



Annex 2 – Protection Mechanism against Arbitrary Arrest, Lengthy pre-trial Detention and Long Delays in Trial

Problem statement

Lebanon continues to witness a trend of arbitrary detention in the form of arbitrary arrest, lengthy pre-trial detention and long delays in trial. Suspects are deprived of their liberty for weeks and some for years before a verdict is reached in their case and pre-trial detainees drift along an undetermined status, where they are perceived as the perpetrator, but have not been found guilty by a court of law. Moreover, former detainees describe a ‘survival of the fittest’ environment in overcrowded correctional institutions, a dog-eat-dog world from the first moments of detention, until their transfer to prisons like Roumieh.

Arbitrary detention not only shatters public confidence in the state, but also symbolizes weak rule of law and tramples the dignity of individuals seeking to access justice. The above-mentioned situation and the persistence of the trend of arbitrary detention go back to socio-political and legal root causes clustered in the following categories:

- 1. Weak legal culture:** lack of assimilation in the concept of the presumption of innocence, in addition to a perverse understanding of the purpose of detention;
- 2. Corruption, nepotism, impunity and lack of accountability;**
- 3. Inadequate legal framework:** ambiguity in the legal texts leading to different understanding of the text, in addition to provisions creating arbitrary detention.
- 4. Decaying infrastructure and crippled institutions:** absence of state funded legal aid, lack of oversight mechanisms, resources scarcity, absence of training.

Lebanon’s obligation to respond

Lebanon is a party to several core human rights treaties. The right to security of the person and freedom from arbitrary detention is stipulated in article 9 of the International Covenant for Civil and Political Rights (ICCPR). The same article also provides a number of other rights for persons who were arrested or detained providing protection and prevention for any individual. Additionally other provisions in international human rights law also indicates the right to security and freedom from arbitrary detention such as article 37 of the CRC and article 14 of the CRPD.

The above-mentioned *soft law* instruments are also referred to constitutionally. Paragraph B of the preamble of the Lebanese Constitution stipulates Lebanon's adherence and commitment to UN resolutions, decisions and the Universal Declaration of Human Rights (UDHR). The Lebanese Constitutional court, in its second decision on the 10th of May 2001, affirms accordingly the constitutional authority of the UN Human Rights instruments.

Based on the above, the state of Lebanon has an obligation to respect and ensure the right to liberty and freedom from arbitrary detention for all persons in the Lebanese territory and under the control of the Lebanese state. Additionally Lebanon is required to make changes to domestic laws and practices as are necessary to ensure their conformity with the different human rights principles. Lebanon also required to ensure effective remedies to vindicate the right to security and freedom from arbitrary detention by establishing appropriate judicial and administrative mechanisms for addressing claims of violations. Reparation also needs to be provided to individuals whose rights have been violated. The culminations of those obligations lead the Lebanese state to take measures to prevent the recurrence of arbitrary detention and engage in preventive and protective mechanisms.

Protection Mechanism Elementary Pillars (annex 1)

I- Prevention

As essential element in protecting individuals from the occurrences of arbitrary detention, prevention aims at preventing violations of arbitrary detention. Several actors play important role in the pillar aiming at building a strong prevention component, these measures can be:

- **Early warning:** it is important to highlight the indicators that will lead to the violation of the right to security and freedom of arbitrary detention. Such indicators can range from access to certain rights (eg. Number of visits by legal assistants, court decisions on deprivation of liberty, healthcare visits and services etc) to gathering detention events and incidents (eg. Involvement in prison activities, behavior etc) such indicators will need to be developed further by the different stakeholders. Gathering such information help actors such as CSOs – involved in monitoring human rights violations – to detect early signs for the occurrence of violations and trigger a proper reaction by the authorities. Other actors such as the ISF committee against torture, the Lebanese Army, Parliamentarians who have unconditional access to places of detention, judges and public prosecutors will participate in monitoring such indicators. The proper implementation of an early warning system requires the availability of other measures such as the empowerment of CSO and health workers in monitoring violations in places of detention, increasing the level of the independence of the judiciary, provide efficient civilian control over law enforcement actors in addition to other measures that increases the level of rule of law and protects
- **Improving the legal culture of individuals and the different stakeholders:** An enhanced legal culture constitutes an essential contribution to the long-term prevention of human rights abuses and represents an important investment in the endeavor to achieve a just society in which all human rights of all persons are valued and respected. Training programs need to be provided for the different sectors of the Lebanese state such as building the capacity of law enforcement officials, police, army, judges, prosecutors, prison staff on modern investigative techniques in addition to highlighting the purpose of detention and proper execution for alternatives to detention. Vulnerable groups need top be a primary target group in such awareness raising efforts. Individuals are not aware of their rights on the legal and human rights level, which often lead to

an increase in committed violations against them. Empowered and aware vulnerable individuals have lower risks to be victims of arbitrary detention.

II- Investigation

In order to satisfy Lebanon's obligation to ensure the respect of the right to security and freedom of arbitrary detention, the Lebanese authorities need to engage in proper and effective investigation on the cases of arbitrary deprivation of liberty. Different steps need to be established to insure this element.

- **Establishment of specialized investigative systems for human rights violations:** a body independent of the alleged perpetrators should promptly, impartially and effectively investigate all complaints and reports of arbitrary detention. The current legislation does not provide such bodies and legislative reforms are required to provide a legal credibility to such independent bodies. The parliament has studied the creation of a Nation Prevention Mechanism (NPM) and a National Human Rights Institution (NHRI) and law proposals have still not been presented to vote. The importance of such mechanisms lies in the objective of their mandates the NPM. For instance the latter is mandated to conduct regular visit to all types of places where persons are deprived of liberty. These visits should lead to reports and concrete recommendations to improve the protection of persons deprived of liberty. The NPM can also make comments on laws and regulations and propose reforms. On the other hand the Institution, NHRI, is able to address and deal with different human rights issues, disputes and complaints. Although it's main role is not to investigate claims however it can play an important role in reviewing policies and legislations and help developing human rights friendly ones.
- **Transparency and visibility of complaint/investigation system:** the Internal Security Forces (ISF), The Lebanese Armed Forces (LAF), the General Security Office (GSO) and other governmental bodies are required to investigate such cases transparently by sharing the methods used in the investigation and publicize the findings. Accordingly trust in the complaint mechanism will be built, allowing citizens to positively engage with law enforcement and the criminal justice system. Although such measures are present in the different legislations but the implementation is flawed and ambiguous. Since 2010 the ISF are conducting internal investigations by a specialized internal body however the outcomes of the investigations or the general activities conducted by this body are only shared with the director general and considered classified.
- **Protective investigative measures:** Officials suspected of committing violations should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals. Currently perpetrators are not suspended from duty unless found guilty in internal disciplinary bodies, witness protection is available however the level of implementation is not visible and proper bodies to ensure protection are absent.

III- Access to justice/ legal guarantees

As described in the problem statement, arbitrary detention in Lebanon is breaking public confidence in state institutions and in the due process of law. Access to justice and the presence of strong legal guarantees will lead to enforce the rule of law by proving accountability and justice; building as such the trust between citizens and their state institutions. The victim shall have equal access to an effective judicial remedy as provided for under international law.

- **Assistance and visibility:** Lebanese authorities in general and the ministry of justice in particular need to disseminate information about all available remedies. Such measures are available but do require reform and strong implementation oversight. As stated earlier, the different relevant ministries need to disseminate information on legal guarantees and facilitate the work of CSOs in disseminating such information.
- **Legal Protection:** the ministry of justice is required to take measures to minimize the inconvenience to victims and their representatives. Those measures need to address different inconvenience highlighted in the findings gathered that include the inability for victims to meet with their lawyers prior to investigation, or even the presence of different obstacles for the access to legal service while in detention leaving lawyers and detainees brief time to consult prior to court hearings drastically affecting the legal proceedings and the fairness of trials. Additional measures will be introduced to protect against unlawful interference with their privacy, ensuring their safety from intimidation and retaliation as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims. Additionally it is essential to provide proper assistance to victims seeking access to justice such as a legal aid, expert opinion and other. This will necessitate a combination of comprehensive legal reforms, the establishment of modern administrative procedures that are able to coopt with the implementation of such measures. Worth noting that the framework to be created should encompass a framework achieving efficient oversight.
- **Legal guarantees:** Right to a lawyer during investigation/period of custody, Right to Remain Silent, Right to a Medical Examination, Inform the accused of the charges against him/her, Access of the lawyer to documents in the criminal file, Protection from forced confession, Right to Contact a family member. The enumerated guarantees are required to be present for proper effective remedy and administration of justice. In that regard there is also a need to prosecute officials for violating those legal guarantees.

IV- Remedies

Victims should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Such measures are absent in the current legal texts and in certain cases they are not *effective* remedies making them unused or repulsed by victims.

- **Compensation:** Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from the violation
- **Restitution:** Restitution should, whenever possible, restore the victim to the original situation before the violation occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.
- **Rehabilitation:** Rehabilitation should include medical and psychological care as well as legal and social services
- **Guarantees of non-repetition.**

