

# TAKING REFUGE IN ARBITRARY DETENTION

A POLICY ABOVE THE LAW

Ruwad Frontiers Association  
**2010**

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# FOREWORD

(Translated from Arabic)

“Lebanon is not a country of asylum.” A phrase that has been relied on for many years, and a policy used to justify all manner of arbitrary detentions.

“Lebanon is a country of liberties.” A phrase that is always repeated, and is perhaps often applied to go beyond the concept of “liberty” and justify arbitrary violations.

Many concepts followed for long years are still being applied and employed, as if continuing, evolving life does not require the invigoration of frozen concepts, and their accompaniment with legislation appropriate for continually changing circumstances.

Laws and legislation are made to be applied, even if in some cases they no longer suit changing and evolving realities. Jurisprudence keeps pace with this evolution, even if it sometimes does so slowly, at least by interpreting and applying the existing laws. Judicial insight and civil society associations keep pace with it on some sensitive and important subjects. Jurisprudence precedes legislation, and the spotlight shone on it provides motivation for the appropriate legislative amendments.

Ratified international agreements and treaties supersede domestic law. Lebanon has ratified a number of them, especially those related to human rights. However, the mechanism of implementation – legislating or amending laws to be compatible with them – is proceeding slowly.

Arbitrary detention has been practiced for decades for various reasons. It is an undiscussable subject, if not a taboo one. It drowns in the mazes of forgetfulness, apathy, and habit.

This issue has been spotlighted at various stages by civil society, particularly through Ruwad Frontiers Association’s use of available legal means, such as recourse to the courts, organizing conferences and seminars, and appealing to public opinion and the media. Following these efforts, arbitrary detention has become a subject of discussion and study, and a reason for a review of related policies – although there must also be legislation that regulates

refugee protection and treatment in Lebanon, as well as a move away from classical interpretations and precedents.

This study, published by Ruwad Frontiers, sheds light on the suffering of refugees arrested in Lebanon. It uses living testimonies that reveal a journey of torment that begins at arrest and, instead of ending when the penalty has been served, begins again in a new journey – a journey that refugees do not know to overcome; a journey of unknown destiny. It often ends in forced “voluntary” agreement to return to the country of torment and killing that they fled from, or in forced deportation to an unknown destination.

The study also discusses judicial verdicts issued by criminal and civil courts condemning the practice of arbitrary detention, putting a stop to it and deciding to immediately eliminate this infringement of personal liberty. It discusses verdicts prohibiting the deportation of refugees and verdicts recognizing arbitrary detention victims’ right to compensation for the administration’s infringement of their liberty, as well as covering the way in which these verdicts were received by the administration, and the way the issue was discussed with the executive and legislative authorities.

In closing, thanks is due to Ruwad Frontiers Association research team for this effort and the many challenges that it faced and will face in defending rights and liberties, hoping that Lebanon will truly become a country of liberties and rule of law through the creation of the necessary laws and the execution of verdicts.

**Judge Cynthia Qasarji al-Qassouf**

# EXECUTIVE SUMMARY

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Refugees and asylum-seekers in Lebanon continue to be arbitrarily detained and deported by the Lebanese authorities despite Lebanon's legal obligations to protect them.

This new report describes and analyses developments in arbitrary detention and refugee protection in Lebanon from the beginning of 2009 to late 2010. It is sourced mainly from testimonies documented by Frontiers Ruwad (FR), official government correspondence and minutes, and media reports.

The report addresses the following topics:

- Lebanese judges' pioneering condemnation of arbitrary detention.
- The administration's disregard for judicial authority and persistence with its policy.
- Efforts by the media and civil society to foster positive jurisprudence, protect personal liberty and advocate on behalf of refugees and asylum-seekers.
- The legality of the administration's use of particular detention facilities.
- Cabinet-level and parliamentary policy debates.
- UNHCR's role in refugee protection in Lebanon.
- The personal testimony of detainees about their harsh experiences.
- FR's policy recommendations to the Lebanese authorities.

## JUDICIAL CONDEMNATION OF ARBITRARY DETENTION

Refugees and asylum-seekers continue to be arrested for irregular entry and/or stay, then detained by the Lebanese General Security Directorate (GSD) after the expiry of their judicial sentences and/or without referring them to a judge. This prolonged detention aims to pressure refugees to sign off on their "voluntary return." In some cases detainees are forcibly deported to their countries of origin.

In all lawsuits brought against the State by detainees during the reporting period challenging their arbitrary detention, Lebanese judges ruled that such prolonged detention is arbitrary and an infringement of personal liberty that violates Lebanon's Constitution, laws, and international human rights obligations. They issued rulings stopping detainees' deportation and ordering their immediate release.

These verdicts rejected the General Security's arguments that arbitrary detention is justified when the goal is deportation. Judges also ruled that the deportation of recognized refugees is itself illegal, thereby overturning previous judicial verdicts sentencing refugees to deportation, even in cases where refugee status was obtained after the initial verdict.

The administration has also sought new sentences by charging detainees with violating expulsion orders. Judges have ruled either that the orders did not meet the conditions established by law, or that detainees' refusal of such orders (or even agreement) is not a legal basis for any action because they are taken under duress.

The judiciary has thereby protected personal liberty and, indirectly, the right to asylum.

## **THE ADMINISTRATION'S DISREGARD FOR JUDICIAL AUTHORITY**

The administration has responded to judicial condemnation with various pretexts and ploys. It has contested judges' competence and jurisdiction, evaded the receipt of judicial orders, and refused to execute them once received. It has deported detainees in spite of rulings blocking their deportation and ordering their release

The administration argued that detainees cannot be released because there is no legal basis for their presence in Lebanon and that refugee status does not legalize presence because "Lebanon is not a country of asylum." Judges have rejected this as grounds for infringement of liberty after a judicial sentence has been served.

The administration has nevertheless released other detainees given sponsorship by an employer, a promise of resettlement to a third country,

or UNHCR intervention. However, the legal grounds for their prolonged detention and eventual release remain unclear. Decisions on detention and release continue to be made at the administration's whim.

The administration is thus not only violating Lebanon's Constitution and law by infringing personal liberty, but also by rejecting the judiciary's authority. Although some of the administration's concerns may be legitimate, they ought to be addressed through a mechanism that takes into account Lebanese law and obligations to personal liberty and refugee protection.

These verdicts condemning arbitrary detention were the first fruits of a strategic litigation campaign pursued by FR and activist lawyers, aiming to obtain the release of those arbitrarily detained; force the administration to publicly defend its policy; and create a jurisprudential trend affirming personal liberty and refugee protection. The media also played a prominent role in spotlighting arbitrary detention, providing almost daily coverage of individual cases and paying particular attention to judicial condemnation of arbitrary detention.

## THE LEGALITY OF DETENTION FACILITIES USED BY GENERAL SECURITY

The administration is not only detaining foreigners arbitrarily; it is doing so in facilities that are not intended for this purpose. General Security is using the Da'irat al-Tahqiq wa al-Ijra' (Bureau of Investigations and Procedures) police station as a long-term detention facility, despite the absence of any clear law or directive authorizing it to detain foreigners for long periods at its own discretion. The administration has also used a women's safe house for victims of human trafficking as a location for the long-term detention of female foreigners with no connection to trafficking. Aside from the questionable legality of such detention centers, detainees in these locations are also deprived of their rights, especially contact with the outside world and access to legal counsel.

## MINISTERS AND MPs DEBATE POLICY: POSITIVE ATTENTION, DISAPPOINTING RESULTS

FR and other non-governmental organizations (NGOs) also campaigned to raise the issues of arbitrary detention and refugee protection with the cabinet, parliament, and international community. Their strategy incorporated dialogue with stakeholders and actors, media campaigns, and communication with international organizations. Civil society advocacy and media coverage of judicial verdicts condemning arbitrary detention prompted discussion of the issue at the cabinet and parliamentary levels.

The cabinet took the unprecedented step of forming an inter-ministerial committee in April 2010 to address the arbitrary detention of foreigners. The committee produced a report that was approved by the cabinet in September 2010.

Unfortunately, this report reiterated the policy that Lebanon is not a country of asylum. It did not address the lack of a legal framework for asylum applications and refugee protection, the legality of the prolonged detention of foreigners after the expiry of their sentences and/or without any referral before the judiciary, the administration's disregard of judicial verdicts condemning arbitrary detention, or the fact that Lebanon is obliged to respect the international customary principle of non-*refoulement* of refugees and asylum-seekers.

Instead, the report simply asked UNHCR to expedite its decisions on refugee status and resettlement. The result was therefore the creation of a cover for the same administrative practice, implicitly backing the administration's disregard for judicial authority and violation of Lebanese law and international human rights obligations.

The combination of judicial verdicts, civil society advocacy, and media coverage also prompted the parliamentary human rights committee to discuss the prolonged detention of foreigners. The MPs present at the discussions agreed that such detention is arbitrary and illegal. They were unanimous that the judicial verdicts must be executed and that a new law should be enacted to regulate asylum applications in Lebanon. However, they also affirmed the policy that Lebanon is not a country of permanent asylum.

The stances of today's MPs can be contrasted with those taken in 1962 parliamentary debates over the draft law related to the entry, residency, and exit from the country. MPs at the time stated explicitly that Lebanon ought to be a haven of liberty for refugees fleeing persecution; and the removal of any foreigner should be approved by the political authority and not left to the security apparatus, and detention for removal should be approved by the judiciary.

FR worked with other NGOs to offer policy input to the Interior Ministry, the ministerial committee, and parliament. The association also advocated on behalf of refugees and asylum-seekers by communicating directly with General Security, the cabinet and individual ministers, raising concerns about arbitrary detention in general and specific cases in particular.

## UNHCR'S STRUGGLE TO PROTECT REFUGEES

The United Nations High Commissioner for Refugees (UNHCR) operates in Lebanon on the basis of a memorandum of understanding (MoU) signed in 2003 with General Security. This MoU has been endorsed in a decree signed by the Lebanese president, prime minister, and minister of interior. The memorandum's provisions do not provide sufficient protection to refugees in Lebanon and in any case are not systematically implemented.

The MoU does not protect refugees and asylum-seekers against arrest for irregular stay and/or entry. It stipulates that General Security issue temporary circulation permits for asylum-seekers and refugees valid for a maximum of one year, but these are not systematically granted. It sets unrealistic deadlines for UNHCR's processing of asylum applications and resettling recognized refugees. Furthermore, it does not address the possibility that UNHCR might give '*prima facie*' refugee status to asylum-seekers from a particular country, as it has to refugees from Iraq in recent years.

Nor does the MoU create any mechanism protecting refugees and asylum-seekers from arbitrary detention and *refoulement*. UNHCR's ability to visit detained persons of interest is severely constrained. The agency has sought to rectify these problems through dialogue with the authorities but has so far been unsuccessful.

FR and other NGOs have notified UNHCR about specific cases of concern and have also maintained contact with the international community regarding refugee protection in Lebanon. They obtained assurances from European Union (EU) officials that European funding of a new GSD “detention facility” would be limited to a feasibility study, based on human rights standards to improve detention conditions. During the reporting period, FR submitted dozens of cases for consideration to the UN Working Group on Arbitrary Detention (UNGWAD) and joined with other Lebanese NGOs in submitting individual and joint reports to the Universal Periodic Review of Human Rights for Lebanon in November 2010.

### THE PERSONAL TESTIMONY OF DETAINED REFUGEES AND ASYLUM-SEEKERS

The lack of a protection framework worsens the plight of refugees who have fled dangerous situations and taken great risks to arrive in Lebanon. Once in the country, the difficulty they have in regularizing their status exposes them to arrest and arbitrary detention by General Security and exploitation by employers.

During the period covered by this report, FR monitored the cases of more than 300 asylum-seekers and refugees who were arbitrarily detained. This report contains some of their personal testimonies. Their accounts describe administrative disregard of due process in their arrest, interrogation, trial, and imprisonment.

Police routinely refuse to recognize UNHCR certification of refugee or asylum-seeking status. Interrogators often insult and beat arrestees. During their trial, defendants’ status as refugees or asylum seekers is frequently ignored and they are often neither informed of their right to legal counsel nor asked if they wish to assign a defense lawyer. Once imprisoned, they experience overcrowding, violence, and poor food and health care. As foreigners, they face discrimination from both Lebanese inmates and prison authorities. They remain incarcerated long after the expiry of their prison sentences and are pressured to sign off on their “voluntary return.” Some are forcibly deported after they refuse to sign.

When provided with competent legal counsel, detainees were able to obtain judicial verdicts condemning their arbitrary detention, stopping

their deportation, and ordering their release with compensation. Despite the administration's continued disregard for judicial authority, this jurisprudential trend is a positive and unprecedented affirmation of personal liberty.

## RECOMMENDATIONS TO THE LEBANESE AUTHORITIES

The arbitrary detention and deportation of refugees and asylum-seekers violates Lebanon's Constitution, law and its international human rights obligations. FR recommends the following steps to the Lebanese authorities:

In the short-term:

- (1) Respect judicial authority and execute judicial verdicts without delay.
- (2) Stop detaining foreigners and refugees without legal cause.
- (3) In cooperation with UNHCR, create a mechanism to regularize the status of refugees and asylum-seekers in Lebanon. This could entail:
  - a. Recognizing UNHCR certification as a basis for legal presence; or
  - b. Granting free temporary residency to refugees and asylum-seekers until they can be voluntarily repatriated or resettled in a third country;
- (4) Do not deport any person to a country where there is substantial reason to believe he/she would be tortured or his/her life or liberty would be in danger, even if he/she has previously been sentenced to deportation.
- (5) Allow foreigners to recourse to a judge when faced with an administrative expulsion in order to ensure the legality of the order and the right to challenge it.
- (6) Open an official public investigation into the practice of arbitrary detention and *refoulement*, hold officials accountable, and compensate victims.
- (7) Activate judicial oversight of detention facilities and parliamentary oversight of the cabinet and administration's policy.
- (8) Allow civil society organizations to independently monitor detention cases.

- (9) Create a national preventive mechanism as per the optional protocol of the UN Convention Against Torture.
- (10) Include civil society input in policy-making on refugee protection and personal liberty.

In the mid-term:

- (1) Amend the 1962 Law Regulating Entry to, Stay in, and Exit from Lebanon to exempt refugees and asylum-seekers from the crimes of illegal entry and stay, pursuant to international norms.
- (2) Create a clear and integrated legal framework to regulate asylum and refugee protection in Lebanon, especially against arbitrary detention and refoulement, seeking inspiration in Lebanon's international commitments as a UN member State.
- (3) Ratify the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol.

# INTRODUCTION

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Despite Lebanon's reputation as a country of liberty, refugees and asylum-seekers continue to suffer arbitrary detention and forced deportation at the hands of the Lebanese State. This document is the latest in a series of reports published by Ruwad Frontiers (FR), highlighting the Lebanese government's infringement of foreigners' personal liberty and failure to meet its legal and international obligations to protect refugees. It builds on the information disseminated in *Legality vs. Legitimacy* and *Double Jeopardy*, two legal studies on the arbitrary detention of refugees, published by FR in 2006 and 2008 respectively.

This new report describes and analyses developments in arbitrary detention and refugee protection in Lebanon from the beginning of 2009 to late 2010, focusing on jurisprudential developments that were the fruit of concerted efforts by civil society and lawyers. Lebanon's General Security has not stopped arbitrarily detaining recognized refugees and asylum-seekers in order to pressure them to return to the countries they fled. However, beginning in late 2009, several judges issued pioneering verdicts condemning this practice, ordering detainees' immediate release, and prohibiting their deportation. This report is sourced mainly from testimonies documented by FR, records, court verdicts, official government correspondence and minutes, and media reports.

Although the State continued these practices in flagrant disregard of judicial authority, the judges' rulings highlighted its infringement of personal liberty and attracted the attention of cabinet, parliament, and the media. Cabinet-level policy work on the issue produced disappointing tacit support for General Security's abuses, and parliamentary efforts have so far been limited. However, judicial support for foreigners' personal liberty and right to asylum is in itself a positive and welcomed development. It is the fruit of a strategic litigation campaign organized by FR and lawyers to aid refugees themselves in suing for their rights. Furthermore, thanks to these verdicts, the media has covered both the broad policy debate and the plight of individual foreigners, cooperating with civil society activists to advocate on behalf of specific cases.

This report's first chapter details the judiciary's condemnation of General Security's practice of arbitrary detention and deportation, analyzing the legal

## INTRODUCTION

arguments and counter-arguments made by both sides, and highlighting judges' conclusions that the administration's practice is an indefensible violation of both Lebanese and international law. The second chapter explains the policy debate that occurred in cabinet and parliament during the reporting period, describing and critiquing ministers' and MPs' stance on arbitrary detention and refugee protection. The third and final chapter provides refugees and asylum-seekers' perspective in their own words, quoting and commenting on the testimony of those who courageously agreed to recount to FR how they have suffered in Lebanon.

It is FR's hope that this report will draw the attention of Lebanese officials and international stakeholders to the plight of refugees in Lebanon and provide a reference for those seeking to help the arbitrarily detained in particular and refugee protection in general. Refugees taking refuge in Lebanon seeking security encounter a government that takes refuge in keeping them in detention to assert its policy of not recognizing their right to asylum nor taking care to safeguard their personal liberty as required by its international obligations and its own laws.

## CHAPTER ONE

# THE LEGAL BATTLE FOR PERSONAL LIBERTY

## JAMAL'S STORY

Jamal<sup>1</sup> is an Iraqi refugee recognized by the UNHCR Beirut Office. Yet Jamal has been arbitrarily detained by the Lebanese General Security since 2008 in spite of three court orders for his immediate release.

In November 2007, Jamal was arrested and prosecuted for irregular entry and sentenced to three months in prison, a fine of 300,000 LL and deportation. By March 2008 he had served his prison term plus additional prison time in lieu of payment for his fine,<sup>2</sup> yet General Security continued to hold him.

At the beginning of 2010, Jamal's lawyer filed a lawsuit against the state before the summary affairs judge challenging his client's detention as arbitrary. The judge initially issued a temporary order stopping Jamal's deportation until his case was decided,<sup>3</sup> then later issued a verdict condemning the Lebanese state for infringing Jamal's personal liberty without cause and ordering his immediate release with compensation, as well as fines for the administration if it did not execute the court decision.<sup>4</sup> The administration appealed the decision after refusing to receive notification for two weeks. The Court of Appeal rejected the appeal on the grounds that the eight-day legal deadline for submitting appeals had passed.<sup>5</sup>

During his arbitrary detention, Jamal was continuously pressured by the Lebanese authorities and the Iraqi embassy to "agree" to be deported back

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1 Not his real name.

2 Jamal's three-month sentence expired in January 2008. Rather than paying his fine, he served an extra 30 days of prison time, calculated at a rate of one day per 10,000 LL.

3 Article 589 of the Code of Civil Procedures stipulates that "the summary affairs judge [...] may take, based on a request from one of the parties, either with or without bail, all temporary and precautionary measures for the protection of rights and prevention of injury." The Code of Civil Procedures, legislative decree no. 90, 16 September 1983. See appendix to *Official Gazette* no 40, 6 October 1983.

4 The court ordered 10 million LL as compensation and a 250,000 LL fine for every day the plaintiff remained in detention.

5 The legal deadline for appealing a summary court decision is eight days, as per Article 586 of the Code of Civil Procedures, *op. cit.*

to Iraq. He was interrogated several times, being placed in a situation where he had to either agree to deportation or return to Rumieh Central Prison. He was also placed in solitary confinement for a period. Despite all this, he refused to sign off on his deportation because he feared for his life in Iraq.

While Jamal's lawsuit challenging his detention was underway and after he had refused to agree to deportation, General Security filed charges against him before the single penal judge tribunal accusing him of violating an administrative expulsion order from the General Security Director-General. The judge in this case dropped the charges on the grounds that no valid administrative expulsion order had existed to begin with and ordered his immediate release. General Security filed similar charges a second time against Jamal six months later. The judge dropped the case on the grounds that a person cannot be tried for the same crime twice.

In spite of all these judicial verdicts in his favor, Jamal is still detained at the time of this report's writing – at this point, he has been arbitrarily detained for around three years. The administration has refused to execute court orders for his release and continues to infringe his personal liberty without legal cause.

## **THE BATTLE FOR PERSONAL LIBERTY: THE ADMINISTRATION VS. THE JUDICIARY**

Jamal is one of seventeen refugees and asylum seekers followed by Ruwad Frontiers Association whose right to personal liberty was affirmed by the Lebanese judiciary in 2009 and 2010.<sup>6</sup> Judges issued pioneering verdicts in these cases: in lawsuits against the State, they condemned it for infringing detainees' personal liberty without legal cause; in cases brought by General Security against detainees, they dropped the charges as void. In all these cases, the judges ordered the immediate release of the detainees.

These verdicts mark a clear legal confrontation between the judiciary and the administration. Judges have rejected General Security's "no asylum" policy as a basis for prolonged detention and have struck down the various legal stratagems the administration has employed to avoid such

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<sup>6</sup> Of these, six were lawsuits filed against the State to challenge detention and the remainder were charges brought by the State accusing defendants of violating administrative expulsion orders.

condemnation. The following sections describe the details of this legal battle and cover the following:

- Judicial rejection of the “Lebanon is not a country of asylum” policy as grounds for infringement of liberty.
- Judicial rejection of “preparation to deport” as an argument for prolonged detention after prison sentence expiry.
- Judicial rejection of new charges brought against detainees for violation of an administrative expulsion order.
- The administration challenging refugees’ status and right to protection in Lebanon.
- The administration’s contestation of judges’ competence and jurisdiction.
- The administration’s deportation of plaintiffs to preempt verdicts.
- The administration’s refusal to receive court verdicts or execute them.

### **Does the “Lebanon is not a country of asylum” policy justify prolonged detention?**

General Security’s position – reflecting official government policy<sup>7</sup> - is that “Lebanon is not a country of asylum” and that therefore refugees’ and asylum-seekers’ status as such does not constitute legal grounds for their presence in the country. They are therefore frequently arrested and tried in court for irregular entry and/or stay, then sentenced to prison time, a fine, and in some cases to deportation. Others are arrested and detained on General Security premises for long periods without being brought before a judge to decide on the case. The administration argues that because refugees’ and asylum-seekers’ status does not legitimate their presence in the country; it cannot release them and must therefore prolong their detention until they are either deported or resettled in a third country, or until they can meet the conditions for regularization of their presence in country.<sup>8</sup>

In general, judges have rejected this “no asylum” policy as a legal basis for such prolonged detention, arguing that it violates Lebanon’s Constitution, which enshrines both the right to asylum and the right to personal liberty.

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<sup>7</sup> See Chapter Two for details on the policy debate.

<sup>8</sup> For example, obtain sponsorship for a work permit.

**Paragraph B of the Lebanese Constitution’s preamble states:**

*Lebanon is Arab in its identity and in its association. It is a founding and active member of the League of Arab States and abides by its pacts and covenants. Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception.*

**Article 8 of the Constitution states:**

*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. No offense may be established or penalty imposed except by law.*

Some judges argued that Lebanon recognizes the right to asylum because it is specified in Article 14 of the Universal Declaration of Human Rights,<sup>9</sup> which is affirmed in the Constitution’s preamble. Furthermore, the Constitution stipulates that personal liberty may not be infringed “except according to the provisions of law.” They ruled that the administration’s infringement of personal liberty is unconstitutional regardless of whether the detainee in question is a refugee or not.<sup>10</sup>

**Does preparation to deport justify prolonged detention?**

Faced with judicial rejection of the “no asylum” policy as a ground for prolonged detention of foreigners after the expiry of prison sentences who were also sentenced to deportation, or of those who were detained and were never brought before a judge, the administration has made various arguments seeking a legal basis for such detentions. It argues that it can detain them as part of its preparations to deport them. It claims that such

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9 Article 14 states that “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” The Universal Declaration of Human Rights, adopted 10 December 1948 by the UN General Assembly and available at <http://www.un.org/Overview/rights.html>.

10 For example, the decision by Summary Affairs Judge in the Metn Mireille al-Haddad in the case of Maitham ar-Rubai vs. the Lebanese State, 28 January 2010, and the decision by Summary Affairs Judge in Zahle Cynthia Qasarji in the case of Yusra al-Amiri vs. the Lebanese State, 11 December 2009.

prolonged detention is an administrative operation and is outside the bounds of judicial oversight. However, judges have ruled that the administration's intent or preparations to deport a detainee do not constitute a legal basis for continued detention, especially given that the law explicitly requires the immediate release of detainees after the expiry of their prison sentences.<sup>11</sup>

Furthermore, in cases where those sentenced to deportation were recognized refugees, judges have overturned earlier deportation verdicts<sup>12</sup> based on Lebanon's obligation to the international customary principle of non-*refoulement*. Also, Lebanon is a signatory to the UN Convention Against Torture,<sup>13</sup> which obliges signatories to not deport any person back to a country where there is substantial reason to believe he or she may be at risk of torture, imprisonment, or death.

Judges also cited Lebanon's international human rights obligations, including the principle of non-*refoulement* in cases where the person in question had received UNHCR recognition *after* a deportation sentence.<sup>14</sup>

In doing so, judges reaffirmed older jurisprudence that declared that prolonged "administrative" detention while awaiting deportation is prohibited – and, moreover, that rather than being held indefinitely in such cases, detainees must receive conditional release, such as temporary residency in exchange for a written undertaking to take known residence and/or report to police regularly.<sup>15</sup>

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11 Decision by Summary Affairs Judge in Beirut Zalfa al-Hassan in the case of Jawad al-Jabbouri vs. the Lebanese State, 8 June 2010.

12 Summary affairs judge decision in Jawad al-Jabbouri's case, *ibid.*; Decision by the Single Penal Judge of the Metn Tanios al-Saghbini in the case of Alaa al-Sayyad vs. the Lebanese State, 17 May 2010.

13 The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Available at <http://untreaty.un.org/cod/avl/ha/catcidtp/catcidtp.html>. Adopted by the UN General Assembly under resolution 39/46 on 10 December 1984 and joined by Lebanon under law no. 185 on 24 May 2000. See *Official Gazette* no. 25, 8 June 2000.

14 Summary affairs judge decision in Yusra al-Amiri's case on 11 December 2009, *op. cit.*

15 Decisions by Public Prosecutor in Beirut Nadim Abdel Malik on 9 December 1993, nos. 14604 and 14605.

## **General Security (GS) brings new charges: Violation of administrative expulsion order**

Other detained refugees and asylum-seekers have been sentenced to prison terms but not to deportation. Here again, the administration arbitrarily detains such persons after their prison terms expire and pressures them to agree to deportation by signing an expulsion form. In some cases – often when detainees file lawsuits challenging their detention as arbitrary – the administration files new charges against them in court, accusing them of violating an expulsion order by refusing to agree to deportation.

General Security’s power of administrative expulsion (i.e. deportation without judicial authorization) is defined by the 1962 entry and residency law as follows:

**Article 17 stipulates that:**

*A foreigner may be expelled from Lebanon at the decision of the General Security Director-General if his presence involves harm to public security and safety. The General Security Director-General must immediately give the Interior Ministry notification of his decision. Expulsion occurs through either the notification of the person concerned that he must depart Lebanon within a time period set by the General Security Director-General, or his deportation to the borders by the Internal Security Forces.<sup>16</sup>*

**Article 18 stipulates that:**

*The General Security Director-General may arrest, with the approval of the public prosecutor, the person who is subject to the [administrative] deportation order until the preparations for the deportation are completed.<sup>17</sup>*

The law specifies imprisonment as the penalty for violating an administrative expulsion order:

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<sup>16</sup> Article 17 of The Law Regulating Entry to, Stay in and Exit from Lebanon, 10 July 1962. *Official Gazette* no. 28, 11 July 1962.

<sup>17</sup> Article 18, *ibid.*

**Article 34 stipulates that:**

*Every foreigner who violates the provisions of Article 17 of this law shall be punished with one to six months' imprisonment.*<sup>18</sup>

The administration appears to use these legal provisions for two purposes: first, it seeks to implement its “no asylum” policy by administratively expelling refugees who did not receive deportation sentences in court. Second, it aims to defend itself against charges of arbitrary detention by accusing detainees of expulsion order violation and thereby obtaining new prison sentences to justify their continued detention.

However, the judiciary has rejected this stratagem. Judges took the position that detainees' agreement or refusal to comply with such orders {if they exist} occurs under duress and that therefore, such refusal is inadmissible in court as evidence to convict the defendant of violating the legal provisions described above.<sup>19</sup> Such rulings imply that General Security should not be conducting any administrative expulsions based on agreements extracted from foreigners in detention, thereby stripping away the veil of “voluntarism” the administration uses to cloak *refoulement*. In these rulings, the judges also cited the limitations the law places on the administration's expulsion power: this power may only be legally exercised in cases where there is a danger to public security and safety, and the interior minister must be notified of the decision.<sup>20</sup>

### **The administration challenges refugees' status and right to protection**

The administration has also challenged plaintiffs' refugee status and argued that UNHCR recognition does not grant them legal status in Lebanon. In one appeal, the State made this argument while citing an Interior Ministry

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<sup>18</sup> Article 34, *ibid.*, and Article 89 of The Penal Code, legislative decree no. 340, 1 March 1943. *Official Gazette* no. 4104, 27 October 1943.

<sup>19</sup> Decision by Single Penal Judge in Beirut Ghassan al-Khoury in the case of Saad Ismail, 29 March 2010

<sup>20</sup> Decision by Single Penal Judge in the Metn Hussam Atallah in the case of 12 Iraqi refugees and asylum-seekers, 20 April 2010.

document<sup>21</sup> and the MoU<sup>22</sup> between the Lebanese government and UNHCR as evidence that “Lebanon is not a country of asylum.”

It claimed that the plaintiffs’ UNHCR refugee status did not protect them because

*Lebanon, as affirmed by cabinet minutes [...], is not a country of asylum and has not yet arrived at an implementation mechanism for [international] agreements that have been concluded, meaning that they are not in force.*<sup>23</sup>

In this appeal the administration also argued that because the refugees had refused to return to Iraq although they could have done so with assistance from UNHCR and the Iraqi embassy, they were therefore hoping to achieve “*de facto*” asylum in Lebanon via their detention:

*This is a clear manipulation of the law by [the plaintiff], which could create a state of “de facto asylum” turning the illegal entrant, after the end of his sentence and his release from prison, into a refugee – something that the Lebanese government cannot accept.*<sup>24</sup>

Furthermore, when appealing a verdict issued in an Iraqi refugee’s favor after General Security had already deported him, the administration argued that the fact that he had not been tortured or killed after deportation was evidence that he had not been a refugee. This begs the question: How does General Security know that a refugee has not been and will not be at risk in his own country? The fact remains that General Security has deported refugees to a country whose government is recognizably unable to effectively protect its citizens.<sup>25</sup>

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21 The document cited was the Interior Ministry’s proposal that the cabinet form an inter-ministerial committee to study the issue of prolonged detention of foreigners – see Chapter Two.

22 See Chapter Two for details on this memorandum.

23 State’s Appeal submission in the case of Jawad al-Jabbouri vs. the Lebanese State, 13 July 2010.

24 Ibid.

25 Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers. Issued by the UN High Commissioner for Refugees, 28 July 2010. Available at <http://www.unhcr.org/refworld/docid/4c4fed282.html>.

## **The administration contests judges' competence and jurisdiction**

The administration has also defended itself by challenging judges' jurisdiction and competence. In the State appeal mentioned above, the State's representative (appointed by the Ministry of Justice) argued that the summary affairs judiciary does not have jurisdiction over cases of infringement of personal liberty.<sup>26</sup> In Yusra al-Amiri's case (see below), the General Security Director-General told reporters that "the judge who issued the verdict does not know what he [she] is doing" and that the summary affairs judiciary had "nothing to do with the matter."<sup>27</sup>

## **General Security deports plaintiffs**

When these other stratagems fail, the administration has preempted or responded to verdicts in detainees' favor by swiftly deporting them to their countries of origin. General Security has deported to Iraq several detainees who had either already received verdicts ordering their release, or had filed lawsuits seeking such verdicts.<sup>28</sup> As noted above, judges have condemned such deportations as a violation of Lebanon's binding international obligations.

## **General Security refuses to execute court decisions**

The administration has refused to execute verdicts even after they become irrevocable. In no case known to FR has General Security released a detainee in execution of a court order. In one detainee's case, the administration received a release verdict and did not appeal it, giving the impression that it had accepted the ruling. However, the Director-General (DG) then told the media that his agency would not release the detainee.<sup>29</sup>

This detainee was released only after extensive media coverage brought pressure to bear on the authorities.<sup>30</sup> Other detainees who had received

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26 State's appeal in Jawad al-Jabbouri's case, *op. cit.*

27 "No freedom for Yusra al-Amiri despite the judiciary's verdict: General Security defies the judiciary," *Al-Akhbar* newspaper, 16 January 2010.

28 Those deported included Ammar al-Zubaidi, Riad al-Hashem, and Ali al-Miri.

29 *Al-Akhbar*, 16 January 2010, *op. cit.*

30 *An-Nahar* newspaper, 16 December 2009; *Al-Akhbar*, 15 December 2009.

court verdicts ordering their release were not set free until 27 July 2010, after UNHCR promised General Security that they would be swiftly resettled.<sup>31</sup> Others who received release orders were only set free once they obtained sponsorship from Lebanese employers.<sup>32</sup> In all the cases above, release was therefore not an execution of judicial verdict, but a unilateral administrative action. Other detainees received court orders for release but General Security either deported them<sup>33</sup> or continues to arbitrarily detain them (at the time of writing).<sup>34</sup> In short, General Security refuses to execute court orders requiring refugees' immediate release: when resettlement or sponsorship is not possible, it continues to arbitrarily detain them and pressure them to accept deportation.

### **The Verdict: The administration is at odds with the Constitution and law twice over**

In summary, judges have ruled decisively in favor of personal liberty and refugee protection in multiple cases. They have clearly condemned the administration's prolonged detention of foreigners after the expiry of their prison sentences, and the verdicts show that the administration is committing a crime according to the Lebanese Constitution and Penal Code.<sup>35</sup>

One judge wrote that prolonged detention "falls outside the sphere of executing a penal verdict and lies within the sphere of infringement of individual liberty."<sup>36</sup> Another described and condemned the practice this way:

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31 Those released included Maitham al-Rubai, Wissam al-Fazaa, Raed Khalaf Salman, Ahmad al-Qahtani, and Fouad al-Shammousi.

32 FR documented more than 15 cases during the reporting period in which detainees were released with sponsorship.

33 Ammar al-Zubaidi and Alaa al-Sayyad, for example.

34 Jawad al-Jabbouri and Tha'er al-Kanawi, for example.

35 Article 367 of the Penal Code stipulates that "any functionary/employee who arrests or detains a person in cases other than those prescribed by law shall be punished by temporary hard labor." See the Penal Code, *op. cit.*

36 Summary affairs judge decision in Maitham ar-Rubai's case, *op. cit.*; See also the decision by Summary Affairs Judge in the Metn Mireille al-Haddad in the case of Wissam Fazaa, 28 January 2010, and the decision by Summary Affairs Judge in the Metn Mireille al-Haddad in the case of Riad al-Hashem, 28 January 2010.

*This continuation [of detention] falls outside the framework of judicial penal measures, which are measures which implementation is derived from the commission of a criminal offense and based on judicial decisions that guarantee the legitimacy of detention (since [detention's] effect is to limit the basic human liberty enshrined by international and domestic law) and place infringement of [liberty] within legal and judicial frameworks that comply with the justifications and goals that necessitate detention. It follows that the limitation of this liberty via this detention, outside the framework outlined above, is a blatant violation of law, even if it aims to ensure expulsion from the country, which ought to be done immediately after the implementation of the sentenced penalty and not after a period that surpasses the [prison] term through it being prolonged, without any legal basis, to a [length of] time not granted by logic, law, or any of the principles that regulate societies and guarantee humans the exercise of their rights and liberties.<sup>37</sup>*

As noted, despite the judiciary's rejection of all pretexts and legal arguments raised by General Security, the administration has refused to execute irrevocable court orders. It is therefore not only violating personal liberty, but also the authority of the judiciary itself. It is violating the Constitution twice over: once by infringing personal liberty, and again by defying the judiciary.

In response, judges have not only condemned detainees' detention and ordered their release; they have also ruled that they are owed compensation and assessed daily fines on the administration for delay in executing court orders.<sup>38</sup> If it is not possible to compel the administration to pay such compensation and fines,<sup>39</sup> then those institutions responsible for oversight and accountability must bear the responsibility for this problem.

Aside from highlighting the administration's violation of law, these court verdicts showed that arbitrary detention and/or deportation is not a solution to refugees' lack of legal cause for presence in Lebanon. It is therefore incumbent on the parliament and government to create a mechanism that regularizes refugees' and asylum-seekers statuses in Lebanon. In the immediate term, the administration could recognize their UNHCR

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37 Single penal judge decision in Alaa as-Sayyad's case, op. cit.

38 Summary affairs judge decision in Jawad al-Jabbouri's case, op. cit.

39 See the jurisprudence of the State Consultative Council, for example decision no. 704 on 16 May 1995, available at <http://www.statecouncil.gov.lb/view2.asp?id=412>.

certification as legal basis for presence in country, or by granting them temporary residency free of charge.

### **UNHCR involvement in trials**

UNHCR rarely intervenes in court cases involving persons with whom it is concerned, since the judiciary rarely asks UNHCR to confirm the refugee status of defendants or plaintiffs.

Agency representatives do not attend refugee trial hearings and they are not officially informed – to the best of our knowledge – of these hearings’ dates. However, in some cases friends of the detainee or NGOs inform UNHCR.

There are a number of reasons for this. The authorities do not systematically notify UNHCR of the arrest of persons of interest or the dates of their trials. UNHCR does run legal aid programs assigning lawyers to defend some refugees in court. See Chapter Two for more on UNHCR’s protection role in Lebanon.

In short, these pioneering verdicts generated a number of positive consequences. The judiciary protected personal liberty as it is constitutionally mandated to do and, indirectly, protected the right to asylum. These verdicts and the media coverage they received also drew the attention of the executive and legislative authorities to human rights violations occurring under cover of the “Lebanon is not a country of asylum” policy. The government, as a result of these judicial verdicts, affirmed that there was a tragic humanitarian and legal situation resulting from the prolonged detention of foreigners that must be addressed (see Chapter Two). However, it remains for the Lebanese administration to respect judicial authority, execute court orders, and create a mechanism that regulates refugee presence in Lebanon in a way that safeguards internationally recognized human rights standards.

### **Who were the plaintiffs?**

These verdicts were issued in lawsuits by Iraqi refugees against the Lebanese State – the Interior Ministry and the General Security Directorate

specifically – challenging their prolonged detention after the expiry of their sentences and demanding their immediate release. They are all registered with UNHCR and most of them hold refugee status.

The common denominator in these lawsuits was that all the plaintiffs had been arbitrarily detained for long period in an effort to pressure them to accept “voluntary” return. They were either held by the Internal Security Forces (ISF) on behalf of General Security, or held in the General Security police station.<sup>40</sup>

Another common denominator in these cases was that their prolonged detention lasted for long periods without any explanation of legal cause. Most were arbitrarily detained for periods ranging from one month to three years, including:<sup>41</sup>

- Eight months in the case of Yusra al-Amiri, who was arrested on 26 May 2009 and sentenced to one month’s imprisonment (toward which her pre-verdict detention was counted) and a fine of 100,000 LL. She had served out her prison sentence plus time in lieu of fine payment by 7 July 2009, but she was not released until 18 January 2010 in spite of a court order for her immediate release issued on 11 December 2009.
- Around 18 months in the case of Maitham ar-Rubai, who was arrested on 25 November 2008. He was sentenced to a prison sentence equal to the time he had already spent in jail and a fine of 300,000 LL. He had finished serving the sentence plus time in lieu of fine payment by 25 December 2008. However, he was not released until 27 July 2010 after UNHCR’s intervention, in spite of a court order for his immediate release issued on 28 January 2010.<sup>42</sup>
- Around 16 months in the case of Wissam Faza’a, who was arrested on

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40 For more details about the detention of foreigners after the expiry of their sentences, see the legal study *Double Jeopardy: Illegal Entry Illegal Detention, Case Study: Iraqi Refugees and Asylum - Seekers in Lebanon*. Published by Ruwad Frontiers Association, 2008. Available in Arabic and English at [www.frontiersruwad.org](http://www.frontiersruwad.org).

41 These lengths of arbitrary detention were calculated on the assumption that the detainees did not pay their fines – i.e., that they were legally detained for a period of time after sentence expiry in lieu of paying their fine. The true period of *arbitrary* detention could be longer in cases where detainees actually paid the fine.

42 Rubai’s detention included around one month’s pre-trial detention on new charges of violating an administrative expulsion order.

24 December 2008 and sentenced to a month's imprisonment and a 250,000 LL fine. He had served out the prison sentence plus time in lieu of fine payment by 19 February 2009 and was not released until 27 July 2010 after UNHCR's intervention, in spite of a court order for his immediate release on 28 January 2010.<sup>43</sup>

- Around 16 months in the case of Riad al-Hashem, who was arrested on 16 October 2008 and sentenced to one month's imprisonment and a 100,000 LL fine. He finished serving the sentence plus time in lieu of fine payment on 27 November 2008, but was then arbitrarily detained until he was deported to Iraq in mid-March 2010, in spite of a court order for his immediate release issued on 28 January 2010.
- Nearly two years in the case of Alaa as-Sayyad, who was arrested on 21 October 2008 and sentenced to one and a half months' imprisonment and a 150,000 LL fine. He had finished serving his sentence plus time in lieu of payment by 20 December 2008, but was deported to Iraq on 10 November 2010 in spite of a court order for his immediate release issued on 17 May 2010.<sup>44</sup>
- Nearly 16 months in the case of Ammar al-Zubaidi, who was arrested on 17 November 2008 and sentenced to one month's imprisonment and a 100,000 LL fine. He had served his sentence plus time in lieu of fine payment by 27 December 2008, but he remained detained until he was deported on 13 April 2010 before the issue of a verdict on 8 June 2010 condemning his detention as arbitrary and ordering his immediate release, and compensation.
- Nearly three years in the case of Jawad al Jabourri. He was arrested on 5 November 2007 and sentenced on 15 November 2007 to three months' imprisonment and a 300,000 LL fine. He had served his sentence plus time in lieu of fine payment on 15 March 2008, but he was still in arbitrary detention at the time of this report's writing, in spite of three court orders issued in 2010 for his immediate release, compensation, and penalty of compulsory fine.<sup>45</sup>

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43 Faza'a's detention included around one month's pre-trial detention on new charges of violating an administrative expulsion order.

44 Sayyad's detention included around two months' pre-trial detention on new charges of violating an administrative expulsion order.

45 This detainee's detention included around 1.5 months' pre-trial detention on new charges of violating an administrative expulsion order.

## **Fostering a jurisprudential trend: Civil society dialogue and strategic litigation**

The judicial challenge to administrative infringement of liberty outlined above was a significant achievement not only for the Lebanese judiciary, but also for those in civil society who had worked to initiate and foster this jurisprudential trend. The 11 December 2009 court verdict ordering the immediate release of Yusra al-Amiri, noted above, was a pioneering moment – the first court verdict condemning the administration’s arbitrary detention of refugees. It was the first fruit of an integrated campaign pursued by activists and lawyers that involved dialogue with the judiciary and strategic litigation.

On the same day as Amiri’s verdict was issued, FR was holding a seminar in which 30 judges debated jurisprudential approaches to sentencing refugees and asylum seekers to deportation, also touching on the issue of arbitrary detention. The participants discussed Lebanon’s obligation to non-*refoulement* and the right to personal liberty. While a minority of participants held that refugees ought to be deported to protect the country from waves of asylum-seekers, the majority argued that deportation penalties must be excluded in such cases on the basis of Article 3 of the Convention Against Torture. All participants agreed that there is absolutely no justification for detaining any person after his or her judicially imposed prison sentence is completed, regardless of his or her legal status. The closing statement called on the state – especially parliament – to create a reasonable policy balancing legal, human rights, and security considerations.

In this and similar dialogue efforts, civil society groups drew judges’ attention to Lebanon’s legal obligations to protect refugees and asylum-seekers. It was made clear to the judges that society looks to them as the constitutional guardians of personal liberty. The effects of such dialogue were noticed in subsequent penal verdicts – judges increasingly excluded deportation penalties for refugees.<sup>46</sup> Aside from influencing initial court sentences, this dialogue combined with targeted litigation efforts produced verdicts such as Amiri’s and the others listed above – judicial condemnation of arbitrary detention and court orders for immediate release. Strategic litigation gave judges an opportunity to rule on lawsuits challenging the

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<sup>46</sup> Unfortunately, some judges continue to sentence refugees and asylum-seekers to deportation as irregular economic migrants.

administration's infringement of liberty, while obliging General Security to mount a public legal defense of its practices.<sup>47</sup>

This litigation was brought before the summary judiciary on the grounds that it has jurisdiction over infringement of freedoms, including personal liberty. Although the State Council (the administrative judiciary) would ordinarily arbitrate disputes between the state and individuals, in cases where personal liberty and rights are infringed, the administration loses its privileges before the citizen and the judicial court (e.g. the summary judiciary) has jurisdiction. Multiple lawsuits were filed with several judges in order to increase the chances of success and promote a jurisprudential trend toward the protection of personal liberty. The result, as shown, was unprecedented judicial condemnation of the administration for its arbitrary infringement of liberty.

### **The media's protection of personal liberty and refugees' rights**

These efforts by activists and lawyers were supported by the pivotal role played by the Lebanese media. Journalists publicized judicial condemnation of arbitrary detention and advocated on behalf of particular detainees, demanding their release. These efforts raised public awareness of the issue, attracted parliamentary and cabinet-level attention, and in some cases actually directly assisted detained refugees and asylum-seekers.

The media protection role was obvious in al-Amiri's case and continued thereafter. The media spotlight cast on her situation was central to her eventual release.<sup>48</sup> In response to an appeal FR issued to the press, the media welcomed and publicized her 11 December verdict<sup>49</sup> and, along

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47 Activists and lawyers worked closely to coordinate these efforts. In 2009-2010, FR cooperated with Lawyer Nizar Saghiyeh to hold a series of meetings with a number of lawyers in Beirut and Tripoli. These lawyers recommended that the Bar Association push for the execution of these verdicts and allocate resources for work on arbitrary detention cases. They also called for a wider meeting with the Bar Association's lawyers, the judiciary, and the administration to discuss arbitrary detention cases, address the administration's disregard of judicial verdicts and produce policy recommendations.

48 For example, *Al-Akhbar* newspaper, 16 January 2010; *As-Safir* newspaper, 15 January 2010; *Al-Akhbar*, 19 January 2010; *As-Safir*, 19 January 2010; *As-Safir*, 20 January 2010; *Al-Akhbar*, 19 January 2010.

49 *An-Nahar* newspaper, 16 December 2009; *Al-Akhbar*, 15 December 2009.

with civil society organizations, called for its execution by the authorities.<sup>50</sup> After General Security said publicly that it would surrender Amiri to Caritas<sup>51</sup> rather than executing the court order for her release,<sup>52</sup> the press continued to follow the case closely. When it was announced that she would be released on 18 January 2010, journalists waited for her outside the UNHCR building in Beirut, where she was scheduled for an interview. When she arrived with Caritas representatives, the press learned that rather than being set free, al-Amiri would be staying at the association's shelter at General Security's request until a final decision was taken by the General Security.<sup>53</sup> Amiri's lawyer told the press that he had informed Caritas that there was a court order for her release and that her forced stay in their shelter was an illegal infringement of her liberty.<sup>54</sup> In the end, the debate between Caritas and the lawyer, the close monitoring of the situation by the media, and activists' vigilance, resulted in al-Amiri's immediate release.<sup>55</sup>

Journalists and activists endured criticism due to their efforts to protect al-Amiri. Caritas subsequently wrote to *Al-Akhbar* accusing the newspaper of publishing false information and attacking the association. The letter stated that Caritas had not infringed al-Amiri's liberty and threatened legal action if such reports were not publicly retracted. *Al-Akhbar* published the statement along with a rejoinder by Dr. Omar Nashabah entitled "Be quick and let's go to court."<sup>56</sup> General Security also issued a statement to the media claiming that al-Amiri was an illegal migrant and not a refugee. This statement accused FR of waging a campaign against Lebanon and trying to show that the Lebanese state does not have the right to enforce its own entry and residency laws by arresting violators.<sup>57</sup> FR replied via the press that the association was simply conducting normal human

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50 FR released a press statement calling for al-Amiri's immediate release in execution of her court verdict. See *As-Safir* newspaper, 15 January 2010; "Ruwad Frontiers for the release of the arbitrarily detained Iraqi refugee," *Al-Liwaa* newspaper, 15 January 2010.

51 Caritas has an agreement with General Security regarding shelters, although these are not public.

52 *Al-Akhbar* newspaper, 16 January 2010.

53 Quoted in *As-Safir* newspaper, 19 January 2010.

54 Ibid.

55 *Sada al-Balad* newspaper, 19 January 2010; *Al-Akhbar* newspaper, 20 January 2010.

56 *Al-Akhbar* newspaper, 19 January 2010.

57 *As-Safir* newspaper, 20 January 2010. The statement was also broadcast on New TV.

rights advocacy and noted that General Security's statement evaded the central question in al-Amiri's case: What is the legal basis for detaining foreigners after the expiry of their prison sentences without judicial authorization?<sup>58</sup>

Al-Amiri's case exemplifies the pivotal role played by the media in refugee protection. As the lawyer Nizar Saghiyeh observed, her court release order was virtually "executed via the media."<sup>59</sup> After her release, the media maintained its coverage of similar court verdicts condemning the arbitrary detention and deportation of refugees and asylum-seekers. It continued to publicize the issue, call attention to specific cases, and report on developments in the policy debate – at times following the subject almost day by day.<sup>60</sup> The press provided a forum for civil society groups' appeals and statements welcoming judicial verdicts and criticizing the authorities for not executing them.<sup>61</sup> Journalists highlighted the danger inherent in the deportation of refugees and allowed detainees themselves to tell the public about their plight in their own words. The media also reported on policy developments such as the discussion of the National Human Rights Action Plan Background Paper on non-Palestinian Refugees,<sup>62</sup> the inter-ministerial

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58 *As-Safir* newspaper, 21 January 2010.

59 Meeting organized by FR between NGO activists and lawyers on 21 July 2010.

60 For example, see "Iraqi refugees languishing at the Lebanese waiting station," *An-Nahar* newspaper, 29 April 2010; "Verdicts required the release of those arbitrarily detained and none of them were released except al-Amiri. To those concerned: What do verdicts change ... and who is responsible for the crime of infringing personal liberty?" *As-Safir* newspaper, 25 February 2010; "Lebanon 'forgets' its signature of human rights agreements and implements decrepit laws. In the 'country of hospitality' and liberties there is whipping, imprisonment and deportation for every refugee," *As-Safir* newspaper, 14 December 2009; "Iraqi refugees legally 'rejected' in Lebanon and civil society institutions call for a halt to their deportation," *Al-Hayat* newspaper, 9 May 2010; "Soldiers and detainees under Elias al-Hrawi Bridge ... A conditional visit to the Lebanese General Security prison and observation of the suffering of the 'underground' residents," *Al-Hayat* newspaper, 7 May 2010; "The General Security police station through the eyes of an inmate," *Al-Akhbar* newspaper, 14 June 2010; and "Refugees in prison: Is the time for silence over?" *Al-Akhbar* newspaper, 25 March 2010.

61 Print media outlets published more than 100 articles in this regard between the end of 2009 and September 2010, based on 33 appeals and statements FR issued.

62 "Human Rights' scans a study of non-Palestinian refugees in Lebanon: The state acknowledges 1,078 of 40,000, and the legal framework is ink on paper," *Al-Mustaqbal* newspaper, 12 March 2010; "The human rights commission discusses a study on the rights of non-Palestinian refugees," 11 March 2010, *El-Nashra* <http://www.elnashra.com/news-1-422420.html>; "The national plan for non-Palestinian refugee rights: Toward Lebanon's respect of international signatures," *As-Safir*, 12 March 2010; "The human rights committee requests from civil and human rights associations a legislative project to regulate asylum for non-Palestinians," *As-Safir* newspaper, 12 March 2010.

committee's formation<sup>63</sup> and report,<sup>64</sup> and its report's reception.<sup>65</sup> It covered the various celebrations of World Refugee Day,<sup>66</sup> and social media such as Facebook and blogs also helped raise public awareness about arbitrary detention and the plight of foreigners in Lebanon.<sup>67</sup>

Although media coverage of refugee protection issues remains seasonal and often comes in response to civil society initiatives, the media has proven that, given the requisite subject matter, civil society cooperation, and supportive editorial policy, it can be a powerful partner on human rights issues. FR has held workshops where journalists and activists discussed cooperation for refugee protection, and continues to work closely with the media.

## THE QUESTIONABLE LEGALITY OF DETENTION FACILITIES

The administration is not only detaining foreigners arbitrarily; it is doing so in facilities that are not intended for this purpose. General Security is using the police station under the authority of the Bureau of Investigations and Procedures (Da'irat al-Tahqiq wa al-Ijra') under the Adliyah Bridge in Beirut as a long-term detention facility despite the absence of any clear law or directive authorizing it to detain foreigners. The administration has also used a safe house for female human trafficking victims as a location for the

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63 "The cabinet forms a committee to solve the problem of foreign detainees/Hariri: We presented a detailed plan for the cabinet's priorities," *Al-Mustaqbal* newspaper, 15 April 2010.

64 For example: "The cabinet approves the inter-ministerial committee report on the deportation of foreign detainees/the postponement of the decision on the mechanism for transferring cellular revenues to the municipalities," *As-Safir* newspaper, 8 September 2010.

65 "Ruwad Frontiers criticizes the ministerial report on deportation," *Al-Akhbar* newspaper, 9 September 2010; "Ruwad Frontiers on the report of the commission on the deportation of detained foreigners: Distressing ... and it did not reach the core of the problem," *As-Safir* newspaper, 9 September 2010.

66 For example: "'I came from a beautiful place' – The hell of asylum: Carol Mansour continues the look inside," *Al-Akhbar* newspaper, 5 July 2010; "At the celebration of World Refugee Day organized by Ruwad Frontiers in Shams theater: Palestinians, Iraqis, Sudanese, and Kurds ... children and mothers, young and old," *As-Safir* newspaper, 22 June 2010.

67 "Solidarity with refugees: stop forced deportation, give them protection!" administered by FR at <http://www.facebook.com/group.php?gid=348286873468>; End Arbitrary Detention of Refugees at <http://www.facebook.com/#!/group.php?gid=303942265280>; Support the refugees detained arbitrarily in Lebanon <http://www.facebook.com/event.php?eid=108110475898402&index=1>, administered by other persons and organizations active in this field.

long-term detention of foreign women with no connection to trafficking. Aside from the questionable legality of such detention centers, detainees in these locations are also deprived of their rights, especially access to legal counsel.

## The General Security Police Station

The Bureau of Investigations and Procedures police station has faced criticism for its harsh and inhumane detention conditions and for the questionable legality of both detention within its walls and the facility itself. Demonstrators have demanded the release of its inmates, since they are detained arbitrarily, and the closure of the facility due to its illegality.<sup>68</sup> Newspapers have also published articles describing the facility's harsh conditions.<sup>69</sup>

FR sent multiple letters to the authorities questioning the facility's legality. The General Security Director-General eventually responded, stating that the facility is neither a prison nor a center for the detention of foreigners, but a police station where arrestees are temporarily held pending their release, transfer to prison to serve a prison sentence, or deportation.<sup>70</sup>

What follows is a discussion of the laws and directives that apply to the arrest and detention of foreigners in Lebanon. It will be seen that there is no legal basis for General Security's use of this police station as a "detention center." Furthermore, if this facility is a temporary holding location, detentions in it should be very brief and should not exceed the legally prescribed temporary holding period of 48 hours with one-time renewal.

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68 "Chosen as a first step within a series of moves ... because it is 'the worst!' A sit-in in front of the Adliyah prison for an end to arbitrary detention," *As-Safir* newspaper, 6 December 2009; "Protesters rally to close 'disgraceful' retention center," *The Daily Star* newspaper, 1 March 2010; "A demonstration in support of Iraqi refugees in prison," *Al-Akhbar* newspaper, 24 March 2010.

69 "Soldiers and detainees under Elias al-Hrawi Bridge ... A conditional visit to the Lebanese General Security prison [police station] and observation of the suffering of the 'underground' residents," *Al-Hayat* newspaper, 7 May 2010; "The General Security police station through the eyes of an inmate," *Al-Akhbar* newspaper, 14 June 2010.

70 Letter from the Ministry of the Interior and Municipalities – General Security Directorate General, no. 29 ,604/1/ع/3 March 2010. The General Security gave the same answer to other NGOs: see "The Ministry of the Interior and Municipalities transfer document regarding the open letter presented by a number of associations concerned with human rights on the occasion of the International Day in Support of Victims of Torture," 6 August 2010.

## Laws governing arrest, detention, and trial

In the absence of specific legislation, foreigners in Lebanon are subject to the same procedural laws as Lebanese citizens with regard to their arrest, trial, and execution of sentences. This is the case regardless of whether the offenses for which they are prosecuted are defined in Lebanon's Penal Code or in specialized codes such as the 1962 Law Regulating Entry to, Stay in, and Exit from Lebanon.

Article 38 of the Code of Penal Procedures provides for such arrests to be made by the judicial police, a term that encompasses both the Internal Security Forces (ISF) and General Security personnel.

### **Article 38 of the Code of Penal Procedures**

*Public prosecutors and public attorneys perform the duties of judicial officers under the supervision of the General Public Prosecutor of the Cassation Court [Supreme court].*

*Within the limits of the roles specified for them by the text of this law and of other relevant laws, the following persons assist the Public Prosecutor's Office in performing the duties of the judicial office:*

- 1. The governors and the district directors*
- 2. The Director-General of the Internal Security Forces, the Officers of the Internal Security Forces and the judicial police, the ranked personnel working in the regional offices, and the heads of the Internal Security Forces stations.*
- 3. The Director-General of General Security, the Officers of General Security, the ranked personnel for investigations in General Security, the Director-General of National Security, the Vice-Director General and the Officers of National Security, and the ranked personnel for investigations in National Security*
- 4. Village mayors.*
- 5. Sea captains and airplane and other aircraft pilots.*

The Internal Security Forces (ISF) is legally authorized to hold arrestees temporarily pending their referral before the Public Prosecutor's Office or their transfer to a "location for executing judicial orders." The Code of Penal Procedures requires this to be done within a two-day period, with a possibility for renewal once.

**Article 217 of the Law Regulating the Internal Security Forces**

*Internal Security Forces may arrest persons under the following circumstances:*

- 1. Executing a judicial order.*
  - 2. Executing a judicial memorandum.*
  - 3. Executing a request from an authorized judicial authority or from the Officers of the Judicial Police.*
  - 4. Automatically in the case of a crime observed [by police] or a misdemeanor that carries a penalty of prison, on condition that they immediately inform the relevant judicial authority and abide by its directives. In the first three cases, the ISF must transfer the arrested person within 24 hours of arrest to one of the locations for execution of a judicial order, or to the judicial authority that issued the memorandum or request. As for the fourth case, the competent judicial authority may exceptionally extend this timeframe if the necessities of investigation demand it, provided it does not exceed three days under any circumstance.*
- [The timeframes mentioned here were amended by the Code of Penal Procedures issued in 2001. See Article 47 below. ]*

As mentioned above, in addition to its other roles and responsibilities such as monitoring land, maritime, and airspace borders and monitoring foreigners on Lebanese territories, General Security also conducts investigations of infractions against internal or external national security.<sup>71</sup>

**Article 6 of Decree No. 2873 of 16 December 1959 regulating the General Security Directorate**

*The Foreigners' Bureau is responsible for:*

- Monitoring foreigners in all matters relating to their entry into Lebanon, their residence in Lebanon and their exit from Lebanon.*
- Investigating foreigners' applications for entry before stamping their passports and their temporary or permanent residence permit and their exit, and regulating their ID cards.*
- Monitoring their movements, and the work they undertake.*
- Monitoring political refugees and displaced foreigners.*
- Granting permits for passage.*
- Issuing statements for groups subject to special conditions for movement within Lebanon and outside it.*

<sup>71</sup> The Regulation of the General Security Directorate-General. Legislative decree no. 139, 12 June 1959. *Official Gazette* no. 30, 22 June 1959.

The General Security Directorate (GSD) therefore does not have any specialized authorization to carry out administrative arrests and detention.<sup>72</sup> There is no legislative text authorizing General Security as such to run police stations or detention centers. When General Security personnel make arrests in their capacity as judicial police, they must therefore process arrestees as specified by the law governing judicial police arrests.

**Article 47 of the amended Code of Penal Procedures stipulates the following:**<sup>73</sup>

*Judicial police officers, in their capacity as assistants to the Public Prosecutor's Office, carry out the duties that the Public Prosecutor's Office delegates to them in the investigation of crimes not flagrante delicto, and the collection of information, along with investigations aiming to discover the crime's perpetrators and accomplices and collect evidence about them. [The judicial police] is forbidden to detain suspects in its own holding facility except per decision from the Public Prosecutor's Office and within a time period not exceeding forty-eight hours. This time period may be extended by another 48 hours only upon approval by the Public Prosecutor's Office. Time is measured from the moment of arrest.*

Based on these provisions, foreigners arrested for violating the provisions of the 1962 entry and residency law must thus be swiftly brought before the Public Prosecutor's Office and held with its permission in holding facilities subject to its authority or in locations for the execution of judicial orders awaiting a prosecutor's decision to either refer the case to court or order the release of the arrestees. If convicted, they must serve their sentence in prisons,<sup>74</sup> then be released immediately upon completion of their prison term.<sup>75</sup> If the court finds them innocent, they must be released immediately.<sup>76</sup>

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72 The Regulation of the General Security Directorate-General (Regulation and Specification of Powers in General Security). Decree no. 2873, 16 December 1959. *Official Gazette* no. 71, 31 December 1959.

73 Article 47 of The Code of Penal Procedures, Law no. 328, 2 August 2001. *Official Gazette* no. 38, 7 August 2001.

74 Pursuant to Article 400 of the Code of Penal Procedures, *ibid.*

75 Pursuant to Article 406 of the Code of Penal Procedures, *ibid.*

76 Pursuant to Article 412 of the Code of Penal Procedures, *ibid.*

*Legal confusion: Directives in addition to the law*

It appears, however, that there are some internal administrative directives that complement the provisions of the Code of Penal Procedures mentioned above. For example, Internal Security Forces Directive No. 278 of 16 August 1973 directs prison wardens to prepare a “Memorandum of Information” on each foreign prisoner ten or more days before the end of his or her sentence. This memorandum is to be sent directly to General Security. If the foreigner’s sentence is less than ten days, the memorandum is to be prepared and sent to General Security upon his or her entry into prison. Foreign inmates must present themselves at a General Security bureau (the bureau location depends on the prison location) within 48 hours of their release. The prison administration is also to immediately notify General Security of any foreigner’s release, along with a copy of the notification to the released foreigner. However, these procedures are waived if the foreigner cannot prove legal presence in the country:

*As for foreign convicts or arrested persons who are unable to prove their identity or the legality of their residence, the procedures described above are waived, and the person is to be taken directly to the relevant General Security bureau ... immediately upon completion of their sentence or the issuing of a release order.*

As for the foreigner without legal residence papers, he or she is taken directly to a General Security bureau, but the directives do not specify the purpose of this transfer or the fate of the foreigner – whether he/she is to be released, let go with a grace period to regularize his/her residency status, or subjected to the initiation of deportation procedures. If he/she is not to be released, the directives do not specify where he/she is to be held. More importantly, they do not specify the legal basis for his continued detention by General Security.

These directives confirm the role of General Security in monitoring the presence of foreigners and the legality of their residence in Lebanon, which includes knowledge of the release of every foreigner and the requirement that he or she appears before General Security immediately upon release for administrative procedures.

However, the Public Prosecutor before the Supreme Court (Cassation) has issued different directives that contradict the directive above and the provisions of the law regarding the release of foreign prisoners, ordering them to be taken to General Security bureaus immediately upon the issuing of their release orders and the end of their sentences, regardless of the legality of their residence papers and other documents.<sup>77</sup>

*The effect of these directives: GSD may monitor foreigners but not imprison them*

It must be stressed that the law requires the immediate release of any person when the legal basis for his arrest and detention ends or is annulled – e.g., immediately upon expiry of prison sentence, acquittal, or if the charges have been dropped. In case of deportation by court order, the law specifies that the foreigner must depart using his private means,<sup>78</sup> which implies that the foreigner is to be released in order to make the necessary arrangements for departure.

Despite these legislative provisions, the directives described here stipulate the transfer of foreigners to General Security bureaus with the goal of reassessing their status regardless of the legality of their residency. For foreigners who have obtained an immediate release order, the directives state that GSD should be notified so that they can be handed over to it in order to prepare for their deportation. There is no mention of the legal requirement for a deportation order, nor any mention of the legal basis for the deportation. There is no specified limit to the time period that deportation procedures may take, or any specified location where the foreigner may be by General Security while awaiting deportation. The approval of the Public Prosecutor's Office is legally required in order to keep the foreigner in prison while awaiting deportation, yet the directives do not mention this as a requirement for the foreigner's remaining in General Security custody. This implies that deportation proceedings ought to be completed speedily without the foreigner being detained while awaiting their completion.

The point that concerns us here, among others, is that none of these laws, directives, or explanations authorizes a "detention facility" in which General Security may detain foreigners.

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77 See Public Appeals Prosecutor's letter No. 4662/16 ,2004/ρ December 2004.

78 Article 89 of the Penal Code, op. cit.

It should further be noted that the Internal Security Forces Directive No. 251 of 14 August 1969 clearly provides that:

*The General Security General-Directorate and the heads of GS headquarters and police stations may request from the heads of Internal Security Forces working alongside them the transfer of persons arrested by GS to their custody, be they women or men, pursuant to a written request in the following cases:*

- *Execution of a judicial order with the goal of transporting them to the relevant judicial authorities or to the prisons.*
- *In case of a witnessed crime, in order to interrogate them with regard to what they are charged with and to undertake the necessary legal processes.*
- *When they are arrested by General Security for a crime that falls under their jurisdiction, for the purpose of transporting them to the judiciary with the necessary paperwork.*
- *Pursuant to an expulsion order with the goal of executing these decisions; those persons may remain arrested in the holding cells until the end of their procedures and their departure even if the period of detention exceeds the 24 hours specified in Article 103<sup>79</sup> of the Code of Penal Procedures.*

### *No legal basis for General Security's long-term detention of foreigners*

In addition to this, the General Security Director-General confirmed in his letter to FR regarding the Bureau of Procedures and Investigations police station<sup>80</sup> that this facility is subject to Article 38 of the Code of Penal Procedures, and the Law Regulating Prisons and Places of Arrest and Institutes for Juvenile Rehabilitation, as well as other laws, directives, and memoranda for internal organization. He also stated that the facility is subject to Article 18 of the Law Regulating Entry to, Stay in, and Exit from Lebanon, which allows the General Security Director-General to arrest, with the approval of the Public Prosecutor's Office, any person whose deportation has been administratively decided until the completion of deportation procedures.

The Director-General argued that GSD personnel's role as judicial police

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79 This article was replaced by Article 107 of the 2001 Code of Penal Procedures, op. cit.

80 Letter from Lebanese General Security to Frontiers Ruwad Association on 29 March 2010, op. cit.

and responsibility for the presence of foreigners in Lebanon required the establishment of this facility. Yet he confirmed that it is not legally or practically a prison or a detention center, but merely a temporary station for detainees awaiting the resolution of their administrative files, usually either on the way to serving their sentences in a Lebanese prison or to deportation or release.”<sup>81</sup>

From the foregoing, we can draw two conclusions: first, that the Bureau of Investigations and Procedures police station is not a prison, as both letters clearly state, and that it is merely a “*de facto*” temporary holding station, since it is not among the detention centers mentioned in the laws discussed above. In addition, granting for the sake of the argument that it is a holding facility, in the three cases described by the General Security Director-General, administrative procedures must be speedy and as such, persons must not be detained in this facility for more than a few days, pursuant to the laws and procedures that govern such cases.

Although the Director-General’s letter did not specify what time period is meant by “temporary,” it is reasonable to conclude that with regard to arrest pending deportation, at least two conditions should be met: first, that there be a judicial deportation order against the foreigner; second – and this is required by the first condition – that the deportation be possible without violating Lebanon’s international obligations not to deport refugees and asylum seekers. As such, this condition applies to cases that are not persons of concern to UNHCR. The administrative directives are clear that deportation procedures should begin before the end of the prison sentence and that deportation should occur speedily. There is therefore no legal justification for detaining a foreigner for years, months, weeks, or even days by General Security while ostensibly awaiting deportation. Furthermore, Article 89 of the Penal Code provides that a foreigner sentenced to deportation by a judge must depart on his own using his own private means within 15 days, which implies that he would be set free in order to arrange for his departure.

Courts have noted tangentially that when deportation is judicially ordered, it must be undertaken under the supervision of the Public Prosecutor’s Office or the Criminal Judge, depending on who issued the order.<sup>82</sup> It is therefore

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81 See General Security letter on 6 August 2010 to human rights groups, *op. cit.*

82 Single penal judge decision in Alaa as-Sayyad’s case, *op. cit.*

not a purely administrative procedure. Furthermore, as noted above, the Public Prosecutor's Office ruled in the 1990s that when deportation cannot take place for any reason, prolonged detention cannot continue and the detainee must be released on the basis of a certificate of resident address and a written undertaking to take up a known residence, or to present him or herself at a police station, along with other release conditions.<sup>83</sup> This position has been affirmed recently by courts that ruled that deportation procedures do not justify General Security's detention of a foreigner.

As for release, it should be no more than a simple administrative procedure that does not even justify holding a person for a few days, let alone months or years. The same applies to the "regularization of status" referenced in General Security's second letter mentioned above, as this is a procedure that should begin in prison and that does not justify the continued detention of a foreigner. He or she should be released with a temporary document testifying that a procedure is underway to regularize status, after which he or she will present him or herself to General Security, obtain either acceptance or rejection of his application for new status, and be dealt with accordingly.

Where General Security acts, in its capacity as judicial police, all the provisions that apply to arrest by judicial police specified in Article 47 of the Code of Penal Procedures should apply to General Security. The arrested person must therefore be afforded all the rights provided by this article. Foremost among these is that the period of initial arrest must not exceed 48 hours and can only be renewed once – and that only with permission from the Public Prosecutor's Office.

The provisions in Directive No. 251 of 14 August 1969 mentioned above, direct General Security to transfer detainees to the Internal Security Forces so the latter may bring them before the relevant judicial authority. However, in practice General Security holds many detainees in the Bureau of Investigations and Procedures police station for long periods far exceeding the legally prescribed deadline, without any hearing before a judicial authority. In these cases, no legal basis is offered for their arrest and there seems to be no regular and systematic monitoring or review by the relevant authorities. This is a clear violation of the law.

What remains is the justification offered by General Security's letter

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83 Public Prosecutor decisions in 1993, *op. cit.*

to FR for the existence of the holding facility: Article 18 of the Law Regulating Entry, Stay and Exit from Lebanon, which allows arrest until the completion of procedures for deportation. However, Article 18 only applies in connection with the application of Article 17 of the same law, and as such, is restricted to cases of administrative expulsion decisions due to a threat to national security and public safety. Even this power is subject to conditions: first, that there be a threat to national security and public safety; second, that the Interior Minister must be notified; and third, that the Public Prosecutor must have approved the arrest.

Although Article 18 does not clearly specify a time limit, the time of detention may be limited in two ways. First, the Public Prosecutor's Office, in its approval of the arrest, subjects it to the Code of Penal Procedure that requires arrest to last no more than a maximum of 96 hours. Second, international human rights norms and jurisprudence from multiple countries that do not specify a maximum time limit on detention pending deportation affirm that when detention is related to deportation, it must be proportional. This means that the detention time period must be specified in proportion to the time necessary to complete deportation procedures. This should not exceed a few days.<sup>84</sup> This principle was affirmed by the UN in a workshop organized by FR in June 2010.<sup>85</sup> Lastly, Article 18 does not specify where the arrestees ought to be held during the period awaiting deportation.

This aside, it should be pointed out that administrative deportation should not apply to refugees and asylum-seekers. To our knowledge, none of them have been accused of being a threat to national security and public safety. Furthermore, such an accusation – if it actually existed – could not legally justify the systematic practice of arbitrary detention. Even if one person from this group was found to be a threat to public safety or national security, it is unacceptable to generalize and assume that all refugees and asylum seekers are threatening national security.

In conclusion, it is apparent that there are no clear laws or directives

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84 UN High Commissioner for Refugees, *Back to Basics: The Right to Liberty and Security of Person and 'Alternatives to Detention' of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants*, April 2011, PPLA/2011/01.Rev.1, available at: <http://www.unhcr.org/refworld/docid/4dc935fd2.html>.

85 Comments by UN Working Group on Arbitrary Detention expert Vladimir Tochilofsky in a workshop organized by FR on 17-18 June 2010 entitled "The Protection of Refugees: a policy of balance between Lebanon's obligations and its privacy."

regarding the legality of the General Security “detention facility” currently being used to detain foreigners. Yet, and in the absence of legal basis, a *de facto* holding facility exists. The situation is therefore a double violation: the detention of these persons is arbitrary, and beyond this the facility used for their detention is itself illegal. Furthermore, Lebanese law does not regulate administrative detention, and the practice is therefore arbitrary in itself.

As for the Director-General’s statement that their holding facility is subject to the Decree on the Regulation of Prisons (No. 14310) that applies to prisons and locations of preventive detention, it is unclear why this decree applies to the GSD *de facto* detention facility. Even if General Security considers this the case, it would imply that the provisions of the decree are applicable, especially concerning medical care, nutrition, visitation by family and lawyers, and other detainee rights. This begs the question: why detainees in the GSD holding facility do not enjoy any of these rights in practice, including automatic visitation by NGOs and UNHCR, and lawyers. Why are such visits instead tightly regulated and done only with GSD’s permission and at its strict discretion? Lawyers’ difficulty accessing clients led them to sign a memorandum of understanding with General Security in 2006 regulating lawyers’ entry into General Security centers.<sup>86</sup> This document stipulates that lawyers must obtain special permission from General Security in order to visit clients detained on General Security premises. It also limits their access to certain parts of the General Security commissariat. This agreement means that detainees cannot swiftly obtain legal counsel once they are arrested by General Security: it takes time for a notary public to procure the lawyer the necessary permission to simply visit his potential client. Furthermore, lawyers are not always granted permission to visit every time they apply.

As detainees in the GS holding facility do not have the automatic ability to appoint an attorney to follow up on their situation or to appeal their detention, this caused some of them to protest and to go on hunger strike around the beginning of 2010 in order to demand their right to legal

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<sup>86</sup> Memorandum of Understanding between the General Security Directorate-General and the Beirut Bar Association Regarding Coordination on the Regulation of Lawyers’ Entry Into General Security Directorate General Buildings. General Security service note no. 41/1 19 ذم/اص/ع, July 2006.

representation.<sup>87</sup> Civil society organizations are also not granted visitation rights to the holding facility, and are rarely granted permission to enter. The exception is Caritas, which is the only organization currently present within the police station. General Security has “used” their presence to claim that humanitarian organizations are allowed to work with detainees and to refute any violations occurring in the facility. Detainees are allowed to communicate with the outside world via telephone at intervals, but only within strict limitations and after obtaining permission from the employee in charge and buying a telephone card.

**Article 47 of the Code of Penal Procedures:**

*From the moment of arrest for investigation, the suspect enjoys the following rights:*

1. *Contacting one of his family members or his employer or a lawyer of his choosing or an acquaintance.*
2. *An interview with a lawyer he may appoint by declaration recorded in minutes written into the record, without need for an official power of attorney as per the rules.*
3. *Access to a sworn interpreter if he does not have mastery of the Arabic language.*
4. *Presenting a request, directly or through his representative or one of the members of his family, to the Public Prosecutor for a medical consultation. The Public Prosecutor will appoint a doctor for him immediately upon presentation of the request. The doctor should conduct a medical examination without the presence of any judicial officers, and should present his report to the Public Prosecutor within a period not exceeding twenty-four hours. The Public Prosecutor should provide a copy of the report immediately upon receipt, and the detainee and the persons previously mentioned may present a request for another medical consultation if his detention is extended.*

*The judicial police must inform the suspect, immediately upon arrest, of his rights provided herein and to write this procedure into the record.*

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87 “General Security’s detainees: It is our right to appoint a lawyer to defend us,” *Al-Akhabar* newspaper, 20 March 2010; “A call for help from General Security’s police station,” *Sada al-Balad* newspaper, 19 March 2010.

Finally, the General Security police station suffers from the same shortcoming as all prisons in Lebanon: it appears that although the law requires regular judicial inspection of all places of detention, judges and public prosecutors do not make such visits regularly to any facilities, let alone the GSO police station. FR has not received any information about inspection visits to the General Security holding facility, despite the fact that prolonged arbitrary detention has repeatedly been the topic of newspaper headlines over the past two years.

### **Unofficial detention at the women’s ‘safe’ house**

General Security has also used a women’s safe house run by the Caritas Lebanon association as an “off-the-map” unofficial detention facility. The misuse of this safe house is especially worrisome, since there is no legal basis for detention there and no mechanism for judicial oversight.

FR followed the case of a foreign woman held in this “safe house” for nearly one year without being able to ascertain the reason for her detention there, communicate with her, or appoint a lawyer for her defense.

#### *The Safe House: Intended as a haven for victims of human trafficking*

The safe house is, in principle, a safe haven for women who are victims of the human sex trafficking trade. It is managed by the Caritas Lebanon Migrant Center and operates on the basis of a memorandum of understanding (MoU).<sup>88</sup>

The safe house is intended to temporarily house victims of human trafficking as part of a larger project for their protection. The MoU requires that entrants be foreign female victims of human trafficking and that they be seeking aid: that is, freely wishing to enter without coercion.<sup>89</sup> There is no reference in the MoU to judicial process, since the women’s stay is a voluntary step they take to protect themselves, taken under the supervision and support of the state.

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88 Conclusion of a Memorandum of Understanding between the Directorate General of General Security, the Caritas Lebanon Migrant Center and the International Catholic Migration Commission (ICMC). Decree no. 14289, 9 March 2005. *Official Gazette* no. 11, 17 March 2005.

89 This is only natural, since Caritas and ICMC do not possess the authority to detain people in the safe house by force against their will without judicial supervision.

The safe house is shrouded in secrecy in order to protect the women staying there. While they wait for their voluntary return to their countries of origin, they are not allowed to leave or communicate with the outside world. Not even lawyers are allowed to visit. This increases concerns that the facility could be misused. Although the safe house is a preventive measure and is based on the voluntarism of the victims, FR is concerned that there is no judicial supervision of the facility.

*Hawa Nasser: Arrest and Detention*

Unfortunately, it appears that the safe house has been misused as a place of detention for women who have nothing to do with human trafficking and are not seeking protection. FR observed this in the case of Hawa Nasser, and there is concern that her case might not be the only instance of abuse.

Hawa Jamal Nasser is an Ethiopian woman born in 1972 and married to a UNHCR-recognized Sudanese refugee. They have one daughter, Sarah, who was born on 20 May 2008.

Hawa worked as a domestic worker in a Lebanese home. Her employer, who was sponsoring her residency, began to transfer the sponsorship to her sister. She then filed a police report accusing Hawa of running away. In response to this report, General Security personnel came to the sponsor's house and did not find Hawa. They had called her and her sponsor on the pretext of following up on the procedure for the renunciation of sponsorship. On 2 December 2008, Hawa with her six-month-old daughter and her sponsor went to the General Security office in the Choueifat area outside Beirut.

She and her baby were arrested there and taken to the General Security office in Beirut, then moved on the same day to Caritas safe house. At the time, Hawa's husband had been in detention at General Security for more than two months after being sentenced to one month's imprisonment for the crime of irregular stay.

Hawa and her baby – who took her first steps in detention – were held at the safe house until 19 November 2009 without any referral to the judiciary.

### *Conditions in the safe house*

What follows is Hawa's own account of conditions in the safe house:

*Since my husband was arrested before me, no one visited me since I was not allowed to have visitors. My husband's relative tried to visit me but Caritas did not allow it. They told him that I was in a 'safe deposit' there with them.*

*My daughter - who celebrated her first birthday in detention - and I shared a room with about 27 prisoners. [...] the doctor rarely visited the center, only when one of the detainees had a health problem. There were pregnant women there. There were no beds in the room, so we slept on mattresses on the floor. We were not allowed to leave the room. We didn't see the sun. We were forbidden to go out on the balcony - they would yell at us if we went out.*

*I used to always ask why I was in the safe house. They would answer that there was no problem with me - that the problem was with my husband's file and once his file was solved, my problem would be solved. I wanted to appoint a defense lawyer to obtain my release. I gave the woman in charge of my room [...] a request for a lawyer [...] and asked her to give it to Caritas. I don't know what happened afterward with the request. I don't know if it was delivered, but normally she delivers everything to Caritas.*

Hawa was not permitted to communicate with the outside world throughout her detention in the safe house, with the exception of several meetings with her husband after his release. During the nearly seven months that her husband was detained, she was totally isolated.<sup>90</sup> Even for these meetings, her husband had to obtain – often with difficulty – permission and prior agreement to arrange meetings outside the safe house in Caritas offices.

She was unable to appoint a lawyer, despite her written request asking for permission to be visited by a notary public so that she could sign off on the procuration. A lawyer hired by FR submitted an application to the Public Appeals Prosecutor in Beirut on 6 November 2009 asking for a notary public

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<sup>90</sup> Her husband was arrested for the first time in September 2008 and held until 5 June 2009, then arrested again on 30 October 2009 and held until 19 November 2009.

to be allowed into the General Security building (Hawa was being held in the safe house the time, but on General Security's behalf). On 13 November 2009, the Public Appeals Prosecutor referred the request to the General Security Directorate-General for an opinion. There was no answer.

The safe house's management also convinced her husband, after his release, to sign a paper stating that Hawa was a guest in the safe house with his approval. He did this out of fear that he would be prevented from seeing her if he refused. However, he asked to withdraw his signature once he understood its consequences.<sup>91</sup>

### *Attempted deportation, then release*

General Security tried to deport Hawa to Ethiopia, willfully ignoring the fact that this would split up the family. On 26 October 2009, General Security called Hawa's sponsor and asked her to purchase a plane ticket for Hawa – either alone, or with her daughter. The sponsor bought Hawa and her daughter tickets for a flight on Yemeni Airlines on 3 November 2009.

On 31 October 2009, Hawa's husband was arrested for the second time. On 3 November 2009, his lawyer filed a petition with the summary affairs judge in Beirut for an injunction stopping the deportation of his client's wife and daughter.<sup>92</sup> On 7 November 2009, the judge issued an order blocking the deportation of Hawa's husband and his family for 20 days.<sup>93</sup>

On 3 November 2009, FR called the interior minister's office to follow up on a previous call made on 26 October 2009 questioning the legality of Hawa's detention. FR also called international human rights organizations asking them to intervene to stop her deportation, and stayed in continuous contact with the UNHCR office to protect Hawa as a person of their concern.

On 19 November 2009, Hawa and her child were transferred to the General Security police station, where they were released. The Directorate gave Hawa and the baby daughter release papers valid for two weeks. Their release came after Hawa and her family obtained approval from Sweden for their resettlement there.

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91 The testimony of Hawa's husband to FR in 2009.

92 Injunction request filed on 3 November 2009.

93 Verdict no. 1180/2009, dated 7 November 2009.

*On the morning of 19 November 2009, she [a Caritas employee] called me and told me to pack my bags and get ready. I didn't know whether I was going to travel [i.e. be deported] or be released. I bathed with my daughter Sarah and washed my clothes, but I didn't take my bags because I didn't know that I would be released. At noon, after Sarah had fallen asleep, they called for me and asked me to bring Sarah with me. They said that we were going to the secretariat (I don't know what that is) and they didn't tell me that I was going to be released. So all my bags and Sarah's stayed with Caritas. I thought they were going to take us to the United Nations, and I was surprised when we arrived at General Security in al-Mathaf. They dropped me off there and I met Fadel [her husband]. He knew that we were going to be released and told me that today we are going home. When Fadel told me I was going to be released, I didn't believe it.*

*Hawa's case: A clear abuse of the safe house and violation of law*

Hawa's experience shows clear misuse of the safe house and violation of Lebanese law. She and her daughter were deprived of their freedom for almost one year in a place that is ostensibly a voluntary safe house for victims of human trafficking. Yet there was never any evidence that she was involved in human trafficking (in fact, GSD never claimed that she was)<sup>94</sup> and she never asked to enter the safe house. While detained, she continually asked why she was there and tried to obtain freedom. The safe house's management apparently ignored her request for a lawyer.

General Security tried to claim that it had not detained Hawa and her daughter for more than 24 hours, since it immediately delivered her to Caritas at the safe house. Yet the GSD gave her and her daughter their release papers after they were allowed to leave the safe house, indicating that from a bureaucratic standpoint, GSD considered her release to have occurred only once she left the safe house. It follows that Hawa's stay in the safe house was illegal detention, since she should have been referred to

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94 Letter from General Security dated 2 January 2010 no. 18038 in reply to a letter from OMCT, EUROMED, and FIDH sent on 8 December 2009.

a judge within 48 hours of her arrest, or else have been released.<sup>95</sup>

This aside, the reason for Hawa's detention was never made clear. The GSD wrote that "Ms. Nasser was arrested by the Directorate for violating the residency regime."<sup>96</sup> Yet Hawa had a valid residency permit when she was arrested.<sup>97</sup> General Security also claimed that Hawa's detention was connected to "UNHCR's ensuring her acceptance in a third country" and said that the GSD was not responsible for her slow resettlement. Yet this was in no way legal grounds for the infringement of her liberty, since she had never committed a crime punishable by law in the first place.

Even if Hawa were in violation of the residency regime, General Security should have brought her before a court so that she could be tried on charges, then serve a prison sentence if convicted. Instead, the administration arbitrarily detained her and her infant daughter in an unofficial facility, without judicial authorization, for a period that far exceeded the temporary holding period permitted to the administration in its judicial police role. This is a blatant violation of the laws governing arrest and detention.

The International Federation for Human Rights, the Euro-Mediterranean Human Rights Network, and the Global Organization Against Torture sent a letter to the Lebanese prime minister, interior minister, justice minister, and the head of the parliamentary human rights committee after Hawa's release. The letter voiced these organizations' concern that foreigners might continue to be arbitrarily detained in Lebanon and that the safe house might be misused again. The General Security Directorate's reply, cited above, falls far short of answering these concerns.

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95 As per Article 47 of the Code of Penal Procedures, *op. cit.* See also Article 9 of The International Covenant on Civil and Political Rights, available at <http://www2.ohchr.org/english/law/ccpr.htm>, adopted by the UN General Assembly under resolution 2200 (d -21) on 16 December 1966 and joined by Lebanon under law by decree no. 3855 on 9 January 1972 - see *Official Gazette* No. 76, 21 September 1972; see also Article 10 of the Universal Declaration of Human Rights, *op. cit.*

96 General Security letter, 2 January 2010, *op. cit.*

97 The residency card expired during her detention.

## CHAPTER TWO

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### THE POLICY DEBATE

During the reporting period, pioneering judicial verdicts, wide media coverage, and civil society advocacy drew the interest of the executive and legislative authorities. Arbitrary detention and refugee protection received unprecedented attention at the ministerial, cabinet, and parliamentary levels, a phenomenon driven by committed civil society efforts to pursue dialogue with the authorities.

Although this new official interest was itself a positive development, the results have so far been disappointing. The cabinet kept “Lebanon is not a country of asylum” as the basis for official policy and implicitly backed the administration’s current practice of arbitrary detention. MPs condemned this practice and affirmed the need for legislation to protect refugees, but they too maintained the “no asylum” policy. Furthermore, UNHCR’s efforts to protect refugees were hampered by the limitations of its formal agreement with General Security.

This chapter describes ministerial and cabinet attention to refugee protection and arbitrary detention, parliamentary debate on the topics, and UNHCR’s role.

#### HOPES AND DISAPPOINTMENT: CABINET-LEVEL ATTENTION TO REFUGEES’ PLIGHT

The pioneering verdict issued on 11 December 2009 in Yusra al-Amiri’s case was the first judicial verdict to clearly condemn the administration’s arbitrary detention of refugees. The verdict itself, coupled with the media coverage it drew and the continuing advocacy efforts of civil society, prompted cabinet-level attention and ultimately led to a dedicated inter-ministerial committee’s study of the subject.

Following the announcement of Amiri’s verdict, Interior Minister Ziad Baroud sent two letters to General Security in which he requested the

execution of the verdict in her case,<sup>98</sup> asked to be notified about other persons detained after expiry of sentence, rejected arbitrary detention and asked that officials be held accountable for it.<sup>99</sup> On the day of her release in January, it was reported from a meeting of the Parliamentary Human Rights Committee that Baroud was taking measures to release all foreigners detained after the expiry of their prison terms.<sup>100</sup>

FR and other NGOs sought to build on these positive developments, forming an *ad-hoc* solidarity movement that wrote to the president, prime minister, justice minister, and interior minister in February 2010 to appeal for an immediate end to arbitrary detention and *refoulement*. This correspondence laid out short, mid, and long-term policy recommendations for the protection of foreigners and refugees in Lebanon.<sup>101</sup>

Representatives from FR, the Lebanese Human Rights Center, and Human Rights Watch then met with the interior minister on 12 March 2010. During the meeting, the minister promised to address the issues of arbitrary detention and deportation. He expressed willingness to consider potential amendments to the 1962 Law Regulating Entry to, Stay in, and Exit from Lebanon and amendments to the MoU between UNHCR and GSD. He also agreed to freeze the deportation of asylum-seekers and refugees registered with UNHCR until a comprehensive solution had been found. He made no commitment to immediately release those arbitrarily detained, but he asked the organizations to provide policy input on the detention and deportation of refugees and asylum-seekers.

In response, the NGOs sent him a policy concept paper on 18 March 2010 specifying practical measures necessary to rectify the situation in accordance with Lebanese law and international standards. The paper explicitly addressed the administration's argument that detainees cannot

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98 The Interior Ministry has affirmed the independence of judicial authority. Asked about recidivism among car thieves sentenced to short (one or two year) prison terms, Baroud said: "I do not permit myself to interfere with a matter that relates to the judiciary. [The judiciary] issues judicial verdicts and our duty is to execute them ... our role is to work according to the direction of the Public Prosecutor's Office, and we assist in implementing the verdicts issued by the judiciary ..." *Al-Akhbar* newspaper, 18 January 2010.

99 *Al-Akhbar* newspaper, 16 January 2010.

100 *Al-Liwaa* newspaper, 19 January 2010.

101 An open letter from 14 Lebanese and international human rights organizations to the President, Prime Minister, Justice Minister, and Interior Minister regarding the arbitrary detention of foreigners and refugees in Lebanon, 24 February 2010.

be released without legal cause for presence. It proposed that this be solved either by granting temporary residency to arbitrarily detained refugees and asylum-seekers, or by releasing them and recognizing their attestations of release as temporary bases for legal presence. The paper also called for an immediate halt to the *refoulement* of UNHCR-recognized refugees and asylum-seekers.<sup>102</sup>

Unfortunately, arbitrary detentions and deportations continued despite these efforts. In response, the NGOs continued to pursue dialogue and also resorted to direct emergency communication concerning specific individual cases and violations. These efforts focused on the administration's legal obligation to execute judicial verdicts condemning arbitrary detention and ordering immediate release. After the direct communication with the interior minister and sending the policy paper mentioned above, FR submitted six letters to the Lebanese authorities addressing the cases of 35 refugees and asylum-seekers.

### **The Interior Ministry's proposal for an inter-ministerial committee**

On 26 March 2010, the interior minister wrote to the cabinet secretariat proposing the establishment of an inter-ministerial committee to study the prolonged detention of foreigners "in view of the existence of a great number of persons of various nationalities who are still being held for various crimes after the expiry of their sentences."<sup>103</sup>

The minister voiced two concerns in his letter. The first was legal: Article 32 of the 1962 Law Regulating Entry to, Stay in, and Exit from Lebanon provides for the punishment of irregular entry with imprisonment, fine, and deportation. He stated that foreigners released after serving a sentence for irregular entry and/or stay are still illegally present in the country, since their release upon sentence expiry does not regularize their status.

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102 Letter to the Interior Minister: "An initial concept for state policy on non-Palestinian refugees and asylum-seekers, presented by a group of human rights associations in Lebanon," 18 March 2010.

103 Letter from the Ministry of the Interior and Municipalities to the General Secretariat of the Cabinet. "The deportation of foreigners arrested for various crimes after the expiry of their sentences," no. 808/S, 26 March 2010.

*The fact remains that releasing foreign violators of the law's provisions does not end their being in a state of violation. Their having served the penalty, or the decision of an summary affairs judge, cannot grant them asylum because there is no [legal] text to that effect, in addition to the fact that Lebanon is not a country of asylum.*<sup>104</sup>

His second concern was that releasing foreigners who have served their sentence in this way and allowing them to stay in the country could create a kind of ‘*de facto*’ asylum, violating the principle that “Lebanon is not a country of asylum”.

*Releasing foreigners detained for various crimes after the expiry of their sentences without linking this to their deportation from Lebanese territory could turn their presence in Lebanon into ‘de facto asylum’. This could cause many illegal residents and entrants to enter prison for the crime of irregular entry or violation of the residency regime and emerge, after the expiry of their sentences, to remain in Lebanon, thereby becoming refugees, in clear manipulation of the law. This is something that the Lebanese government cannot accept.*<sup>105</sup>

However, the minister stressed that “what has occurred [i.e. arbitrary detention], even though it happened as implementation of the law,”<sup>106</sup> still constitutes a humanitarian crisis.

The minister also acknowledged that the solution proposed in the MoU between the Lebanese government and UNHCR – resettlement to a third country – is not a sufficient solution for all refugee cases.

In response to the minister’s proposal, on 14 April 2010 the cabinet formed an *ad-hoc* inter-ministerial committee headed by the prime minister and including the ministers of labour, interior and municipalities, social affairs, and foreign affairs and emigrants.<sup>107</sup>

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104 Ibid.

105 Ibid.

106 It is unclear what law the minister was referring to here, or how detention in such cases – that is, after the expiry of prison sentence – is “implementation of the law.”

107 See the second clause of decisions taken during the cabinet session held on 14 April 2010. Available at <http://www.pcm.gov.lb>.

FR and other human rights activists welcomed this inter-ministerial committee because it was the first time that the problem of arbitrary detention had received official cabinet-level attention. Under the aegis of the parliamentary human rights committee, FR held a workshop on refugee protection and Lebanon's international obligations. During that workshop, the interior minister's proposals regarding the detention of foreigners and asylum policy were debated. Representatives from the authorities and UN agencies along with experts and activists from Lebanon and abroad attended. The participants agreed on a policy paper that was then sent to the inter-ministerial committee, making recommendations that would ensure a bare minimum of protection for refugees and asylum-seekers while taking into consideration the government's concerns.<sup>108</sup> The committee also received proposals from the Justice Ministry stressing the impermissibility of the deportation of refugees and asylum-seekers.<sup>109</sup>

On 5 June 2010, the Interior Ministry sent its proposal to the inter-ministerial committee. The proposal recommended the following:

- Affirming the principle that Lebanon is not a country of asylum – neither temporary nor permanent – as the basis for all pertinent policy.
- Insisting that the provisions of the 1962 entry and residency law be applied to refugees and asylum-seekers.
- Requesting that UNHCR expedite refugee status decisions and commit to swiftly resettle recognized refugees.
- Deporting applicants who do not receive refugee status from UNHCR.
- Granting asylum-seekers a grace period of two months from the

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108 Letter from Frontiers-Ruwad Association to the Prime Minister in his capacity as head of the inter-ministerial committee formed to study the prolonged detention of foreigners: "An initial concept for state policy on the detention and deportation of foreigners and non-Palestinian refugees and asylum-seekers," 11 May 2010. This 3-page document outlined short, mid and long-term recommendations for refugee protection, including: granting temporary residency to refugees, especially those arbitrarily detained, or recognizing refugee status as legal grounds for residency; halting all administrative deportation in cases where there is no threat to national security; executing all court verdicts; holding accountable those who arbitrarily detained refugees; amending the 1962 entry and residency law to exempt refugees and asylum-seekers from 'irregular entry'; passing special legislation for refugee protection; and ratifying the 1951 UN Refugee Convention.

109 This information was given by the representative of the Ministry of Justice during FR's workshop on 17-18 June 2010.

date of their application, during which deportation procedures are suspended pending the acceptance or rejection of their application to UNHCR.

- Granting recognized refugees exceptional residency up to a maximum of one year, during which UNHCR must resettle them in a third country.
- Affirming the deportation of persons who have “not submitted asylum applications previously” and entered Lebanon illegally, with the allocation of a special budget to General Security for this end.<sup>110</sup>

The committee approved the Interior Ministry’s proposal and it was endorsed by the cabinet as a whole on 7 September 2010. The final report did not include any of the refugee protection recommendations supplied by the civil society or UNHCR.<sup>111</sup>

### **A critique of the committee’s policy conclusions**

The Interior Ministry’s concerns, adopted by the committee in its report, may be legitimate from a security perspective. However, the report did not take into consideration the Lebanese state’s obligations per its Constitution, UN membership, and ratification of human rights instruments. The following sections examine these concerns and critique the principles and proposals in the committee’s report.

#### *“Lebanon is not a country of asylum”*

“Lebanon is not a country of asylum” is the central principle of the policy set forth in the committee’s report. However, this contradicts the text of Lebanon’s Constitution, which enshrines the Universal Declaration of Human Rights and, it follows, the right to asylum stipulated clearly in Article 14 of the Declaration.

Furthermore, the “no asylum” policy does not actually deter new asylum seekers from coming to Lebanon. The reality is that asylum-seekers will

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110 Letter from the Ministry of the Interior and Municipalities to the General Secretariat of the Cabinet. “The deportation of foreigners arrested for various crimes after the expiry of their sentences,” no. 5 ,808/ص م June 2010.

111 See the first clause of decisions taken during the cabinet session held on 7 September 2010, chaired by the prime minister. Available at <http://www.pcm.gov.lb>.

continue to seek protection in Lebanon because they are driven to do so by circumstances in their countries of origin. States do not choose whether or not to be countries of asylum – rather, they choose whether or not to facilitate safe entry and asylum procedures.

Lebanon must do its part to share in the international responsibility to shelter and protect refugees. The country is not expected to provide a permanent home for them, and there are legitimate economic, social, and demographic reasons for the government's refusal to do so. However, Lebanon is obliged to provide incoming refugees with a bare minimum of protection, especially against arbitrary detention and deportation, until they can voluntarily return home or be resettled.

Although there may be legitimate concerns precluding the permanent absorption of large numbers of refugees in Lebanon, there are a limited number of cases in which this should be a possibility: refugees who have longstanding social, economic, cultural, familial, career, and other ties to Lebanon. This small number of foreigners could be granted residency based on these ties, especially in cases of male refugees married to Lebanese women.<sup>112</sup>

### *Judicial verdicts of release create 'de facto' asylum*

As noted in the Interior Ministry's proposal, the government fears that if foreigners are released in Lebanon after serving out their prison sentences, this would create a kind of '*de facto*' asylum for them in Lebanon.

These fears are misplaced. Judges do not create '*de facto*' asylum when they order detainees' release or prohibit their deportation. Rather, they are simply implementing Lebanon's existing legal obligations to the non-*refoulement* of refugees and asylum-seekers. The Lebanese state has mandated UNHCR with the power to grant refugee status to asylum-seekers arriving in Lebanon. When a judge forbids a detained UNHCR-recognized refugee's deportation, he does so based on the refugee status the detainee holds. It is not the judicial verdict that creates this refugee status, but rather the status that necessitates the verdict (or the overturning

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112 On the basis of the 2010 amendment of Decree no. 10188, 28 July 1962 Related to the Application of the Law Regulating Entry to, Stay in, and Exit from Lebanon. This amendment was made in decree no. 4186, 31 May 2010. See *Official Gazette* no. 29, 10 June 2010.

of an earlier deportation verdict, if refugee status is granted afterward). In cases where the person is not a recognized refugee but there are substantial grounds to believe he/she may be tortured or his/her life or liberty put at risk if he/she is returned, the judge forbids his deportation pursuant to Lebanon's obligations as party to the UN Convention Against Torture. Having prohibited such deportations, the judiciary has left it to the government and administration to find a suitable mechanism to regulate these foreigners' temporary stay in the country.

*The 1962 Law Regulating Entry to, Stay in, and Exit from Lebanon*

Lebanon does not have a comprehensive and integrated law on asylum,<sup>113</sup> nor is it party to the 1951 United Nations Convention Relating to the Status of Refugees. The 1962 Law Regulating Entry to, Stay in, and Exit from Lebanon contains a few limited provisions regarding asylum, but these are only rarely applied.<sup>114</sup> Thus the government argues that it is simply enforcing Lebanese law when it arrests and detains refugees and asylum seekers, treating them like any other migrants. This means prosecuting them for crimes of irregular entry and/or stay as defined in Article 32 and 36 of this law.

This official argument is half true. Although the current law does criminalize the act of irregular entry/stay, this law ignores Lebanon's international human rights obligations, including international human rights principles that have become customary, such as the exemption of asylum-seekers from the crime of illegal entry. Furthermore, as noted above, Lebanon has affirmed the Universal Declaration of Human Rights and, since it has thereby affirmed the right to asylum, ought to create a legal mechanism allowing asylum-seekers into Lebanon.

Rather than arguing that the law criminalizes illegal entry and that asylum-seekers and refugees should therefore be prosecuted and imprisoned accordingly, the Lebanese government ought to exempt them from such

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113 The 1962 entry and residency law provides for the right to seek political asylum in Lebanon, for the formation of an *ad-hoc* commission to study such requests, and for the right of a political refugee to not be deported. See Articles 26 and 31 of the Law Regulating Entry to, Stay in and Exit from Lebanon, *op. cit.* However, this is a narrow definition of asylum. See the section on parliamentary policy below.

114 To the best of FR's knowledge, these provisions have been used in only one case recently: the case of a Japanese refugee named Kozo Okomoto.

prosecution. Furthermore, the illegal entry of foreigners in general ought to be considered an administrative misdemeanor rather than a criminal infraction.

*Unrealistic expectations placed on UNHCR*

The policy adopted by the inter-ministerial committee focuses on expediting UNHCR decisions on refugee status. The agency is expected to, within one year, either accept asylum-seekers and resettle them in a third country, or deny them refugee status so that authorities can deport them back to their countries of origin. This was essentially a reiteration of the provisions already present in the MoU signed by the Lebanese government and UNHCR.

These provisions have already been proven to place unrealistic expectations on UNHCR. Although the agency has over the past two years been able to resettle around 4,000 refugees from Lebanon,<sup>115</sup> it cannot resettle all refugees within this short time limit. Furthermore, the policy does not clarify the fate of applicants who are granted refugee status but cannot be resettled within one year. Resettlement is indeed one way to share in the international responsibility toward refugees, and it is true that the international community must help share Lebanon's burden. However, Lebanon must also accept its share of this burden, at least until the factors driving refugee movement abate and refugees in Lebanon are able to return to their countries of origin.

*Voluntary return: Not an option for most refugees in Lebanon*

UNHCR stipulates two conditions for voluntary return to countries of origin: the availability of national protection in the country without need for international protection, and the possibility of return in safety with dignity.<sup>116</sup> UNHCR currently takes the position that the countries of origin for most refugees in Lebanon do not meet these conditions.

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115 UNHCR Statistical Report on UNHCR Registered Iraqis in the Region, 31 August 2010. Available at <http://www.iauiraq.org/documents/1059/Monthly%20Statistical%20Report%20on%20UNHCR%20Registered%20Iraqis%2031%20Aug%202010.pdf>.

116 *Global Consultations on International Protection/Third Track: Voluntary Repatriation*. Issued by the UN High Commissioner for Refugees, 25 April 2002, EC/GC/02/5. Available at <http://www.unhcr.org/refworld/docid/3d62695d4.html>.

UNHCR stated in July 2010 that the security situation in Iraq is still unsuitable for the voluntary return of Iraqi refugees in safety. The agency therefore continues to call for the provision of international protection to Iraqi refugees.<sup>117</sup> Concerning Sudanese refugees from Darfur, UNHCR maintains its 2006 policy asking states to protect them in cases where they do not individually qualify for refugee status, thereby recognizing the impossibility of these refugees' return.<sup>118</sup>

Furthermore, international norms do not recognize as valid the "voluntary return" of persons who have been deprived of their liberty and will: any possibility of 'voluntarism' disappears when return occurs from detention. UNHCR affirms this principle in its rejection of collective and individual voluntary return operations of detained persons of concern.<sup>119</sup>

Although UNHCR Beirut does not have an active voluntary return program, it does assist individuals who ask of their own accord to be returned to their country of origin, including Iraqis.<sup>120</sup> The organization is offering up to 500 USD to Iraqi families who wish to return home. This assistance is not extended to detainees. In contrast with UNHCR's position, the Iraqi embassy in Lebanon is actively assisting Iraqis in returning to Iraq, especially from detention. It covers the travel costs and General Security exempts these returnees from exit tax.<sup>121</sup>

### *Lack of constraints on deportation*

As noted above, the Interior Ministry position endorsed by the committee affirms the deportation of irregular entrants who have "not submitted asylum applications previously." By exposing them to prosecution and detention, this position prevents persons with legitimate refugee status claims from applying for asylum with UNHCR.

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117 Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines, *op. cit.*

118 UNHCR's Position on Sudanese Asylum-Seekers From Darfur. Issued by the UN High Commissioner for Refugees, 10 February 2006. Available at <http://www.unhcr.org/refworld/docid/43f5dea84.html>.

119 UNHCR Handbook - Voluntary Repatriation: International Protection, 1996, para. 2.3. Available at <http://www.unhcr.org/3bfe68d32.pdf>.

120 According to UNHCR reports on return to Iraq, there was no assistance for returnees to Iraq before May 2010. See, for example, the UNHCR August 2010 statistical report on registered Iraqis, *op. cit.*

121 Meeting with the consul of the Iraqi embassy in Lebanon, 8 March 2010.

It is dangerous that the report specifies deportation as a potential solution without establishing clear constraints. Deportation should require a judicial verdict, as well as confirmation that the deportee is not an asylum seeker or a documented refugee who may face persecution in his/her country of origin, or any person who may face torture if returned.

In its 8 July 2010 session, the cabinet approved a 200 million LL budget for the General Security General Directorate for the deportation of foreigners whose sentences expired during 2010.<sup>122</sup> This was done without specifying that a judicial verdict is required for deportation. It was also done with no mention of the fact that administrative expulsion (deportation without a court verdict) is legally possible only in cases where there is a threat to national security, and must be done under the Interior Ministry's supervision.

### **The cabinet's conclusion: New wine in old bottles**

In short, although cabinet-level attention to the issue of prolonged detention was a positive development, the result was ultimately disappointing. The inter-ministerial committee merely affirmed the administration's position that "Lebanon is not a country of asylum" and confirmed General Security's practice of deportation without acknowledging judicial or legal constraints, or recognizing Lebanon's obligations to non-*refoulement* and Article 3 of the UN Convention Against Torture. The committee's report did not address the heart of the problem, which is the prolonged detention of foreigners after the expiry of their sentences. It completely disregarded pioneering judicial verdicts in favor of personal liberty and the administration's *refoulement* of refugees.<sup>123</sup>

### **Further disappointment: The futility of direct appeals to the Interior Ministry**

Civil society's disappointment with the inter-ministerial committee's outcome was part of broader disappointment with authorities' response to

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122 See the decisions made by the cabinet in its 8 July 2010 session, available at <http://www.pcm.gov.lb>. See also Decree no. 4719 on 31 July 2010 for the "Transfer of Credit From Public Budget Reserves to the Budget of the Ministry of the Interior and Municipalities – General Security for 2010 on the Basis of the Twelfth Rule," *Official Gazette* no. 38, 12 August 2010.

123 FR made these points publicly in a press statement issued on 8 September 2010 entitled "The policy of no policy?" Available at [frontiersruwad.wordpress.com](http://frontiersruwad.wordpress.com).

pleas for refugee protection. During the reporting period, FR submitted appeals on behalf of 59 detained refugees and asylum seekers to the Interior Ministry regarding arbitrary detention cases. Four of these were also submitted to the Prosecutor-General's Office and one to the Higher Judicial Council. FR only ever received six replies to these appeals, all of which merely acknowledged the appeal without acting to protect the refugee or the asylum-seeker in question.

The majority of these 59 detainees were Iraqis, and the remaining included nationalities such as Sudanese, Egyptian, Somali, Ethiopian, as well as some stateless persons. The majority were prosecuted for irregular entry/stay; a few of them for other crimes; and others for violating an expulsion order. Ten of them were never brought before a judge, despite the expiration of the legally prescribed detention period at the police station.

FR received replies concerning six cases from the Interior Minister and the Prosecutor-General. These responses were merely forwarded correspondence from General Security that confirmed that the persons in question were in GSD custody and listed their case history. None of the responses provided an explanation of the legal grounds for their detentions.<sup>124</sup> The Higher Judicial Council had not responded to the case submitted to it at the time of writing.

Unfortunately, appeal to the authorities about arbitrarily held refugees and asylum-seekers often seemed futile. Thirty of these 59 detainees were deported during the reporting period, even though not all of them were judicially sentenced to deportation. Of the rest, one died during detention, seventeen were released on an unclear basis, and eleven were still arbitrarily detained at the time of writing.

## UNCHANGED POLICY: *REFOULEMENT* CONTINUES

The inter-ministerial committee's disappointing conclusions were highlighted by General Security's continued *refoulement* of refugees following the committee's report in September 2010. Alaa as-Sayyad, an Iraqi refugee recognized by UNHCR, was forcibly deported to Iraq on 10 November 2010 after spending around two years in arbitrary prolonged detention after

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124 Letter from the Prosecutor General's Office to FR, no. 2437/m/2009 dated 2009/7/8.

the expiry of his sentence for irregular entry. This occurred in spite of two court orders for his release and two court orders forbidding his deportation.

Sayyad was arrested for the first time on 13 June 2007 and prosecuted for irregular entry. Eight months after finishing his sentence, he was released on 17 April 2008 on the basis of regularization procedures after UNHCR and General Security reached an agreement whereby the latter paid the release fees. On 21 October 2008 he was arrested again and prosecuted a second time for irregular entry.<sup>125</sup>

After the expiry of his second sentence, Sayyad remained in prolonged detention without any legal basis. He was repeatedly pressured to agree to his return, but refused to return to a place where he knew his life would be in danger. Eventually General Security forcibly took him to the airport, telling him that if he told the aircraft captain that he did not want to travel, he would not be deported.<sup>126</sup> Once at the airport, the officers beat Sayyad until he passed out. He regained consciousness on board the aircraft.

Sayyad was forcibly deported despite court orders blocking his deportation and ordering his release. He received these favorable rulings in two court cases: his own lawsuit against General Security for arbitrary detention, and his trial on charges of violating an administrative expulsion order.

Sayyad's lawyer filed a lawsuit before the summary affairs judge in Beirut on 8 March 2010, challenging his client's detainment as arbitrary infringement of personal liberty. General Security at first responded by attempting to extract Sayyad's agreement to "voluntary return", but he refused. The GSD then filed charges against him with the Prosecutor General's Office on 31 March 2010, accusing him of violating an expulsion order.<sup>127</sup> General Security took this step in order to obtain a sentence legitimating Sayyad's continued detention.

The prosecutor general referred this case to court, where the defense lawyer requested Sayyad's release. On 14 April 2010, the judge ordered

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125 This was a clear violation of the general principle of law that one may not be prosecuted for the same crime twice (double jeopardy) and Article 182 of the Lebanese Penal Code, *op. cit.*

126 Aircraft rules forbid the pilot from accepting on board any person who is not traveling of his own free will, in order to preserve the flight's safety.

127 Pursuant to Articles 17 and 34 of the 1962 entry and residency law, *op. cit.*

that Sayyad be released on bail, but GSD refused to execute the order.<sup>128</sup> On 17 May 2010, the judge issued his final decision, dropping the charges on the grounds that the expulsion order was invalid and ordering Sayyad's immediate release.<sup>129</sup> The prosecutor general did not appeal this decision and it therefore became irrevocable.

Meanwhile, the summary affairs judge considering Sayyad's own lawsuit in Beirut had issued an order on 15 May 2010 forbidding his deportation until his case had been decided.<sup>130</sup> General Security was notified of this and simply stated that it had nothing to do with the case.

Despite Sayyad's receiving court verdicts in his favor as both defendant and plaintiff, General Security continued to arbitrarily detain him and eventually forcibly deported him as described above, ostensibly on the basis of a decision by the General Security Director-General.<sup>131</sup> The GSD justified this by citing the cabinet's endorsement of the inter-ministerial committee's report<sup>132</sup> and the MoU signed with UNHCR, which states that after a one-year period, if the refugee is not resettled by UNHCR, he or she is at the GSD's disposal.<sup>133</sup>

## PARLIAMENTARY ATTENTION AND THE CONTRAST WITH MPS' STANCES IN 1962

### **A specialized parliamentary committee session on the day of al-Amiri's release**

Inspired by media coverage of Yusra al-Amiri's case, the parliamentary

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128 Decision by Single Penal Judge in the Metn Tanios as-Saghibini in the case of Alaa as-Sayyad, 14 April 2010.

129 Single penal judge decision in Alaa as-Sayyad's case on 17 May 2010, op. cit.

130 Decision by Summary Affairs Judge in Beirut Nadim Zouein in the case of Alaa as-Sayyad, 15 May 2010.

131 See the statement of General Security General-Directorate issued on 13 November 2010, available as follows: "General Security responds: The Iraqi detainee was not tortured or beaten," *Tayyar.org* website, 13 November 2010, at <http://www.tayyar.org/Tayyar/News/PoliticalNews/ar-LB/amen-3am-pb-950295528.html>; also "General Security: The Iraqi detainee passed all legal deadlines and was not tortured or beaten," *The Lebanon Files* website, 13 November 2010, at [http://lebanonfiles.com/news\\_desc.php?id=199517](http://lebanonfiles.com/news_desc.php?id=199517). See also *Al-Akhbar* newspaper, 13 November 2010.

132 Citing the cabinet's 7 September 2010 decision to approve the report, op. cit. See also *Al-Akhbar* newspaper, 15 November 2010.

133 See the UNHCR policy section at the end of this chapter.

human rights committee held a session on arbitrary detention on the day of her release (18 January 2010). Interior Minister Ziad Baroud and the head of the General Security Bureau of Investigations and Procedures attended.

According to media reports, the session discussed the situation of foreigners like al-Amiri who were detained after the expiry of their prison sentences. As noted above, The Interior Minister reportedly said that he was taking measures to end arbitrary detention and the parliamentary committee also decided to visit prisons and temporary holding facilities run by the defense and interior ministries.<sup>134</sup>

### **Discussion of the Background Paper on non-Palestinian Refugees in Lebanon**

The committee addressed arbitrary detention twice in 2010 in discussion of the Background Paper on the Protection of the non-Palestinian Refugees in Lebanon. This document constitutes part of the National Human Rights Action Plan, which had been drafted five years before by an independent expert and updated with input from UNHCR, MPs, General Security, the Interior Ministry, and civil society.<sup>135</sup>

At the committee's invitation, these discussions included relevant ministries, delegates from UNHCR and UNHCHR, representatives from the Internal Security Forces and General Security, individual experts and NGOs working with refugees. Although the background paper presents a comprehensive plan for the protection of refugees, a large portion of the first meeting was spent discussing prolonged arbitrary detention. The MPs present, from across the political spectrum, agreed that detention was impermissible after the expiry of judicial sentences and that judicial verdicts should be executed.<sup>136</sup> They were unanimous that while Lebanon cannot absorb a large number of refugees and is not a "country of asylum," a law should be enacted to provide a legal framework for basic protection

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134 *Al-Liwaa* newspaper, 19 January 2010.

135 The Background Paper was drafted by Samira Trad, expert in refugee law and refugee situation in Lebanon. See parliament's website: <http://www.lp.gov.lb/DownloadPageAr.aspx?id=7290#>; see also draft zero of the Action Plan at <http://www.lp.gov.lb/Client%20Resources/Download%20Pages/7290%5CFinal-Draft%20NHRAP.docx>.

136 Remarks by MPs Michel Moussa, Sami Gemayel, Nawaf Moussawi, Atef Majdalani and Serge Torsarkissian during the Parliamentary Human Rights Commission's deliberations on the National Plan for Human Rights, 25 November 2010.

for asylum seekers and refugees in Lebanon. They also agreed that the parliament should assert its constitutionally mandated monitoring and accountability role over governmental policy and administrative practice on the issue.

### **The contrast with MPs' stances in 1962**

This attention paid by MPs to the topics of arbitrary detention and refugee protection was reminiscent of parliamentary debates in 1962 over the Law Regulating Entry to, Stay in, and Exit from Lebanon. However, the stances described above contrast with those taken in 1962, when MPs agreed that Lebanon ought to be a haven of liberty for refugees fleeing persecution.<sup>137</sup>

As a result of this debate, the 1962 law recognized the right to asylum, but on a limited political basis: "Any foreigner prosecuted or sentenced for a political crime by a non-Lebanese authority, or whose life or liberty is threatened for political reasons, can request to be granted the right of political asylum."<sup>138</sup>

This legislation did not consider the possibility that large numbers of refugees might flee to Lebanon for reasons related to their ethnic, religious, or social identity – that is, for reasons that have broad political significance but do not match the narrower senses of "political crime" and "political reasons" as intended by those who drafted the law. Furthermore, the law specifies that an *ad-hoc* committee consider asylum applications: it does not create a comprehensive legal framework or institutional process for such applications.

### **1962 MPs' concern over General Security's administrative expulsion power**

The focal point of the 1962 debate was Article 17 of the draft bill, which granted the Director-General of General Security the power of

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137 See statements by MPs Louis Abu Sharaf, Emile Bustani, and Sleiman al-Ali recorded in official parliamentary minutes of the third session of the first extraordinary meeting of the tenth legislative round in 1962. See also statements by MPs Bahij Taqieddine and Nuhad Boueiz in the minutes from the fourth session.

138 Article 26 of the 1962 entry and residency law, *op. cit.* This law merged two draft bills that were originally separate: one regulating entry and residency and the other addressing asylum.

administrative deportation - that is, the power to expel a foreigner from the country without reference to the judiciary in cases where there is a threat to “public security and safety.”

Several MPs argued that the parliament should not cede such unregulated power to the executive authority’s administration because parliament could not summon the DG for questioning. They argued that if the interior minister were summoned by parliament regarding a deportation, he could simply point out that the law gave this power to the DG and did not give the interior minister the power to change his decisions. They also noted that the clause’s definition of “public security and safety” was so vague and broad as to give the DG wide powers to deport almost any foreigner at his own discretion.<sup>139</sup>

Amendments were proposed that would grant this power to the interior minister rather than the DG and grant foreigners the right of appeal before a committee with ministerial and administrative representation. However, the version of the law that was passed contained the original wording and required that the General Security DG notify the interior minister of all expulsion decisions. The minister has the power to amend and/or cancel the GSD deportation order. It should be noted that the concerns voiced by legislators during these parliamentary debates indicate their intentions and ought to be taken into consideration when interpreting the law.

## THE UNHCR-GSD MEMORANDUM: INSUFFICIENT PROTECTION FOR REFUGEES

UNHCR operates in Lebanon on the basis of an MoU signed in 2003 with General Security.<sup>140</sup> Unfortunately, the memorandum’s provisions do not provide sufficient protection to refugees in Lebanon. For example, it does not ensure that refugees and asylum-seekers are not prosecuted for irregular entry or explicitly specify Lebanon’s commitment to non-*refoulement*.

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139 See statements expressing this concern by MPs Muhsin Slim, Ahmed Isber, Emile Bustani, Sleiman al-Ali, and Raymond Edde in the minutes from the third and fourth sessions, op. cit.

140 This MoU has been endorsed in a decree signed by the Lebanese president, prime minister, and minister of the interior. Conclusion of a Memorandum of Understanding between the Directorate General of General Security and the Regional Office of the United Nations High Commissioner for Refugees Concerning the Processing of Cases of Asylum Seekers Applying for Refugee Status with the UNHCR Office. Decree no. 11262, 30 October 2003. See *Official Gazette* no. 52, 13 November 2003.

The MoU does not recognize the protection granted by UNHCR to refugees fleeing generalized violence, places tight time constraints on UNHCR's decisions on refugee status, and requires resettlement within a maximum of one year from the date of registration.<sup>141</sup>

Per the MoU, General Security grants registered asylum seekers who meet the conditions a temporary circulation permit card valid for three months only. Once UNHCR grants refugee status, the validity of the circulation permit can be extended an additional six to nine months (with the total period not exceeding 12 months). During this time period, UNHCR is expected to find a suitable solution for the refugee (usually resettlement in a third country). After twelve months, "General Security will have the right to take the appropriate legal measures."<sup>142</sup> This means, for example, that it may prosecute the foreigner for irregular entry and/or deport him/her.

In practice, General Security does not systematically issue circulation permits on time. As a result, recognized refugees and asylum-seekers whose cases are under study at UNHCR are frequently arrested and held.

### **The *prima facie* protection gap**

The MoU also does not cover UNHCR's extended mandate to grant complementary protection and *prima facie* refugee status to asylum-seekers from a particular country due to widespread violence. This has been done in recent years for refugees from Iraq after the fall of Saddam Hussein's regime in 2003 and for Darfuris from Sudan. This legal gap in the MoU's provisions has led to many arrests, prolonged arbitrary detentions, and deportations under the pretext of "voluntary" return.

### **UNHCR access to refugees and asylum-seekers behind bars**

UNHCR's mandate under this MoU includes refugees or asylum-seekers who are detained by the authorities. However, UNHCR does not have automatic access to General Security detention locations when it needs to interview persons of concern. Per the MoU, General Security must notify the agency when it detains asylum-seekers and the agency can formally

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141 For more details, see FR comments on MoU on FR website: [www.frontiersruwad.org](http://www.frontiersruwad.org).

142 See clause 9 of the MoU between GSD and UNHCR, *op. cit.*

request authorization for interviews.<sup>143</sup> However, in practice GSD does not automatically or systematically notify UNHCR of such detentions. In many cases, notification does not take place even if the arrestee shows a UNHCR certificate and requests that UNHCR be informed of his or her arrest. Since UNHCR does not maintain a phone hotline after working hours, refugees and asylum-seekers arrested at night cannot immediately notify the agency of their arrest. UNHCR usually learns about such detentions from NGOs and detainees' friends and families.

### **UNHCR efforts to improve refugees' legal status**

Over the years, UNHCR has attempted to improve refugees' legal situation via dialogue with the authorities and amendment of the MoU. UNHCR has been advocating for exemption of asylum-seekers and refugees from the crimes of irregular entry and stay pursuant to international norms.<sup>144</sup> In late 2008, it submitted to the Interior Ministry a draft amendment for the 1962 entry and residency law. The relevant authorities appeared willing to negotiate terms in order to reach an agreement acceptable to all parties. However, the issue is still under study at the ministry at the time of writing.<sup>145</sup>

These efforts by UNHCR often run aground on the mindset, prevalent among officials, that Lebanon is not a country of asylum, that notions to the contrary are dangerous, and that refugees' situation in Lebanon is not a humanitarian crisis that harms the country's image.

### **Resentment among refugees**

UNHCR's difficulties in fulfilling its protection mandate also generate feelings of resentment among refugees, some of whom accuse the agency of "collaboration" with the authorities for the issue of refugee certificates

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143 Clauses 11 and 12 of the MoU between General Security and UNHCR, *ibid*.

144 International norms require that refugees not be prosecuted for entering the territory of a state illegally when they are seeking asylum. See UN General Assembly resolutions A/RES/35/41A in 1980 (<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/390/60/IMG/NR039060.pdf?OpenElement>) and 44/137 in 1989 (<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/548/96/IMG/NR054896.pdf?OpenElement>), as well as a UNHCR statement in 1986 (<http://www.unhcr.org/refworld/docid/3ae68c43c0.html>).

145 Statement by an Interior Ministry representative in a meeting organized by the Migration Working Group of the Euro-Mediterranean Human Rights Network, Beirut on 3 November 2010.

that they feel have no real value. The following quotes from refugee testimonies demonstrate some of their frustrations:

- *As for the second injustice, which I consider to be harsher and crueler, it is the injustice of the UN as represented by UNHCR. I cannot express how worried, grieved, and frustrated I am with [the UN]. I do not know how an agency that represents the highest international body can stand there and watch without doing anything about our sufferings. It neglects its work and it ought not to. Three months in General Security and not one of [UNHCR's] employees was delegated to visit and meet with us.<sup>146</sup>*
- *I went through nine months' detention and it felt like eternity itself. I was hoping in the end that I would obtain my liberty. But all their [UNHCR's] promises were lies and their hopes were delusions, like they were playing a game with us.<sup>147</sup>*
- *They called my name [in the General Security police station] and they asked me if I wanted to travel. I said no. The next day they called my name again and said the UN wanted to meet us. However, instead they took me to Baabda before the public prosecutor. I asked one of the soldiers and he told me that [my] charge was "violation of an expulsion order." I stayed there around two hours, then I was taken to Rumieh Central Prison. After two or three days, they came from the UN to visit me. [...] I told him [the UN employee] that I had a verdict for "immediate release." He replied that "General Security does not recognize anything and the UN is negotiating with them. If you want to travel [return to your country], then travel."<sup>148</sup>*
- *I went on hunger strike for three days and Caritas allowed me to call the UN and talk with [a UN employee]. She asked me "do you have a deportation order?" I asked her about the verdict in the lawsuit against General Security and she said that the verdict had been issued but she did not know what it was. She told me that my situation was better than the*

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146 An Iraqi refugee's testimony to FR in 2010.

147 An Iraqi refugee's testimony to FR in 2010.

148 An Iraqi refugee's testimony to FR in 2010.

*guys who had received court verdicts for deportation and that "we will tell you about the solution when we get it."*<sup>149</sup>

- *I went on a hunger strike for three days in Aley Prison [transferred to Aley prison on 18 May 2010]. My demands were my release and an interview with the UN. The UN had not interviewed me since my arrest [on 31 January 2009]. I would run into them by chance in Rumieh [Prison] and when I asked them about my file, they would tell me that it was with the judiciary. When they said this I felt that they had abandoned me. The UN should have appointed a lawyer in the first week [after arrest] to attend the initial interrogation and know the status of my [judicial] file. After I stopped the hunger strike, a person came from UNHCR and interviewed me. He asked me if I could return to Iraq and told me that it would be better if I returned because General Security did not want to release me. I told him that I wished I could return but I cannot. People think that I came here by choice ...*<sup>150</sup>
- *Once I saw one of them [from UNHCR] and asked him about my situation [detention]. He told me that it was difficult because I had a deportation [court verdict] unlike the other guys. I said yes, I have deportation but I have two release orders too. He told me, "Travel." I said, after all this time you tell me that? This was about a month before I was released.*<sup>151</sup>

## **Civil society assistance in tandem with UNHCR**

A number of NGOs work with UNHCR as implementing partners, providing mostly socio-economic assistance to refugees. Human rights NGOs also notify the agency about arrests of asylum seekers and refugees, threats of deportations, medical problems and other issues raised by detainees. Such subjects are discussed in regular meetings between UNHCR and the NGOs.

Given that UNHCR deals directly with General Security on the basis of a signed MoU, the agency ought to take a public stance on complaints

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149 An Iraqi refugee's testimony to FR in 2010.

150 An Iraqi refugee's testimony to FR in 2010.

151 An Iraqi refugee's testimony to FR in 2010.

by NGOs regarding the administration's practice of arbitrary detention. FR intensified its protection work in the latter half of 2009 and in 2010, eliciting many reactions from General Security, particularly in Yusra al-Amiri's case. In some cases these reactions negatively affected FR's relationship with UNHCR. However, the association continued to notify UNHCR of all developments concerning detained refugees and asylum-seekers in order to protect them. UNHCR's policy, set by its headquarters in Geneva, focuses on strengthening partnership between UNHCR and civil society, particularly mechanisms for cooperation and information sharing to better protect refugees.

## THE INTERNATIONAL COMMUNITY AS AN ALLY IN REFUGEE PROTECTION

As well as coordinating with UNHCR, FR and other Lebanese NGOs also communicated with the EU and the UN regarding refugee protection challenges in Lebanon.

### **Communication with EU officials**

Since the EU provides the Lebanese state with assistance in border control and prison administration, FR met with EU officials and discussed the Lebanese judiciary's condemnation of arbitrary detention, the administration's refusal to execute court orders, and the absence of an effective refugee protection regime in Lebanon.<sup>152</sup>

FR raised worries that promised EU funding for a new General Security police station would not put an end to the arbitrary detention of foreigners. The EU officially responded that it is not financing the construction of such a "detention center," but is instead funding a feasibility study to ensure conformity with international human rights standards and Lebanese laws regulating detention and imprisonment.<sup>153</sup> The funding for the improvement of the conditions of such a "detention center" would come via NGOs such as Caritas and ICMPD.

FR also voiced concern that European Agency for the Management of

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152 FR held a number of meetings with various EU agencies in Brussels in 2009 and 2010 to discuss arbitrary detention in Lebanon and the role of the EU in influencing this policy.

153 Ibid.

External Borders (Frontex)<sup>154</sup> assistance in Lebanon's border administration (currently underway without a memorandum of understanding) might involve *refoulement* of asylum-seekers before they can apply to UNHCR. EU officials confirmed that Frontex's assistance will not involve such operations.

## Communication with the United Nations

### *Cases submitted to the UN Working Group on Arbitrary Detention (UNWGAD)*

FR submitted to the UNWGAD 36 communications during the reporting period regarding 33 arbitrarily detained refugees and asylum-seekers.<sup>155</sup> Three of these cases were submitted twice due to the exceptional length of their detention. Of this group, seven individuals were still being held arbitrarily at the time of writing; 12 had been deported despite being UNHCR persons of concern; one died in prison;<sup>156</sup> and 13 were released. The legal basis for these releases was never made clear.

### *Submissions to the Universal Periodic Review of Human Rights for Lebanon*

NGOs submitted reports to the UN Human Rights Council in preparation for Lebanon's Universal Periodic Review (UPR)<sup>157</sup> session, which

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154 The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, established in 2004. It is the agency responsible for executing the migration monitoring and control policy set by the EU. For more information, visit <http://www.frontex.europa.eu/>.

155 Their periods of detention ranged from between one and 30 months. Seven of them had been detained without a court hearing and the rest had been held after the expiry of their prison sentences. Twenty-four of them were of Iraqi nationality, including one woman. Four were Sudanese, two were Somali, one was Egyptian, one had no nationality, and one was an Ethiopian woman married to a Sudanese refugee who had been detained with her daughter. The majority had been convicted of irregular entry, while others had been convicted of irregular stay or violating an expulsion order.

156 This refugee, an Egyptian national, was arrested four times for irregular entry. His final arrest was on 18 August 2009, after which he was sentenced on 16 September 2009 to one month's imprisonment (toward which his pre-trial detention was counted), a 250,000 LL fine, and deportation. He had finished his prison sentence and paid his fine by mid-October 2009. He died in Rashaya Prison on 23 January 2010.

157 The Universal Periodic Review is a mechanism allowing civil society organizations to submit reports to the UN Human Rights Council and ask member states to raise specific issues for discussion in session.

was held in November 2010. FR initiated a coordination process for the writing of a comprehensive report on human rights in Lebanon, as well as thematic reports on torture, trials, and arbitrary detention.<sup>158</sup> The latter report recommended that the Lebanese state stop arbitrary detentions and establish a national preventive mechanism pursuant to the Convention Against Torture's optional protocol. It also called for an independent public investigation into officials who infringed personal liberty without legal cause.

FR also submitted its own report on the protection of refugees, asylum-seekers, and stateless persons in Lebanon. It recommended the amendment of the 1962 entry and residency law to exempt refugees and asylum-seekers from the crime of irregular entry; the creation of a new law regulating refugee protection in Lebanon; and the amendment of nationality laws to keep pace with the developments related to nationality and citizenship since the 1960s and to conform to international standards.<sup>159</sup>

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158 A copy of the UPR reports is available at [www.frontiersruwad.org](http://www.frontiersruwad.org).

159 A copy of the report is available at [www.frontiersruwad.org](http://www.frontiersruwad.org).

## CHAPTER THREE

### WILL THE VICTIM'S VOICE BE EVER HEARD?

#### TAKING REFUGE IN DETENTION: REFUGEES FALL VICTIM TO THE "LEBANON IS NOT A COUNTRY OF ASYLUM" POLICY

FR has closely followed the cases of hundreds of detained refugees and asylum-seekers and has recorded many of their testimonies. This chapter describes refugees' experience based on their own accounts and in their own words, highlighting the specific legal and human rights violations they experience.

The first section paints an overall picture of the plight of non-Palestinian refugees in Lebanon; the second section uses refugee accounts to highlight specific violations; and the third section contains two detailed case studies illustrating the administration's determination to arbitrarily detain and/or deport refugees despite UNHCR recognition.

#### **Refugees' precarious legal situation in Lebanon**

Lebanon hosts a disproportionately large number of refugees relative to its geographic and demographic size. In addition to an estimated 400,000 Palestinian refugees in Lebanon, the number of non-Palestinian refugees and asylum-seekers present in the country is estimated at between 20,000 and 40,000. As of September 2010, 9,768 persons were registered with UNHCR. More than 80% of these were from Iraq.<sup>160</sup>

With the exception of 1948 Palestinian refugees registered with the Lebanese authorities and UNRWA, there is no effective legal framework for the protection of refugees and asylum-seekers in Lebanon.<sup>161</sup> Even the 2003 memorandum of understanding between UNHCR and GSD does not provide adequate protection.<sup>162</sup>

Despite this precarious legal situation, Lebanon continues to witness an

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160 UNHCR Statistical Report on UNHCR Registered Iraqis in the Region, 31 August 2010, *op. cit.*

161 See Chapter One.

162 See Chapter Two.

influx of refugees fleeing unbearable conditions in their home countries. Many enter Lebanon using the dangerous services of smugglers, since it is difficult for asylum-seekers to enter legally to seek asylum, particularly when they come from countries the Lebanese state considers “refugee sources”. When they do manage to enter legally on tourist visas, they are unable to obtain residency by claiming asylum. Residency in Lebanon is granted on the basis of strict criteria, limited to purposes such as employment or enrollment in a Lebanese educational institute.<sup>163</sup> When refugees and asylum-seekers apply to General Security for residency, they are asked to show documentation from UNHCR proving that their file at the agency has been closed.<sup>164</sup>

Refugees and asylum-seekers thus find themselves unable to maintain legal presence in the country, forcing them into irregular stay and illegal employment. Their precarious legal situation makes them vulnerable to exploitation and blackmail by their sponsors and places them under continual threat of arrest for irregular entry and/or stay, as well as prolonged arbitrary detention. Resettlement and/or deportation back to the countries from which they fled seem to be the only official “solutions” available to them.

Between 2009 and 2010, FR learned of the detention of more than 300 asylum-seekers or refugees. The great majority were documented refugees who had been detained for illegal entry or stay. Others were originally arrested due to simple administrative violations, such as working without a work permit or for an employer who was not their proper sponsor. Almost half of them were detained prior to 2009. Many of them were arbitrarily detained after the expiry of their prison sentences. At the time of this report’s writing, around 70% of them have been either released, resettled in a third country, or deported back to their country of origin – either forcibly, or under the pretext of “voluntary return.”

The “voluntary return” of refugees and asylum seekers (mostly Iraqis) at their embassies’ expense continued at an average rate of ten persons per

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163 See the General Security website at <http://www.general-security.gov.lb/Arabic/Stay/Pages/stay9.aspx>.

164 FR has a number of documented testimonies to this effect.

month during the reporting period.<sup>165</sup> These persons agreed to return because they had no other way to escape arbitrary detention. At least 50 UNHCR persons of concern (either recognized refugees or asylum-seekers) were forcibly deported or “voluntarily” returned during the reporting period. A number of them had received judicial verdicts ordering their immediate release or stopping their deportation. Some received verdicts blocking deportation after they had already been deported, while others received verdicts of compensation for their arbitrary detention. Three Iraqi refugees were deported by administrative decision despite the fact that it was never proven that they posed any threat to national security – the condition stipulated by law for administrative decision of deportation.

There are no official statistics on arbitrary detention and deportation in Lebanon. There is no national oversight mechanism and NGOs’ ability to track cases is severely limited. The numbers given here represent the information that FR was able to obtain. They should not be taken as comprehensive or final statistics, but rather as general indications of the worrying nature of the administration’s policy and practice.

## DOCUMENTATION OF SPECIFIC LEGAL AND HUMAN RIGHTS VIOLATIONS

Personal accounts recorded by FR document how Lebanese authorities takes refuge in detention to implement its policy “Lebanon is not a country of asylum” and thus violate international obligations and Lebanese law throughout the course of refugees and asylum-seekers’ arrest, detention, sentencing, imprisonment, and deportation. This section also describes the arbitrary nature of releases and the difficulties asylum applicants have in interacting with UNHCR.

### **Non-recognition of refugee certificates**

Despite the fact that the Lebanese government has mandated UNHCR with refugee recognition in Lebanon, the authorities routinely ignore UNHCR certification of refugee or asylum-seeker status. During arrests or at police checkpoints, officers refuse to recognize these documents, as shown by the following testimonies:

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165 Meeting with the consul of the Iraqi embassy in Lebanon, 8 March 2010.

*After involvement in a car accident:*

*When I had the accident, I told the officers who arrested me that I was a refugee. I had my Iraqi passport and UNHCR refugee certificate... I showed them my refugee certificate. They replied, "This document is meaningless to us - to us, you are illegal". I insisted and asked, "What about the UNHCR certificate?" They said, "We do not recognize it".*<sup>166</sup>

*When arrested by plainclothes Internal Security Forces officers:*

*They asked about my residence permit. I said I do not have one, but I have a protection certificate issued by the United Nations. They told me, "That does not work for us. The United Nations is lying to you by saying they will resettle you. They won't".*<sup>167</sup>

*When arrested at an Internal Security Forces checkpoint:*

*I only had my UNHCR certificate. I presented it and told the officers that I am an Iraqi recognized as a refugee. They replied, "We neither acknowledge this certificate nor accept it". I also told the interrogator to verify with UNHCR that I was a refugee. He refused and said, "I don't care about these things".*<sup>168</sup>

*When arrested by the army:*

*We were stopped at a Lebanese army checkpoint [...] they asked my employer about me. When he told them I was Iraqi, they asked me to show my documents. I showed them my Iraqi ID and told them I was a recognized refugee registered with UNHCR. They said, "We have nothing to do with the United Nations. We do not know or recognize it".*<sup>169</sup>

*During interrogation at an Internal Security Forces station:*


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166 Testimony of an Iraqi refugee to FR in 2010.

167 Testimony of a Sudanese refugee to FR in 2010.

168 Testimony of an Iraqi refugee to FR in 2010.

169 Testimony of an Iraqi refugee to FR in 2009.

*They insulted me [...] I told them I was a refugee and showed them my refugee certificate. They did not acknowledge it.*<sup>170</sup>

## **Disrespect of arrest and interrogation procedures**

Lebanese authorities regularly fail to respect due process when making arrests and violations are often reported by the Lebanese press.<sup>171</sup> Human rights organizations raised this issue with the UN Human Rights Council during Lebanon's Universal Periodic Review. Refugees are frequently arrested outside the legally prescribed hours, not read their rights, not allowed to make phone calls when arrested, not allowed to read their interrogation reports before signing them, and not told the grounds for their arrest. Some refugees report being ill-treated or tortured during their interrogations by the police.

The following accounts describe such violations:

- *I was interrogated by an Internal Security Forces officer [...] he did not allow me to call a relative. I wasn't informed of my rights during interrogation either.*<sup>172</sup>
- *I asked the [Lebanese army] soldier to let me call my neighbor to bring me the refugee certificate. He refused and shoved me.*<sup>173</sup>
- *I was not allowed to make any phone calls during the whole [two day] period [...] I was reluctant to ask for this right after the hell I'd experienced during the interrogations.*<sup>174</sup>
- *I told the interrogator [at the General Security police station] that I would remain silent unless he allowed me to make a phone call. I wanted to contact UNHCR. He replied,*

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170 Testimony of an Iraqi refugee to FR in 2010.

171 See, for example, *Al-Akhabar* newspaper editions on 23 January 2010, 5 June 2010, 4 December 2009, 6 November 2009, and 31 March 2010.

172 Testimony of a Sudanese refugee to FR in 2009.

173 Testimony of an Iraqi refugee to FR in 2009.

174 Testimony of an Iraqi refugee to FR in 2010. This refugee was arrested by military intelligence and interrogated by military intelligence, the military police and at the General Security police station.

"I'm talking to you. You will talk to me. You will answer my questions." I insisted that I would talk only if he lets me make a phone call. He then stood up, came over next to me, insulted me and asked me to stand up. When I did, he slapped me.<sup>175</sup>

- I asked to appoint a lawyer. They [at the police station] wouldn't let me. [...] They were asking me about my political positions, whether I was for [Nouri] al-Maliki or Saddam [Hussein]. I became afraid. I felt that I might be executed [...] It was the first time I'd ever been arrested. I felt as if I was not in Lebanon. The way the police treated me reminded me of Saddam's security apparatus.<sup>176</sup>
- There were two policemen [at an ISF checkpoint]. They searched us and insulted us [...] they took us to the closest police station. We were locked in a cell without being told why we had been arrested. No one ever informed us of our rights. We were arrested during Ramadan. However, we were not offered any food when it came time to break the fast [at sundown]. We were begging the officers to bring us food. They only responded at 9 p.m., and they only brought us food after we gave them money.<sup>177</sup>
- Military intelligence raided my place at 10:30 pm. As soon as I opened the door, an officer pushed me onto the sofa and handcuffed me. They didn't let me get dressed even though I was only wearing underwear. They took me away in a civilian car and they didn't even identify themselves to me. Later they told my wife they were from military intelligence.<sup>178</sup>

One common violation of due process is forcing arrestees to sign their interrogation reports without reading them, as recounted in the following testimonies:

- They [at the police station] asked me to sign the interrogation report. They didn't ask me to read it. I didn't ask to either - I knew they wouldn't let me [...] so

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175 Testimony of an Iraqi refugee to FR in 2009.

176 Testimony of an Iraqi refugee to FR in 2010.

177 Testimony of a Sudanese refugee to FR in 2009.

178 Testimony of an Iraqi refugee to FR in 2010.

*therefore I didn't know what was written in my interrogation report.*<sup>179</sup>

- *They took me to an army base. A plainclothes officer interrogated me and I put my fingerprint on the report at the end of the interrogation without reading it. They asked me to put my fingerprint on it, so I did. They didn't tell me I had the right to read the report.*<sup>180</sup>

Several refugees said that they were tortured during their interrogations:

- *The investigator told me, "It looks like you don't want to confess." Right after he said that, 3 or 4 officers started beating me with pipes and electric cables. They kept on saying, "confess!" and I kept on replying, "I have nothing to confess." They beat me for around 5 hours. They would let me rest for a few minutes, then start beating me again. This went on until 1 a.m. The second day they transferred me, handcuffed, to the detectives' offices. The detectives were in plainclothes. I spent 5 days there. I was tortured. They used to handcuff my hands behind my back and beat me with pipes and cables, on my shoulders and feet. They wanted me to confess.*<sup>181</sup>
- *I was transferred to military intelligence. I was beaten, randomly and everywhere on my body. They wanted to force me to confess to murder. I didn't even know who the victim was. They said two Iraqis had accused me, but they didn't show them to me. After a rest, they would start beating me again. They were using sticks and they kept breaking them while they beat me. They tried to torture me with a cigarette, threatening to put it out in my eye. They told me, "You have to confess to rest." I said I refuse to confess because I don't know who was murdered or who is accusing me. They threatened to torture me with electricity and other techniques. I spent the night at military intelligence and stayed there until 6 p.m. the second day. I was not offered any food or water. They knocked out*

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179 Testimony of an Iraqi refugee to FR in 2010.

180 Testimony of an Iraqi refugee to FR in 2009.

181 Testimony of an Iraqi refugee to FR in 2009.

*some of my teeth with the beating. They beat me so much I couldn't walk.*<sup>182</sup>

- *When I arrived [at the General Security Office], my hands were handcuffed behind my back. The officer insulted me. He said, "Turn your face to the wall, you animal. You'll see [...]" The other interrogator told me to cooperate or he would "take out my teeth." In the bathroom, they doused me with water continually. The water injured my eye - I couldn't close my eye for three days; I had to sleep with it open.*<sup>183</sup>

### **Trials: Lack of legal counsel and neglect of refugee status**

Procedural violations also occur in the trials of refugees and asylum-seekers, especially when they do not have legal counsel. This continues to be the case despite the positive jurisprudential trend described in Chapter One. Some refugees expressed despair in the judicial system. They feel that if they are charged with irregular entry, they will not be able to defend themselves and will simply receive the standard penalty if they do not have an attorney to defend them:

- *A lawyer is useless - what would you get? You're illegal - is he going to get you released? There were a lot of Iraqi, Sudanese, and even Lebanese defendants. The judge asked my name, my mother's name, and how I entered Lebanon. I said I came in through the mountains. He said, "That's enough." I told him I was a refugee. He replied, "I don't recognize refugee status." The sentence is well known: one month and fine. Mine was two months - I don't know why and I didn't even ask. I couldn't do anything anyway. I was handcuffed and surrounded - how would I ask?*<sup>184</sup>
- *I do not recall the date of my hearing. I was tried three times. The first time, I didn't have an attorney and the judge didn't ask me if I wanted to appoint one. He just asked me why I came to Lebanon. I answered, "because of the*

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182 Testimony of an Iraqi refugee to FR in 2009.

183 Testimony of an Iraqi refugee to FR in 2009.

184 Testimony of an Iraqi refugee to FR in 2010.

war in Iraq." The judge then said, " We had a 25-year civil war, but we didn't leave." He didn't say anything else, then he told me to wait ten days for my sentence. I didn't have the opportunity to defend myself. When I tried to talk, the court guard advised me " don't bother, the most you'll get is a two month sentence."<sup>185</sup>

- I was not aware that there was an order for my release during the whole period I spent at the General Security police station. I only found out when FR visited me [after I was transferred] at Rumieh Prison and handed me the verdict summary.<sup>186</sup>
- Me. Nizar [defense lawyer] was present at the second hearing [...] He cited the texts of Lebanese laws. He told the judge that we had been detained for a very long time. The judge answered, "At General Security? Do you know what General Security is? It's a state on its own." [...] Me. Nizar asked for our release. I could feel the difference having an attorney. He made the judge listen. Without an attorney the judge wouldn't look at you. Everything is different when you have a lawyer - the judge takes his time.<sup>187</sup>
- I went to court three times. My hearing was postponed twice. I know that the judge would just tell an "illegal" Sudanese defendant "you entered illegally" and sentence him to one month. In my case - with a lawyer who defended me, explained my case and the relevant laws to the judge - it was different. The lawyer told the judge that I was now a recognized refugee. The judge asked for a copy of my refugee certificate. I could tell the difference when you have a lawyer. I didn't have to say anything [in court] by myself.<sup>188</sup>
- The judge asked me "do you feel better?" I answered "Yes, Your Honor." He asked me "What's written here? I said "I don't know, Your Honor." I had no other opportunity to

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185 Testimony of an Iraqi refugee to FR in 2010.

186 Testimony of an Iraqi refugee to FR in 2010.

187 Testimony of an Iraqi refugee to FR in 2010.

188 Testimony of a Sudanese refugee to FR in 2009.

*Speak. The right to speak is just something you see on TV. In Lebanon the judge has more than 30 cases per day. They won't listen to you. The judge asked me to sign a paper and I didn't know what the paper was. I didn't ask for a lawyer and I wasn't asked if I needed one. The judge didn't let me talk about my being tortured at the police station. Even if he had, I wouldn't dare to - I was afraid of reprisal if sent back to the police station. It's not as easy as you may imagine.<sup>189</sup>*

Some refugees describe being detained for months without being brought before a judge:

- *I was not brought before a judge or prosecutor during my entire detention period. During 121 days at the General Security Commissariat, I saw no judge.<sup>190</sup>*
- *I wanted to know why I was in prison and what I was charged with. For six months I didn't know my charge. Everyone but me knew.<sup>191</sup>*

## **Harsh detention conditions**

It is well known that prison conditions in Lebanon are notoriously harsh – this has been the subject of official attention and many reform proposals. In addition to the difficult circumstances experienced by all inmates in Lebanon, refugees and asylum-seekers also face discrimination as foreigners. In the following testimonies, refugees describe experiencing violence, discrimination, overcrowding, poor food, sub-par health care, and lack of hygiene:

- *I was transferred to Rumieh Prison after spending 3 days in the Baabda court arrest facility. In Rumieh, you enter first to the arrestees building - building D, known as the "entrance cell." Rumieh prison is like a graveyard. I was first received by inmates - I felt like it was the end of the world. There were people with tattoos, people yelling insults - I almost passed out. I couldn't tell how I felt. I was in*

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189 Testimony of an Iraqi refugee to FR in 2010.

190 Testimony of an Iraqi refugee to FR in 2009.

191 Testimony of an Iraqi refugee to FR in 2010.

*a black state of mind. There were so many people - it was overcrowded. I was crying. I don't know what happened to me.*<sup>192</sup>

- *The prison is humiliating. It's a strange environment. I can't describe it - it's a period I would like to completely forget. I felt like I was losing my humanity.*<sup>193</sup>
- *Rumieh prison is not for humans. It is full of suffering and abuse. It is controlled by gangs of inmates, not by the state. A different gang controls each building.*<sup>194</sup>

They also recount discrimination against foreigners:

- *Sudanese, Somalis, Sri Lankans and Indians are discriminated against in the prison. Because of the overcrowding, the big and clean rooms are reserved for Lebanese. The cells where Lebanese are imprisoned are not as overcrowded as those for migrants. They also have water and other facilities.*<sup>195</sup>
- *We used to sleep sideways for lack of space. We were 50 people in a 5-meter square room. The Lebanese inmates had beds but the foreigners had nowhere to sleep. Almost half the inmates in my cell were foreigners. We were crowded into a small corner of the cell while they [the Lebanese] enjoyed the rest of the space. If you said anything, they just said you're a foreigner. Even the guards used to say you're foreigners. Prison is unjust. Whenever there was a fight between Lebanese and foreign inmates, the guards would only beat the foreigners.*<sup>196</sup>

Quality and quantity of food are also serious issues for incarcerated migrants and refugees. This is aggravated by the fact that they rarely receive visitors bringing them food:

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192 Testimony of an Iraqi refugee to FR in 2010.

193 Testimony of an Iraqi refugee to FR in 2010.

194 Testimony of an Iraqi refugee to FR in 2010.

195 Testimony of a Sudanese refugee to FR in 2010.

196 Testimony of an Iraqi refugee to FR in 2010.

- *You pass out when you open the rice pot.*<sup>197</sup>
- *Sometimes we didn't eat the prison food. Instead we'd eat what visitors brought to some of our inmates. Those with no visitors at all would suffer, in terms of food.*<sup>198</sup>
- *In the prison, you experience a real catastrophe - starvation. If you have money you can buy food. I had no money so I used to eat the prison food. Even when I was sick, I had to eat the same food as all the other prisoners. Those with visitors received good food. I was always hungry because the food was never enough. There was starvation, real starvation. Don't believe anyone who tells you there's no hunger in the prison.*<sup>199</sup>

Sub-standard health care is a serious issue for both foreign and Lebanese prisoners. Medical treatment is often delayed and, when provided, is often of poor quality:

- *During my detention I got sick. I was coughing all the time. The doctor used to come to the prison once a week. He would prescribe Panadol no matter what the illness was. Also it took two weeks to get the medicine. Plus you could get only half the prescribed amount.*<sup>200</sup>
- *One of the inmates lost consciousness because he did not have his medicine at the time. This happened twice. We had to carry him on our shoulders to the pharmacy. We called for the nurses and guards to take care of him but nobody came.*<sup>201</sup>
- *When I arrived at General Security I asked to see the doctor, who used to come on Monday and Friday. Since I was transferred there on a Monday, I had to wait until Friday to see him. When he came he gave me a routine*

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197 Testimony of an Iraqi refugee to FR in 2010.

198 Testimony of an Iraqi refugee to FR in 2010.

199 Testimony of an Iraqi refugee to FR in 2010.

200 Testimony of an Iraqi refugee to FR in 2010.

201 Testimony of a Sudanese refugee to FR in 2010.

*checkup. He just asked me what was hurting me and gave me painkillers that didn't make me better. At night the guards would take a long time to come if they were called to see someone who was ill.<sup>202</sup>*

- *I was referred to a neurologist. He prescribed me treatment and wrote a report recommending my release due to my psychological condition. But General Security refused to release me.<sup>203</sup>*

Detainees also recounted being humiliated during searches and prevented from showering:

- *When I arrived at Rumieh Prison, I was searched by some of the prisoners. They searched us in a humiliating way while they made us take off all our clothes.<sup>204</sup>*
- *In winter, prisoners were not allowed to take hot showers. Only the shawish [the inmate given the responsibility of supervising the other inmates] and his gangs had this privilege.<sup>205</sup>*
- *[In the juvenile section] we were allowed to take a shower once a week. There was not always hot water.<sup>206</sup>*

Refugees and asylum-seekers also described being imprisoned in suffocating and overcrowded cells:

- *[In Rumieh] I was imprisoned in cell number 4 in the juvenile building with inmates of all nationalities. It was very overcrowded, even though it was a big room.<sup>207</sup>*
- *The Aley prison was better than Rumieh, in terms of*

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202 Testimony of an Iraqi refugee to FR in 2010.

203 Testimony of an Iraqi refugee to FR in 2009.

204 Testimony of a Sudanese refugee to FR in 2009.

205 Testimony of an Iraqi refugee to FR in 2010.

206 Testimony of an Iraqi refugee to FR in 2010.

207 Testimony of a Sudanese refugee to FR in 2009.

*overcrowding. But there were no NGOs or charities to assist prisoners.<sup>208</sup>*

- *I spent three months at the General Security police station underground. There we couldn't tell whether it was day or night. We couldn't see the sunlight and it was oppressively humid. We were more than 50 people crammed together in one [small] room.<sup>209</sup>*
- *I was transferred to the General Security police station and there my nightmare began. It's an underground place, with no ventilation or light. When there was a power cut, we would start to suffocate. Rumieh prison is heaven compared with the [General Security] police station. I stayed in these conditions for seven months.<sup>210</sup>*

Detainees' communication with the external world was also severely constrained:<sup>211</sup>

- *The General Security officers had a register where they recorded the names of people who requested to make phone calls. Whenever I made a phone call, an officer would be standing next to me listening to the conversation. We were not allowed to call NGOs. The officers would know whom we wanted to call because they asked for the numbers and recorded them.<sup>212</sup>*
- *At General Security we were allowed to make one phone call every eight days, unless one has good relations with the shawishs and guards.<sup>213</sup>*

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208 Testimony of an Iraqi refugee to FR in 2010.

209 Testimony of an Iraqi refugee to FR in 2010.

210 Testimony of a Sudanese refugee to FR in 2009.

211 Prison inmates are not permitted to make phone calls. Detainees at the General Security police station are permitted to make occasional phone calls under certain conditions, but they are not permitted to receive phone calls.

212 Testimony of an Iraqi refugee to FR in 2010.

213 Testimony of an Iraqi refugee to FR in 2009.

- *Phone calls were limited to one 2-minute call every 10 days, as per GSO instructions.*<sup>214</sup>

## **Difficulties with UNHCR applications**

The process for decisions on refugee status is also problematic for detained asylum-seekers. They have difficulty accessing UNHCR, there are delays in the processing of their applications, and they receive insufficient support.

### *Difficulty accessing UNHCR*

Detained asylum-seekers have difficulty contacting UNHCR and swiftly declaring themselves and registering with the agency upon arrival in country. They have difficulty staying informed of their case's status. Some have been deported before they were able to meet with UNHCR. In some cases, detainees were interviewed by UNHCR but their cases were then dismissed without record. Even when detainees finally have access to UNHCR, their application may be dismissed in a swift manner without any registration. For example, it appeared in the case of one detainee who was seen by UNHCR staff but not registered – although he did not have a manifestly unfounded claim – that detainees are not registered “if [they] have no fear of return.” This raises serious risks related to the swift screening of manifestly unfounded claims in a detention context. In addition, refugees systematically complain that they do not receive responses to letters they sent to UNHCR via NGOs. Detainees in prison cannot access UNHCR by phone. Those in the General Security police station can at intervals make phone calls. When they do, they often cannot reach UNHCR staff. Furthermore, UNHCR does not have an emergency hotline for detainees.

### *Delays in the refugee status determination process*

UNCHR sometimes takes an exceptionally long time to make decisions on refugee status. In one case, a detained asylum-seeker obtained a first instance decision only seven months after his arrest. In another case, a detainee waited more than nine months for a decision. Another detainee's

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214 Testimony of an Iraqi refugee to FR in 2010.

application appears to have been suspended while he was in detention. At least two asylum-seekers were deported before UNHCR finished processing their asylum applications. These two were held for months: one was in the appeal stage when he was arrested and held for around three months, and the second was in detention seven months after registering with UNHCR and was never interviewed.

### *Inadequate counseling and support*

UNHCR rarely visits detained asylum-seekers and provides them with little support or counseling. When visits do occur, they are conducted only for refugee status interviews, usually without counseling on the application. Detainees are therefore often not aware of their status. For example, one Iraqi detainee believed he was a recognized refugee, while his asylum application had actually been rejected. Many are not aware that their UNHCR interview was for the purpose of refugee status determination.

### *Inappropriate interview conditions*

There are concerns about the privacy of prison interviews and the confidentiality of detainees' case information. Detainees interviewed in prison reported that they could not speak freely for fear of being overheard, since their interviews were conducted in rooms frequently entered by prison guards or other inmates. Other detainees reported that UNHCR asked for details on their case over the phone. One detainee claimed that a letter he sent to UNHCR ended up with the Lebanese authorities and his home country's embassy.

Other detainees felt uncomfortable with UNHCR interviewers' attitudes. For example, one detainee recounted that the interviewer became angry if he remembered a detail he had forgotten to mention earlier. Another said that his interviewer had not taken any notes during their conversation, then later appeared to have misunderstood major elements of his claim.

### *Factual and legal errors in application assessment*

In some cases, UNHCR has rejected applications without allowing detained asylum-seekers to clarify inconsistencies in their statements,

despite this being strictly required by the agency's own guidelines. It has also failed to assess some applicants' fear of persecution, eligibility under extended UNHCR mandate, or statelessness. One detainee was recognized by UNHCR Syria as a refugee, but UNHCR conducted a new status assessment in Lebanon rather than transferring his refugee status.

A Sudanese applicant from Darfur was rejected because his claim was not assessed in connection with the Darfur conflict. He died in prison on the day that FR requested that his case be reopened. Another Sudanese applicant was rejected because UNHCR had not established his tribal affiliation, although other members of his tribe in Lebanon confirmed it. This applicant was then deported. A third Sudanese applicant was rejected on first instance for the same reason, despite the fact that UNHCR had established his brother's tribal affiliation. He was deported before UNHCR could process his appeal.

### *Obstacles to appeal*

When detained applicants' cases are rejected, UNHCR usually does not inform them of the reasons behind the rejection. One detainee reported that a UNHCR staff member simply told him he had been rejected because he was a "liar." Without proper counseling or knowledge of the reasons for their rejection, detained applicants cannot exercise their right to appeal. For example, one detainee did not know why he had been rejected, so he appealed the decision. UNHCR asked him whether he had any new elements to report in his case; when he said no, his appeal was dismissed and his file closed.

### *Lack of legal counsel*

Detained asylum-seekers have great difficulty obtaining legal counsel. NGOs legally representing them (e.g. FR) can visit them in prison but not at the GS police station. However, they do not attend applicants' interviews with UNHCR at the latter's request. UNHCR has failed on multiple occasions to notify applicants' legal representatives of interview dates and results. It has also failed to share information necessary to prepare legal defenses for detained applicants.

## Prolonged detention

As described in Chapters One and Two, detained refugees and asylum-seekers are frequently kept imprisoned after the expiry of their judicial sentences:

- *I was sentenced to one month's imprisonment and a fine. I finished serving my sentence on 19 January 2009. I didn't pay the fine. I knew from my inmates that whether you paid it or not, you would stay in detention. They had been in prolonged detention for four or five months after finishing their sentences.<sup>215</sup> [He was released on 27 July 2010 after UNHCR intervention.]*
- *For a 20-day sentence, I stayed nine months in a vile prison, in the Rumieh building for those convicted of murder and other felonies. I signed for my deportation under duress. I was forced to do it, since they sent those who refused back to Rumieh again and I could not bear it anymore.<sup>216</sup> [He was charged with the crime of irregular entry.]*

## Detention ends unpredictably without explanation

For those refugees and asylum-seekers who are released from prison, the grounds for their release are usually unclear. Their release is not necessarily the result of a court order. The end of their detention is thus an unpredictable and often inexplicable surprise. They are often afraid when they are called up for release, thinking that they are going to be pressured to sign off on their deportation:

- *[One day] They called my name on the microphone. I went to the police station office. The officer asked me, "What's with you?" I replied "I don't want to go back." He said, "Who told you you'd be sent back?" [...] a UNHCR staff member handed me my release attestation [...] I never found out on what grounds I was released.<sup>217</sup>*

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215 Testimony of an Iraqi refugee to FR in 2010.

216 Testimony of an Iraqi refugee to FR in 2010.

217 Testimony of an Iraqi refugee to FR in 2010.

- *I don't know on what basis I was released, or the reason I was given a six-month release attestation. I didn't even believe I was being released.*<sup>218</sup>
- *After my name was called, I went to the reception office where I met a GSO officer and a UNHCR staff member. The officer asked me to sign some documents. I think these were the release documents. I signed without reading them. I didn't ask if I could read them because I wasn't sure I had the right to do so. I couldn't believe I was going to be released. I asked the officer "sir, what's happening?" He told me to sign the documents because "we are releasing you."*<sup>219</sup>

## Deportation with a mask of “voluntarism”

As noted in earlier chapters, authorities continue to practice *refoulement* under the guise of “voluntarism” despite judicial condemnation. Refugees’ personal testimonies describe how they were pressured to agree to deportation:

- *On 25 February 2010, they summoned several of us to see the officer in charge, each one separately. The captain asked me to sign a paper. It had “I want to travel” written on it. I told him I did not want to go back. He tried to convince me to return to my country, saying that it was better for me and UNHCR was lying to me. I repeated that I did not want to go back. He demanded that I sign the paper and threatened to put me in solitary confinement. I said that I would rather die here than go back to Iraq. This happened three times.*<sup>220</sup>
- *I was forced to sign the deportation form because those who refused to sign were transferred back to Rumieh. I couldn't stand it anymore. I lost more than 20 kilos and I was in a very bad psychological condition. This was my first experience of prison and it was very hard.*<sup>221</sup>

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218 Testimony of an Iraqi refugee to FR in 2010.

219 Testimony of a Sudanese refugee to FR in 2010.

220 Testimony of an Iraqi refugee to FR in 2010.

221 Testimony of an Iraqi refugee to FR in 2010.

- *I signed the return papers because I couldn't take the prison or UNHCR anymore. I'd been lying to myself for seven months. I was convinced that there was no other solution - nothing was moving.*<sup>222</sup>
- *I met with UNHCR staff three times there and had my resettlement interview there too. I was always told that General Security was refusing to release me and had decided to deport me. I was put in solitary confinement for three hours once because they were pressuring me to accept return.*<sup>223</sup>
- *General Security would pressure me to accept deportation back to my country. Once, an officer insulted my family and me because I refused. I answered, "I'm not in your home that you can kick me out." He got angry and beat me while I was handcuffed. This same officer used to beat detainees who refused to be deported. Beating and mistreating detainees who refused deportation was very common.*<sup>224</sup>
- *When I was asked if I would like to go back to Iraq, I said yes, out of despair. I hated Lebanon after everything that had happened to me. I would even have agreed to go to Somalia. Then I was transferred to the GS police station with 37 other Iraqis who had signed off on their deportation like me. Three days later we were taken to the airport. I felt very ashamed. We were poorly clothed and walked two by two, with the GS officers insulting us. People were looking at us like we were criminals, even though all the others - except me - had only been imprisoned for irregular entry. UNHCR was not present. Then they brought a handicapped detainee who was accompanied by an Iraqi embassy delegate. I learnt that he was handicapped and mute as a result of torture during interrogation in Lebanon. We waited for around seven or eight hours at the airport. Then we took a plane in very bad condition. When we arrived in Baghdad, there was no electricity. We had to wait [at the airport] until the second day.*<sup>225</sup>

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222 Testimony of an Iraqi refugee to FR in 2010.

223 Testimony of a Sudanese refugee to FR in 2009.

224 Testimony of a Sudanese refugee to FR in 2009.

225 Testimony of an Iraqi refugee to FR in 2009.

- *He [the officer] told me there was an order from the Director-General for my deportation. The order was a plain piece of paper with "I accept to be deported" written on it and two choices: Yes and No. I selected "No," since I didn't want to be returned to Iraq. Another interrogator threatened me with a stick, asking "why don't you sign for deportation?"*<sup>226</sup>

## CASE STUDIES

FR has documented the cases of many detained refugees and asylum-seekers in detail. This section contains two full case studies highlighting multiple legal and human rights violations.

### **Multiple Violations: The story of seventeen-year-old Mohannad**

Mohannad is an Iraqi born in Baghdad in 1991. He came to Lebanon in 2009 as an unaccompanied minor, and his mother and three brothers (aged between one and fourteen) followed him in November 2009. Mohannad was the only breadwinner for the family. He was recognized as a refugee by UNHCR as soon as he arrived in Lebanon, but was arrested by the authorities while he was still a minor (17 years old). What follows is his own account of his arrest, trial, and detention, as told to FR in 2010.

The Lebanese Army arrested Mohannad on 24 October 2009 while he was coming back home with his employer:

*We were stopped by a Lebanese Army checkpoint at the entrance to Britel. The soldier asked my employer about me. He told him I was Iraqi. The soldier asked me to show my papers. I gave him my Iraqi ID and told him that I was a recognized refugee with UNHCR. He said, "I don't care about the United Nations. I don't know or recognize them!" He asked me to drop off the car, handcuffed me and took me to the Ablah base. The next day, my neighbors brought me my refugee certificate. I was interrogated and the officer told me, "We don't know what this document is. What we want is a residency permit issued by General Security."*

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226 Testimony of an Iraqi refugee to FR in 2010.

Mohannad underwent three separate interrogations after his arrest. None of them complied with Lebanese or international human rights standards for the interrogation of minors:

*At the army base, the interrogating officer asked where I came from and I said I am Iraqi. He asked if I had a residence permit and I said I have my Iraqi ID and UNHCR certificate [at home]. At the end of the interrogation [...] I signed a certain paper without reading it or asking to do so. The second day, I underwent a new interrogation, in which I was asked about my entry to Lebanon, the name of the smuggler, etc. Again, I signed the paper without reading it or requesting to do so. None of the investigators handed me this paper for me to read it before signing. I was asked to sign, so I signed. None of them informed me of my rights during the investigation either. [...] I was offered no food or water for two days. I slept alone in a room, on a very dirty mattress on top of the concrete.*

*Two days later I was transferred to the Talia police station. There, an Internal Security Forces officer interrogated me. He asked me how I entered Lebanon. I said I was smuggled into the country but I immediately registered with UNHCR. After looking at the UNHCR certificate, he just replied that I had entered the country illegally. He said nothing about the certificate ... I was not informed of my rights at the police station either.*

*I did not ask to make any phone calls. I had already asked at the Army base in Ablah but was not allowed. I thought they wouldn't allow me to call from the police station either. I was handcuffed during the whole investigation. I only spent one night at Talia police station.*

*I was then transferred to the General Security Office in Zahleh. Nobody told me why I was transferred there. The second day, I was interrogated by an officer. He just asked me how and when I entered Lebanon. Again, I signed the interrogation paper without reading it, or being asked to do so. I was then transferred to Baalbek Serail, without knowing why. I was just told that I was going to be transferred to Baalbek Serail and then to Rumieh Prison.*

*A GS man asked me if I would like to make a phone call and I said yes. Then he said that he would make the call but he asked*

*me not to tell anyone so that he would not get into trouble. He called my mother from his personal phone. She was in Syria at the time. He informed her of my arrest. [...] I slept alone in a 5 by 4 meter room, on a very old and dirty mattress. I was not offered any food.*

*[At Baalbek Serail] I had to share a 1.5 by 1 meter room with another arrestee and to sleep on the floor. Again, I was offered no food or water. One of my Lebanese neighbors visited me and brought me three sandwiches and a can of Pepsi. But they only let me have one sandwich and the Pepsi. They said that it was forbidden to bring in the rest of the food - I did not know why and I did not ask.*

*I was underage [a minor] when they arrested and interrogated me. However, none of the officers or investigators paid attention to this fact or sympathized with me.*

After spending the night at the Baalbek Serail, Mohannad was transferred to the juvenile section of Rumieh Central Prison:

*The second day, I was transferred to Rumieh, juvenile section. The first day there, I slept in room No. 12, with 8 inmates. The room was big and clean, and there was a bed for every one of us. There was a kitchen, refrigerator and a television. The second day there, I met the supervisor of the juvenile section [...] and told her that I was a refugee recognized by UNHCR. As for the conditions at the juvenile section: there was a group of adult criminals, including the *shawish* [the 'prisoner in charge'] of our section, who were suspected or imprisoned for various crimes including drug trafficking and murders.*

According to Mohannad, the *shawish* used to beat the juvenile inmates. He stated that he was beaten twice. He also described fights between rival groups of adolescent prisoners who attacked each other with blades.

On 28 October 2009, four days after Mohannad's arrest, the Baalbek prosecutor charged him in court with irregular entry. FR appointed a

lawyer for him.<sup>227</sup> His first court hearing was on 11 November 2009 before the Zahle juvenile court.

The court issued its verdict five days later, finding Mohannad guilty of violating Article 32 of the 1962 entry and residency law. He was sentenced to 15 days' imprisonment and a fine of 50,000 LL. The court ruled that he be immediately released after serving his sentence. Since time spent in pre-trial detention is counted as time served on a prison sentence, Mohannad finished serving his sentence on the same day that his verdict was issued. However, he remained in detention until January 2010 – more than two months after the expiry of his sentence – despite the fact that he was a minor.

While in prison, Mohannad was placed in solitary confinement for two days as the result of a fight he had with one of his inmates. According to his account, the cell in which he was confined was a small room (1 meter square) with no light, food or water. Furthermore, this cell was not located in the juvenile section of the prison.

Although FR and Mohannad's friends informed UNHCR of his arrest, agency representatives did not visit him at any point during his detention.

On 8 January 2010, Mohannad was transferred from Rumieh Central Prison to the General Security police station at Adlieh. He was held there for several days before being released in mid-January. His release was obtained thanks to a Lebanese sponsor. It was not the result of his having finished his prison sentence or the fact he was a recognized refugee.

### *Notes on the legal and human rights violations in Mohannad's case*

Mohannad's case is indicative of the administration's general approach to refugees and asylum-seekers as described in Chapter One. His UNHCR certification was ignored and he was tried for irregular entry, imprisoned, and held arbitrarily after the expiry of his sentence. He was released because he was able to find an employer to sponsor him: had he not, he would likely have remained in arbitrary detention despite being a refugee and a minor.

Mohannad's case also illustrates a second important point: the administration

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<sup>227</sup> See Article 42 of Law no. 422, 6 June 2002: The Protection of Minors Violating the Law or at Risk. *Official Gazette* no. 34, Part II, 16 June 2002. This article requires that juvenile offenders have legal counsel in their court hearings.

routinely disregards Lebanese law governing due process when arresting and arbitrarily detaining refugees and asylum-seekers.

During his interrogation, Mohannad was denied the right to contact a lawyer or a family member, since he was not allowed to make phone calls. This is a violation of Article 47 of the Code of Penal Procedures. Furthermore, his interrogators did not abide by the law's provisions for the interrogation of minors: the law's requirement that his parents be notified and a social worker be present at the interrogation was not fulfilled. Mohannad also described sub-standard detention conditions. Solitary confinement of minors, especially in such conditions, violates the United Nations Guidelines for the Prevention of Juvenile Delinquency.

Furthermore, Mohannad was held for more than two weeks of pre-trial detention in a prison with adult inmates, despite the fact that the minimum penalty for the "crime" he was tried for is one month and not a year. Yet minors ought to be detained or imprisoned only in exceptional circumstances – the law restricts the application of preventive detention to cases where the charges are for crimes which penalty exceeds one year's imprisonment.<sup>228</sup>

### **The *refoulement* of a recognized refugee: Case of Ali Fares**

Ali Abdel Ilah Miri Fares is an Iraqi refugee recognized by UNHCR since 2007. On 21 January 2009, ISF personnel raided his house based on a complaint from a Lebanese woman who said that her maid had fled to his home. He was arrested even though there was no warrant for his arrest or complaint against him personally.

Fares was arrested at night outside the hours permitted by law.<sup>229</sup> He testified that he was beaten during his arrest and at the police station, a clear violation of both Lebanese legal procedures and internationally recognized human rights standards.

The police report states that after interrogation, the Public Appeals

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228 Article 35 of Law 422, *ibid*.

229 See Paragraph 3 of Article 33 of the Code of Penal Procedures, which limits "entry to houses to search or look for criminals" to between 5 a.m. and 8 p.m. unless the house owner consents, *op. cit*.

Prosecutor was contacted and gave instructions that Fares and the arrested domestic worker be transferred to the Bureau of Investigations and Procedures.<sup>230</sup>

Fares was then questioned by the Public Appeals Prosecutor and charged with irregular entry under Article 32 of the 1962 entry and residency law. The interrogation report states that he signed the report, but no signature was found on the document.

He was tried on 3 February 2009 before the single penal judge in the Metn without legal counsel. He was sentenced to the period already in detention and to deportation.<sup>231</sup> Fares received this deportation sentence despite the fact that he was a recognized refugee. The judge thereby failed to respect the principle of *non-refoulement* and treaties such as the Convention against Torture, which is binding on Lebanese courts.

Furthermore, despite having technically served his prison sentence, Fares remained arbitrarily detained for more than a year until he was forcibly deported across the Syrian-Lebanese border on 31 March 2010.

Fares recounts how he was deported:

*I was tricked in General security. At 5 p.m. they called my name on the microphone, so I went up to check what was going on. I found a Caritas lady employee working there. She told me "good luck" and said, "Don't tell your friends in prison that you're getting out. Tell them 'I'm traveling to Iraq'. But you're getting out of here now." After that I was surprised by twenty men who bound me and told me "go, sign with your fingerprint" They bent my hand backward and three of them grabbed me, took my thumb, and made me stamp with my thumbprint. I didn't know what I was signing. After, they told me this is a decision from General Security that you are being deported to Syria. I asked them why did you do that - why did you tie my hand behind my back and make me sign with my thumbprint in this way? They told me because we know you would not accept. If I had known that, I wouldn't have gone out.*

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230 General Security record, 21 November 2010.

231 Decision 2009/34 on 3 February 2009 by the First Level Criminal Court in the Metn.

When he learned that he would be deported, Fares asked permission to call a friend so that he could notify FR about the deportation. When the officers noticed what he was doing, they hung up the phone. FR and the Lebanese Center for Human Rights went to the General Security police station and tried to stop his deportation. Their representatives saw him being violently forced into the car that would take him to the border. Security forces personnel also used force against FR representatives. After he was deported to Syria, Fares was arrested there and returned to Iraq, where he was again detained and interrogated.

Fares was forcibly deported even though he had filed a lawsuit challenging his detention on the basis that it was an arbitrary infringement of his liberty without legal cause. A lawyer appointed by FR filed the lawsuit with Summary Affairs Judge in Beirut Zalfa al-Hassan on 12 February 2010. The first hearing was set for 9 March 2010. The state lawyer asked for postponement, so the session was postponed to 13 April. Fares was deported before the second session.

On 20 April 2010, Judge al-Hassan issued an injunction blocking Fares's deportation until a decision was reached in his case.

FR had also written letters to the Interior Ministry on 8 January 2010 and again on 18 March 2010 raising the issue of Fares's arbitrary detention.<sup>232</sup> It sent an urgent appeal to the interior minister and the General Security Director-General on 31 March 2010 requesting immediate intervention to stop his deportation. FR raised the issue with the Interior Ministry a fourth time on 17 May 2010 when listing recognized refugees who had been forcibly deported.<sup>233</sup> There was no reply to any of these letters. This case was also submitted to the UN Working Group on Arbitrary Detention on 11 January 2010. Yet none of these steps prevented Fares's *refoulement*.

Ali Fares's case clearly illustrates the Lebanese administration's determination to violate legal and human rights obligations in order to deter asylum-seekers from seeking refuge in Lebanon. A UN-recognized refugee, Fares was arrested, arbitrarily detained, and forcibly deported to his country of origin despite Lebanon's legal, constitutional, and international obligations to protect him.

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232 Registration of request dated 9 January 2010, no. 467/2010 و.دب; Registration of request dated 20 March 2010, no. 4798/2010 و.دب.

233 Registration of request dated 18 May 2010, no. 7931/2010 و.دب.

## CONCLUSION

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Despite positive jurisprudential developments and the efforts of civil society activists, lawyers, and journalists, refugees and asylum-seekers in Lebanon continue to suffer in the absence of a legal framework for asylum. Although the reporting period saw unprecedented judicial affirmation of refugees' right to asylum and personal liberty, General Security's refusal to implement court orders and the cabinet's tacit approval of refugees' arbitrary detention show that there is a long way to go before Lebanon fulfills its constitutional, international, and humanitarian obligations towards refugees within its borders.

Lebanon has not ratified the UN's 1951 Refugee Convention and there is no sign that the government will do so in the near future. There is still no Lebanese legislation regulating asylum and the 1962 entry and residency law is outdated and fails to provide adequate protection to refugees and asylum-seekers. The memorandum of understanding between General Security and UNHCR provides only limited legal protection for refugees, which is in any case frequently disregarded by the authorities. Although judges have, when given the opportunity, condemned arbitrary detention and deportation, refugees and asylum-seekers in Lebanon continue to be at risk of arrest and prosecution for irregular stay and/or entry, prolonged and arbitrary detention, and *refoulement*. The administration is continuing these practices with virtual impunity in order to enforce its "no asylum" policy and deter asylum-seekers from taking refuge in Lebanon.

No person's liberty should be infringed without judicial authorization, and no refugee or asylum-seeker should be arbitrarily imprisoned and/or deported to their country of origin. FR therefore makes the following near-term and mid-term recommendations to the Lebanese authorities, pursuant to Lebanon's constitutional, legal, and international obligations as repeatedly affirmed by the judiciary.

We recommend to the Lebanese authorities that they:

In the near term:

- (1) Respect judicial authority and immediately execute all irrevocable court verdicts without delay, pursuant to the principle of the separation of powers and the judiciary's independence.

- (2) Immediately halt the arbitrary detention of foreigners and refugees without legal cause, whether after the expiry of their prison sentences, the dropping of charges, their acquittal, or a court order for their release.
- (3) Create a mechanism that allows refugees and asylum-seekers a legal basis for presence in Lebanon, to be decided by the relevant authorities in cooperation with UNHCR. This could entail recognizing refugee cards and asylum-seeking certificates as a basis for residency, or the granting of complimentary unconditional residency, subject to renewal, until the refugee can be resettled or voluntarily return home, or until the conditions that caused him or her to flee no longer obtain.
- (4) Commit to not deport any foreigner to any country where there is reason to believe he or she may be tortured or where his or her life or liberty could be in danger, and commit to not deport any foreigner who has been recognized as a refugee or asylum-seeker by UNHCR, including those who had already received deportation sentences before such recognition. The judiciary has ruled that their status as refugees or asylum-seekers voids such deportation sentences, pursuant to the provisions of Article 3 of the UN Convention Against Torture, which Lebanon has ratified.
- (5) Abide by the restrictions placed by law on the power of administrative expulsion, and grant any foreigner who has received such an order the right to appeal to the judiciary to ensure that the legal conditions for such an order have been met.
- (6) Open an official and public investigation into the practices of arbitrary detention and *refoulement*, hold officials accountable for such violations, and compensate victims.
- (7) Activate systematic judicial oversight of detention locations and parliamentary oversight of cabinet and its administration's operations.
- (8) Establish the principle of independent observation of detention by civil society organizations, alongside a national preventive mechanism as per the optional protocol of the Convention Against Torture.
- (9) Pursue partnership with civil society organizations in the creation of policy and administrative or legislative mechanisms related to refugee protection and personal liberty.

In the mid-term:

- (10) Amend the 1962 Law Regulating Entry to, Stay in, and Exit from Lebanon in order to exempt refugees and asylum-seekers from the crimes of illegal entry and stay, pursuant to international norms. This will serve as an initial stage in the process of achieving a clear and integrated legal framework that regulates asylum and protects the rights of refugees and asylum-seekers, especially against arbitrary detention and refoulement, drawing inspiration from Lebanon's international commitments and its role as a member in the international family.
- (11) Ratify the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol.

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# ANNEXES

**ANNEX 1**  
**Court Decision, Judge Cynthia Qasarji,**  
**Summary Judge in Zahleh,**  
**Yusra al-Amiri's vs. the State, 11 December 2009**  
(Unofficial translation)

On behalf of the Lebanese people

We, Cynthia Qasarji, Judge dealing with matters of special urgency in Zahleh,

Upon verification,

It has been found that Yusra Al Amiri, represented by her lawyer Nizar Saghiyeh, by virtue of an assignment issued by the President of the Bar in Beirut, had submitted a summon registered at the registry of this Court under N° 286/2009, on 1/10/2009 against the Defendant, the Lebanese State - Ministry of Interior – General Directorate of General Security, represented by the Chairman of the Legal Affairs Panel at the Ministry of Justice, stating that she is an Iraqi citizen; she fled her country as a result of war and violence which endangered her life and led to the death of her husband and brother. She is now a refugee according to the asylum card issued by the United Nations High Commissioner for Refugees – UNHCR. On 21/5/2009, she was arrested for illegal entry to Lebanon, and on 17/6/2009, the Single Criminal Judge in Zahleh sentenced her to one month imprisonment provided that her time as remanded in custody would be deducted, a fine of 100 thousand Lebanese pounds cash, and expulsion from the country upon the sentence serving and the payment of all fees and charges. However, she is still detained in women's prison in Zahleh for just one reason which is the General Security's refusal of releasing her. It also states that the Judge dealing with matters of special urgency is the competent authority to adjudicate this case since there is violation of a fundamental freedom, i.e. personal freedom, and the procedure taken by the Directorate is not based on any legal foundation. The plaintiff is detained for an indefinite period by the General Directorate of General Security even though she had served her sentence; and that the subject of the case deals with fundamental rights and freedoms, established by international instruments and pacts; and that her continuous detention is

considered inhuman treatment and detention surpasses the administrative jurisdiction since it is not based on any decision, and is therefore a merely physical act. Moreover, even if there were a decision of detention, it should be based on the provisions of the article 18 of the Law of Entry and Exit and on the incompetence of the General Security to take a decision of administrative detention under the article 89 of the Criminal Code. It also states that any deportation decision is legally impossible based on the article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The summon called for the declaration of the Court's authority to adjudicate the current case based on the second paragraph of the article 579 of the Rules of Civil Procedure as well as the "voie de fait" theory, and the immediate release of the plaintiff by the defendant who should be charged with the payment of all fees and costs.

It has been found that on 24/11/2009, a decision was issued to start the trial, enforce its content and inform the defendant of the summon and its annexes.

It has been found that on 8/12/2009, the lawyer of the plaintiff came before the Court, presented the case, re-confirming all his statements and requests. Mrs. Rabab Khaled, the legal assistant appointed by the Chairman of the Legal Affairs Panel at the Ministry of Justice for Habeas Corpus and the follow up of the State's lawsuits under the Decision N° 52/2009, of 12/5/2009, came before the Court and submitted a plea including the findings of the Ministry of Interior and Municipalities with the plea of the General Directorate of General Security, requesting thereby the dismissal of the case on the grounds of unrealistic and illegal character.

It has been found that the plea of the General Directorate of General Security annexed to the State's plea stated that the Directorate operates in collaboration with the UNHCR Office in Beirut and Caritas for the regularization of the Iraqi nationals seeking refuge in Lebanon, granting those three months to satisfy the conditions of annual residence. Hence, it allows them to stay in Lebanon and grants them legal residence, without forcing them to repatriate to Iraq. It also stated that the lawsuit should be dismissed on the grounds of the incompetence of the Judge dealing with matters of special urgency to adjudicate the case because the release had been decided by virtue of a criminal verdict, not judicial decision and the desired measure relates to a criminal matter; The case should also be dismissed for incompetence because the administrative court is considered

competent in case the violation is established, and because it resulted from a decision issued by the Directorate and the latter denied issuing any decision regarding the release of the plaintiff; furthermore, there is no measure taken in relation with the plaintiff and the absolute irrelevance of this topic for the General Directorate of General Security. The Directorate concluded that the case should be dismissed for incompetence and illegality.

It has been found that during the session on 8/12/2009, the trial was duly concluded after both lawyers reconfirmed all their statements and requests.

Consequently,

Whereas the subject of the case deals with the request made by the plaintiff to declare the competence of the Judge dealing with matters of special urgency to settle the dispute, based on the provisions of the second paragraph of article 579 of the Rules of Civil Procedure as well as the “Voie de fait” theory and compel the defendant to immediately release her, because her continuous detention in women’s prison in Zahleh constitutes a violation of her personal freedom and fundamental rights;

Whereas the defendant requested the dismissal of the case on the grounds of incompetence, because it is the criminal court judge, and by digression the administrative court judge who is competent, as well as on the grounds of the absence of any measure taken in relation with the plaintiff and the absolute irrelevance of this topic for the General Directorate of General Security;

Whereas it is necessary to examine all the points that are raised, and whereas it is well established and undisputed that the plaintiff is an Iraqi national who entered Lebanon illegally, was arrested on 21/5/2009 and sentenced by the Criminal Court on 17/6/2009, by the Single Criminal Court Judge in Zahleh, convicting her on the crime set out in the article 32 of the Law of Entry and Exit, and condemning her to one month imprisonment provided that her time as remanded in custody would be deducted and a fine of 100 thousand Lebanese pounds, counted as one additional day of detention for every 10 thousand Lebanese pounds, and in case of non payment, her expulsion from the country upon the sentence serving;

Whereas it is established that the plaintiff is still in detention until today in spite of the termination of the sentence time a few months ago;

Whereas it is agreed in accordance with jurisprudence that the remedy of any violation of the individuals' private property and personal freedoms falls within the jurisdiction of the judicial system;

Whereas the Judge dealing with matters of special urgency as part of the judicial system is competent to look at these violations where conditions related to the enforcement of his competence are satisfied with regard to absolute necessity and special urgency which require the remediation to the violation without any delay;

Whereas there is no contested administrative decision that would justify the competence of the administrative court, since the General Directorate of General Security stated that it did not issue any decision related to the plaintiff's deportation; hence, what had been mentioned in this regard should be refuted;

Whereas what had been raised about the competence of the Criminal Court should be also refuted because the Judge dealing with matters of special urgency is competent to remediate to violation of personal freedom where conditions related to the enforcement of his competence are satisfied, and if this violation was in the form of personal freedom restriction; Hence, all that's been otherwise raised should be refuted;

Whereas based on the above, the claim about the incompetence of the Judge dealing with matters of special urgency shall be refuted;

Whereas it is established that following the issuance of the criminal decision on 17/6/2009 consisting of the plaintiff's imprisonment and expulsion from the country upon the sentence serving, the latter obtained a refugee status recognition document, dated on 4/9/2009, from the UNHCR, stating that she is at risk of persecution in Iraq.

Whereas the article 14 of the Universal Declaration of Human Rights stipulates that everyone has the right to seek and to enjoy in other countries asylum from persecution when his/her life is in danger and he/she is at risk of torture.

Whereas the article 33 of the 1951 Convention and its 1967 Protocol Relating to the Status of Refugees states that No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the

frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion;

Whereas the article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by Lebanon under the Law N° 185, on 24/5/2005, states in its first paragraph that No State Party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture;

Whereas based on the above, a foreigner should not be expelled through repatriation where it has been found that his/her life might be in danger;

Whereas international treaties prevail over all other legal texts as according to the article 2 of the Rules of Civil Procedure;

Whereas the issuance of a criminal decision stipulating the expulsion of the plaintiff upon the sentence serving – issued while the plaintiff was not yet recognized as refugee – does not justify the prolongation of her detention without any fixed term, despite the expiration of imprisonment time a few months ago, on the pretext of the impossibility of her deportation to Iraq and the unavailability of a third country where she could be deported.

Whereas the Directorate's action consisting of keeping the plaintiff in detention, in women's prison in Zahleh, constitutes a violation of her personal freedom and justifies the intervention of the Judge dealing with matters of special urgency in order to put an end to it, the defendant shall be required to acquit and immediately release the plaintiff;

Whereas in addition to the above, the article 89 of the Criminal Code states that the foreigner who is sentenced to expulsion shall leave the Lebanese territories by his/her own means within fifteen days. Each violation of this expulsion measure, whether judicial or administrative, shall be punished by one month to six months imprisonment;

Whereas based on the above, the exit from the Lebanese territories as a result of an expulsion sentence shall be made by the foreigner who is sentenced to expulsion by his own means and within the predetermined period. Where this period is exceeded and he/she remains in Lebanon, he/

she shall be punished for the above mentioned contravention.

Whereas based on the above, the defendant should be required to put an end to the violation of the plaintiff's personal freedom and immediately release her;

Whereas given the conclusion reached by the Court, there is no need for further investigation and all additional and illegal reasons shall be refuted, whether because of implicit rebuttal or illegality;

Hence

The following verdict had been reached:

**First:** Refutation of the plea stating that the Judge dealing with matters of special urgency is incompetent to settle this dispute.

**Second:** Committing the defendant to remediation of the violation of the plaintiff's rights and personal freedom as well as her immediate release.

**Third:** Refutation of all additional and illegal reasons.

**Fourth:** Compliance with the payment of expenses.

A verdict in presence, for immediate execution, publicly issued and declared in Zahleh, on 11/12/2009.

ANNEX 2  
**Court Decision, Judge Ghassan El Khoury,  
Single Penal Judge in Beirut,  
the State vs. Saad Ismail, 29 March 2010**  
(Unofficial translation)

On behalf of the Lebanese people

I, Ghassan El Khoury, Single Penal Judge in Beirut,

After perusal of the claim made by the Appellate Prosecutor's Office in Beirut, on 9/3/2010, against the defendant:

Saad Muhammad Ismail – mother's name Tamira – born in 1956, Iraqi, who has been arrested in presence on 9/3/2010, and is still under arrest

Pursuant to the article 89 of the Criminal Code

And as a result of the public trial:

**First:** Regarding the Facts

It has been found that the defendant, Saad Ismail, Iraqi, has been living in Lebanon since a long period of time, and obtained a residence card from the Lebanese General Security on 2/2/2007, valid until 1/2/2008, based on a work permit as technician, issued by the Ministry of Labor on 11/1/2007.

It has also been found that on 7/5/2007, he was arrested for molesting a minor xxx and sentenced, by virtue of a verdict pronounced by the Single Penal Judge in Beirut and authenticated by the Penal Court of Appeal on 29/11/2007, to two month imprisonment, provided that his time as remanded in custody would be deducted; thus, his sentence time terminated on 7/7/2007.

It has also been found that upon the sentence time termination, he was kept under arrest in Roumieh Prison, without any warrant, court sentence, legal document or known justification. However, on 9/3/2010, i.e. two years and a half later, he was referred to the Directorate General of General Security, where a preliminary investigation had been carried out, under the supervision of the Appellate Public Prosecutor in Beirut, based on a decision issued by the Director General of General Security, aiming at the defendant's repatriation to Iraq. It has been found that the defendant

refused his repatriation to his country of origin, and that the preliminary investigation showed no objection against him at the Operations Office and no security impediment at the Directorate's Information Office. He was then referred to the Court.

During the public trial on 22/3/2010, the defendant Saad Ismail was brought before the court escorted and uncuffed, in presence of his lawyer, Me. Nizar Saghiyeh. At the hearing, he repeated what he said in his deposition during the preliminary investigation at the General Directorate of General Security, adding that he was still detained in Roumieh Prison since the year 2007, after he served his sentence, and that he had been brought before the General Directorate of General Security a month and a half ago where he was informed verbally of his deportation to Iraq and expressed his refusal of such deportation since his brother was killed in Iraq and his family members were displaced, and even though he was not wanted nor prosecuted in Iraq, security problems prevented him from going back there. Me. Nizar Saghiyeh pleaded for him, requesting to stop all pursuits against the defendant because of the absence of an administrative deportation decision which would be, if existing, in conflict with international treaties and norms, and because of the lack of elements of criminal offense set out in Article 89 of the Criminal Code. Me. Saghiyeh also presented a briefing which was publicly read as a verbal pleading at the trial.

**Second:** Regarding the evidence

The facts were supported by the following evidence:

- Prosecution
- Preliminary investigation
- Documents
- Public trial events

**Third:** Regarding the law

Whereas it has been found that the defendant's residence in Lebanon was legal and that he was detained on 7/5/2007 and sentenced to two-month imprisonment;

Whereas upon the sentence time termination, the defendant was arbitrarily kept in detention in Roumieh Prison, as an infringement on his personal freedom, and without any legal document;

Whereas the Director General of General Security issued on 9/3/2010 a decision aiming at the defendant's deportation to Iraq;

Whereas the Director General of General Security may decide upon the repatriation of a foreigner where the presence of the latter would threaten general security and safety;

Whereas although the records of the General Directorate of General Security stated that there were no objection against the defendant at the Operations Office and no security impediment at the Directorate's Information Office, the decision issued by the Director General based on his discretion is subject to legal rules regarding its implementation, in addition to the applicability of the second paragraph of Article 89 of the Criminal Code for violations of the administrative decision of deportation;

Whereas it is to be said that the decision of deportation issued by the Director General of General Security against the defendant does not violate the law No. 185, of 24/5/2000, referring to Lebanon's adherence to the Convention against Torture, which prevents the expulsion of any foreigner where he might be at risk of torture, for the lack of applicability to the Iraqi defendant whose case does not include special aspects requiring further consideration, but the Director General's aforementioned decision must be implemented in accordance with the general rules of decisions implementation, so that in case of infringement of the deportation decision, the offense provided for in Article 89 of the Criminal Code shall be established;

Whereas the aforementioned decision of deportation was issued against the defendant who has been arbitrarily detained in Roumieh Prison for more than two years and a half, and consequently no consideration should be given to his criminal intention or will with regards to failure to implement the deportation decision; what should apply in this case are the rules of the exercise of power on a prisoner who is deprived of his liberty with regards to his inability to decide upon the components and circumstances of the exercise of power, and not hold him responsible as a result of his discontent about them;

Whereas in this case, any decision or measure rendered against the detainee must be carried out by force, and the detainee must be forcibly deported, without any consideration of excuses related to the means of transportation,

such as the Captain of the plane in the current case or any other;

Whereas the elements set out in the provisions of Article 89 of the Criminal Code do not apply unless with regards to the non-detained foreigner who breaches the decision of deportation, and consequently the pursuits against the defendant who was held in detention without any judicial decision during the previous period of time must be cancelled.

Hence

Decide on the revocation of pursuits against the defendant, Saad Muhammad Ismail, for lack of elements of criminal offense set out in Article 89 of the Criminal Code, and his immediate release unless he was arrested for any other charge, by virtue of another judicial decision.

A verdict in presence publicly issued and declared in Beirut, on 29/3/2010.

**ANNEX 3**  
**Court Decision, Judge Tanios Saghbini,**  
**Single Penal Judge in Metn,**  
**the State vs. Alaa Sayyad, 14 April 2010**  
(Unofficial translation)

Upon consideration of the release request submitted by the defendant at the conclusion of the trial;

In the light of the document attached to the memorandum of the defendant's lawyer, regarding the recognition of the latter as refugee by the Regional Office of the United Nations High Commissioner for Refugees (UNHCR);

Considering all the information and facts included in the case file, especially the duration of the defendant's detention beyond the criminal procedures framework and the enforcement of the penal verdict issued by the Penal Single Judge based on the provisions of the article 32 of the Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country regarding deportation;

Hence,

The following decision had been reached: The release of the defendant provided that the latter would have a well-known and clear place of residence in Lebanon and the notification of the competent General Security Department for the immediate enforcement of this release decision without any bail.

Jdeidet El Metn, 14/4/2010

Head of the Judicial Circuit of the Penal  
Single Judges in El Metn District

**Judge Tanios Saghbini**

## ANNEX 4

**Old Policies and Practices into new forms: The Lebanese Inter-Ministerial Committee ignores the issue of arbitrary detention and deportation, Ruwad Frontiers Association, Press release, 8 September 2010**

Beirut, 8/9/2010

Ruwad Frontiers Association regrets that the Lebanese Inter-Ministerial Committee charged last April to find a solution to end the practice of arbitrary detention of foreigners including refugees and asylum seekers failed to bring any changes and improvement to the old governmental policies.

The creation of the Inter-Ministerial Committee was welcomed by the human and refugee advocates believing it would bring Lebanon's policy and practice in line with international human and refugee rights and standards, particularly in relation to putting an end to the practice of arbitrary detention of all foreigners including refugees and asylum seekers and the "forcible return" under the cover of "voluntary return".

The conclusions of the Inter-Ministerial Committee, endorsed by the Government were published in the Lebanese press on the 7<sup>th</sup> of this month. The conclusions states that Lebanon is not "a country of asylum, neither temporary nor permanent"; that illegal entrants should be penalized and deported; as for refugees and asylum seekers they would be treated similarly, with a grace period of two months pending the determination of their refugee status. UNHCR is given a short time – maximum one year – to resettle recognized refugees in a third country, and to determine the asylum seekers' refugee claim.

We regret that the conclusions of Inter-Ministerial Committee condoned the illegal practice of arbitrary detention and deportation of refugees and asylum seekers despite several court rulings this year that considered the detention of foreigners after the end of their prison sentence as arbitrary and contrary to the law; nor took into account any of the recommendations for a minimum refugee protection framework submitted to them by the human rights associations such as Frontiers and the UN Refugee Agency. Further, the conclusions contain some regression in Lebanon's policy. The statement that "Lebanon is not a country of asylum" contradicts the essence of the Lebanese Constitution that embedded the Universal Declaration of Human Rights in its preamble and consequently the right to seek asylum.

We regret that by not bringing a change to its policy, Lebanon continues to violate its own Constitution and laws as well internationally recognized human and refugee rights, particularly the right to seek asylum, the right to protection and not be detained solely for entering the country illegally to seek asylum, and the right to personal freedom and not to be arbitrary detained, and finally the right not to be refouled according to the principle of non-refoulement and Article 3 of the Convention against Torture which prohibits returning anyone to any country where they are likely to be subjected to torture.

Finally, we call upon the United Nations High Commissioner for Refugees to ensure ongoing communication with the relevant authorities to ensure that no refugee or asylum-seeker is being deported and to guarantee the release of all refugees and asylum seekers who are still arbitrarily detained in Lebanon.

ANNEX 5

**Deportation of foreigners detained on various grounds  
after serving their sentences, Letter from the Ministry of  
Interior to the General Secretariat of the Cabinet of Ministers,  
26 March 2010**  
(Unofficial translation)

**MINISTRY OF INTERIOR**

**Beirut, March 26, 2010**

**Number 808/ص.م**

**To the General Secretariat of the Cabinet of Ministers**

**Subject:** Deportation of foreigners detained on various grounds after  
serving their sentences

**Reference:**

- The law of 10/7/1962 (Regulating the entry to, stay in and exit from Lebanon)
- Decree 11262 of 30/10/2006 (Memorandum of Understanding between the Directorate General of the General Security and the regional Office of the United Nations High Commissioner for Refugees [UNHCR] concerning the processing of cases of asylum seekers applying for refugee status with UNHCR)
- Letter of the Directorate General of the General Security number 465/اع/ص dated 9/3/2010]

Given the existence of a large number of people from various nationalities who are still detained after finishing serving their sentences on various grounds,

The Ministry of Interior would like to clarify the following points to the Cabinet of Ministers:

1. The entry to Lebanon is regulated by the law dated 10/7/1962 (Regulating the entry to, stay in and exit from Lebanon) [Law regarding foreigners]
2. In case of violation of the said law and entering illegally to the country, the provisions of Article 32 of the said law should apply, punishing this breach with one month to three years of imprisonment, fine of 250.000 to 1.250.000 LL and expulsion from the country.
3. Based on the said law, any violation is to be referred to courts that would order imprisonment, fine and expulsion
4. After serving the sentence, the status of the defendant remains illegal unless regularization of their legal situation is done according to the existing procedures.  
If the detention after serving the sentence is being considered by the judiciary as a violation of rights according to Article 579 of the Code of Civil Procedures, the release of people who have violated the Law regarding foreigners would not exempt them from the violation. Neither serving the sentence nor the judicial ruling would grant them the refugee status in view of the fact that there is no text regulating this issue. Moreover, Lebanon is not an asylum country.
5. The above mentioned, although it is in application of the law, raises a humanitarian crisis par excellence and a difficult life for the people who entered the country illegally. In the same time, it raises a security and demographic problem linked to the Lebanese government refugee related policy.
6. There are thousands of people who have entered Lebanon illegally and these illegal residents comprise of different nationalities. Some of them are among those detained for various crimes. Their problems are interlinked.
7. There is a concern that these illegal residents become refugees in Lebanon (in addition to the existence of more than 400 thousand of Palestinian refugees in the country).  
Notably, it is impossible to turn Lebanon into a humanitarian asylum country. Additionally, granting political asylum to foreigners not willing to return to their countries under the pretext that they will be persecuted there is not possible.
8. The MOU signed between the General Security Directorate and the UNHCR regional office concerning the processing of cases of asylum seekers applying for refugee status with UNHCR, signed on

September 9, 2003 and ratified by decree 11262 dated 30/10/2003, is one of the temporary humanitarian solutions for the problems of those who enter the country illegally or are illegal residents in the country and are in the process of applying for refugee status with the UNHCR. This is obviously pending their resettlement in third countries or their repatriation in their countries of origin.

Nevertheless, the MOU is not a solution for other cases and it cannot in anyway be interpreted as Lebanon being turned into a country of asylum, indeed it explicitly stipulates the contrary.

9. The release of foreigners detained after serving their sentences on various criminal grounds, without deporting them from the country, would turn their stay in Lebanon to a “*de facto asylum*”. This may result in a lot of illegal residents or people who have entered the country illegally to try to get arrested and detained for illegal entry or stay, to be released after serving their sentences and stay in the country as being “refugees”. This would be a clear abuse of the law that could not be tolerated by the Lebanese government.

Consequently;

The Ministry of Interior refers the issue to the Cabinet of Ministers for their consideration and in order to take the appropriate decision in this sensitive question. The Ministry suggests the following measures:

- i. the establishment of an inter-ministerial committee composed of Ministers of Justice, Foreign Affairs, Social Affairs and Interior, to look into:
  1. Finding legislative, regulatory and procedural solutions for this problem
  2. Coordinating with UNHCR in this regard.

## ANNEX 6

**Deportation of foreigners detained on various grounds  
after serving their sentences, Letter from the Ministry of  
Interior to the General Secretariat of the Cabinet of Ministers,  
5 June 2010**  
(Unofficial translation)

### MINISTRY OF INTERIOR

**Beirut, June 5, 2010**  
**Number 1323/ص.م**

**To the General Secretariat of the Cabinet of Ministers**

**Subject:** Deportation of foreigners detained on various grounds after  
serving their sentences

**Reference:** Your letter number 1154/ص.م dated 27/5/2010

Regarding the issue and reference mentioned above,

- 1- We would like to inform you that the initial suggestions you requested from us in application of the Council of Ministers Decision 19 of 14/4/2010 are those in our letter number 808/ص.م
- 2- Taking into consideration the consultation meetings of the Minister of Interior with the stakeholders. Specifically, the United Nations High Commissioner for Refugees [UNHCR] and the civil society organizations.

With regards to the data compiled by the Directorate General of the General Security [DGGS], and in light of the meeting of the inter ministerial committee headed by the Prime Minister, dated 2/6/2010, the Ministry of Interior suggests the following:

- A. Emphasizing the fact that Lebanon is not a permanent or temporary country of asylum. All procedures related to this issue should be based on this fact.

- B. Insist on the application of the law regulating the entry to, stay in and exit from Lebanon of 10/7/1962 [Law on foreigners], and issuing the necessary enforcement decrees, when needed.
  - C. Stressing that granting the refugee status (as per UNHCR definition) should be according to objective and stable criteria that justify the asylum claim.
  - D. Wishing upon UNHCR to adjudicate as soon as possible the files of asylum seekers to third countries from Lebanon, and to sort them into two categories:
    - i. Those who meet the requirements
    - ii. Those who do not deserve the refugee status
- a) Founded on the above mentioned:, those belonging to the second category will be deported after verifying their status
  - b) UNHCR issues a written commitment in what regards all persons belonging to the first category for whom it foresees a genuine resettlement opportunity.
  - c) Deportation procedures by DGGS will be suspended for those who applied to UNHCR for a maximum delay of two months after their application for asylum. The deportation procedures would resume after the expiry of this delay if the asylum is not granted and notified to the DGGS.
  - d) The DGGS grants those who were recognized as refugees an exceptional residence for three months renewable for another three months and for a maximum of a year, in order to allow UNHCR to resettle them in third countries.
  - e) Those who did not apply to UNHCR previously and entered Lebanon illegally will be deported according to the law. For that end, the DGGS requests a special budget of 200 millions Lebanese Pounds to ensure the deportation of 250 individuals on its expenses.

For your consideration, and to be presented to the Cabinet of Ministers for the appropriate decision.

