach when he stressed that “it is not only financial, economic, and technical support to these States which is needed (...) It also includes (...) resettlement, humanitarian admission, family reunification, or similar mechanisms [for] refugees who are today in the neighboring countries but who cannot find a solution outside the region.”<sup>24</sup>

Those durable solutions cannot be promoted in isolation and must be combined with more immediate measures to address the various challenges highlighted above. However, a common denominator shall be to ensure rights of refugees and protection are not compromised in the name of realistic and pragmatic solutions.

## 2. Relevant international legal frameworks for solutions to the mass influx of Syrian refugees in Lebanon

The relevant legal framework applicable to Syrian refugees in Lebanon is relatively loose and consists of various sources and bodies of international law. However Lebanon is not party to the 1951 Convention, which constitutes a significant gap notably in terms of regulating the legal status and rights afforded to Syrian refugees. As a result, there is no comprehensive set of rules at the domestic level governing the treatment of refugees and they are covered by the national legislation on foreign nationals, in particular specific regulations applicable to all Syrian nationals.<sup>25</sup> As illustrated below, this raises a series of protection issues, notably due to the changing and ad hoc policies adopted by the Lebanese authorities.

This being said, it does not mean that Lebanon has no obligation towards Syrian refugees and that those fall into a legal black hole, even in a context of mass influx. A series of existing international norms are indeed applicable regarding non-refoulement of persons fleeing a conflict, but also their protection and reception conditions in the host country. Such norms should be interpreted in a mutually reinforcing manner for the protection of refugees and asylum seekers.

Firstly, Lebanon remains bound by the principle of non-refoulement under international refugee law, which prohibits returning a refugee to a country where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion. This prohibition has indeed a customary nature and is therefore binding on all States irrespective of whether they ratified the 1951 Convention. The customary law status of this principle is widely recognized through State practice, in particular States not

<sup>19</sup> UNHCR, Finding solutions for Syrian refugees: Resettlement, Humanitarian Admission, and Family Reunification, 18 October 2013, available at: <http://www.unhcr.org/5249282c6.pdf>

<sup>20</sup> Amnesty International Briefing, An International Failure: The Syrian Refugee Crisis, ACT34/001/2013, 13 December 2013, p. 1.

<sup>21</sup> The Daily Star, “Bassil warns against Syrian refugee camps”, 5 July 2014, available at: <http://www.dailystar.com.lb/News/Lebanon-News/2014/Jul-05/262746-bassil-warns-against-syrian-refugee-camps.ashx#axz3BbKgnlM5>

<sup>22</sup> Report under the supervision of Susan Akram (hereinafter the “Akram Report”), Protecting Syrian Refugees: Laws, Policies, and Global Responsibility Sharing, Boston University, April 2014, p. 1., available at:

<http://www.bu.edu/law/central/jd/programs/clinics/international-human-rights/documents/FINALFullReport.pdf>

<sup>23</sup> Cynthia Orchard and Andrew Miller, Protection in Europe for refugees from Syria, Refugee Studies Centre, Oxford Department of International Development, University of Oxford, August 2014, p. 2., available at:

<http://www.rsc.ox.ac.uk/files/publications/policy-briefing-series/pn-protection-europe-refugees-syria-2014.pdf>

<sup>24</sup> UNHCR, Finding Solutions for Syrian Refugees: Resettlement, Humanitarian Admission, and Family Reunification, op. cit., p. 1 quoting António Guterres, UN High Commissioner for Refugees, Address at the 64th Session of the Executive Committee of UNHCR’s Programme.

<sup>25</sup> Syria Needs Analysis Project, Legal status of individuals fleeing Syria, op. cit., p. 4.

parties to the 1951 Convention who were confronted to mass influxes of refugees<sup>26</sup>, as well as by international organizations and the doctrine.<sup>27</sup> This principle is also increasingly considered to be a peremptory norm of international law (*jus cogens*) in that it cannot be derogated from.<sup>28</sup> While a detailed analysis of this obligation goes beyond the scope of the present paper, a few important characteristics should be underlined as they serve as standards that the Lebanese authorities and the international community at large should uphold for any solutions to the Syrian refugee crisis:

- The non-refoulement obligation, including in its customary formulation, applies not only to refugees but also asylum-seekers - who applied for asylum but whose refugee status has not yet been determined - given the declaratory nature of the refugee status determination.<sup>29</sup> As a result the non-applicability of the 1951 Convention in the Lebanese context has no bearing on the protective scope of this principle vis-à-vis Syrian refugees.
- The non-refoulement principle equally applies in mass influx situations. This is clearly illustrated by the various examples of temporary refuge over the past few decades,<sup>30</sup> including during the boat people crisis in South East Asia, and the explicit acknowledgement by the States concerned that persons should not be returned to danger irrespective of the magnitude of the influx they are part of or of the uncertainty as to whether they meet the criteria to be qualified as refugees.

Refugees and asylum seekers, being protected by the principle of non-refoulement against forcible return, fall under the jurisdiction of the host state. As a result, they are entitled to the protection and certain rights afforded under international human rights law (IHRL). In that regard, Lebanon is party to a number of international human rights law instruments<sup>31</sup> which contain a set of obligations binding on Lebanon detailing rights and norms applicable to Syrian refugees and which should be reflected and complied with in the solutions to be developed in their favour. Such standards should be guaranteed to everyone on its territory and within its jurisdiction. In principle, human rights apply irrespective of immigration or other status, be it refugee, asylum-seeker, stateless person, or migrant worker.<sup>32</sup> They include an obligation not to return a person to a real risk of torture or inhuman or degrading treatment irrespective of the ground for such ill-treatment, the equivalent of the principle of non-refoulement in the particular context of the prohibition of torture and other ill-treatment.<sup>33</sup>

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<sup>26</sup> See for instance the EXCOM members' (including Thailand) stating at the time of the boat people crisis that: "In situations of large-scale influx, asylum-seekers should be admitted to the State in which they first seek refuge and if that State is unable to admit them on a durable basis, it should always admit them at least on a temporary basis (...)", EXCOM Conclusion N° 22 (XXXII) on Protection of Asylum-Seekers in situation of Large-Scale Influx, para. II.A.1, <http://www.unhcr.org/41b041534.html>. See below for further details on the significance of this Conclusion and the boat people crisis in the present context of Syrian mass influx in Lebanon.

<sup>27</sup> LAUTERPAUCHT, E., BETHLEHEM, D., The Scope and Content of the Principle of Non-Refoulement: Opinion, in : FELLER, E., TÜRK, V., NICHOLSON, F. (eds.), *Refugee Protection in International Law*, Cambridge University Press, 2003, para 253; GOODWIN-GILL, G. S., McADAM, J., *The Refugee in International Law*, Oxford University Press, Oxford, 2005, p. 346; UNHCR, *The Principle of Non-Refoulement as a Norm of Customary International Law*, Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, 31 January 1994, § 3; UNHCR, *European Roma Rights Centre and Others v. Immigration Officer at Prague Airport, Secretary of State for the Home Department, and the Office of the United Nations High Commissioner for Refugees (Intervener)*, 28 September 2004, § 40, <http://www.unhcr.org/refworld/docid/41c1aa654.html>; DECLARATION OF STATES PARTIES TO THE 1951 CONVENTION AND OR ITS 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES, para. 4, HCR/MMSP/2001/09, 16/01/2002, available at: <http://www.refworld.org/docid/3d60f5557.html>

<sup>28</sup> G. S. Goodwin-Gill and J. McAdam, *The Refugee in International Law*, 3<sup>rd</sup> edition, 2007, p. 218.

<sup>29</sup> UNHCR, Note on Refugee Status Determination, para. 5, available at: <http://www.refworld.org/docid/3ae68cc04.html>

<sup>30</sup> For an overview of this practice see COLES, G. J. H., "Temporary Refuge and The Large Scale Influx of Refugees", *Australian Year Book of International Law*, Vol. 8, 1983, pp. 189-212; HARTMAN, J. F., PERLUSS, D., "Temporary Refuge: Emergence of a Customary Norm", *Virginia Journal of International Law*, Vol. 26, 1985-1986, and EXCOM Conclusion N°19 (XXXI), *Temporary Refuge*, 1980, available at: <http://www.refworld.org/docid/4b28bf1f2.html>

<sup>31</sup> These instruments include notably the International Covenant on Civil and Political Rights (acceded on 3 November 1972), the UN Convention on the Rights of the Child (ratified on 14 May 1991) and the International Covenant on Economic, Social and Cultural Rights (acceded on 3 November 1972). Importantly

<sup>32</sup> See Article 2(2) of the ICESCR and Article 2(1) of the ICCPR. See also, ICESCR, General Comment No. 20, *Non-Discrimination in Economic, Social and Cultural Rights* (art. 2, para. 2) (E/C.12/GC/20, 2009), paragraph 30, which states: "The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation." See also, United Nations Human Rights Committee, General Comment No. 15, *The Position of Aliens under the Covenant*, UN Doc. CCPR/C/21/Rev.1 (19 May 1989), paragraph 1.

<sup>33</sup> Human Rights Committee, General Comment N°31, CCPR/C/Rev.1/Add.13, 26 May 2004, para. 12

Furthermore, as underlined by the Executive Committee of the High Commissioner's Programme (ExCom)<sup>34</sup> Member States, applicable international human rights law and standards should play a central part in the development and implementation of reception policies for asylum seekers<sup>35</sup> and, for that matter, also refugees where the 1951 Convention is not applicable. UNHCR underlines in particular that there is a minimum core content of human rights, which applies to everyone in all situations.<sup>36</sup> Article 25 of the Universal Declaration of Human Rights recognizes the right of everyone to a standard of living adequate for his or her health and well-being and that of his or her family, including food, clothing, accommodation and medical care and necessary social services. More specifically, the International Covenant on Economic, Social and Cultural Rights (ICESCR) spells out basic principles that help set out the framework for reception standards in the area of economic and social rights.<sup>37</sup> An adequate standard of living includes the provision of food, clothing and accommodation to those asylum-seekers who are unable themselves to secure these.<sup>38</sup> The International Covenant on Civil and Political Rights (ICCPR) likewise provides standards relevant to reception conditions for asylum-seekers, namely protection against arbitrary detention, the prohibition on inhuman or degrading treatment, and the right to recognition everywhere as a person before the law. Both the ICESCR and the ICCPR prohibit discrimination on the grounds, inter alia, of national origin or other status.

In addition to the above, a number of precedents of mass influx situations should inform the design and content of the solutions to the Syrian refugee crisis in Lebanon. It is paramount to stress that the situation of mass influx cannot be invoked by Lebanon to violate the principle of non-refoulement and core IHRL obligations.

### 3. The Lebanese experience into perspective: Brief appraisal of practices in other mass influx refugee crisis and key elements and gaps to consider for solutions

A review of some previous situations of mass influx serves to identify some lessons learned and offers interesting elements to contribute to the current discourse about solutions.

By the way of introduction, it should be noted that there is no universally accepted definition of the notion of "mass influx". While a few soft-law international instruments merely refer to it<sup>39</sup>, the European Union Directive on Temporary Protection is the only binding instrument providing a definition<sup>40</sup>, a mechanism that would be applicable to the Syrian refugee crisis.<sup>41</sup> Importantly, the EXCOM identified a number of parameters characterizing a situation of mass influx, which are particularly relevant for determining the influx of Syrian refugees in Lebanon:

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<sup>34</sup> This Committee was established in 1958 and functions as a subsidiary organ of the United Nations General Assembly. It has both executive and advisory functions vis-à-vis the UNHCR. According to a UNHCR Document, "this includes issuing Conclusions on International Protection (often referred to as "ExCom Conclusions"), which address issues in the field of refugee protection and serve as "international guidelines to be drawn upon by States, UNHCR and others when developing or orienting their policies on refugee issues"; see: UNHCR, General Conclusion on International Protection, ExCom Conclusion No. 55 (XL) – 1989, 13 October 1989, para. (p). ExCom Conclusions are adopted by consensus by the States which are Members of the Executive Committee and can therefore be considered as reflecting their understanding of legal standards regarding the protection of refugees". See UNHCR, Statement on the « Ceased Circumstances » Clause of the EC Qualification Directive, August 2008, p. 2, <http://www.unhcr.org/48a2f2a42.pdf>

<sup>35</sup> UNHCR, Conclusion on reception of asylum-seekers in the context of individual asylum systems, 8 October 2002, No. 93 (LIII) - 2002, available at: <http://www.unhcr.org/refworld/docid/3dafdd344.html>

<sup>36</sup> UNHCR Statement on the reception conditions of asylum-seekers under the Dublin procedure, <http://www.refworld.org/pdfid/4e37b5902.pdf>

<sup>37</sup> See ICESCR General Comment No. 3 (E/C.12/1990/SR.1990) which provides a broad definition of minimum standard: "A State Party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is prima facie, failing to discharge its obligations under the Covenant." See also ICESCR, General Comment No. 19, (E/C.12/GC/19, 2008), paragraph 38 which states: "Refugees, stateless persons and asylum-seekers, and other disadvantaged and marginalized individuals and groups, should enjoy equal treatment in access to non-contributory social security schemes, including reasonable access to health care and family support, consistent with international standards."

<sup>38</sup> Article 11(1) of the ICESCR guarantees the right to an adequate standard of living.

<sup>39</sup> For instance in the Declaration on Territorial Asylum adopted by the UNGA in its resolution 2312(XXII), 14 December 1967, Art. 3(2).

<sup>40</sup> Art. 2(d) of the Temporary Protection Directive provides as follows: "mass influx" means arrival in the Community of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival in the Community was spontaneous or aided, for example through an evacuation programme", EU Directive on Temporary Protection, 2001/55/EC, 20 July 2001, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ.L:2001:212:0012:0023:EN:PDF>

<sup>41</sup> Cynthia Orchard and Dawn Chatty, "High Time for Europe to Offer Temporary Protection to Refugees from Syria?", Oxford Human Rights Hub, 27 October 2014, available at: <http://ohrh.law.ox.ac.uk/high-time-for-europe-to-offer-temporary-protection-to-refugees-from-syria/>

“(…) mass influx situations may, inter alia, have some or all of the following characteristics: (i) considerable numbers of people arriving over an international border; (ii) a rapid rate of arrival; (iii) inadequate absorption or response capacity in host States, particularly during the emergency; (iv) individual asylum procedures, where they exist, which are unable to deal with the assessment of such large numbers”.<sup>42</sup>

Despite the absence of definition, the notion of “mass influx” played a critical role in the practice of temporary refugee or temporary protection. These notions also deserve a few words of clarification as they have been used indistinctively to refer to various types of practices over the past decades.<sup>43</sup> This confusion also reflects the varying scope and purpose of the different practices referred to as temporary refuge or temporary protection. In a nutshell, these notions have been used to cover two strictly different realities<sup>44</sup>: either a form of complementary protection for persons not falling within the scope of the 1951 Convention<sup>45</sup> or as a form of temporary admission, in case of mass influx, without prejudging of the eligibility of the persons concerned to international protection.<sup>46</sup> This is the way these notions are understood for the purpose of the present paper. In other words the various practices described below cover instances of temporary protection afforded to refugees in exceptional circumstances of mass influx where the determination of the refugee status of the persons concerned was either not practically possible given the magnitude of the crisis or merely immaterial as the receiving countries were not party to the 1951 Convention.

The most significant case and of primary importance is the boat people crisis which took place in South East Asia between the mid 1970's and the early 90's and involved the exodus of more than 3 millions refugees from Vietnam, Cambodia and Laos into neighbouring countries, in particular Thailand. The relevance of this crisis for the current situation of Syrian refugees in Lebanon is at least fourfold.

- Firstly, by its magnitude it involved a considerable burden on the first countries of asylum. While it is not comparable to what Lebanon is currently experiencing, the boat people crisis imposed a huge strain on first countries of asylum resources, which influenced some of the key components of the response including in terms of resettlement and international solidarity. In this regard, it should be noted that Thailand conditioned the admission of refugees to a firm commitment of international community for assistance and that refugees will be resettled.<sup>47</sup>
- Secondly most of the first countries of asylum, in particular Thailand, were not party to the 1951 Convention.
- Thirdly, the response to this crisis consisted of a Comprehensive Plan of Action.<sup>48</sup> Although it was adopted only in 1989, it provides interesting elements<sup>49</sup> as an attempt to pull together all the actors in the crisis and all the dimensions of this crisis – i.e. reception conditions in host country, resettlement some respects.
- Lastly, it led to unprecedented efforts by the international community to formalize the practice of temporary refugee in cases of mass influx and the standards applicable in this context. Importantly, these efforts took place primarily within the framework of the EXCOM, which included Lebanon since 1963. While this is not a binding document, it is worth mentioning that Lebanon endorsed those standards and contributed to their

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<sup>42</sup> EXCOM Conclusion No 100 (LV) on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations, 2004, at <http://www.unhcr.org/41751fd82.html>

<sup>43</sup> For instance see UNHCR, A Comprehensive Response to the Humanitarian Crisis in the Former Yugoslavia, HCR/IMFY/1992/2, 27 July 1992.

<sup>44</sup> See UN General Assembly, Note on International Protection, A/AC.96/830, 19-20 (Sept. 7, 1994)

<sup>45</sup> E.g. HARTMAN, J. F., PERLUSS, D., “Temporary Refuge : Emergence of a Customary Norm”, Virginia Journal of International Law, Vol. 26, 1985-1986, p. 554.

<sup>46</sup> COLES, G. J. H., op. cit.

<sup>47</sup> CHIMNI, B. S. (ed.), International Refugee Law A Reader, Sage Publications, London, 2000, p. 114; HARTMAN, J. F., PERLUSS, D., “Emergence of a Customary Norm”, op. cit., p. 587. Assistant High Commissioner at the time indicated during the consultative meeting on refugees and displaced in South-East Asia that “existing facilities in countries of first asylum in South East Asia were already overloaded and that for such countries temporary asylum depended on commitments for resettlement in third countries (...)”. COLES, G. J. L., “Temporary Refuge and the Large Scale Influx of Refugees”, op. cit., p. 194.

<sup>48</sup> BRONEE, S. A., “The History of the Comprehensive Plan of Action”; HELTON, A. C., “Refugee Determination under the Comprehensive Plan of Action : Overview and Assessment”, IJRL, Vol. 5 n° 4, 1993, pp. 556-557.

<sup>49</sup> TOWLE, R., “Processes and Critiques of the Indo-Chinese Comprehensive Plan of Action: An Instrument of International Burden-Sharing?”, IJRL, Vol. 18, n° 3-4, pp. 537-570

development.<sup>50</sup> More particularly, the 1981 EXCOM Conclusion N°22 recommends that the persons concerned are “treated in accordance with the following minimum basic human standards: “they should receive all necessary assistance and be provided with the basic necessities of life including food, shelter and basic sanitary and health facilities; in this respect the international community should conform with the principles of international solidarity and burden-sharing”;<sup>51</sup>

The main lessons learnt from the above for the purpose of the current crisis regarding Syrian refugees in Lebanon can be summarized as follows:

- Being a party to the 1951 Convention -or not- is not necessarily a decisive factor and strategic and comprehensive solutions to a mass influx situation may be elaborated and implemented despite this legal hurdle;
- There are a number of specific minimum standards and safeguards to be afforded in mass influx situation that Lebanon itself acknowledged and even contributed to formalize in the context of EXCOM Conclusion N°22;
- Temporary asylum in the receiving country is part of the comprehensive solution including resettlement as an expression of burden sharing<sup>52</sup>;
- Appropriate and sufficient international solidarity<sup>53</sup>, including through resettlement, is key to ensure first countries of asylum’s continued compliance with relevant standards<sup>54</sup> although it should not be a prerequisite.<sup>55</sup> Otherwise, as exemplified in the boat people crisis, there is a risk that the receiving countries not only question the admission of further refugees but also challenge the status of those already in their territory. Importantly during the boat people crisis the EXCOM members spoke of an obligation for States to take all measures to assist a country facing a mass influx.<sup>56</sup> Lastly, this precedent also demonstrated the need to ensure that international cooperation is comprehensive and covers protection, assistance and durable solutions.<sup>57</sup> This was further acknowledged in the context of other mass influx situations like the one resulting from the conflict in former Yugoslavia in the early 90s.<sup>58</sup>
- While critics of temporary protection mainly point at the risk that this may undermine the protection offered in 1951 Convention<sup>59</sup> and mean that certain durable solutions are not considered such as permanent resettlement and integration, these are less relevant legally or practically speaking in the Lebanese context as Lebanon is not a party to the 1951 Convention. Furthermore, temporary protection might be combined with resettlements, although its main purpose is to aim at repatriation as a durable solution.

Other mass influx situations, in particular in Europe, are therefore also worth mentioning in the context of this paper. While the applicable legal standards differed as most of the receiving States concerned were party to the 1951 Convention, these crisis were actually dealt with, at least in the beginning, outside the framework of this instrument<sup>60</sup>, therefore illustrating the exceptional and temporary nature of the response. In this regard, the reactions to the mass influx of refugees from former Yugoslavia in the early 90s or during the Kosovo crisis in 1999 are particularly

<sup>50</sup> List of EXCOM members available at: <http://www.unhcr.org/40112e984.html>

<sup>51</sup> Conclusion n° 22, § II(B) (2)) see also statement by the Thailand’s authorities during the adoption of that Conclusion at the EXCOM that recalled the necessity to “reaffirm the minimal norms regarding the reception of displaced persons in case of mass influx”

<sup>52</sup> UNGA, Declaration and Comprehensive Plan of Action of the International Conference on Indo-Chinese Refugees – Report of the Secretary-General, § C5(a)

<sup>53</sup> For a detailed analysis of this principle see EGGLI, A. V., *Mass Refugee Influx and the Limits of Public International Law*, Martinus Nijhoff, The Hague, 2002.

<sup>54</sup> UNHCR Note on international protection, A/AC.96/850 1 Sept 1995 para. 14

<sup>55</sup> EXCOM Conclusion No 85 para. (p)

<sup>56</sup> EXCOM Conclusion No 22, op. cit., para IV(1) available at: <http://www.refworld.org/docid/4b28bf1f2.html>

<sup>57</sup> HCR, *International Solidarity and Burden-Sharing in All its Aspects: National, Regional and International Responsibilities for Refugees*, A/AC.96/904, 7 September 1998, §§ 7 and 27. <http://www.unhcr.org/excom/EXCOM/3ae68d978.pdf>

<sup>58</sup> “(u) Acknowledges that the realization of solutions in a growing number of mass outflow situations is much facilitated where these are made an integral part of a comprehensive plan of action, which balances the interests of affected States and the rights and needs of individuals and, accordingly, encourages UNHCR to work together with States and other interested organizations to explore new solutions-oriented approaches, which might include temporary protection and necessary arrangements for burden-sharing, when a situation so requires.” <http://www.unhcr.org/3ae68c6e1c.html>

<sup>59</sup> See for example Akram Report, op. cit., p. 5.

<sup>60</sup> For an analysis of the applicability of the 1951 Convention in mass influx situations see DURIEUX, J-F., McADAM, J., “Non-Refoulement through Time : The Case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies”, *JURL*, Vol. 16 n° 1, 2004.

interesting as they further demonstrate some of the challenges at stake in Lebanon with respect to Syrian refugees:

- The importance of international solidarity including through temporary evacuation programme outside the first country of asylum like during the Kosovo crisis;<sup>61</sup>
- The need to identify appropriate durable solutions for the persons concerned relatively early in the process<sup>62</sup>, which constitutes the overall objective of international protection.<sup>63</sup> For instance, for the Bosnian refugees, voluntary repatriation was prioritized from the outset.<sup>64</sup>

Given the above the following points should be highlighted in the context of the Lebanese response to Syrian refugee crisis:

- Irrespective of the fact that it is not party to the 1951 Convention, Lebanon remains bound by a number of international obligations in particular regarding the principle of non-refoulement and the reception conditions of Syrian refugees;
  - The treatment of Syrian refugees to date falls short of international human rights standards<sup>65</sup> and the minimum safeguards specifically acknowledged in the context of mass influx (see EXCOM Conclusion N°22 above);
  - Lebanese authorities have a primary responsibility in ensuring compliance with these standards. The magnitude of the influx is no excuse to derogate from those obligations. This involves in practice to set up a proper action plan, dedicated resources and a specific coordination structure at the national and local level. Refugee themselves should be involved in the design and implementation of such policy;
  - The international community has a responsibility to assist Lebanese authorities in dealing with this crisis and Lebanese authorities may want to refer to precedent examples of mass influx situations where such assistance took the form of temporary evacuation (Kosovo) or resettlement (boat people crisis).
4. Review of envisaged solutions: the need to consider the impact on protection and human rights standards

As highlighted earlier, it is fundamental to consider both short term and long-term solutions in order to address the multiple challenges raised by the Syrian refugee crisis in Lebanon. The Lebanese authorities are currently considering some immediate measures. However, it is paramount that any solution envisaged complies with key international standards. While some of the measures under review may be explained by pragmatic reasons, some raise important questions and risk undermining the protection of refugees. This is accentuated by ad hoc and changing policies adopted by the Lebanese authorities.<sup>66</sup> One of them relates to the discretionary power of the General Security Office of the Ministry of the Interior (GSO) within its functions of monitoring borders and carrying out the admission and regularization of the status of foreigners, as well as detention and deportation to issue policies vis-à-vis Syrian refugees. With the protracted lack of comprehensive solutions to the crisis, there is a risk of Lebanon adopting new measures undermining the protection and rights of refugees. In as much as the above review of past responses to mass influx offered some lessons learned, it also shows that these were not by far best practices. The boat people crisis illustrated the risk that the receiving countries not only

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<sup>61</sup> BARUTCISKI, M., SUHRKE, A., "Lessons from Kosovo Refugee Crisis : Innovations in Protection and Burden-Sharing", in : JOLY D. (ed.), *Global Changes in Asylum Regimes*, Palgrave MacMillan, 2002, pp. 79-104.

<sup>62</sup> See for instance the reception of Hungarian refugees in 1956 where 80% of them in Austria have been resettled (UNHCR Report to the AGUN A/3828/Rev. 1, 1958, § 3). See also the response to Vietnamese boat people which primarily focused on resettlement on the basis of an « unwritten arrangement (...) between first asylum countries and the resettlement countries (...) ». KOURULA, P., *Broadening the Edges Refugee Definition and International Protection Revisited*, Martinus Nijhoff Publishers, The Hague, 1997 p. 104; BRONEE, S. A., "The History of the Comprehensive Plan of Action", *IJRL*, Vol. 5 n° 4, 1993, pp. 534-543.

<sup>63</sup> EXCOM Conclusion No 29 (XXXIV), General, 1983, para (1), available at: <http://www.refworld.org/docid/4b28bf12.html>

<sup>64</sup> BAGSHAW, S., "Benchmarks or Deutschmarks? Determining the criteria for the repatriation of refugees to Bosnia and Herzegovina", *IJRL*, Vol. 9 n° 4, 1997, p. 567; JOLY, D., "Temporary Protection within the Framework of a New European Asylum Regime", *IJHR*, Vol. 2 n° 3, 1998, p. 51.

<sup>65</sup> See for example, ALEF, *Two Years On: Syrian Refugees in Lebanon*, op. cit., pp. 20 and ff; Human Rights Watch, "Lebanon: At Least 45 Local Curfews Imposed on Syrian Refugees", 3 October 2014 available at: <http://www.hrw.org/news/2014/10/03/lebanon-least-45-local-curfews-imposed-syrian-refugees>; and "Lebanon: Rising Violence Targets Syrian Refugees", 30 September 2014, available at: <http://www.hrw.org/news/2014/09/30/lebanon-rising-violence-targets-syrian-refugees>

<sup>66</sup> See for example, the Akram Report, op. cit., pp. 30-31.

question the admission of further refugees but also challenge the status of those already in their territory.

The newly created Inter-Ministerial Committee Crisis Cell was to be welcomed as an opportunity to enhance coordination. However a careful review of the potential measures or recent decisions is required to ensure they comply with the principle of non-refoulement and core human rights standards. Among those measures, ALEF is particularly concerned with the following:

- Deny access to Syrians coming from areas affected by the conflict which are not contiguous to Lebanon

It is reported that Lebanon decided that a person can only qualify as a refugee if he/she fled an area in Syria where hostilities are taking place and which is close to the Lebanese border. On that basis the authorities consider that the persons currently entering Lebanon cannot be refugees given the fact that the areas adjacent to Lebanon are relatively calm now.<sup>67</sup>

This decision could be supported by the concept of “internal flight alternative” as a ground for refusing international protection to an asylum seeker. The notion of “internal flight or relocation alternative” refers to a specific area of the country where there is no risk of a well-founded fear of persecution and where, given the particular circumstances of the case, the individual could reasonably be expected to establish him/herself and live a normal life. This argument has been used, for example by European states to justify the expulsion of asylum seekers who were not granted the refugee status on the basis they would not be at risk in another part of their country of origin.

However, international jurisprudence and the UNHCR stress that certain conditions must be met for this concept to be a ground for refusing the status of refugee. For example the European Court of Human Rights held as a pre-condition to consider the existence of an internal flight alternative that certain guarantees are in place:

“the person to be expelled must be able to travel to the area concerned, gain admittance and settle there, failing which an issue under Article 3 may arise, the more so if in the absence of such guarantees there is a possibility of the expellee ending up in a part of the country of origin where he or she may be subjected to ill-treatment.”<sup>68</sup>

Similarly, the UNHCR insists for certain conditions to be met.<sup>69</sup> It is essential to stress that the European Court of Human Rights also took into account the capacity of security forces to pursue their targets beyond a certain area<sup>70</sup> or patterns of human rights violations such as torture and ill treatment happening in other areas<sup>71</sup> to dismiss the existence of an internal flight alternative.

These conditions and guarantees are particularly relevant in assessing the decision of the Lebanese authorities. Firstly, the systematic and general character of the decision to refuse the refugee status to Syrian coming from areas adjacent to the Lebanese border is problematic. There would be a need to proceed on a case-by-case basis. Furthermore, the ability of the multiple Syrian security and intelligence services to carry out arrests in areas they regained control of is unquestionable. The same goes for the well-documented widespread use of torture and ill treatment of opponents by security forces on the whole territory of Syria. Additionally, the very fact that Syrians fled to Lebanon could make them be perceived as associated with the opposition, and as a result, returning to Syria could itself be a ground for persecution even in areas where there are no hostilities.

The recurring threat by Lebanese authorities to put an end to the open border policy cannot result in a decision to set criteria to only accept refugees with prominent risk and proximity to

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<sup>67</sup> L'Orient le Jour Newspaper, Interview with the Minister of Social Affairs, 12 August 2014, available at: <http://www.lorientlejour.com/article/880556/derbas-a-loj-une-fermeture-des-frontieres-libano-syriennes-est-possible-et-bientot.html>

<sup>68</sup> ECtHR, Salah Sheekh v. the Netherlands, No. 1948/04, Judgment of 11 January 2007, para. 141.

<sup>69</sup> UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION - Internal Flight or Relocation Alternative within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 2003, available at:

<sup>70</sup> ECtHR, Chahal v. the United Kingdom, No. 22414/93, Judgment [GC] of 15 November 1996, paras. 100 and 104.

<sup>71</sup> ECtHR, Hilal v. the United Kingdom, No. 45276/99, Judgment of 6 March 2001, para. 67.

Lebanon in contradiction with the principle of non-refoulement that does not contain such conditions. Furthermore, the decision to rely on an internal flight or relocation alternative must be in line with the guarantees highlighted above and be based on a case-by-case assessment.

- Review the status of those who are already in Lebanon to remove the refugee status for those who are here for economic reasons or who are travelling back to Syria<sup>72</sup>

While the necessity for Lebanon to ensure that those who registered as refugees with the UNHCR meet the well-established criteria for such status, the review must be done on a case-by-case basis. It is reported that UNHCR itself initiated a process to rescreen the registered refugees to identify potential abuses. It is true that long term Syrian migrant workers residing in Lebanon do not qualify to be refugees. However, it does not mean this review process must be used to reject the status of refugees to those who recently arrived to Lebanon and who may have legitimate fear of persecution. Additionally if a migrant worker who recently arrived to Lebanon comes from a region affected by the hostilities, he/she could qualify as a refugee. Finally the mere fact for some refugees to travel back to Lebanon cannot be an automatic reason for refusing protection and withdrawing his/her refugee status. A temporary or stand-alone visit to the country of origin does not mean that the individual is receiving protection and he/she could still be in need of such protection.

The review of the refugee status must therefore be conducted in line with international law standards and with due consideration for the specific individual situation of the person.

- Promote the establishment of camps inside Syria or in the no-man's land between the two countries and ask from the international community to support Lebanon in this respect.

Due to the reluctance to establish official camps in Lebanon, the Lebanese authorities suggested the creation of camps in two different locations: the so-called no man's land between the borders of the two countries or in Syria. Both proposals raise key questions in terms of protection and practical challenges. They are also fundamentally different.

It is assumed that the latter option is meant to be for refugees already in Lebanon. In that case this would amount to a measure of repatriation, one of the three durable solutions, and it should be done on a voluntary basis. However, the creation of camps in Syria would not in itself replace the need of protection that refugees sought in the first place when they fled Syria. As a result, this option will not affect the obligation for Lebanon to respect the principle of non-refoulement.

The establishment of camps in the no man's land between the Lebanese and the Syrian borders raises a key question of jurisdiction. If this area is not falling under the jurisdiction of any state, this issue should be resolved first before considering any further step as refugees currently in Lebanon could not be sent by Lebanon to an area where there is no effective authority to ensure their protection. In case it is agreed between Lebanon and Syria that Lebanon exercises jurisdiction for the purpose of the administration of the camps, therefore, on the basis that the principle of non-refoulement applies extra-territorially to any area where the state exercises authority on or the benefit of persons under its control<sup>73</sup>, Lebanon would still be bound by its obligations.

Whatever solution is favored, it is fundamental it is in line with existing refugee law and human rights standards. As noted above, some envisaged measures could be implemented provided that they are guarantees to ensure the core objective of the need of protection of refugees is upheld. This being said, there seems to be a link between the insufficient international solidarity to

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<sup>72</sup> MOSA Representative attending United Nations, Office of the resident and humanitarian coordinator in Lebanon, Lebanon crisis response plan of the 3RP, Stakeholder consultation analysis and planning meeting, 17 August 2014.

<sup>73</sup> UN Human Rights Committee, General comment no. 31 - The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 10. See also, UNHCR intervention before the European Court of Human Rights in the case of Hirsi and Others v. Italy, March 2010, para. 4.2, available at: <http://www.refworld.org/docid/4b97778d2.html>

address the Syrian refugee crisis and the likelihood that this will erode Lebanon's commitment to receive more refugees and to respect its relevant obligations. This in turn calls for a greater involvement of the international community, including with regard to durable solutions, such as resettlement.

5. ALEF position and strategy: Calling for the adoption of a principled and coherent national policy supported by the international community

In light of the above ALEF is of the view that it is imperative a comprehensive, coherent and principled national policy is adopted by the Lebanese authorities in full compliance with core principles of international law, notably the principle of non-refoulement and the human rights of refugees and that takes into account the constraints on Lebanon as a result of this crisis. Of similar importance is the need for the international community to step up its efforts to provide more durable solutions and assistance to Lebanon.

The non-applicability of the 1951 Convention should not be an excuse not to act. In particular past practices showed that this aspect is less relevant in the context of mass influx. On the other hand cases of mass influx in the past and the related responses demonstrated that the situation in Lebanon is not unprecedented in terms of the design of solutions to address a huge number of refugees. Lesson learned should be taken into account in full respect of international law.

To the Lebanese authorities:

- 1) Short term recommendations
  - Reiterate the unconditional commitment to the principle of non-refoulement and to improve the conditions of Syrian refugees;
  - Review the decision to systematically refuse the refugee status to new Syrians entering Lebanon from adjacent areas in accordance to international standards and ensure an assessment is undertaken to determine whether internal flight or relocation alternatives exist in line with guarantees and conditions developed by the UNHCR and the international jurisprudence;
  - Continue to provide access of Syrian refugees on the basis of stricter review process in compliance with international refugee law standards, in particular the principle of non-refoulement and with human rights law;
  - Ensure the review process for the status of refugees already in Lebanon is in line with international standards and done on a case-by-case basis, including when considering internal flight or relocation alternatives and voluntary repatriation;
  - Repeal the current ad hoc policies adopted by Lebanese security services that amount to discriminatory and arbitrary treatment of asylum seekers and refugees;
  - Initiate the necessary steps for the drafting of a national policy to serve as a comprehensive framework to govern admission, status and reception conditions, in coordination with key relevant actors, notably the UNHCR and taking into account the current discussions on the adoption of a Memorandum of Understanding;
  - Ensure consultation processes are envisaged to allow refugees being associated to the design and implementation of that policy;
  - Conduct human rights and refugee law training of local municipal officials as well as border officers in partnership with the UNHCR to ensure international standards are respected in the way they deal with asylum seekers and refugees from Syria;
  - Consider a greater role to be given to municipalities in the determination of the refugee status in coordination with the UNHCR in line with international standards and include specific training to local officials for that purpose;
  - Formalize in Lebanon, including within the national policy, the concept of temporary protection, taking into account the need to respect international law.
- 2) Long-term recommendations
  - Consider the establishment of small-scale camps in partnership with the UNHCR and the international community in line with international standards. Such camps would allow a more coherent aid delivery and better perspectives of security monitoring to prevent refugee communities from being used as safe haven for armed groups.

#### To the UNHCR

- Continue and fast forward efforts to review the status of existing Syrian refugees to ensure in line with UNHCR practice and standards and in coordination with the Lebanese authorities;
- Engage in discussions with and assist the Lebanese authorities to draft a national policy on the Syrian refugee crisis;
- Assist the Lebanese authorities in conducting human rights and refugee law training of local municipal officials as well as border officers;
- Continue and intensify advocacy efforts towards states to increase the number of places for Syrian refugees globally on resettlement, humanitarian admission, or other forms of admission.

#### To the International Community

- On the basis of the recognition of the huge impact the Syrian refugee crisis has on Lebanon and the responsibility of other members of the international community, provide adequate resources to Lebanon in order to address the needs of the Syrian refugees, including through granting development aid to support Lebanese infrastructures affected by the mass influx and therefore tackle the growing concern in the local population;
- Intensify efforts to increase the number of places for Syrian refugees globally on resettlement, humanitarian admission, or other forms of admission, in particular through the activation of the temporary protection EU Directive and agreeing that some of the Syrian refugees are temporarily admitted in EU member States;
- Provide more support to self-reliance activities for Syrian refugees in order to ensure that they are less dependent on assistance and subsidies.

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