

Arbitrary Detention and Freedom of Expression in Lebanon

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The Impact of Arbitrary Detention on Freedom of Expression

Withholding a journalist's liberty of movement is one of the major impediments to freedom of expression. Journalists cannot fulfill their duty of informing, reporting and covering the news if they are not provided with full access to all places where events are unfolding.

In the last few years, journalists and media professionals in Lebanon faced several cases of arbitrary detention both from official security services and non-state actors. While detention periods by official security services have been relatively short, the occurrence of such cases demonstrates that due process is often ignored by security officers. Whether for intimidation purposes or due to a lack of awareness about legal procedures, members of the security apparatuses still arrest and question journalists and media professionals because of what they wrote, filmed or published. Arrests on these grounds are a clear violation of Lebanese constitutional principles and Lebanon's human rights obligations.

However, the unlawful detention of journalists and media professionals by non-state actors, mainly armed groups operating in various regions of Lebanon, is one of the most dangerous situations in the country today. Creating de facto

closed zones for journalists severely limits their ability to shed light on what is happening across the country, imposes taboos and constitutes a serious violation of freedom of expression. Additionally, the infringement of such groups on liberty of movement encroaches upon the state's authority. These cases are met with absolutely no action from the government's judiciary or security services to hold the groups who have detained journalists and media professionals accountable for their violations.

Today the absence of official protection for media professionals against the perpetrators of press freedom violations is by far the most important challenge that journalists face. The government is required to hold its own security services accountable and force them to respect Lebanese laws and codes of conduct. The government is also required to exercise its authority over all non-state armed factions that restrict access to some regions, illegally detain people and erect boundaries of fear inside Lebanese territory.

Year after year, Lebanon is regressing in the international press freedom indexes. Putting an end to the practice of the official and non-state arbitrary detention of journalists is one of the first measures to take to reverse this negative trend.

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What is Arbitrary Detention?

Many legal instruments, whether national or international, define the deprivation of liberty in various ways. The most commonly used terms are: arrest, detention, incarceration, prison, custody, etc. It is for these reasons that the United Nations Commission on Human Rights¹ coined the term ‘deprivation of liberty’. This concept was chosen since it “relates to the protection of individuals against arbitrary deprivation of freedom in all its forms, and its mandate extends to deprivation of freedom either before, during or after the trial [—], as well as deprivation of freedom in the absence of any kind of trial (administrative detention).”² In fact, the term ‘arbitrary detention’ has not been clearly defined in international law. The Working Group on Arbitrary Detention refers to it as a deprivation of liberty that is contrary to human rights provisions enshrined in major international human rights standards and instruments. It defines a deprivation of liberty as being arbitrary if it falls within one of the following categories:

- a. When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (Category I);
- b. When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of

Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);

- c. When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III);
- d. When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV);
- e. When the deprivation of liberty constitutes a violation of the international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).³

Therefore journalists, who are deprived of their liberty for exercising the right to freedom of opinion and expression—guaranteed by articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights—are deemed to fall under Category II.

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What Are Your Rights During Detention?

There is an abundance of international norms which guarantee the right to liberty and security of the person and are available to all individuals and not strictly citizens of state parties. Therefore individuals in criminal detention and administrative detention, such as migrants, refugees and asylum seekers are also protected if they are on the territory.⁴ The most widely referred to instruments are those enshrined in the Universal Declaration of Human Rights (UDHR) (articles 3, 8, 9 and 10) and the International Covenant on Civil and Political Rights (articles 2(3), 4, 5, 9, 10(1), and 14 (1)). Regional standards also codify the scope of protection against arbitrary detention, such as: the Council of Europe, European Union, Inter-American System, African System, etc. While an illegal or unlawful arrest or detention is almost always arbitrary, an arrest or detention which is in accordance with law may nevertheless be arbitrary if it contains “elements of injustice, unpredictability, unreasonableness, capriciousness and un-proportionality.”⁵ These elements may be measured according to the following procedural safeguards, established in international law and compiled by the International Commission of Jurists:

- Inform detainee: Detainees must be promptly informed of the grounds for arrest and detention (ICCPR article 9(2)) and of their rights and how to avail themselves of those rights, including safeguards against torture or other ill treatment. Indefinite detention without charge is prohibited.
- Inform others: Incommunicado detention is strictly prohibited and detainees must be kept in a recognized place of detention. “In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours.” Registries of both detainees and responsible officials must be accessible to those concerned, including doctors, lawyers, relatives and friends.
- Facilitate access to lawyers: A detainee must be given prompt and regular access to legal counsel within 24 hours of arrest.
- Ensure judicial control: A detainee must be brought promptly before a judge or other competent authority (ICCPR, art. 9(3)) and has a right to have a court determine the lawfulness of the detention (ICCPR, art. 9(4)).
- The habeas corpus writ or similar remedy must not be limited or restricted under any circumstances. Any delay of judicial scrutiny beyond 48 hours would be hard to justify under international law.
- Provide human treatment: All persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person (ICCPR, art.10) and have access to prompt medical care.
- Ensure right to fair trial: If charges are brought, the detainee is entitled to a fair trial by a competent, independent and impartial tribunal established bylaw within reasonable time or release (ICCPR, art. 9(3), art.14). The trial must be conducted in accordance with international fair trial standards.⁶

1. “Commission on Human Rights,” Office of the United Nations High Commissioner for Human Rights, accessed February 14, 2012, <http://www2.ohchr.org/english/bodies/chr/index.htm>.

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

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

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

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

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