



The Right to Fair Trial in Lebanon

**A Position Paper on Guarantees during
Arrest and Investigation**

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Fair Trial in the Lebanese Context

The principles shaping fair trial are the very rejection of arbitrary procedures and unfair processes that eradicate the notions of freedom and justice. These principles are preserved by a wide array of international agreements and conventions that apply to citizens as well as the state. The most significant of which are the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), both of which, the state of Lebanon has ratified and subsequently reflected in its laws. The basic principles of fair trial are present in the Lebanese justice system, such as the unconditional right to resort to lawsuits, the right to legal counsel, the burden of the proof falling upon the accusation, no crime without a law, and one cannot be prosecuted twice for the same crime. Despite these local and international obligations, Lebanese criminal justice practices have not always functioned according to the same spirit as these agreements, as this paper will aim to explain. By expanding on the key components of fair trial guarantees as developed in international and national laws, this position paper will present and evaluate the reality of the realization of these rights by reflecting on Lebanese state practices

Guarantees against Arbitrary Detention and Long Delays in Trial

In a system, which respects the rule of law, one of the main duties of the government is to preserve security and hold people accountable; however, this comes with a huge responsibility for the state. Someone who is suspected of having committed a crime has the right to be tried based on certain standards enabling the justice system to properly separate the innocent from the guilty.¹ Some of these standards are applied even before the trial begins, such as law enforcement requiring a **warrant to be able to make an arrest**. Persons detained also retain the right to appear before a court without delay, to challenge the lawfulness of their detention.

These are internationally recognized principles² that are also promulgated by Lebanese laws³. However, in practice, suspects are routinely held in detention past the 96 hour time limit before appearing in front of a judge⁴. Former prisoners have reported cases of arbitrary detention, involving raids of their homes without warrant⁵. For example, between 2007 and 2011 92 individuals were arbitrarily arrested for being suspected of playing a role in the Naher el-Bared conflict.⁶ Another example of an arbitrary arrest in March 2015, involved the Lebanese Army Intelligence arresting Syrian opposition liberal activist Maan Abdel Salam, without having a judicial warrant requesting his arrest. He was interrogated for almost 10 hours before being released.⁷ A third example is the warrantless arrest by the Lebanese Army Intelligence in 2008 of Tarek Mostafa Marei and Abdel Karim Mustafa on alleged charges of terrorism.

Petty crimes and misdemeanors can still lead to the accused being placed in preventive detention with late bail sessions. Time limitations in preventive detention, including the 4-day detention period before the accused is heard in front of an investigative judge, are often not respected. Someone may also be detained indefinitely under terrorism charges since the investigative judge can order a 6-month extension to the pre-trial detention period,

1 "The Right to a Fair Trial." FairTrials.org. Accessed September 14, 2015

2 ICCPR, Articles 9(1) and 9(4)

3 Lebanese Constitution, Article 8

4 American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 20

5 LCPS AND ALEF, Right to a Fair Trial Focus Group Report, LCPS AND ALEF, 2015

6 Khiam Center. "Lebanon: Arbitrary Arrest of 92 in Naher el-Bared Conflict." Khiam Center. <http://www.khiamcenter.org/ar/p.php?lang=ar&aid=199> (accessed January 14, 2016)

7 Abu el-Eiss, Jihad. "Lebanese Security Arrest Syrian Opposition Maan Abdel Salam." Al Jazeera. <http://www.aljazeera.net/news/humanrights/2015/3/31/> (accessed January 16, 2016)

which can be renewed for another 6 months indefinitely⁸. A highly controversial and mediatized example was when four officers, suspected of assassinating former Prime Minister Rafik al-Hariri. Generals Jamil al-Sayed, Raymond Azar, Ali al-Haj and Mustapha Hamdan, were held in custody for a total period of three years and eight months.⁹ In a communication addressed to the Lebanese government, the Working Group on Arbitrary Detention stated that the Generals' detention constitutes an arbitrary detention, "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."¹⁰

8 Lebanese Code of Criminal Procedure, Article 108

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

10 Communication Addressed to the Government on April 27, 2007," United Nations Working Group on Arbitrary Detention, Opinion no. 37/2007 (Lebanon)

The Right to Know the Reasons for Arrest

Judges often do not study the facts of each individual case and rarely order the release of a suspect awaiting trial. Furthermore, the prosecutor may order an arrest based upon “strong suspicion”¹¹, but this term is not defined in Lebanese law and is left to the prosecutor’s discretion¹². This vague term provides the prosecutor, who gets most of the information from police reports, with a wide range of discretionary powers in the interpretation of the law. In case an arrest is made, the accused has the **right to be informed of the reasons for their detention** and the charges brought against them as stated in both international¹³ and Lebanese laws¹⁴. This rule is not widely respected in Lebanon and in spite of some improvements in recent years, violations still occur.¹⁵ For instance, citizens are often summoned to the Cybercrime Bureau under vague or even false premises. Nineteen year old Karim Hawa was told that he had purchased a stolen smart phone and asked to report to the Bureau. He was then held for four days, interrogated and unable to recover his laptop and phone, which had been requested, for another two months.¹⁶ In the case of Tarek Marei and Abdel Karim Mustafa mentioned above, the police did not tell Marej and Mustafa the reason for their detention.¹⁷

11 Lebanese Criminal Code of Procedure, Article 32

12 American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 24

13 ICCPR, Article 9(2)

14 Lebanese Criminal Code of Procedure, Article 47

15 LCPS and ALEF, Right to a Fair Trial Focus Group Report, LCPS AND ALEF, 2015

16 Anna Lekas Miller, “Digital Rights and Online Expression in Lebanon”, SKeyes Center for Media and Cultural Freedom, February 2016

17 ANHRI. “15 Years Sentence for Sheikh Tarek Mostafa Marei and Abdel Karim Mustafa based on Confessions Obtained under Torture.” Arab Network for Human Rights Information. <http://anhri.net/?p=133152> (accessed January 17, 2016)

Equality before the Law

The accusation and arrest have to be based on an already existing law, as guaranteed by the principle of **non-retroactivity of laws**, common to international¹⁸ and national laws¹⁹. Furthermore, all individuals have the right to be treated equally before the law and the court; **non-discrimination** is a principle which extends to race, color, sex, language, religion, political opinion, national or social origin, property, birth or any other status. This right is guaranteed in international²⁰ and Lebanese laws²¹, however, discrimination does occur in Lebanon against followers of certain religious or political groups. Proof of which was found in a video leaked in June 2015, showing ISF officers beating Islamists following a prison riot in Roumieh prison²². Discrimination also occurs against individuals based on their sexual orientation. In August 2014, ISF Morals Protection Bureau raided the Turkish bathhouse, Hammam al-Agha, and arrested more than twenty individuals, including a dozen employees, customers and the owner. Detainees were charged with sexual intercourse contradicting the laws of nature, secret prostitution and breaking morals and ethics. News reports by organizations, ALEF documentation, and statements from victims arrested, indicated the occurrence of torture and inhuman practices during investigation and arrest. In particular, intimidation and humiliation, and for particular homosexual individuals, group rape in detention. Another similar incident occurred in Dekwaneh in 2013, where a nightclub raid led to the arrest of 4 individuals who were subjected to verbal and physical abuse. They were beaten, forced to undress and engage in sexual acts.²³

Foreigners working low-income professions, or migrant workers originating from non-western states also suffer from discriminatory practices.²⁴ Former Syrian and Palestinian detainees indicated the presence of an acute animosity and hatred towards them by some officers²⁵ Hatred towards lower-class minority groups has occurred numerous times, especially at the Adlieh

18 ICCPR, Article 15(1)

19 Lebanese Constitution, Article 8; Lebanese Criminal Code, Articles 1 and 6

20 ICCPR, Articles 14(1) and 26; ICERD, Article 5

21 Lebanese Constitution, Article 7

22 HRW. "Lebanon: Monitor Detention to Combat Torture." Human Rights Watch. <https://www.hrw.org/news/2015/06/26/lebanon-monitor-detention-combat-torture> (accessed January 16, 2016)

23 Wael Farah. "Gay Rights in Lebanon The Good The Bad and The Ugly." Index on Censorship. <https://www.indexoncensorship.org/2014/04/gay-rights-lebanon-good-bad-ugly/> (accessed February 6, 2016)

24 LCPS AND ALEF, Right to a Fair Trial Focus Group Report, LCPS AND ALEF, 2015

25 LCPS AND ALEF, Right to a Fair Trial Focus Group Report, LCPS AND ALEF, 2015

detention center during the detention of migrants, asylum seekers, or refugees who are kept in poor conditions. This is done to coerce those detained into accepting deportation to their country of origin, as a tool to punish detainees for illegal entry into the country, or for leaving their sponsor.²⁶

During interrogations, the **right to be communicated with in a language understood by the accused** is guaranteed by law²⁷. This is coupled with the right to have an interpreter in case the language spoken is not understood. In practice, this right has not been respected when dealing with Migrant Domestic Workers (MDWs). Although lobbying by civil society organizations has led to a much wider use of interpretation for MDWs in a language they understand during investigation and court hearings, this continues to be problematic. The application of such measures has not guaranteed professional and objective interpretation. For example, the only interpreters available to detained migrant domestic workers were from Caritas Lebanon Migrant Center²⁸. In some instances where interpreters for MDWs are not available during the investigation, another detainee who understands both languages will often act as substitute. In one instance, at the Hobeiche police station, an American University of Beirut student, who was passing by, helped to translate during the interrogation of a Ukrainian woman.²⁹

26 Harbi, Rana. "Adlieh Center Detainees Subject to Inhumane and Illegal Incarceration." Al Akhbar English. <http://english.al-akhbar.com/node/20354> (accessed January 16, 2016)

27 ICCPR, Articles 14(3-a) and 14(3-f); Lebanese Criminal Code of Procedure, Articles 47, 78, and 254

28 LCPS AND ALEF, Right to a Fair Trial Focus Group Report, LCPS AND ALEF, 2015

29 LCPS AND ALEF, Right to a Fair Trial Focus Group Report, LCPS AND ALEF, 2015

Presumption of Innocence

Even if someone is accused of committing a crime and is considered a suspect, they are considered **innocent until proven guilty** as stated by international law.³⁰ However, the Lebanese CCP does not explicitly state this. It is implicated however, in article 130, which stipulates that a person accused of a crime should be released in case the accusatory body cannot present sufficient evidence".³¹ A person shouldn't have to prove their innocence; the prosecution has to prove guilt. In reality, investigative authorities heavily rely on confessions, which are sometimes obtained through coercion³². The burden of proof becomes less relevant in such circumstances, since convictions by the judiciary based on confessions are carried out without a more thorough investigation.

Moreover, the detained has the **right not to incriminate himself** or confess under coercion as stated in international law.³³ This is rarely applied in Lebanon where police fail to inform defendants of their right to refuse to answer questions.³⁴ Police training does not emphasize on the right to remain silent. Policemen often demand the suspect to talk or to sign the investigative transcript, contradicting this principle. The dangers of violating this right were seen during the case of "Abou Amine," who was physically tortured, and his family threatened if he did not cooperate with security forces. In the end, Amine provided false statements to protect his family.³⁵ According to Amnesty International, two other men who were arrested in 2013, at army checkpoints, were subjected to torture until they agreed to sign a statement they were not allowed to read.³⁶ Another similar incident occurred to Tarek Rabaa, who spent more than four years in detention from July 2010 to February 2015 under charges of "collaborating and communicating with the enemy". For three months before being transferred to Roumieh prison in October 2010, he was severely tortured repeatedly with the aim of forcing him to sign incriminating documents.³⁷

30 ICCPR, Article 14(2)

31 Lebanese Criminal Code of Procedure, Article 130

32 American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 2

33 ICCPR, Article 14(3-g)

34 American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 20

35 Abdallah, Vera. "Torture in Prisons Reported, Activists Sent to Court." NOW News. <https://now.mmedia.me/lb/en/reports/features/564985-torture-in-prisons-reported-activists-sent-to-court> (accessed January 14, 2016).

36 Amnesty International Press Release. "Lebanon: Death in Custody and Torture Claims must be Investigated." Amnesty International. <https://www.amnesty.org/en/press-releases/2013/07/lebanon-death-custody-and-torture-claims-must-be-investigated/> (accessed January 14, 2016)

37 Al Karama Media Team. "Lebanon: Tarek Rabaa Set Free after 4 Years of Arbitrary Detention." Al Karama. <http://en.alkarama.org/iraq/1611-lebanon-tarek-rabaa-set-free-after-six-years-of-arbitrary-detention> (accessed January 16, 2016)

Freedom from Ill-treatment and Torture

During detention, every individual has the **right to physical and mental integrity** and should be treated with humanity and respect. This includes the right to be safe from torture and cruel, inhuman and degrading treatment during custody³⁸. In a focus group of Lebanese youth aged 18-25, participants stated that the use of torture to obtain a confession, in cases of national security, is acceptable.³⁹ This highlights society's tolerance of the use of torture for certain suspects, specifically those who've committed terrorism. This perception is also reflected at police stations where many are abused psychologically and physically; leading detainees to confess to crimes which they might have not committed⁴⁰. In August 2014, Charbel (pseudonym), a 26-year-old Lebanese citizen, stated that he was charged with selling arms online and was arrested in order to have his case investigated by authorities. During the investigation, he was repeatedly beaten and insulted by officers in civilian clothing. Every time he was defiant about his innocence the beating would become more severe. His abuse went on for a couple of hours until his fiancé, whose family is well connected, arrived to ask about him. Due to her connections, the officers immediately stopped torturing him, but threateningly advised him not to speak about what had happened. In a similar case, Samer, who was arrested for participating in "acts against nature", stated that he was insulted, humiliated, and beaten to admit he was gay. He was also threatened that he would be subjected to an "anal test," a technique used by Lebanese medical legists, on behalf of law enforcement agencies, aimed at providing evidence of homosexual acts⁴¹. Thirdly, Nader al-Bayoumi, (a 35-year-old man arrested in 2013, following clashes between the Lebanese Army and Ahmad al-Assir's armed group in Sidon, reportedly died in prison due to the injuries he sustained from being tortured during his investigation.⁴² The recurrence of these violations throughout different instances reflects a trend of systemic negligence of individuals' rights.

38 ICCPR, Article 10(1); Lebanese Criminal Code of Procedure, Articles 38, 42, and 47; Lebanese Criminal Code, Article 569

39 LCPS AND ALEF, Right to a Fair Trial Focus Group Report, LCPS AND ALEF, 2015

40 A former Palestinian prisoner who spent a month in the Ministry of Defense said "The minute I walked in, the officer told me, God, Jesus, Prophet Mohamad, Imam Ali, Saint Charbel, Saint Maroun, I don't know any of those. Here I am throwing all of them in the garbage bin. It is only you and me here, and he started beating me urging me to confess to something I had no idea about".

41 Abdallah, Vera. "Torture in Prisons Reported, Activists Sent to Court." NOW News. <https://now.mmedia.me/lb/en/reportsfeatures/564985-torture-in-prisons-reported-activists-sent-to-court> (accessed January 14, 2016).

42 Amnesty International Press Release. "Lebanon: Death in Custody and Torture Claims must be Investigated." Amnesty International. <https://www.amnesty.org/en/press-releases/2013/07/lebanon-death-custody-and-torture-claims-must-be-investigated/> (accessed January 14, 2016)

Right to Legal Counsel

Perhaps, one of the most important rights during pre-trial is the **right to counsel**. The accused should be given enough time and facilities to contact a lawyer. They should also be tried in the presence of their counsel and be able to defend themselves in person or through legal assistance. Additionally, they should be granted legal assistance if they are not able to afford it. International law guarantees all the above stated rights⁴³. Lebanese law guarantees all the above, but does not assign a lawyer if the accused refuses to have a lawyer⁴⁴. The Lebanese law can also be interpreted in a manner that does not require the presence of a lawyer during the initial interrogation and investigation; opening the door to forced confessions or other abuses at the police station.⁴⁵ Article 47 of Criminal Code of Procedure gives the right to any person accused to contact an attorney but it does not require counsel to be present during the investigative hearings. Lebanese citizens believe that the presence of a lawyer is very important, but they did not fully understand the idea of having a lawyer assigned by the court to the defendant in case he cannot afford one⁴⁶. Former prisoners were also not aware that they could have a lawyer appointed to them by court if they cannot afford one⁴⁷.

Most of the Lebanese citizens who were unaware of their right to an attorney were youth from ages eighteen to thirty. These citizens make up an essential part of the workforce in Lebanon. Conflicts with the law will negatively impact their ability to work, to find a job, and to be productive. Average citizens are at risk of having more of their rights violated when they are unaware of their right to access legal aid, making them more vulnerable to self-incrimination in order to avoid a longer pre-trial detention and trial process. Layal al-Kayaje, a pet shop employee from Sidon, was arrested by the Military Intelligence in 2015, after she claimed to the media that she was tortured and raped by members of the Military Intelligence during a previous detention in 2013⁴⁸. Layal was held in *incommunicado* detention since authorities had actively concealed information regarding her detention. Part of the information they tried to conceal was not allowing al-Kajaye to have a lawyer. Secondly, certain judges try to speed-up the trial by implying that asking for a lawyer will

43 ICCPR, Articles 14(3-b) and 14(3-d)

44 Lebanese Criminal Code of Procedure, Articles 47 and 78

45 American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 20

46 LCPS AND ALEF, Right to a Fair Trial Focus Group Report, LCPS AND ALEF, 2015

47 LCPS AND ALEF, Right to a Fair Trial Focus Group Report, LCPS AND ALEF, 2015

48 HRW. "Lebanon: Woman Detained After Alleging Rape." Human Rights Watch. <https://www.hrw.org/tet/node/281666> (accessed January 14, 2016)

entails a long administrative process which will prolong the trial process.⁴⁹ This was also seen with the arrest of demonstrators in August 2015 protesting the garbage crisis. Many of those detained were not allowed by the security forces to meet their lawyers⁵⁰ and to communicate their whereabouts with family members. Another example is from January 2015 where a taxi driver's wife filed a missing person's report at the Abdeh police station in Tripoli after her husband went missing. It turned out that her husband was being detained at the Beddawi police station in Tripoli and the authorities failed to contact his family about his whereabouts⁵¹.

49 LCPS AND ALEF, Right to a Fair Trial Focus Group Report, LCPS AND ALEF, 2015

50 The Daily Star. "60 Detained, 4 Missing since Tuesday Night Clashes: Beirut Activists." Daily Star. <http://www.dailystar.com.lb/News/Lebanon-News/2015/Aug-26/312831-60-detained-4-missing-since-tuesday-night-clashesbeirut-activists.ashx> (accessed January 16, 2016)

51 ALEF, Snapshot on Fair Trial in Lebanon, ALEF, 2015

Conclusions and Recommendations

Lebanon holds, in theory, a well-organized judiciary system that is respectful of the basic international principles of justice. Although Lebanese legislation and criminal justice procedures comply with international standards in some areas, they are not in compliance with statutory, and most importantly, applied practices. This situation remains unstable since no effective measures have been taken to resolve these issues by the government. Lengthy delays in trial, regularities of arbitrary arrest, lack of access to legal aid, trial of civilians in exceptional courts, interference in the judicial system, and the general lack of respect for the rule of law are among the many embodiments of the flaws of the Lebanese judicial system. In order to address these fundamental issues, ALEF recommends the following:

To the Lebanese Parliament

- Ensure consistency of national laws with the ICCPR and other international obligations. All of which must be effectively available by law and in practice. The procedural safeguards must also be available for every detainee without discrimination.
- Strengthen provisions in the Code of Criminal Procedures (CCP).
 - ♦ To include the principle 'innocent until proven guilty'.
 - ♦ To allow the separation of criminal files when a crime is committed by more than one individual.
- Amend the following articles:
 - ♦ Article 32 of the CCP:
 - To include reasons for the arrest and factual and material grounds that would warrant strong suspicions.
 - To require the public prosecutor or deputy to motivate the decision for renewing the period of custody for an additional forty-eight hours.

◆ Article 47 of the CCP:

- Reformulate the rights of a suspect or a person who is the subject of a complaint to the following wording: "To contact a member of his family, his employer, an advocate of his choosing and an acquaintance."
- Add a paragraph requiring the judicial police to inform the suspect that he/she has the right to remain silent.
- Amend the article to make it clear that once the lawyer is contacted, he/she is able to attend the questioning with the suspect.
- Add a paragraph stating that the judicial police have a duty to inform the detainee that should they not have sufficient funds to appoint a lawyer, that they can have one appointed by the Beirut or Tripoli Bar Associations' Legal Aid Committee.
- Add a paragraph that specifically states that if the judicial police fail to inform the suspect of their rights upon arrest, that the investigation forthwith is null.

◆ Article 107 of the CCP:

- Include a paragraph that states that when the decision to order pre-trial detention is made, the suspect should be informed of the following rights:
- The right to be assisted by legal counsel of his/her choice or be informed of the right to have legal aid appointed to the case.
- The right to challenge the lawfulness of the detention and be released if the detention is not lawful.
- The right to communicate and be visited by family.
- The right to have the pre-trial detention reviewed by a court of law at short periods.
- The right to have proceedings conducted without undue delay.

◆ Article 108 of the CCP:

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

- Strengthen provisions in the Criminal Code. Criminalize “arbitrary detention” (expand notion of unlawful detention) and discipline and prosecute violators accordingly.
- To create means that guarantee the respect of a fair trial throughout judicial proceedings and sanction any violations.
- To establish a state lead legal aid system that allows people to benefit from its judicial proceedings.
- In the process of establishing a state-funded legal aid system, a raise in salary for legal aid lawyers should be implemented.

To Civil Society

- As much as possible, put in place a clear and public mechanism for regular monitoring of the judicial system, a detailed calendar outlining progress, and a regular evaluation of the implementation and systematic consultations with human rights NGOs.
- To ensure that practice outcomes adhere to international human rights standards.

To the Lebanese Government

- Develop a centralized system, used by relevant ministries who are competent in matters of criminal justice, to retrieve information about court decisions, laws, criminal files, etc.
- Transfer the management of prisons from the MoI to the MoJ pursuant to 1964 Decree-Law No. 17315.
- Restrict the Ministry of Defense prison and detention facilities to military personnel only.
- Seek support from international donors to upgrade prison conditions so they meet international standards. Also, set up external monitoring mechanisms.
 - ♦ Undertaking proper renovations and infrastructural improvements;
 - ♦ Separating pre-trial detainees from convicted criminals;
 - ♦ Separating detainees according to severity of the crime.
- Build additional detention facilities to house pre-trial detainees.
- Build additional holding cells at the various courthouses.
- Establish mobile courts in the North, South and Bekaa valley. These courts would resolve transportation issues and ensure quicker trials.

- Review as a matter of urgency, the alternatives available to indefinite detention of foreigners. Allow temporary settlement or any other appropriate means to respect human dignity, especially for refugees from war torn regions.
- Monitoring places of detention every month, according to Article 402 of the CCP.
- The MoI and MoJ should have an independent committee on arbitrary detention that serves as an internal oversight mechanism. It will assess the effectiveness in identifying and combatting arbitrary detention and develop a plan to strengthen the mechanisms accordingly. The MoI and MoJ must quickly discipline any individual responsible for failing to protect and respect the rights of detainees, regarding legal time limits and other legal standards.
- Adjust training and capacity building initiatives to Lebanon by taking into account the current concepts of justice and the need to develop better mechanisms and tools.
- Raise public awareness regarding the rights of suspects.
- Lawyers, judicial police, public prosecutors and judges should gain a better understanding of the following:
 - ♦ Concepts of justice in the formal and informal systems
 - ♦ Role and function of detention and the rights of suspects
 - ♦ The roles of the lawyer, judicial police, public prosecutor and judges
 - ♦ The function and content of criminal procedural law related to detention
 - ♦ Alternative investigation and interrogation methods
 - ♦ The definition of arbitrary detention and remedies available
 - ♦ Internal oversight mechanisms
- Lastly, the Lebanese Government must allocate the necessary budget and other resources to implement the abovementioned recommendations.

Principle	References in International Law	
No crime without a law and non-retroactivity of legal provisions	ICCPR, Article 15(§1) 1966a : “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed”	
Warranted Arrest and Detention by Authorized Judicial Authority	<p>ICCPR, Article 9 (§1) 1966a: No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</p> <p>ICCPR, Article 9(§4) 1966a : “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”</p> <p>ICCPR, Article 11 1966a: “No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation”</p> <p>ICCPR, Article 9(§5) 1966a: “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”</p>	
Right to be stated retained charges	<p>ICCPR, Article 9(§2) 1966a: “Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”</p> <p>ICCPR, Article 14(§3-a) 1966a: “To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”</p>	

	Lebanese Law & Practice	Comments & Explanation
	<p>Article 8 of Lebanese Constitution: “[...] No offense may be established or penalty imposed except by law”</p> <p>In Lebanon, the Criminal Code guarantees such disposition in its very first article and the non-retroactivity of legal provisions is confirmed in its article 6.</p>	<p><i>Any accusation should relate to an existing legal provision enacted by Law.</i></p>
	<p>Article 8 of Lebanese Constitution: “Individual liberty is guaranteed and protected by law. No one may be arrested, imprisoned, or kept in custody except according to the provisions of the law [...]”</p> <p>In Lebanon “suspects are routinely held in police stations or courthouse holding cells in excess of the legal time limit of 96 hours prior to appearing before a judge”⁵². Furthermore, “although pretrial detention is never mandatory, in practice judges generally do not consider the individual facts of the case and rarely exercise their discretion not to hold a defendant pending trial”⁵³.</p> <p>According to article 32 of the Criminal Code of Procedure, the prosecutor may order arrest based upon “strong suspicion”. But this term is not defined in Lebanese law and is left to the prosecutor’s discretion, who gets most of the information from police reports. Also, preventive arrest and investigative detention often occur for misdemeanors.</p>	<p><i>Arrest should be founded on sufficient incriminating elements pertaining to sufficiently grave actions. No one should stay indefinitely in detention.</i></p>
	<p>In Lebanon, Article 47 of the Criminal Code of Procedure stipulates clearly that any person accused should be stated his/her rights “at the moment of detention” and this needs to be noted in the arrest memo.</p> <p>However, this rule was not widely respected during the Syrian tutorship in Lebanon 1990-2005. With the amendment of the Criminal Code of Procedure in 2001 and the change of political context in April 2005, the stating of the charges is more perceivable today by the detaining authorities. Awareness posters are posted in most police stations stressing the obligation to expose the reasons behind the deprivation of freedom.</p>	<p><i>A Person needs to know reasons behind detention as pursued by relevant authorities.</i></p>

Right to Physical and Mental Integrity	ICCPR, Article 10(§1) 1966a: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"	
Right not to incriminate one self	ICCPR, Article 14(§3-g) 1966a: "Not to be compelled to testify against himself or to confess guilt"	
Non-Discrimination	<p>ICCPR, Article 26, 1966a : "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.</p> <p>ICCPR, Article 14(§1),1966a: "All persons shall be equal before the courts and tribunals"</p> <p>ICERD, Article 5, 1965: "[...] States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:</p> <p>(a) The right to equal treatment before the tribunals and all other organs administering justice [...]"</p>	
Right to Counsel	<p>ICCPR, Article 14(§3-b) 1966a: "To have adequate time and facilities [...] to communicate with counsel of his own choosing"</p> <p>ICCPR, Article 14(§3-d) 1966a: "To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".</p>	

	<p>In Lebanon, the preamble of the Constitution recognizes the main human rights obligations stated in international conventions, such as the one prohibiting the use of torture, inhuman and degrading treatments.</p> <p>The Criminal Code of Procedure contains many provisions for the accused to benefit from medical attention at the time of the arrest (articles 38 & 47) or during prolonged detention (article 42).</p> <p>Article 569 of Criminal Code prohibits any act of torture, whether physical or mental.</p>	<p><i>Any form of torture and cruel, inhuman, degrading treatment is prohibited during custody.</i></p>
	<p>In Lebanon, “<i>police commonly fail to notify defendants of their rights, including the right to refuse to answer questions</i>”⁵⁴.</p>	<p><i>Person has right not to present any element that might lead to his/her incrimination.</i></p>
	<p>Article 7 Lebanese Constitution: “All Lebanese shall be equal before the law. They shall equally enjoy civil and political rights”</p> <p>In Lebanon, the Constitution and the relevant legislation guarantees non-discrimination on the basis of colour, religion and national or social origin. The provisions specifically recognizes the equality of all Lebanese before the law; however, foreigners from low income activities keep being subject to discrimination and racism by the Lebanese institutions despite the legal obligations to respect their dignity and rights.</p>	<p><i>No person can be arrested, mistreated or be deprived from judicial rights because of discrimination on the basis of colour, nationality, religion or cultural and ethnic background.</i></p>
	<p>In Lebanon, the presence of defense counsel during the initial interrogation at the police station is not required by law, which opens the door to coerced confessions and other abuses. Furthermore, “<i>the legal aid system is inadequate to ensure due process is adhered to</i>”⁵⁵.</p> <p>Article 47 of Criminal Code of Procedure gives the right to any person accused to contact an attorney but procedure does not require a Counsel to be present during the investigative hearings. Hence, article 78 of Criminal Code of Procedure states that if the “<i>accused refuses to hire an attorney, the investigative judge does not force him to and records this in the official investigation note [...]</i>”.</p>	<p><i>A person accused has the right to legal counseling and benefit from a legal aid system if cannot be afforded.</i></p>

Right to Language	<p>ICCPR, Article 14(§3-a) 1966a: “To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him”</p> <p>ICCPR, Article 14(§3-f) 1966a: “To have the free assistance of an interpreter if he cannot understand or speak the language used in court”.</p>	
Presumption of Innocence and Burden of Proof	<p>ICCPR, Article 14(§2), 1966a: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”</p> <p>ICCPR, Article 14(§3-e), 1966a: “To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him”.</p>	

52 American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 20.

53 American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 24.

54 American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 20.

55 American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 20.

56 American Bar Association, *Detention Procedure Assessment Tool for Lebanon*, April 2012, p. 2.

	<p>In Lebanon, the Code of Criminal Procedure stipulates in its Article 47 that any person arrested has the right to “<i>request a sworn translator in case Arabic is not practiced</i>”. This right appears also under Articles 78 & 254 of the same rules.</p> <p>In practice, this right was little respected especially in regards to Migrant Domestic Workers in conflict with the law. Intense lobbying by civil society organizations recently led to a much wider use of interpretation for MDWs in a language they understand during investigation and court hearings.</p> <p>The same applies for the testimony of witnesses as stipulated in articles 88 & 184 & 267 of the Code of Criminal Procedure.</p>	<p><i>Every person in interaction with the justice system has the right to be heard in his own language through the provision of a translation mechanism.</i></p>
	<p>In Lebanon, the presumption of innocence is recognized in the Criminal Code of Procedure. Article 130 stipulates that a person accused of a crime should be released if the Accusatory Body (هيئة اتهامية) “<i>in case of insufficient evidence</i>”.</p> <p>However, investigative authorities rely mostly on a “<i>admittance policy</i>” that might have been obtained through coercion. Some defendants depict what they call the “<i>presumption of guilt</i>”⁵⁶ during investigations. The burden of proof hence becomes less relevant for judicial authorities as it is not uncommon to have convictions based on sole confessions without deeper investigation and evidence gathering.</p>	<p><i>A person is considered innocent until proven guilty. The burden of proof lays on the prosecution and those standing behind the accusation. No one can be required to prove innocence.</i></p>

