

DOUBLE JEOPARDY

Illegal Entry - Illegal Detention

**Case Study:
Iraqi Refugees and
Asylum - Seekers in Lebanon**

Legal Study
December 2008

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ACRONYMS

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCP	Code of Civil Procedures
COA	Country of Asylum
COO	Country of Origin
CPP	Code of Penal Procedures
EU	European Union
FIDH	International Federation for Human Rights
FR	Frontiers Ruwad Association
GSO	General Directorate of the General Security
ICCPR	International Covenant on Civil and Political Rights
ISF	Internal Security Forces
IOM	International Organization for Migration
Law of Entry and Exit	Law Regulating the Entry, Stay and Exit from Lebanon
MoI	Ministry of Interior
MoU	Memorandum of Understanding between UNHCR and Lebanon
NGO	Non-Governmental Organization
PC	Penal Code
Refugee Convention	Convention Related to the Status of Refugees
RSD	Refugee Status Determination
UDHR	Universal Declaration of Human Right
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNRWA	UN Relief and Works Agency for Palestine Refugees in the Near East
US	United States of America

EXECUTIVE SUMMARY

Detention and prolonged detention after the expiry of judicially imposed sentences as well as “administrative” detention have long been one of the most severe protection problems confronting refugees and asylum-seekers in Lebanon.

Lebanon hosts two categories of refugees, the Palestinian refugees, most of them arrived in the late 1940s and early 1950s (1948 Palestinian refugees), and refugees from war-torn countries, or countries well known to have systematic human rights violations. Today, the majority of them are Iraqis. While the 1948 Palestinian refugees in Lebanon have legal status and receive humanitarian relief through the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the core problem of non-Palestinian refugees is the lack of any functioning domestic legal framework guaranteeing their basic right to legal recognition and security in accordance with international standards. The Law of Entry and Exit of 1962 does not have any provisions related to persons attempting to enter Lebanon to seek asylum. As a result, many refugees who do not meet the usual entry visa requirements enter the country illegally and face the risk of

arrest and deportation, contrary to international refugee law that does not penalize asylum-seekers for entering a country illegally.

The United Nations High Commissioner for Refugees (UNHCR) is present in Lebanon since the 1960s and has a Memorandum of Understanding (MoU) since 2003 with the Lebanese State to process asylum claims. Yet, the MoU falls short of the required standard for refugee protection. Registration with UNHCR does not give refugees and asylum-seekers the needed protection, particularly from being prosecuted for entering the country illegally.

Frontiers Ruwad Association (FR) published in 2006 a legal study on arbitrary detention of refugees entitled *Legality vs. Legitimacy: Detention of Refugees and Asylum-Seekers in Lebanon* where it concluded that the Lebanese practice of detention of refugees is in violation of national laws and international refugee and human rights standards.

The present report analyses in more depth the Lebanese policies and practice regarding refugee legal protection and takes the Iraqi refugees as a case study. The report is strictly limited to the analysis of the gaps of the refugees' rights to recognition and security in the Lebanese system. It describes the process of arrest, trial, indefinite detention, and deportation or releases of refugees, mainly for having entered the country illegally. It focuses on the issue of the indefinite detention after the expiry of the judicial sentence or following an administrative order of arrest and detention, and looks at the national procedural safeguards against arbitrary detention.

The analysis of the findings in this report is mainly based on the Association's information obtained from its ongoing monitoring and research on the issue of detention of refugees, trial observations, studies of court decisions and interviews with detainees. The case sample covers 66 arrests of Iraqi refugees, most of them registered with UNHCR at the time of arrest. The sampling is not representative, but aims at indicating the policy and the gaps related to refugee protection. The report covers the period from 1 January 2007 to 30 September 2008.

The report shows that the Lebanese policy regarding refugees is simply one of denial. Arrest and prolonged detention is used as a policy of deterrence to force refugees to agree to be deported and/or discourage potential new arrivals. Refugees, even if they are holding UNHCR certificate, are subject to arrest and detention as any illegal migrant.

The judiciary is slowly, but half heartedly, making case law to stop the

deportation of refugees and asylum-seekers through the use of Lebanon's obligation to the principle of *non-refoulement*, particularly by invoking Article 3 of the Convention against Torture. However, the judiciary is not yet guaranteeing the protection of refugees and asylum-seekers: they are tried in masses, in swift hearings, are not given the opportunity to put forward before the judge the fear of persecution that led them to flee their country. They receive the standard sentence of one-month, fine, and deportation; only when refugees benefit from the assistance of defense lawyers, this standard sentence may be reconsidered by judges to their favor.

Refugees and asylum-seekers face the ordeal of arbitrary prolonged detention once they serve their prison sentences. The practice is to transfer them from the authority of the prison administration to the immigration authority that decides their release or deportation, even if the court had acquitted or did not sentence the refugee to deportation. The same fate would be for refugees and asylum-seekers arrested and detained by the immigration authorities without even being referred before a judge. They are kept in detention for months without any legal grounds. Lebanon, who has been criticized in the past for violating the principle of *non-refoulement*, seems to have resorted to the use of prolonged unlawful detention to coerce refugees to agree to be deported. As such, arbitrary detention leads to *de-facto refoulement*.

The Lebanese law provides clear remedies for those who have experienced abuse at the hands of the state, creating actionable rights and clear civil and criminal penalties. Lawyers rarely, if ever, pursue cases of arbitrary detention on the basis of these provisions. Whenever arbitrary detention is challenged before the judiciary or the administration, these challenges are either ignored or do not necessarily result in putting an end to the unlawful detention. Arbitrary detention is a serious crime in both the national and international human rights law. By not fulfilling its legal obligations and not holding those responsible accountable to the full letter of the law, Lebanese authorities are signaling their disrespect for the rule of law and as such putting at stake their status as a liberal and democratic state.

The findings show the unpredictability of when and how detention ends. The Lebanese policy to force Iraqi refugees to return to Iraq was conducted under the 'voluntary' return operations that were organized by IOM and halted in September 2007. These returns continued to

be organized by the Iraqi Embassy and the Lebanese government throughout 2008, contrary to the 2006 UNHCR position of the ‘non-returnability’ of Iraqis. Releases do occur when other solutions such as forced returns fail. However, these releases remain on an *ad hoc* basis and restricted to either regularization through normal migration procedures or promises of resettlement made by UNHCR. In all cases, the right to remain temporarily in Lebanon as a refugee continues to be denied.

The report calls, *inter alia*, on the Lebanese authorities to put an end to the practice of arbitrary detention and safeguard personal liberty. It also calls for an immediate investigation of the practice, to bring those responsible to justice and make the findings public. It further calls for legislative amendments to bring Lebanese laws to be in conformity with international refugee and human rights standards, and particularly not to penalize asylum-seekers and refugees for entering the country illegally as a first step towards an effective protection system of refugee rights.

In the immediate term, the report calls on the authorities to set up an independent permanent judicial committee with the authority to automatically review deportation orders, provide procedural safeguards against *refoulement*, and ensure respect for detention standards.

The report makes specific recommendations regarding Iraqi refugees. It calls on the Lebanese authorities to adhere to UNHCR guidelines and advisory concerning the non-returnability of Iraqi refugees, halt their “returns” to Iraq, and grant them temporary residencies on humanitarian grounds.

Finally, the report calls on the international community to assist the Lebanese government in order to grant the refugees from Iraq access to basic services such as health and education, allow self-reliance opportunities, and increase funding to UNHCR and independent human rights NGOs providing legal aid and for training of the legal profession, security forces, and judges on the issue of asylum.

INTRODUCTION

Lebanon hosts a very large refugee population compared to its geographic and demographic size. Palestinian refugees are estimated to be around 450,000 and non-Palestinian refugees around 55,000.

The legal structures for protecting and assisting these two groups are quite different in both international and Lebanese law. While most, though by no means all, Palestinian refugees in Lebanon have legal status and receive humanitarian relief through the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the core problem of non-Palestinian refugees is the lack of any functioning domestic legal framework guaranteeing their basic right to legal recognition and security in accordance with international standards.

“Lebanon is not a country of asylum”

Lebanon’s Constitution enshrines the principles of the United Nations and human rights conventions¹, including the right to seek

¹ The Universal Declaration of Human Rights is embodied in the Preamble of the Lebanese Constitution as amended in 1990 available at: http://www.servat.unibe.ch/icl/le00000_.html [accessed 8 December 2008]

asylum. Lebanon is also a party to the core human rights instruments including the Convention against Torture (CAT) that prohibits the *refoulement* of any person to a country where he or she would be subjected to torture.² The 2006 Ministry of Justice Advisory affirmed that the Government should not return refugees recognized by United Nations High Commissioner for Refugees (UNHCR) on the basis of Article 3 CAT.³

The Law Regulating the Entry, Stay and Exit from Lebanon of 1962⁴ (Law of Entry and Exit) grants any foreigner the right to seek asylum in Lebanon if the person's life or liberty is threatened for political reasons. The Law has a narrow definition of a refugee and includes limited provisions to deal with refugee issues.⁵ It establishes an *ad-hoc* inter-ministerial committee with the capacity to adjudicate asylum applications and grant refugee status. In practice, the right to seek asylum in Lebanon is a dead letter, for it has been rarely used.

Although Lebanon is not a signatory to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, the country has been, since 1963, a permanent member of UNHCR's Executive Committee⁶ and hosts the office of the UNHCR in Beirut. Yet, the Lebanese authorities never acknowledged UNHCR's refugee certificate as a valid document recognizing refugee status; even recognized refugees continue to be treated as illegal migrants. It is only in 2003 that a written Memorandum of Understanding (MoU) was signed between UNHCR and the Lebanese State.⁷

2 Article 3, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted by the General Assembly, 10 December 1984, A/RES/39/46, available at: <http://www2.ohchr.org/english/law/cat.htm> [accessed 8/12/2008]; Law No. 185 of 24/5/2000 ratifying the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, published in the Official Gazette No. 25 of 8/6/2000.

3 Advisory 405/2006 issued by the Ministry of Justice on 19/6/2006 (on file)

4 The Law Regulating the Entry to Lebanon and Stay and Exit from the Country, published in the Official Gazette No. 28-1962, Entered into force 10/7/1962

5 *Idem.*, articles 26 to 31; the ad-hoc committee is composed of the Directors of the Ministries of Interior, Foreign Affairs and Justice in addition to the Director of the General Security

6 UNHCR Executive Committee responsibilities include setting international standards with respect to the treatment and protection of refugees

7 MoU between the GSO and the Regional Office of UNHCR concerning the processing of cases of asylum-seekers applying for refugee status with UNHCR office signed on 9/9/2003, adopted by decree 11262 of 30/10/2003, published in the Official Gazette No. 52 of 13/12/2003

The signing of the MoU was seen as an advance in Lebanese official policy. Unfortunately the terms of the MoU fell short of providing adequate protection to refugees and asylum-seekers.⁸ Most notably, it stipulates that Lebanon is not an asylum country and that the term “asylum-seeker” is defined as a person seeking asylum to a country other than Lebanon. It does not explicitly recognize the principle of *non-refoulement* but only grants refugees registered with UNHCR the right to a temporary circulation permit (maximum 12 months) which only gives them the right to free mobility in Lebanon. During this period UNHCR is expected to resettle them to a third country. Basically, the MoU did not bring major improvements in basic refugee security and protection.

As there is no national refugee legal framework, refugees and asylum-seekers have no legal, social, or economic protection. In rare cases where a refugee has a work permit, it is only granted to him/her on the basis of the normal immigration regulations covering the work permits granted to migrant workers, and not on the basis of their refugee status with UNHCR.⁹ This drives refugees to work in the informal labor market, subjects them to discrimination and exploitation, and denies them the right to work, to basic health care and education. Resettlement in a third country remains the only durable solution for non-Palestinian refugees other than ‘voluntary return’.

Crucially, the most serious and immediate refugee protection concern remains the threat of arrest, prolonged detention, and forced deportation on grounds of illegal entry, a crime penalized by the 1962 Law of Entry and Exit without any exception. Lebanon continues to ignore its international obligations regarding refugee rights and treats this vulnerable category as any other illegal migrant.

Whereas in past years, the main refugee protection concern in Lebanon was direct violation of the principle of *non-refoulement*, today, the most urgent concern is the indefinite arbitrary detention as a coercive measure to what seems to be a policy of *de facto refoulement* hidden under ‘voluntary return’ operations.

8 For a detailed analysis of the MoU, see FR’s statement available at <http://www.frontiersruwad.org/>

9 For more details on refugee legal, social, and economic protection, see FR’s previous Annual Reports, available at <http://www.frontiersruwad.org/>

The Plight of Iraqi Refugees in Lebanon

Today, Iraqis make up the majority of non-Palestinian refugees and asylum-seekers in Lebanon. Other nationalities include Sudanese, Syrians, Ethiopians, Egyptians, Iranians, and Somalis, countries that are well known for their systematic human rights violations, civil wars, or other types of generalized conflicts. Most refugees pass through Syria before seeking asylum in Lebanon. However, Syria does not have a national asylum policy and does not offer stable protection from *refoulement*.

During 2007 and 2008, the security situation in Iraq continued to be unstable and political reconciliation remained limited, with not much political advances being reached. Though some improvements were reported in 2008, the situation remains unstable and grave violations of human rights continue to occur.¹⁰

The displacement of the Iraqi population has been repeatedly characterized as the worst humanitarian crisis since the 1948 displacement of Palestinian refugees. As of September 2007, UNHCR estimated that there are approximately 2.2 million Iraqi refugees around the world and another 2.2 million displaced inside Iraq. The majority of refugees are mainly in Syria and Jordan; others are in Egypt, and Lebanon.¹¹

The response to the plight of the Iraqi refugees by the international community has focused mainly on assistance rather than solving the root cause of the reasons that led to such huge displacement. The assistance itself is far from adequate, especially that Iraqi refugees have fled to countries in the region, including Lebanon, which cannot take the full burden and provide them with the minimum basic assistance.

UNHCR has issued global appeals for USD 123 million in 2007 and USD 261 million in 2008 with USD 11.3 million allocated for assistance to refugees in Lebanon.¹² Yet, funding received in the first half of 2008

10 For further details, see UN Assistance Mission for Iraq, Human Rights Reports for 2005-2008, available at: <http://www.uniraq.org/docsmaps/undocuments.asp#HRReports> [accessed on 6/12/2008]

11 UNHCR, *Statistics on Displaced Iraqis around the World*, September 2007, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=470387fc2> [accessed on 13/12/07]

12 UNHCR, *Iraqi Situation Response, Update on revised activities under the January 2007 Supplementary Appeal*, July 2007, available on <http://www.unhcr.org/cgi-bin/texis/vtx/home/>

was not sufficient; UNHCR stated that this could lead to the reduction or halting the aid programs for Iraqi refugees.¹³

Before 2003, Frontiers Ruwad Association (FR) estimated the Iraqi refugee population in Lebanon to be around 20,000. Their number started to slightly increase after the US invasion in 2003. However, they arrived in significant numbers following the bombing of the Shiite shrine in Samarra in February 2006. The figures of Iraqis entering Lebanon legally vary between 28000 and 38500 in 2006 and more than 15000 in the first five months of 2007.¹⁴ But, the number of refugees who entered the country illegally is unknown. Only around 10,700 were registered with UNHCR as of September 2008.¹⁵

The majority of Iraqi refugees in Lebanon are Shiite or Christians who last resided in Baghdad or Mosul. In addition to the generalized violence in Iraq, many fled after being directly threatened or experienced attempts on their life and physical integrity. Most Iraqis arrive to Lebanon through Syria. They refuse to remain there for various reasons, including fear of the Syrian regime, having relatives in Lebanon, or the belief in availability of better work opportunities that enable them to be more self-reliant and to provide for their families. Moreover, religious minorities prefer to find refuge in Lebanon where they feel safe among Lebanon's various religious communities.¹⁶

Lebanon remained indifferent to the reasons that made thousands of Iraqis flee their country. To be allowed entry, Iraqis had to obtain a prior authorization and an entry visa from the Lebanese consulate in Iraq. By the end of 2005, the regulations were slightly eased. They were

opendoc.pdf?tbl=SUBSITES&cid=46a4a5522 [accessed on 18/12/2007]; UNHCR, *2008 Iraq Situation Supplementary Appeal*, 1/1/2008, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&cid=491953e92> [accessed on 25/11/2008]

13 UNHCR, *UNHCR seeks donor help amid funding shortfall for Iraq operation*, UNHCR News Stories, 9/5/2008, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=news&cid=48246c3c4> [accessed on 2/12/2008]

14 Correspondence with UNHCR, 17 February 2007; Danish Refugee Council, *Iraqi Population Survey in Lebanon*, November 2007, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&cid=4762690f2> [accessed on 16/12/07]

15 UNHCR Statistical Report on registered Iraqis in Syria, Jordan, Lebanon, Turkey and Egypt as of 25 September 2008, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&cid=491959312> [accessed on 25/11/2008]

16 Profiles of Iraqi refugees seeking FR assistance; Danish Refugee Council, *Iraqi Population Survey in Lebanon*, November 2007, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&cid=4762690f2> [accessed on 16/12/07]; UNHCR, *Iraq Situation Update*, August 2008, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&cid=491956a02> [accessed on 25/11/2008]

granted visas at all border points. However, they had to provide a return non-refundable ticket, a hotel reservation, or the address of a private residence and USD 2,000 in cash or in a bank account.¹⁷ In 2008, this regulation was restricted to the entry at the Beirut International Airport. Entry at the land border points with Syria was approved only to traders, holders of entry visas, physicians, engineers, and diplomats.¹⁸ Refugees not able to meet these rigid entry requirements resorted to being smuggled in unsafe conditions.¹⁹ Even those who enter legally, face difficulties renewing their visa or obtaining residency. As a result, they live in 'illegality' and face the risk of arrest and deportation.

In contrast to Lebanese policy, UNHCR started reacting after the mass displacement of Iraqis in 2006 and the increasing influx of Iraqi refugees.²⁰ In January 2007, it started recognizing all Iraqi as refugees on a *prima facie* group basis and urged all states to refrain from forcibly returning Iraqis to Iraq.²¹ The only exceptions to this policy are Iraqis who originate from the three governorates of Northern Iraq (Erbil, Suleimaniyyah and Dahok) and Iraqis who may fall under the exclusion clauses of the 1951 Refugee Convention; these have their asylum claims individually assessed.

In Lebanon, UNHCR's new policy of *prima facie* group recognition combined with an increase in registration of Iraqi refugees, and the continued limited number of resettlements in third countries has *de-facto* put Iraqis outside the MoU, and consequently, they did not benefit from the right to 'remain temporarily' in Lebanon on the basis of the circulation permit. They fell back to the situation that existed prior to the signing of the MoU, when the Lebanese authorities did not recognize UNHCR certificate to provide them protection. These refugees ended up living in the whirlwind of fear and insecurity.

17 *The Lebanese General Security allows Iraqis to enter Lebanon without prior authorization*, Ad-Diyar daily newspaper, 9/11/2005 [in Arabic]

18 GSO Website, *Entrance Visas, Entry of the citizens of non Gulf Arab countries who are coming for the purpose of tourism, Entrance of the Iraqi citizens to Lebanon*; available at <http://www.general-security.gov.lb/English/Entrance+Visas/Arab+countries/> [accessed on 18/11/2008]

19 At least 77.5% of Iraqi refugees in Lebanon are said to have entered the country illegally. See Danish Refugee Council, 2007, *op. cit.* [accessed on 16/12/2007]

20 Prior to 2007, UNHCR granted Iraqi refugees temporary protection and the international community paid little attention to their problem.

21 UNHCR, *UNHCR Return Advisory and Position on International Protection Needs of Iraqis Outside Iraq*, 12/12/2006, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&cid=45a252d92> [accessed 25/11/2008]

The Purpose of the Study

Arbitrary detention, which could also amount to a form of ill-treatment, continues to be practiced in Lebanon as a policy to deter refugees from coming and/or staying in the country. Yet, and despite that arbitrary detention is a serious crime, the issue has not become a major concern to the defenders of human rights in the country, let alone to the legislature and the judiciary that have the legal obligation to guarantee and protect personal liberties and security.

In 2006, FR published a thorough legal report on arbitrary detention of refugees and asylum-seekers in Lebanon, "*Legality vs. Legitimacy*", where it concluded that the detention of refugees violates national and international detention standards.²² The present study probes into the inner depths of this coercive policy and practice of unlawful detention. It particularly attempts to understand the policy of prolonged arbitrary detention after the expiry of the judicial sentences or on grounds of administrative arrest and detention orders. It further looks into the lack of administrative and judicial review of arbitrary detention. All that amounts to serious violations of both national laws and regulations and international refugee and human rights law.

For this purpose, the study looks at the performance of the different directly involved actors – the arresting authorities, the judiciary, the immigration authorities, and UNHCR – to better understand how they interact and interrelate and why it has been so far difficult, if not impossible, to build a positive refugee protection environment. The study raises questions that need further research and hopes to be a useful tool for advocacy for refugee protection.

Methodology

The analysis of the findings in this report is more qualitative than quantitative. It relies mainly on primary information obtained from FR's ongoing monitoring and research on the issue of detention of refugees, as well as previous major research and publications by the association, specifically its 2006 study.²³

22 FR, *Legality vs. Legitimacy: Detention of Refugees and Asylum-Seekers in Lebanon*, May 2006 available on Frontiers website: www.frontiersrwad.org

23 *Ibid.*

In addition, the analysis of arrest, trial, and arbitrary detention is based on a case study of a selected small sample of 66 cases of arrests of Iraqi refugees, 34 court decisions (27 decisions of Courts of First Instance involving 47 Iraqi defendants and 7 decisions of Appeals Courts involving 10 Iraqi appellants), and 29 interviews with detainees and/or their family members during or after their detention. Most of the cases in the sample were arrested and detained in 2007 and 2008. A few were arrested before 2007 and their detention continued in 2007 and/or 2008. The sampling is not representative and aims only at identifying particular problems and indicating particular gaps that prevent refugee protection, in addition to the trends and patterns of the policy and its practice related to refugee protection in general and arbitrary detention in particular. All quotations by refugees and asylum-seekers are taken from statements documented and on file at FR.

The information in this report is limited to the period from 1/1/2007 to 30/9/2008. The report did not attempt to look at the historical development of refugee protection policies, although, at times, this seemed relevant and necessary to gain a better understanding of the trends and policies.

We use the term “refugee” to refer to foreigners who are protected by international law from deportation. Most of these refugees comply with the refugee definition found in the 1951 Refugee Convention and the mandate of the UNHCR.²⁴ For this reason, most of the refugees to which we refer will be recognized as refugees by UNHCR, or will have applied to UNHCR in an attempt to gain recognition. Nevertheless, we also use the term refugee to refer to people who are protected from deportation by other bodies of human rights law.

The report is divided into four main parts. The first two parts detail the pattern of arrests and trials that fall short of national and international standards. The third part will examine the practice of arbitrary detention and the last part will briefly describe the end of arbitrary detention, through deportation or release. This is followed by conclusion and recommendations.

It is not the aim of this study to make an analysis of the compatibility

²⁴ A refugee is any person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.” 1951 Geneva Convention Relating to the Status of Refugees, 28/7/1951, art. 1(A) (2), 189 U.N.T.S. 150.

of the Lebanese laws with international human rights standards. This was done in our previous legal study, “Legality vs. Legitimacy” in 2006. However, our analysis is based on international human rights standards that allow us to see the extent to which Lebanon is respecting its national and international human rights obligations, particularly when it comes to ensuring that no one is arbitrarily detained and that the principle of *non-refoulement* is respected.

I. ARRESTS

A complete ban on the detention of refugees and asylum-seekers for illegal entry or stay is considered as a potential pull factor that should be avoided. While sweep police operations against persons of concern are normally not conducted, random arrests – followed by detention – do occur, usually during identity checks. These random arrests are seen as a necessary deterrent and as a way of limiting the number of asylum-seekers entering Lebanon.²⁵

Since 2007, more than 1,200 refugees and asylum-seekers were arrested in Lebanon, of which a thousand were Iraqis.²⁶ The majority was arrested solely on charges of illegal entry. Few were arrested on other grounds such as illegal presence, violating the provisions of the Lebanese Labor Law, or immigration rules. Arrests of refugees and

25 UNHCR, *Country Operations Plan, Lebanon 2008-2009*, <http://www.unhcr.org/home/PROTECTION/46f90afa2.pdf> [accessed on 2/12/2008]

26 FR correspondences with UNHCR, 21/12/2007 and 17/11/2008

asylum-seekers tend to increase during periods of unrest and instability in the country, as happened during the Nahr el Bared armed conflict in May 2007.²⁷ By September 2008, there were around 150 refugees and asylum-seekers, of which at least 100 Iraqi refugees were still in detention.²⁸

FR's sample of 66 arrests of Iraqi nationals shows that the majority were registered with UNHCR prior to their arrest. Most had entered Lebanon after 2006, while some had been in Lebanon before 2003. 97% were male and 3% were female. The majority was between 20 and 40 years old and 3 % were minors at the time of their arrest. At least 7.5% were married to Lebanese women.

Arrest for Illegal Entry

The risk of arrest is omnipresent from the moment refugees illegally cross the border into Lebanon. They live in constant fear of arrest throughout their stay in the country. The absence of UNHCR at all Lebanese borders and the absence of a national mechanism to seek asylum at the border seriously endanger asylum-seekers right to safe entry.

An 18-year old young Iraqi asylum seeker was arrested immediately after illegally crossing the Lebanese borders:

I was handcuffed and put in a cell for three days without food or water. On the third day, a policeman interrogated me and asked me why I had come to Lebanon. I told him I was threatened in Iraq and that I came to Lebanon to seek asylum, but he did not say anything. I was still in detention when, four months later, UNHCR visited me in prison for the first time.

Another Iraqi, smuggled from Syria through Wadi Khaled, had fled Iraq following politically motivated threat letters, was arrested by the police along with his smuggler while boarding a bus in Tripoli heading to Beirut:

²⁷ During the armed conflict between the Lebanese army and Fath Al-Islam in Nahr El Bared (May to September 2007), refugees were mostly arrested at security checkpoints and during house raids conducted by the army or the police, mainly because they are undocumented foreigners. The population of refugees and asylum-seekers in detention was approximately 200 persons in April 2007 and reached 765 persons by December 2007 (Correspondence with UNHCR, 17/11/2008)

²⁸ FR correspondences with UNHCR in 2008

They took us to the Public Prosecutor office in Tripoli where I was interrogated by two men. They asked me many questions such as how I came to Lebanon and how much I paid to the smuggler. After the interrogation, I signed the police interrogation report without reading it and they put me in a cell. I was not told I was under arrest for illegal entry but it sounded clear to me.

Iraqis attempt to register with UNHCR as soon as they arrive to Lebanon, thinking that this would legalize their stay. Some are arrested before they reach the office of the Agency.

Even after registration with UNHCR, refugees are still arrested for their illegal entry or presence. A number of refugees stated that when they were asked by the police to show their papers either when arrested or later during the police interrogation, they either showed their UNHCR certificates or informed the arresting authorities that they are registered with UNHCR. Yet, the arresting authorities did not take the refugees' registration with UNHCR into consideration. Many were told by the police that the UNHCR certificate was "not useful" or "insufficient" or that it "did not mean anything". Refugees themselves soon realize that UNHCR documents do not provide them with protection.

A registered Iraqi refugee was arrested near Basta police station in Beirut at 8:30 a.m. on his first day of work while waiting for the restaurant that employs him to open:

I was approached by a man wearing civilian clothes who asked me what I was doing here. I told him that I was waiting for the owner of the restaurant. He immediately asked for my papers, so I gave him my UNHCR refugee certificate. He said this paper is not useful and took me inside the police station.

The refugee contacted FR from the police station asking for assistance. FR immediately informed UNHCR who contacted the police station requesting the refugee's release but the police refused and insisted on referring the refugee to the General Security (GSO), the immigration authority, where he was detained without trial for more than three weeks.

A Sudanese female refugee was arrested randomly on the streets for the lack of documentation and was taken to the police station for interrogation:

I requested to call UNHCR but the police did not allow me. The interrogator asked me how I entered Lebanon. I told him that I entered illegally and that I am registered with UNHCR. So he told another policeman: "take this UN garbage to the cell."

The above testimonies reveal that the arresting authorities continue to lack the awareness and understanding of the specificity of refugees and asylum-seekers, despite UNHCR's attempt to promote its protection role and the value of its certificates among arresting authorities. The head of the Internal Security Forces (ISF) publicly stated that refugee certificates are considered as proof of legal stay and that the holders should in principle not be arrested²⁹ except upon the approval of the Public Prosecutor.³⁰ In practice, Public Prosecutors appear to always give approval for the arrest of refugees on grounds of illegal entry and presence. However, it is not clear whether ISF inform the Public Prosecutor that the arrested undocumented foreigners have a UNHCR certificate in order to decide whether or not to arrest them. The police do not appear to always record, in the interrogation reports, that the refugees had declared or shown proof of their UNHCR registration, nor whether they have informed the Public Prosecutor of these facts, as this is commonly done over the phone.

Denial of Rights Starts at Arrest

FR sampling shows that most arrests were followed by interrogation at police stations while some refugees were interrogated at the GSO. These interrogations are painfully remembered by refugees. The detention conditions at police stations are miserable. There is no adequate heating or ventilation, no mattresses, cells are dirty, and toilets smelled bad. There was no food or water. The majority were informed of the reason of their arrest only when they reached the police station. Some stated that they were never explicitly informed of the charges against them. Many reported that they had been handcuffed in uncomfortable positions throughout their interrogation. Some said that they were humiliated and sometimes suffered from ill-treatment, physical or psychological.

All were interrogated without the presence of a lawyer. In some cases,

²⁹ *Al Akhbar Newspaper*, 17/3/2008, "[Head of ISF] Rifi Promises to Stop Torture in Detention Facilities and Prisons"

³⁰ Meeting with General Rifi, General Director of the ISF, 15/03/2008 (on file with FR)

refugees were not allowed to contact their relatives or UNHCR. Many were not aware of their right to do so. Indeed, many said that the police did not read to them their rights, although according to Article 47 of the Lebanese Code of Penal Procedures (CPP) the arresting authorities are obligated to do so, and they should record this in the individual interrogation report.³¹ The non-compliance with this mandatory procedure is considered a crime of unlawful deprivation of liberty and is sanctioned by up to 15 years of hard labor.³² Of the 15 reviewed police reports, eight had no mention that the police followed this mandatory procedure. As to the remaining ones, at least 5 refugees interviewed by FR said that in reality they had not been informed of their rights.

Further, many refugees interviewed by FR stated that they signed the police interrogation reports without reading them. Some reported that they had explicitly requested to read their statements before signing but were denied that right. Others reported that they had been pressured and threatened with physical abuse to sign on their statements regardless of their objections on its content.

The interrogator only asked me how I entered Lebanon and whether I had a passport. He did not ask me anything else but he wrote around three pages. He asked me to sign on the police report but I refused to sign without reading because I did not know its content. He had a belt and electric cables tied together next to him on the table. He threatened to beat me if I didn't sign. So I was forced to sign.

Of the 66 arrest sample of Iraqi refugees, 59 were transferred to prisons to wait for their trials, and seven were kept at the GSO detention center. The grounds of the arrest of the seven ranged between illegal entry, illegal presence, violating provisions of the Labor Law, and rejection of their residency application. All were released without being brought before a judge, though two of them found out that they were charged with illegal entry or illegal presence after their releases by GSO. (Details of these cases will be elaborated in Chapter 3.)

31 Art. 47 CPP (Law 328 of 2/8/2001) stipulates that arrestee has the right to contact his family or a lawyer or a friend, to meet a lawyer without a power of attorney, to an interpreter, and to request a medical examination. The Judiciary Police should inform the arrestee of these rights immediately at the time of his arrest and should record this procedure in the interrogation report.

32 Art. 48 CPP stipulates that the non-compliance with the legal procedures for arrest is sanctioned as an unlawful deprivation of liberty (Art. 367 Penal Code) with three to 15 years of temporary hard labour (Art. 44 Penal Code) and with other disciplinary measures.

Limits of UNHCR Protection Role

Considering that there is lack of a well-established mechanism between UNHCR and Lebanese authorities to systematically bring to UNHCR's attention the arrests of refugees and asylum-seekers, the Agency is given little possibility to efficiently intervene immediately upon arrest in order to prevent the detention, prosecution on illegal entry/presence charges, or deportation of refugees. UNHCR relies on its own visits to places of detention and on information obtained from the refugee communities as well as from its implementing partners. However, this remains far from a comprehensive monitoring mechanism. Further, UNHCR has limited margin of intervention once an arrest occurs and this is projected in its counseling of the families or friends. The latter are often told that UNHCR will intervene by requesting the release of the detainee, but they have to be patient as the arrestee might stay for a long time in prison. They were also often advised to find a sponsor to regularize the detainee's legal status on the basis of a work permit in order to speed-up the release procedures.

Two days after my arrest, my wife informed UNHCR that I was arrested. They told her that they cannot do anything to release me. My wife was calling them everyday to see when I will be released but they were telling her the same thing every time.

UNHCR perception of its limited protection role and its response enforces the present *status quo* of the continuing Lebanese policy of arresting refugees and asylum-seekers on grounds of illegal entry.

II. TRIALS

Article 32 of the “Law of Entry and Exit” sanctions a person entering Lebanon illegally with one month to 3 years of imprisonment, a fine, and deportation. Lebanese courts have slowly shown more commitments to refugee protection and are progressively invoking Lebanon’s international obligation to respect the principle of non-refoulement to block the deportation of refugees, decrease prison terms, and fines, thus recognizing their right to remain in Lebanon until they find a durable solution, with no fixed time limit.

Unfortunately ^{t h i s} relative advancement in the jurisprudence has not yet become a widespread and common judicial ruling. The judiciary is still not a protection safety-net for refugees. In general, judges remain hesitant to invoke international human and refugee rights standards in order not to penalize refugees for entering the country illegally.³³

One of the reasons for the slow advancement in the jurisprudence is the way trials of refugees

33 In 2001, the Beirut Appeal Criminal Court halted the deportation of an Iraqi refugee on the basis of Art. 3 of CAT (Decision 580/2001, re: Sajed Yukhanna Eliya). In February 2002, the Beirut Juvenile Court (Decision 93/2002) prohibited the deportation of a minor Iraqi refugee and ordered that he remains in Lebanon until a durable solution can be found. Similarly, in May 2003, a Beirut First Instance Criminal Court blocked the deportation of Makir Bit Betout, similarly citing the CAT, the first time this has been done in a case involving a Sudanese refugee. All three cases were defended by lawyers.

charged with illegal entry are conducted. Often, they are tried swiftly and collectively with no right of defense. Most court decisions are made prior to hearings, resulting in standard sentences.³⁴ They do not take into account asylum considerations, specifically the reasons and circumstances that led refugees to enter Lebanon illegally. Nonetheless, limited but potentially significant breakthroughs continue to be made, as a few court decisions have begun creating a system of safeguards against deportation. A few have gone so far as to drop charges of illegal entry on the basis of UNHCR refugee status. In particular, it is noticeable that only when refugees are assisted by lawyers that the sentences may be in favor of the refugee.

The analysis of the trials below covers 27 First Instance court decisions for 47 defendants charged with illegal entry and seven appeal decisions for 10 appellants.³⁵ The analysis focuses on the judiciary protection role to prevent the penalization and deportation of refugees and asylum-seekers for having entered the country illegally.

Trial Proceedings Silence Refugees

Refugees are sentenced for the crime of illegal entry before their hearings

Refugees arrive to court to discover that their sentence has already been decided. More than half of the First Instance court decisions were sentenced on the basis of a one page pre-set court decision form (25 defendants). These forms detail the basic information such as the name of the court, judicial case number, the crime the defendant is accused of, and applicable law. Most importantly, the form sets the standard sentence of imprisonment, fine, and deportation. The hearing is limited to only filling the bio-data of the defendant and basic information related to the crime such as the date of arrest and the exact sanction.

Pre-set court decisions are even used when defendants have defense lawyers. Of 25 preset decisions, eight defendants had a defense lawyer. In such situations, if the judge decides not to sentence the refugee for deportation, the pre-set deportation sentence is erased with a pen.

34 Standard judicial sentences for the crime of illegal entry are one month of imprisonment, a fine of 100,000 Lebanese pounds (amounting to USD 66) and deportation.

35 All the decisions involve Iraqi refugees. They cover different courts across the country. The majority of the defendants were registered with UNHCR at the time of their trials; two were women and one was a minor.

To illustrate, an FR representative met with a judge prior to the hearing of an Iraqi refugee charged with illegal entry to discuss the possibility of adjourning the hearing in order to prepare his defense. Initially, the judge did not approve, since the detainee was a foreigner and ‘illegal’ and “*he will be deported so there is no need for an adjournment.*” However, the FR representative insisted and the judge finally agreed. In another case, an FR lawyer was surprised to find the pre-set court decision summary added to the refugee’s judicial file prior to the hearing.

The frequent use of pre-set court decisions demonstrates that judges enter courtrooms with prepared decisions and rarely, if ever, consider seriously the material facts. The hearing granted to defendants is thus emptied of its meaning and raises concern of its fairness.

Refugees are denied the right to an individual hearing

More than half of the defendants have been tried *en masse* (28 defendants). Only 11 defendants tried *en masse* had defense lawyers. The trials appear to last a couple of minutes. The study of the court decisions indicate that judges are satisfied by merely asking the migrants: “*Are you all illegal?*” and only await the refugees to nod their heads to write down in the minutes “*all accused acknowledged what they are accused of*”, or simply mention that “*all accused reiterated their initial statements*” without stating clearly what are the initial statements.

Although there are sometimes legitimate reasons to try a number of persons together, without prejudice to the principle of individual hearing,³⁶ the trials of refugees do not necessarily involve defendants arrested together nor who committed the crime of illegal entry together, to justify to be tried together. This was noted in two separate court decisions involving 14 defendants charged on grounds of illegal entry but did not appear to have any direct link together.³⁷

36 Art. 240 CPP specifies that court cases can be merged if there are multiple perpetrators of the same crime or if there are crimes connected to each other.

37 In the first case, nine Iraqis appear to have been arrested on the same day for illegal entry in Mreijeh area, South of Beirut. The police station drafted one interrogation report for all nine of them at 15:00. Another Iraqi refugee was arrested on his own on the streets on the same day in the same area. The same police station drafted an interrogation report for him at 18:00. All 10 were tried together (Unique Criminal Judge in Baabda, Decision No. 1639/2007 of 16/5/2007). In the second case, one Sudanese was arrested for illegal entry in the area of Antelias, East of Beirut. Two days later, two Iraqis refugees were arrested on the same grounds; the same police station drafted one interrogation report for both of them at 14:00. An Egyptian was also arrested for illegal entry and was interrogated based on a separate police report at 17:00 of the same day. Yet, the four of them were referred to Court together. (Unique

For all this, the trials *en masse* make it that defendants are given the same sentence without taking into consideration the individual specificities of each case. As such, the conduct of these trials violates the refugees' right to individual hearing guaranteed in national legislations.³⁸

Refugees are not given the opportunity to defend themselves during the trial

Because trials of refugees are swift, conducted *en masse*, and judges rarely look into the reasons and circumstances that led them to enter the country illegally nor give them the opportunity to present their case, their right of defense is seriously violated. Most interviewed ex-detainees stated that the judge limited his questioning to whether they had entered Lebanon illegally. Few were asked more specific questions related to their UNHCR asylum application, their reasons for leaving Iraq, or the reasons for coming and entering Lebanon illegally. However, these were defended by lawyers except two who were being tried collectively with two Iraqi refugees represented by lawyers, and the judge extended the same questions to them.

In one of these mass trials, an FR observer witnessed a migrant defendant attempting to address the judge. The defendant raised his hand, but the judge, busy dictating the sentence to the court clerk, did not see him. The police guard present in the courtroom drew the judge's attention to the eager defendant. Only at this moment the judge reacted and allowed the defendant to speak. The defendant told the judge that he has a sponsor willing to regularize his legal status in Lebanon. This was confirmed by the sponsor in court. The judge consequently decided to reconsider the case based on this new material element. This shows that if the refugee had not insisted on defending himself, he would have most probably been sentenced for deportation along with the others.

Following this incident, the co-defendants attempted to address the court. They raised their hands but the judge did not notice them and no other person present in the court room made an effort to bring the judge's attention to them. As a result, they were denied the right to speak and their defense will remain unknown.

The large majority of refugees do not get the chance to have an

Criminal Judge in Metn, Decision No. 292/2007 of 13/7/2007).

38 Art. 180 CPP states that the Unique Criminal Judge hears the statements of the plaintiff or his/her lawyer and then questions the defendants.

individual hearing, an individual examination of their accusation, and the right to present an individual defense. As a result, refugees do not have the opportunity to raise the issue of their refugee status and right to protection.

Refugees are tried without the assistance of legal defense

Given that most trials are far from being adequate to the specific concerns of refugees, it became necessary that refugees have legal representation in order to modify the outcome of these trials and ensure that the judiciary is aware of the need to protect them.

However, refugees tried for illegal entry and illegal presence, a misdemeanor falling under the jurisdiction of the Unique Criminal Judge, are not automatically entitled to free legal aid.³⁹ Consequently, refugees tried on these charges did not in the past benefit from the Bar Association's Judicial Aid Committee.⁴⁰ Refugees face trials on their own and are only represented by lawyers in the rare occasions when they could afford the costs themselves.

A Sudanese refugee, who was not represented by a lawyer because he was not yet recognized by UNHCR, noticed the implications of the absence of a lawyer:

*Judges are polite but their questions are limited and I was not able to talk during the hearing. I wish I had a lawyer for I have seen that when there are lawyers defending cases, the judges respond to the arguments and this has an impact on the judge's conviction.*⁴¹

As of 2007, UNHCR set as its priority that “[e]very single asylum-

39 The CPP stipulates that when the defendant is not legally represented before the Criminal Court, the Court is under the obligation to request from the Bar Association to assign a lawyer for the defendant. The Code is however silent on the procedures to obtain free legal aid before the Unique Criminal Judge. According to Art. 6 of the Code of Civil Procedures (CCP), the provisions of this Code apply to other proceedings (such as criminal proceedings) whenever there is a silence or void. This Code regulates the assignment of free legal aid in its Articles 425 to 441. Defendants who are unable to cover the court fees are entitled to request free legal aid from the court which decides upon the request. If the court decides to grant the defendant free legal aid, it informs the Head of the Bar Association who assigns a pro-bono lawyer to the defendant. (CCP, Legislative Decree No. 90 of 16/9/1983 as amended by Law No. 440 of 29/7/2002, published in the official gazette No. 40 of 6/10/1983).

40 In 2006, no foreigner charged with illegal entry or presence obtained free legal aid, “FR interview with the Judicial Aid Committee of the Beirut Bar Association”, 27/3/2007

41 The refugee was recognized by UNHCR after his trial while he was still in detention. He had been tried five years earlier on the same charges of illegal entry although he had entered Lebanon illegally only once.

*seeker or refugee in detention should systematically be offered legal aid. Both her/his detention and possible deportation must be challenged in court. Given the number of persons of concern in detention, this task will be time and resources consuming, but there must be no compromise in this respect, since both detention and deportation (amounting to refoulement when the person is sent back to her / his country of origin) have very severe consequences for the individuals concerned.*⁴² The objective was further maintained for 2008–2009.⁴³ To ensure proper legal representation, UNHCR seeks the use of external lawyers to fill this existing protection gap.

UNHCR legal aid program is not currently extended to all refugees and asylum-seekers arrested for illegal entry or presence, mainly due to limited resources and capacities.⁴⁴ Since the start of its legal aid program in late 2006, UNHCR has assigned lawyers to defend 322 refugees and asylum-seekers of which 284 were Iraqis. The referrals covered only 96 refugees and asylum-seekers tried on charges of illegal entry and presence. As of September 2008, 139 cases (amounting to 43%) continued to benefit from legal aid.⁴⁵

Judiciary Is Moving Towards Protecting Refugees

From the data sample, 22 defendants had defense lawyers during the hearings. The impact of lawyers' intervention on judges sentencing defendants charged with the crime of illegal entry is noticeable. The findings show that there is no major difference regarding the penalization of the illegal entry crime except for one case that was acquitted on these charges. A slight difference was noted regarding the prison term and fine sentences. Seven out of 22 defended by lawyers were sentenced to the duration of the pre-trial detention that was less than one month, compared to only 2 out of 25 not defended by lawyers; seven defended by lawyers were sentenced to no fine or less than 100,000 LL compared to only one out of 25 without legal representation.

42 UNHCR, *2007 Lebanon Country Operations Plan*, Executive Committee Summary, 2007, available on <http://www.unhcr.org/home/RSDCOI/46f90afa2.pdf>, p.5 [accessed on 13/12/2007]

43 UNHCR, *Country Operations Plan, Lebanon 2008–2009*, *op. cit.*

44 UNHCR legal aid criteria to refugees and asylum-seekers arrested for illegal entry and presence are generally determined by their recent arrest, their vulnerability, and their registration status with UNHCR

45 FR correspondence with UNHCR, 11/11/2008

The impact of the legal defense lawyers was most observed when it comes to deportation sentences. Only three out of the 22 defended by lawyers were sentenced to deportation, one of them to Syria,⁴⁶ and seven were sentenced to deportation if they failed to regularize, compared to 19 of the 25 defendants without legal representation sentenced to deportation, and five referred to GSO without specifying the action to be taken by the administrative authorities. Only one defendant was not sentenced to deportation in the absence of a lawyer. He is a single Iraqi male who came to Lebanon in 2005 after his brother was killed and after receiving threats due to his association with the US forces in Iraq. His Lebanese employer had come forth during the hearing and declared his intention to sponsor him for a regularization of status. As a result, the judge did not sentence him to deportation.⁴⁷

The legal defense made by the lawyers argued for the non-penalization of the refugees of the crime of illegal entry, and consequently to dropping the charges. They further requested from the court to reduce sanctions, prohibit deportation, and to release them if they are convicted of the charge of illegal entry. These arguments were made before courts trying refugees fleeing from the generalized violence in Iraq and who are unable to return due to the continuing lack of security. They also argued that the act of illegal entry was a case of *force majeure*.⁴⁸

In support of their arguments, defense lawyers invoked Article 14 of the Universal Declaration of Human Rights (UDHR), incorporated in the preamble of the Lebanese Constitution, and the refugee human rights standards, particularly Article 3 of the CAT. They also invoked the MoU between UNHCR and the Lebanese State, court precedents, and the Ministry of Interior (MoI) Decision 136/1969 on the “*verification of the presence of foreigners in Lebanon*”.⁴⁹

In response, most judges (13 out of 22 defended cases) did not take into account the lawyer’s defense arguments. Their decisions relied solely on Lebanese legislation, without discussing the rights and the

46 The judge believed that the refugee feared no persecution or torture in Syria where he resided in a habitual manner prior to his entry to Lebanon. (Unique Criminal Judge in Zgharta, Decision No. 782/2007 of 20/11/2007). The refugee was deported and his final destination is believed to be Iraq.

47 Unique Criminal Judge in Baabda, Decision No. 2178/2007 of 26/6/2007

48 This is further detailed in the section below: *Refugees should be exempted of the illegal entry penalty on grounds of force majeure*.

49 Ministry of Interior Decision 136/1969 of 2/8/1962

legal issues arising from Lebanon's Constitution or its international obligations raised by the lawyers. Only seven judges referred explicitly to the international instruments in their decisions, either to Article 3 CAT and/or Article 14 UDHR.

Only one judge based his decision on the 1951 Refugee Convention. Judge *Al-Mortada* was satisfied with the duration of the pre-trial detention, did not sentence the refugee to a fine, and explicitly prohibited his deportation based on the 1951 Convention – although Lebanon is not a signatory!⁵⁰ In another decision by the same judge, he invoked Article 2 of the Code of Civil Procedures (CCP)⁵¹ to apply Lebanon's international obligations to prohibit the refugee's deportation.⁵²

Nevertheless, the findings indicate that, with the presence of defense lawyers, more judges are starting to become more sensitive to the issue of refugee protection. Judicial decisions are more and more taking into consideration the reality of refugee status. These are small improvements and prove that the absence of legal assistance entails great risks for the refugees' protection.

Refugees should not be penalized for illegal entry

International standards related to refugees provide that no refugee should be penalized on ground of illegal entry. Lebanon should be bound by these standards, especially since the Preamble of its Constitution incorporates UDHR, which provides for the right to seek asylum. Yet only one of the judges dropped the charge of illegal entry and acquitted the refugee.⁵³

Judges seem to maintain the charge of illegal entry because they consider that they are obligated to implement the national legislations in force. For instance, judge *Al-Dughaidi* sentenced a refugee to imprisonment, fine and deportation. The judge argued that he could not dismiss the application of Article 32 of the Law of Entry and Exit on grounds that this was not compatible with the Constitution – specifically with Article 14 of the UDHR and Article 3 of the CAT as invoked by the lawyer for the control of the constitutionality of a Law falls exclusively

50 Unique Criminal Judge in Metn, Decision No. 44/2008 of 5/2/2008

51 Art. 2 CCP: *Courts should respect the principle of the hierarchy of norms. When provisions of ratified international treaties contradict with provisions of national law, the former prevails over the latter.*

52 Unique Criminal Judge in Metn, Decision No. 528/2007 of 24/12/2007

53 *Supra* at 37 (Metn decision)

under the competence of the Constitutional Council.⁵⁴ Unlike many other decisions, judge *Al-Dughaidi* motivated his decision. However, he appears to have limited his legal arguments to the issue of the control of the constitutionality of the laws. As a result, he overlooked the application of CCP, Article 2 which clearly states that when a law is contrary to a ratified international treaty, the latter prevails, as was the case before him.

In another case a refugee who, prior to the court decision had been released from detention by the GSO and was not informed that there will be criminal proceedings against him, found out about his sentence through the press, which unusually published the court decision. He was charged *in absentia*⁵⁵ with illegal entry. In the meantime, he had obtained a valid circulation permit from the GSO under the MoU. In his defense, the lawyer who objected to the sentence *in absentia* argued that the court should drop the illegal entry charges since the refugee now held a valid circulation permit. Judge *Mkanna* rejected this argument justifying it by the fact that the circulation permit did not provide the refugee with immunity from criminal prosecution as it only regulates the conditions of stay in Lebanon. The judge further argued that no act penalized by the legislator could be exempted by administrative decision such as the MoU.⁵⁶ This decision indicates to what extent the legal value of the MoU is not well known among judges. The MoU was adopted by Decree Number 11262 on 30/10/2003 and was signed by the Lebanese Authorities under Article 52 of the Constitution which regulates the adoption of international conventions.⁵⁷ The 1986 Vienna Convention on the Law of Treaties between States and International

54 Unique Criminal Judge in Zahleh, Decision No. 398/2007 of 19/11/2007 ; Art. 18 of Law No. 250 of 14/7/1993 establishing the Constitutional Council states that the Lebanese legal system does not allow examining the constitutionality of laws once they are adopted, similar to the French legal system. However, a recent amendment in July 2008 in France allowed such recourses. It is hoped that the Lebanese legislation will follow this lead.

55 Unique Criminal Judge in Beirut, Decision No. 1506/2007 of 29/11/2007

56 Unique Criminal Judge in Beirut, Decision of 28/2/2008 (Court case No. 3197/2007)

57 The decree was signed by the President of the Republic, the Prime Minister, the Minister of Foreign Affairs, the Minister of Interior and the Minister of Finances. It starts in the following way: "*based on the Constitution and its Article 52...*" Art. 52 of the Constitution: [Negotiation of International Treaties], states: "*The President of the Republic negotiates international treaties in coordination with the Prime Minister. These treaties are not considered ratified except after agreement of the Council of Ministers. They are to be made known to the Parliament whenever the national interest and security of the state permit. However, treaties involving the finances of the state, commercial treaties, and, in general, treaties that cannot be renounced every year are not considered ratified until they have been approved by Parliament.*"

Organizations or between International Organizations clearly specifies in its 2nd Article that “*For the purposes of the present Convention: (a) “treaty” means an international agreement governed by international law and concluded in written form: (i) between one or more States and one or more international organizations.*”⁵⁸ Although this Convention has not yet entered into force and Lebanon has not signed it, it provides an indication of the legal value of an MoU contracted between a State and an international organization.⁵⁹ As such, it is FR’s opinion that the MoU constitutes an international agreement between a State (Lebanon) and an international organization (UNHCR), and thus prevails over national legislation.

In rare cases, judges dropped the charges of illegal entry. In a breakthrough decision, Judge *Zaanni* presiding in the Metn Court declared an Iraqi refugee to be innocent of the crime of illegal entry because he held refugee status.⁶⁰ The same judge issued a similar decision declaring a Sudanese female refugee innocent on charges of illegal entry and considered that her presence on Lebanese territories was legal as she held a UNHCR refugee certificate.⁶¹ Further, Judge *Nassar* presiding in the Keserwan court also issued a decision following similar lines when he dropped the charges of illegal entry against a Somali refugee because he held UNHCR refugee status, and based on Lebanon’s international obligations.⁶² While these decisions are positively welcomed, one cannot fail to notice that they lacked detailed legal argumentation pertaining to the link between asylum and illegal entry.

Thus, apart from these three progressive decisions, judicial decision failed to meet Lebanon’s international obligations to guarantee the right of asylum and not to penalize refugees from criminal sanctions based

58 *Vienna Convention on the Law of Treaties between States and International Organizations or Between International Organizations*, 1986

59 The Introductory Note of *United Nations Treaty Collection* also clarifies that: “*A memorandum of understanding is an international instrument of a less formal kind. It often sets out operational arrangements under a framework international agreement. It is also used for the regulation of technical or detailed matters. It is typically in the form of a single instrument and does not require ratification. They are entered into either by States or International Organizations. The United Nations usually concludes memoranda of understanding with Member States in order to organize its peacekeeping operations or to arrange UN Conferences. The United Nations also concludes memoranda of understanding on co-operation with other international organizations.*”

60 *Supra* at 37 (Metn decision)

61 Unique Criminal Judge in Metn, Decision of 25/3/2008

62 Unique Criminal Judge in Keserwan, Decision No. 440/2007 of 30/8/2007

on their irregular entry. While a few Judges are becoming more aware of Lebanon's international obligations to protect refugees from such prosecution, the majority are still showing resistance and apprehension to look into the non-penalization of refugees and asylum-seekers charged with the crime of illegal entry.

Refugees should be exempted of the illegal entry penalty on grounds of force majeure

In their defense of the refugees, lawyers have also requested from the courts that the defendants are exempted from sanctions as their illegal entry was a case of *force majeure*, or acting out of necessity.⁶³ Only three decisions, issued by the same judge, appear to have looked into the lawyers' arguments and requests, but none exempted the refugees from the sanction.⁶⁴

Judge *Mkanna* found that the refugees were acting under necessity when they left Iraq and entered Syria, as the situation in Iraq constitutes a serious and imminent danger to their life and forces them to find refuge in another country. However, considering that Lebanon is not their first country of asylum, they were not acting under necessity when they crossed the Syrian-Lebanese border and should therefore have requested an entrance visa from Lebanese authorities. Judge *Mkanna* also found in one of his decisions that no moral or material pressure was exercised on the refugee on the moment of his illegal entry to Lebanon, as he could have chosen to find refuge in another country and that, in any case, all forms of pressure ended once he crossed the Iraqi border.

Here, the judge appears to have applied the "safe third country" theory. UNHCR considers that the prohibition of sanction for illegal entry and presence included in the 1951 Refugee Convention applies to refugees who briefly transited through another country or were unable to find effective protection in the first country of asylum.⁶⁵ As mentioned earlier, Syria does not have a national asylum legal framework and thus, refugees cannot be deemed to have found protection, especially against

63 Articles 227, 229, and 230 Penal Code

64 Unique Criminal Judge of Beirut, Decision of 28/2/2008 (Court case No. 3197/2007); decision of 22/4/2008 (Court case No. 597/2008); decision no. 631 of 22/4/2008 (Court case No. 631/2008)

65 UNHCR, *Refugee Protection in International Law, UNHCR's Global Consultation on International Protection*, 2003, p. 255 (Part 3.2.) available at: <http://www.unhcr.org/publ/41a1b51c6.html> [accessed on 7/12/2008]

refoulement, when they transited in Syria.⁶⁶

Sentences should be attenuated

In their further defense, lawyers requested that the sanction is attenuated. They based their request on provisions of the Penal Code (PC) that prescribes that, in the absence of a specific law, sentences for misdemeanors can be reduced to a minimum of 10 days of detention and 50,000 LL fine.⁶⁷ Article 32 of the Law of Entry and Exit specifies that the imprisonment sentence cannot be reduced to less than one month. None of the judges took up the lawyers arguments in their decisions. Yet, it seems that judges are, in fact, attenuating their sentences as one-month imprisonment seems to be the sentencing norm.

Deportation of refugees should be prohibited based on non-refoulement obligation

Every refugee is entitled to benefit from the fundamental right of *non-refoulement* to one's country of origin or habitual residence. This principle has become a customary international law. It is enshrined in Article 33 of the 1951 Refugee Convention and Article 3 CAT prohibiting expulsion to any place where the deportee would be at risk of torture. As such, Lebanon is legally bound to respect the principle of *non-refoulement*. As mentioned earlier, the Ministry of Justice 2006 Advisory also recommended that all Courts prohibit the deportation of refugees on the basis of Article 3 CAT.

Defense lawyers have unanimously invoked Article 3 CAT to request from the courts to prohibit deportation. Only eight court decisions referred to Lebanon's international obligation of *non-refoulement*, and did not sentence the refugees to deportation. Yet, almost half of the defendants with legal representation were sentenced to deportation or to deportation if they fail to regularize their status, regardless of the lawyer's defense or invocation of the *non-refoulement* obligation. Here, judges flagrantly violated Lebanon's *non-refoulement* obligation, especially since they were given material facts necessary to block deportation. They did not take into consideration the consequences of

66 For more information on *refoulement* of Iraqi refugees from Syria, see Amnesty International, *Rhetoric and reality: the Iraqi refugee crisis*, June 2008, AI Index: MDE 14/011/2008 available at: <http://www.amnesty.org/en/library/asset/MDE14/011/2008/en/43d61ea9-3637-11dd-9db5-cb00b5aed8dc/mde140112008eng.pdf> [accessed 8/12/2008]

67 Art. 254 PC

their sentences, ordering that a refugee is returned to a country where he or she fears persecution.

In cases where a defense lawyer was not present, FR is aware of at least one judge who took the initiative to protect refugees from deportation. Judge *Mkanna*, presiding in Beirut, halted the deportation of two Iraqi refugees in two separate court decisions sentenced *in absentia* on the basis of their UNHCR refugee certificate, which was available in their judicial files. His decisions were clearly based on Lebanon's *non-refoulement* obligations.⁶⁸ These two decisions mark a positive approach on the road to protecting refugees.

Contradicting Precedents by Appeal Courts

The review of seven decisions of the Courts of Appeal, concerning 10 Iraqi refugees convicted by the Court of First Instance of the crime of illegal entry by imprisonment and deportation, raises more concerns. The defense lawyers made the same legal arguments as they did before the Court of First Instance, particularly requesting from Appeal Courts to prohibit deportation based on Lebanon's *non-refoulement* obligation. Only one lawyer failed to request from the Court to protect the appellant from deportation and omitted to base the appeal on Lebanon's *non-refoulement* obligation.⁶⁹ Yet, five appeal decisions upheld the First Instance decisions,⁷⁰ and only two decisions overturned the First Instance decisions. One only reduced the penalty of fine,⁷¹ and the second prohibited the appellant's deportation, on the basis of Article 3

68 *Supra* at 56; see also, Annahar Daily, 12/1/2008, "An Iraqi Case in Court Again: A Refugee Enters Through Syria and is Sentenced In Absentia" [in Arabic]

69 The First Instance Court had sentenced the refugee to one month of imprisonment and deportation but to an excessive fine of 1 million Lebanese pounds (amounting to USD 666). The lawyer appealed the decision requesting from the Appeal Court to reduce the fine but failed to request the prohibition of the refugee's deportation. As a result, the Appeal Court overturned the First Instance decision only to reduce the fine and maintained the deportation. (Appeal Criminal Court in the Bekaa, Decision No. 138/2007 of 28/05/2007). In the end, the refugee was deported to Iraq.

70 Two of the first instance decisions included standard sentences of one month imprisonment, LL 100,000 fine and deportation while the other three slightly varied from the standard sentences. The first included an imprisonment sentence limited to the duration of pre-trial detention; the second included a 250,000 LL fine and referral to GSO; the third decision sentenced 4 refugees to a 50,000 LL fine and to deportation if they failed to regularize their status.

71 *Supra* at 69

CAT.⁷²

Two of the Appeal court decisions totally ignored the lawyers' requests and arguments and did not look into the issue of asylum. The court argued that the appellants had acknowledged they had illegally entered Lebanon; therefore they found no justification to overturn the First Instance decisions.⁷³ One of these two decisions had also ignored an important material fact presented by the lawyer: the Iraqi refugee was married to a Lebanese national and had a child legally residing in the country.⁷⁴ With this decision, the Court of Appeal is not only denying the refugee his right to be protected against *refoulement* but is also denying Lebanese women and their children their right to family unity.

In the three other Appeal decisions, the judges looked into the issue of asylum only in order to dismiss it.⁷⁵ For instance, the Court of Appeal in North Lebanon found that, regardless of whether or not the appellants have refugee status and regardless of whether or not they were at risk of persecution or torture if returned to Iraq, these facts cannot amend the related provisions nor give the court the discretionary power to apply them or not. The Court further considered that the possibility of being harassed in one's own country of origin does not entitle him/her to enter illegally to another sovereign country or to violate its laws regulating the entry of foreigners. It further stated that an asylum seeker should submit an asylum request following regular procedures to the competent authority that will have the role of examining the credibility of one's allegations, the convenience of granting asylum as to considerations of public security, and the possibility of providing protection for the refugee with a legal residency within the limits of the law.⁷⁶ Here, the court failed to identify the competent authorities to receive an asylum request and disregarded the MoU which recognized UNHCR as a – if not the – competent body to receive and assess asylum applications.

The review of appeal decisions related to the illegal entry of refugees generally reveals to be disappointing as only one court, the Beirut Criminal

72 Appeal Criminal Court of Beirut, Decision No. 784/2007 of 13/9/2007

73 Appeal Criminal Court in the Bekaa, Decision No. 41/2008 of 18/2/2008; Appeal Criminal Court in the Bekaa, Decision No. 274/2007 of 17/12/2007

74 Appeal Criminal Court in the Bekaa, Decision No. 41/2008 of 18/2/2008

75 Appeal Criminal Court in Mount Lebanon, Decision No. 12/2008 of 22/01/2008; Appeal Criminal Court in North Lebanon, Decision No. 415/2008 of 21/04/2008; Appeal Criminal Court in the Bekaa, Decision No. 12/2008 of 17/01/2008

76 Appeal Criminal Court in North Lebanon, Decision No. 415/2008 of 21/4/2008

Court of Appeal, recognized the right of a refugee to be protected from deportation. They failed to take into account substantial material elements, such as UNHCR refugee status and the state's obligations to protection from *refoulement*. First Instance courts are adopting a more progressive approach towards Lebanon's *non-refoulement* obligation. One judge went as far as taking the initiative of prohibiting deportation in an *in absentia* trial. Courts of Appeals are therefore encouraged to follow the lead of First Instance judges.

III. ARBITRARY DETENTION

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. (Lebanese Constitution, Article 8).

The arrest and detention of an individual is considered arbitrary when it is carried out without evidence that the person has committed an offence or where there has been no respect to the legal process and the due process of law. Arbitrary arrest and detention of persons contradicts the principle of the rule of law that differentiates democratic from dictatorship states regimes. Imprisonment in violation of fundamental rules of international law could amount to a crime against humanity if committed as part of a widespread or systematic attack directed against any civilian population.⁷⁷

By the end of 2007,⁷⁸ more than 1,200

⁷⁷ Article 7 of the Rome Statute of the International Criminal Court, adopted on 17/7/1998, entered into force on 1/7/2002

⁷⁸ For previous years, please see FR Annual Reports available at <http://www.frontiersruwad>.

foreigners who had finished their prison terms but remain in detention, of whom more than 700 were kept in prisons and nearly 500 in the General Security detention center.⁷⁹ Most of them were either released or deported in 2008. More were detained in 2008, including at least 140 Iraqi refugees.⁸⁰ Arbitrary detention of foreigners including refugees seems to take place either after the expiry of a prison term or when the immigration authorities initiate an administrative action against an illegal migrant and do not refer them to court. The scope of the measure by the immigration authorities appears to be wide, though its grounds are not clear.

The analysis below is based on two different samplings: the first involves 53 Iraqis detained on the basis of a judicial decision of imprisonment. Forty eight of them were sentenced for illegal entry or presence only, and five for other criminal acts and illegal entry. All but three were registered with UNHCR at the time of arrest or during their prison term. More than 96% are known to have been held in prolonged detention after the expiry of their court sentences. The second sample involves 7 Iraqis who were held in GSO detention center for long periods without trial. They were all registered with UNHCR at the time of their arrest.⁸¹

Continued Detention after Expiry of Prison Term

All foreigners are transferred to the immigration authority upon the expiry of their judicial sentences regardless if they were sentenced to deportation or not, or if they had obtained a release on bail. Once they become under the authority of GSO, and whether they remain in the prison or are transferred to GSO detention center, they face the ordeal of indefinite detention. During that period, the detainees appear to lack basic and fundamental protection right: they are not informed of the reasons for their detention and the legality of their detention is not

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79 Assafir Daily, 14/11/2007, "When Will the Situation Be Solved for Prisoners Who Served Their Sentences?"

80 Correspondence with UNHCR, November 2008

81 The analysis here excludes from the 66 arrests sample, two refugees held in pre-trial detention despite the fact that judges had issued a decision of release on bail. It also excludes four refugees that FR interviewed but did not have their court decisions in order to confirm the legality of their detention, although all of them reported they were held long after the expiry of their judicial sentences.

regularly, if at all, reviewed by the competent authorities. Furthermore, UNHCR's repeated requests and interventions may lead to the release of some of them, but this is not a statutory right nor is it automatic.

Many are kept for months after the expiry of their judicial sentence before they are either released or deported. The length of this detention varied considerably from case to case. Our findings show that the average duration of this detention is three months with the majority detained between one and four months after the expiry of their judicial sentences. In six cases, refugees were released in less than a month although half of them had been sentenced to deportation. Twelve detainees were kept in detention for the longest period of time up to more than nine months: 83% of them had been sentenced to deportation and half of them were deported in the end.⁸²

This shows that there is no clear pattern for the period of continued detention after the expiry of the judicial sentence. For example, in one case, the First Instance court ordered one month of imprisonment and the Appeal court prohibited the deportation, but the refugee was detained for more than seven months after the expiry of his sentence and for more than six months after the appeal decision. He was finally released under the UNHCR-GSO release agreement in March 2008.⁸³

The Responsibility of the Internal Security Forces

Prisons are under the authority of the judiciary. The Administration of prisons is the responsibility of the ISF, which is responsible for insuring that no one is imprisoned without legal grounds. The CPP clearly states that the execution of court decisions is the responsibility of the ISF⁸⁴ and that a convicted person should be released on the day the prison term ends.⁸⁵ The same is stated in the decree regulating the administration of prisons.⁸⁶

82 In cases where FR was not aware whether the judicial fine had been paid, it assumed that the detainees had not paid it and consequently calculated the start of the arbitrary detention from the date when the detainee would have served the imprisonment duration as a replacement of the fine amount. Therefore, the duration of the arbitrary detention may in reality be longer.

83 Case monitored by FR.

84 CPP Art. 404 Para. 3 stipulates that the execution of Court decisions summaries is done through a written delegation to the ISF.

85 CPP Art. 406 Para. 1 A convicted is released on the day his sentence ends.

86 Art. 58 of Decree 14310 of 11/02/1949 amended in 2002 related to Prisons Administration stipulates that the Head of the prison should release the convicted on the

In a number of cases, FR lawyers attempted to request from prison authorities the release of detained refugees when their prison term had expired. They had provided ISF with copies of judicial decisions prohibiting deportation or ordering the immediate release. However, ISF refused to execute these judicial decisions and said they were not entitled to release them as they were under obligation to transfer all foreigners to GSO.

The general legal provisions covering the execution of sentences and administration of prisons do not discriminate between nationals and non-nationals. However, there are internal instructions that seem to regulate that practice. According to these instructions, the justification for this practice is that it falls under the exclusive responsibility of the GSO to decide over matters related to the entry, residency, and exit of foreigners.⁸⁷ As such, from the moment they finished serving their judicial prison sentence; foreign detainees are no longer considered the responsibility of the judiciary and ISF, but of GSO. This transfer of authority is automatic regardless of whether the foreigner has legal or illegal status or if the judicial sentence includes deportation or not.

According to these instructions, if prison authorities are unable to transfer the foreigner to the GSO detention centre, they should obtain the approval of the prosecutor to maintain them in prison “pending removal”.⁸⁸ Yet, it is not clear if, in practice, the approval is obtained and on what legal grounds it is based. The ISF asserted this policy on several occasions and confirmed that once the prison terms expire, their responsibility ends and the detainees become the responsibility of GSO, although, until they are physically transferred to GSO centre, ISF continue to provide them with “humanitarian” care.⁸⁹

day their imprisonment term ends. Art. 37 of the same Decree states that any prison guard who accepts to maintain in prison a person without legal ground or keeps him/her after the specified time will be brought to trial on charges of attempt on liberty according to Art. 368 PC that sanctions from one to three years of imprisonment. Also, Art. 367 PC, *op. cit.*, and Article 371 PC also sanctions employees who use their authority to obstruct or delay the execution of laws or judicial decisions or other regulations with three months to two years of imprisonment.

⁸⁷ Public Prosecution instruction No. 4662/ρ/2004 of 16/12/2004 (on file with FR) orders the transfer of all foreigners – regardless of whether or not they hold proper documentation – to GSO after the receipt of their decision of release on bail or after the expiry of the period of their prison term, in order for the latter to take the appropriate decision regarding their legal status

⁸⁸ *Ibid.*

⁸⁹ Meeting with the Head of the ISF Human Rights Department, 04/12/2008; ISF replies to

These instructions and practices are in violation of legislative provisions that forbid the detention of anyone after the end of his or her imprisonment term. The ISF position regarding the detention of foreigners after the expiry of their prison terms is ambiguous: Thus foreigners seem to be the victims of the violation of the legal provisions that prohibits arbitrary detention and guarantees personal liberty.

The Responsibility of the General Security

In principle, detention after the expiry of a judicial sentence is unlawful. After they complete their prison term, foreign detainees are said to be under 'ida' (deposit) at GSO.⁹⁰ The legal grounds that justify their continuous detention are not clear.

The situation becomes more acute when it comes to refugees not sentenced by the court to deportation. Here, there is no reason that justifies their arbitrary detention, unless a short period is needed to finalize formalities of release. Their continuous detention cannot be justified by the purpose of removal and thus amounts to arbitrary detention.

As to those who had been sentenced to deportation, their continued detention is also arbitrary for several reasons. First, Lebanese legislations provides that a foreigner sentenced to deportation should exit the country by his or her own means. There are no provisions for the detention of a foreigner sentenced to deportation except in one situation, and that is when there is a serious threat to national security. Even then, the detention should not exceed the legally prescribed period of maximum four days.⁹¹ A person sentenced to deportation should be given 15 days during which he or she is expected to ensure his or her exit by his or her own means.⁹² Thus, detention is not considered as a systematic necessity prior to deportation unless it could be justified by, for example, the necessity to prevent the foreigner's escape.

Second, all but three detainees in the FR sampling had sought asylum

FR defense lawyers (on file with FR). In one case the lawyer challenged before the Prosecutor the arbitrary detention of a refugee, the latter requested from the Head of the Prison to provide him with the legal basis of the continuous detention. The Head of the Prison replied that the detainee is still in prison as they are awaiting to be received by GSO and this in accordance with the General Memorandum no. 204/234 of 17/10/2003 (On file with FR)

90 *Supra* at 87

91 Articles 42 and 47 CPP

92 Art. 89 Penal Code

and were registered with UNHCR. As a result, they cannot be deported without violating Lebanon's *non-refoulement* obligations. Once again, continuous detention cannot be justified by the purpose of removal due to the fact that deportation is legally and materially impossible.

Any detention beyond the legally prescribed arrest period is prohibited and punished by law. Yet, administrative instructions seem to violate this, such as Instruction No. 251 of 14/08/1969⁹³ that apparently allows keeping foreigners under arrest until the completion of their procedures for deportation, even if the period of arrest exceeds the maximum period set in the CPP.

Thus, the Lebanese practice of systematic arbitrary detention of refugees and asylum-seekers amounts to serious violations of both national and international human rights laws.

Detention without Appearing before a Judge

As an immigration authority, the GSO⁹⁴ is empowered to decide whether or not the individual foreigner should remain in the country. The GSO may issue an administrative order of deportation if a foreigner constitutes a threat to public security and safety.⁹⁵ In that case only, the Director General of the GSO may arrest and detain, with the approval of the prosecution, anyone who is a subject of an administrative "removal order" until the deportation formalities are finalized.⁹⁶ It is therefore necessary to distinguish between a judicial decision of deportation regulated by Article 88 PC⁹⁷ and the administrative order of removal taken on the basis of Article 17 of the Law of Entry and Exit.

Fear of the discretionary powers granted by Article 17 of the Law of Entry and Exit raised the concerns of the legislator. When examining the *travaux préparatoires* (parliamentary discussions) leading to the adoption of the Law of Entry and Exit, the legislators clearly expressed their fears of the extent of the powers granted to one person – the

93 Instructions No. 251 of 14/8/1969

94 For an overview of the General Security role and competence, see Legislative Decree No. 139 of 12/6/1959 amended in 1996, Decree 2873 of 16/12/1959 and Art. 38 CPP.

95 Art. 17 of the 1962 Law of Entry and Exit

96 Art. 18 of 1962 Law of Entry and Exit

97 Art. 88 PC states that any foreigner sentenced for a crime can be expelled from the Lebanese territories on the basis of a specific clause in the judgment. If he or she is sentenced for a misdemeanor, he or she can only be expelled in cases specified by the Law.

General Director of the General Security – and argued that this norm would provide the immigration authority with opportunity for abuse of power. Discussions were heated and resulted in setting safeguards against the possible abuse. The first was to subject an administrative order for removal to the approval of the Minister of Interior as the hierarchical authority, and the second was to clearly limit the use of these administrative orders to foreigners who constitute a threat to public security and safety.⁹⁸ However, it seems that these safeguards are not being applied in practice. Yet, the administrative judge (*Conseil d'Etat*) has relied on these discussions to annul removal orders that were taken without the approval of the Minister of Interior.⁹⁹

While the concept of public safety and security remains elusive and at the discretion of the administration, the Penal Code provides a list of crimes considered to be against the State's security and public safety.¹⁰⁰ Nothing in these crimes can lead us to believe that crimes such as illegal entry or presence and violation of immigration or Labor rules constitute a crime against national security or safety. Yet, FR observed that foreigners said to be accused of such crimes have been administratively detained by GSO.

As such, FR has learnt of detentions at the GSO of foreigners on various grounds, such as the rejection of their application for residency, violations of immigration or labor regulations, illegal entry, or failure to renew their residency permit.

One refugee was arrested when his residency application was rejected:

I submitted a residency application and declared that my real employer was my sponsor. When the General Security conducted its investigation, it went to the wrong location of the factory where I worked and did not find me. As a result, I was arrested on the accusation that I had provided incorrect statements to GSO and my residency application was not processed. I remained in detention for around 52 days. I was never taken to court.

98 Minutes of the Parliamentary Discussions of the 1962 Law of Entry and Exit (on file with FR)

99 *Conseil d'Etat*, Preliminary Decision No. 56 of 23/5/1969, Case No. 189/69, Felicite Rifa vs. State, cited in Zakhour, Adib, *The Legal Status of Foreign Workers*, 2004, pp. 471-473

100 Articles 270 to 349 PC list the crimes against the State's security and public safety.

It is not clear on what legal basis these arrests and detentions are occurring. It is not clear if GSO is invoking Article 17 and 18 of the Law of Entry and Exit to these situations and thus extending the definition of “threat to national security” to violations of any legal provisions committed by foreigners. It is noted that all but one of these refugees were released following UNHCR intervention, which may imply that in fact they did not constitute any threat to national security.

Further, it is not clear whether the Public Prosecutor is approving the arrests carried out by GSO. According to the refugees’ testimonies in FR sample, none of them was brought before a judge during their ‘administrative’ detention. This raises concern as to whether these detentions are being systematically reviewed and judicially approved, and if so, what are the legal grounds for their prolonged detention beyond the legally prescribed period of 48 hours renewable once.

Regarding those who were arrested following the rejection of their residency application, the Law of Entry and Exit stipulates that foreigners are judicially sanctioned if they fail to leave the country after they are notified of the rejection of their request to extend their residency.¹⁰¹ There appears to be no ground for arrest and detention following a rejection, except in case of refusal to leave the country. However, both refugees in the data sample were arrested on the day they were notified of their rejection, thus giving them no chance to leave the country on their own as prescribed by the law.

It is also noted that prior to submitting the residency applications, foreigners are issued a work permit from the Ministry of Labor who also examines whether they meet the required conditions.¹⁰² It would appear that GSO is the authority who holds the last decision on the foreigner’s right to remain in Lebanon for work purposes regardless of the Ministry of Labor’s approval.

Concerning refugees who were arrested for violation of immigration and Labor regulations such as declaring a false sponsor, Labor regulations explicitly states that they should be referred to court for prosecution; judicial sanctions do not include deportation unless in case of violation of the obligation to obtain a prior authorization before

101 Art. 33 of the Law of Entry and Exit sanctions foreigners with one to three months of imprisonment and/or a fine.

102 Decree 17561 of 18/9/1964 regulating the work of foreigners

entering Lebanon.¹⁰³

As to three refugees who were arrested by ISF for illegal entry or presence and subsequently transferred to GSO, both crimes are judicially sanctioned.¹⁰⁴ It appears that the ISF referred them to GSO based on the latter's competence to deal with foreigners. Two of them were referred to Court after their release due to the fact that the ISF arrest reports reached the Prosecutor who referred them to the Judge.¹⁰⁵ In at least one case, FR noted that when the Prosecutor was informed of the arrest of the refugee for illegal entry, he approved the arrest, the transfer of the detainee to GSO in order for GSO to take the appropriate decision, and, one month later, he referred the case for trial. Yet, it is not clear why these three refugees were not seen by a judge during their detention, which again raises concerns as to whether their continued detention was approved by the Prosecutor.

The legal provisions are therefore clear that the above-mentioned charges - rejection of residency, violation of Labor rules, and illegal entry and presence - should be judicially sanctioned. Yet, none of the Iraqis detained by GSO were brought before a judge during the period of their administrative detention, nor was their detention reviewed by the judiciary and exceeded the legally prescribed period of 48 hours renewable once. Thus, their continuous detention after this period appears to be unlawful.

Challenging Arbitrary Detention

Recourse before the Administration

Challenging 'administrative' detention before the same administration does not appear to be straightforward. One reason is that lawyers are not automatically allowed to visit detainees held at GSO detention centers. In 2006, the Beirut Bar Association reacted to that situation and reached an understanding with GSO which sets a rigid mechanism regulating the access of lawyers to this center.¹⁰⁶ Yet, lawyers still

103 Articles 21 of Decree 17561 of 18/9/1964 regulating the work of foreigners

104 Articles 32 and 36 of the Law of Entry and Exit

105 One found out through the press that, after his release, he was sentenced for illegal entry *in absentia*. The other detainee was notified of the court hearing at his home after his release.

106 General Security Memorandum of Service No. 43/1 (ع/ص/م ذ) 19/7/2006 on file with FR ; (FR interview with Bar Association, 2007

encounter difficulties accessing their clients, seriously affecting the latter's right to legal counsel.

For instance, one lawyer defending migrant workers (Me. Adib Zakhour) was informed by GSO that he was forbidden from attending clients' interrogations because his attitude was "provocative". The lawyer challenged the decision before the administrative judge (*Conseil d'Etat*) arguing that it violated the right to legal counsel. In a breakthrough decision in 2007, the administrative judge suspended the execution of the GSO decision thereby limiting GSO's power over the attorney-client relationship.¹⁰⁷

FR's lawyers frequently attempted to challenge the arbitrary detention of refugees who are under the authority of GSO, by requesting their release directly before the immigration authority. It is a general principle that any decision taken by the administration can be challenged before the same administration. However, lawyers find it difficult to have their requests officially registered by the immigration authority. The only available recourse is the request for mercy against a negative decision. Refugees themselves have often used this recourse especially when their residency applications were rejected.

One lawyer said that during one of his visits to GSO to request a detainee's release, he provided GSO with the court decision that prohibited the refugee's deportation. At first, GSO was surprised to find that there was no deportation in the sentence, but later said that it made no difference whether or not the judicial decision entails a deportation sentence, as they have the discretionary powers to take the ultimate decision.

Later, GSO told the lawyer that the detained refugee will remain in detention unless he provides the necessary documents for his deportation (i.e., an airline ticket to Iraq, LL 650,000, and passport) or if UNHCR requests his release in order to be interviewed by a resettlement country for resettlement. Another GSO unit told the lawyer that the procedure to release a detainee on the basis of UNHCR intervention is long and complicated, as there is a long list of refugees that UNHCR had intervened on their behalf for their release and that there was no specific time-frame for this procedure, and thus, no expected date of release.

Decisions taken by GSO can also be challenged before the Minister of Interior, the highest hierarchical authority. FR raised the issue of

107 *Conseil d'Etat*, Preliminary Decision No. 267/2006-2007 of 20/6/2007 (on File with FR)

arbitrary detention of Iraqi refugees with the head of Cabinet of the Office of the Minister of Interior¹⁰⁸ and, on another occasion, submitted to the Minister a request to end the arbitrary detention of a Sudanese refugee.¹⁰⁹ Unfortunately, no formal reply to these actions has been received to date, though FR learned that the Minister is closely following the issue of detention of refugees and asylum-seekers. So far, there does not appear to be any concrete results.

Recourse before the administrative judge

An administrative decision to maintain a foreigner under arrest or an order of deportation can be challenged before the Administrative Judge like any other administrative decisions, with the aim of suspending its execution and/or invalidating it.

The Lebanese *Conseil d'Etat* has accepted that it had the competence to interfere in GSO discretionary power to issue a deportation order, yet this competence is only limited to ensure that the decision is not legally flawed, especially to ensure that the Minister of Interior approves the order and verifies the accuracy of the facts that were found to constitute a threat to national security without assessing whether or not they do amount to a threat.¹¹⁰

Regulations oblige the immigration authority – like any other administration – to provide a motivated decision and to notify in writing the person concerned with the decision. As such, in case GSO takes a decision to arrest a foreigner to be deported - an act permitted only on the basis of Article 17 of the Law of Entry and Exit, it has the obligation to justify why the foreigner constitutes a threat to national security. Recourse before the administrative judge can be done within 2 months of the notification or execution of an administrative decision.¹¹¹ Yet, in the case of detention of refugees and asylum-seekers, this reveals to be difficult, as most refugees are kept in detention without being informed of the reasons and whether any decision had been issued. In addition, deportation may take place before or during such recourse.

FR is not aware of any instance where a refugee was able to challenge,

108 Meeting with the office of the Minister of Interior in January 2008

109 FR letter to the Minister of Interior dated 14/10/2008

110 *Conseil d'Etat*, Decision No. 235 of 17/5/1971, Case No. 189/69 Felicite Rifa vs. State, cited in Zakhour, *op. cit.*, pp. 477-479

111 Art. 69 of Decree 10434 of 14/06/75 cited in Zakhour, *op. cit.*, pp. 477-479

before the administrative judge, a GSO decision to maintain him or her indefinitely in detention, whether based on an administrative act or after the expiry of the judicial sentence.

Recourse before the Judiciary

Lebanese legislation considers arbitrary detention a serious crime punishable up to 15 years of hard labor.¹¹² The judiciary has the right and obligation to supervise all prisons and detention centers. General Prosecutors, Examining Magistrates, and Unique Criminal Judges are obliged to visit persons under arrest or in detention on a monthly basis,¹¹³ and are disciplinary sanctioned if they do not release persons held in illegal custody.¹¹⁴ Yet, judicial control of prolonged detention of foreigners, including refugees and asylum-seekers, appears to be rarely exercised. FR is not aware of any legal or disciplinary action taken against any authority that committed the crime of arbitrary detention or failed to end such detentions. Since 2007, pro-bono lawyers have attempted to challenge the legality of refugee's detention before the judiciary. The number of challenges, however, remains very low compared to the hundreds in arbitrary detention.

Before the Juge des référés

During 2008, the arbitrary detention of an Iraqi refugee sentenced to deportation was challenged before the Judge dealing with matters of special urgency (*Juge des Référés*).¹¹⁵ The lawyer requested the refugee's immediate release on grounds that his detention by GSO was unlawful.

The lawyer's arguments were built on the premises that the immigration authority did not take a decision of arrest following the expiry of the judicial imprisonment term. Article 18 of the Law of Entry and Exit is the only ground that gives the GSO the right to arrest. However, the arrest of this refugee is irregular as it does not meet the conditions

112 *Supra* at 32 and 88

113 Art. 402 CPP and art. 15 of Decree 14310 of 11-02-1949 related to Prisons Administration

114 Art. 403 CPP

115 Art. 579 CCP: the *Juge des Référés* is competent to put an end to the administration's transgressions against rights. French and Lebanese jurisprudence have recognized the judge's competence to intervene to put an end to the unlawful actions of the administration which violate individual freedoms based on the *voie de fait* theory.

of this article: indeed, it cannot be justified by the judicial decision of deportation which falls under Article 89 PC; it is not approved by the Public Prosecutor and cannot be justified by the purposes of removal due to the fact that deportation is legally and materially impossible given the defendant's refugee status, his refusal to be deported, the lack of proof that he constitutes a serious threat to public order, and the lack of proportionality between the needs to maintain public safety and the violation of rights resulting from the refugee's detention.

The court session was constantly rescheduled due to the lack of State defense lawyers.¹¹⁶ In the end, the plaintiff dropped the case and was later released in the framework of UNHCR-GSO release agreement in 2008.

Before the Public Prosecutor

FR lawyers challenged the legality of the detention of five Iraqi refugees. All were kept detained in prisons after the expiry of their sentences. Lawyers requested from Public Prosecutors to act on the basis of Article 403 CPP that states they have the right and the obligation to release any individuals detained without legal basis.

The petitions challenging the arbitrary detention of Iraqi refugees received different reactions from prosecutors. Some of them refused to register the petitions; others agreed to register them but either did not take action or were satisfied to inquire or refer the petition to GSO, leaving the final decision to the immigration authority. Thus, the public prosecutors tend to defer the issue to the GSO to take the appropriate decision without specifying the appropriate course of action or assuming their own responsibility in the area of protection and guarantees of personal liberty.

For instance, an Iraqi refugee who fled the violence in Iraq in early 2006 was arrested and sentenced to three months imprisonment, a fine, and deportation on charges of use of forged ID and illegal entry. After he completed his sentence, he remained in arbitrary detention in prison without being transferred to GSO. He refused to be deported numerous times out of fear of return to Iraq. After 10 months in arbitrary detention, FR lawyer attempted to challenge the legality of his detention before the Public Prosecutor, but the registry of the Public Prosecutor refused

116 Al-Akhbar Daily, 22/2/2008, "The State Is Without Lawyers and the Prejudiced Are Waiting for the Decree", <http://www.al-akhbar.com/ar/node/64657>

to accept the lawyer's petition. Following this refusal, the lawyer met with the Public Prosecutor to inform him of the details of the case. The Prosecutor phoned GSO who informed him that the refugee was sentenced to deportation but refuses to be deported. The Prosecutor told the lawyer that he did not have the authority to release the refugee as the case fell under GSO's competence, especially with regards to the execution of the deportation decision. The Prosecutor indicated that if he decided to release the refugee, he would be violating the judicial decision of deportation and referred the lawyer to follow the matter with GSO. When the lawyer attempted to submit the same petition to the Cassation Public Prosecutor, the latter refused to accept it and told the lawyer that the matter falls under the competence of GSO. None of them justified the legal grounds for the prolonged arbitrary detention. The detainee was finally released after 303 days in arbitrary detention on the basis of his departure date to a resettlement country.

In another case, and after 18 days in arbitrary detention, FR lawyer unsuccessfully attempted to challenge the legality of the detention before the Public Prosecutor in Beirut of an Iraqi refugee from Baghdad, whose brother was kidnapped and killed, and who received death threats from militias and fled to Lebanon with his wife and another brother. The refugee was arrested on grounds of illegal entry. The lawyer had defended him in Court of First Instance and succeeded in ensuring a judicial decision that explicitly prohibited deportation. The lawyer insisted on registering the petition to end the arbitrary detention. However, the Public Prosecutor in Beirut orally informed the lawyer that they would not take any action because there is a general instruction issued by the Cassation Public Prosecutor to all judges, courts, and relevant administrative divisions prohibiting the release of any foreigner detained on any charges without the approval of GSO. When the refugee entered his sixth week of arbitrary detention, the lawyer proceeded to submit the same request to the Public Prosecutor in Mount Lebanon who agreed to register it and wrote instructions to GSO to take the appropriate actions to execute the court decision (i.e. release the refugee). When the lawyer approached GSO and presented the Public Prosecutor's instructions, the latter did not take it into account and insisted that the refugee's detention will end either when the refugee provides the necessary documents for his deportation or when UNHCR informs them that he has an interview with a resettlement country. The

refugee was thus kept in arbitrary detention in Roumieh prison. In the meantime, his wife delivered their baby and he was not able to see his newborn child until his release on the basis of UNHCR-GSO release agreement after 76 days in arbitrary detention.

Yet, in the past, the Public Prosecutors did not fail their mission to protect and guarantee personal liberties. In two decisions in 1993, the Public Prosecutor in Beirut favorably replied to two petitions submitted on behalf of two migrant women who were kept in prolonged detention after the expiry of their sentences, awaiting the execution of a judicial decision of deportation. The Public Prosecutor ruled that the detainees “*should not be kept under arrest indefinitely if [their] deportation from Lebanese territories is not possible*” and ordered their release on the following conditions:

1. *adopt a known place of residence in a designated area*
2. *present themselves to the police station of their area of residence every 15 days*
3. *work on obtaining their travel ticket within three months*
4. *report to the GSO at the end of the three-month period in order to process their deportation procedures.*¹¹⁷

These decisions are in conformity with national laws and confirm that the judiciary ought not to allow unlawful detentions. Further, they clearly indicate that detention is not necessary prior to deportation, as one can be deported without being detained. They demonstrate how the Public Prosecutor can block the prolonged detention of a foreigner, arrested under the authority of the Director General of the GSO.

The fact that prosecutors are not systematically preventing today the prolonged detention of refugees and asylum-seekers in Lebanon, points to the inherent deficiency of the judicial system, particularly when it comes to protect individuals from unlawful detention and guarantee personal liberty.

117 Decision of the General Prosecutor (*Nadim Abd Almalik*) in Beirut 9/12/1993 No. 14604. See Zakhour 2004, *op. cit.*, pp 463-464: Anderani Tiaritchi; Decision of the General Prosecutor (*Nadim Abd Almalik*) in Beirut, 9/12/1993 No. 14605. See Zakhour 2004, pp 464-465: Beidani

IV. END OF DETENTION

Considering that the prolonged detention of migrants including refugees and asylum-seekers are not today subject to close scrutiny and regular review by the judicial authorities, the way out is left to practical opportunities and policies to be decided by the immigration authorities. The spectrum of ending such detentions ranges between deportations to releases on promise of resettlement.

DEPORTATION

De facto Refoulement

The policy of indefinite detention as a means to coerce Iraqi refugees to accept to be deported or to “voluntarily” return to their country continues today, despite the violence and indiscriminate killings and the lack of protection they will face there. The Lebanese official policy is paying off. Many Iraqis, facing little or no hope to be released from the indefinite detention and sometimes despite UNHCR intervention, had ‘forcibly’ agreed to return and face death in Iraq rather than spend months and months behind bars in poor detention conditions.

During 2007-2008, Lebanese authorities returned detained Iraqi refugees to Iraq on a

regular basis either through the International Organization of Migration (IOM) return operations, or at the expenses of the detainees, or the Iraqi Embassy and Lebanese government. There are no official statistics of exact number of deportations. FR monitored the deportation of hundreds so called “voluntary return” of Iraqis from detention. The US country report on Lebanon said that 513 Iraqis were deported back to Iraq in 2007.¹¹⁸ The Iraqi Embassy continued in 2008 to facilitate the “voluntary return” from detention center. In the first half of 2008, it had organized the return of more than 700 refugees.¹¹⁹

International position against return to Iraq

In December 2006, UNHCR issued a Return Advisory on Iraqis in which it stated that “[n]o Iraqi from Southern or Central Iraq should be forcibly returned to Iraq until such time as there is substantial improvement in the security and human rights situation in the country.”¹²⁰ This position has been reiterated by the Agency on numerous occasions during 2008, indicating that it “does not believe the conditions are there to enable return in full safety and dignity on a meaningful scale.”¹²¹

While a small number of Iraqis have returned since the start of the US surge in 2007, reports indicate this had less to do with improved security than with desperation. A US official noted that “Most had gone back because they ran out of options and resources.”¹²²

Lebanese policy on return to Iraq

In terms of threats to the principle of *non-refoulement*, there were

118 US Country Reports on Human Rights Practices - 2007, Released by the Bureau of Democracy, Human Rights, and Labor, 11/3/2008 available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100600.htm> [accessed on 3/12/2008]

119 Communication with Iraqi Embassy on 6/6/2008

120 UNHCR, *Return Advisory*, op. cit.

121 UNHCR, *High Commissioner Guterres wraps up mission to Syria, Iraq and Jordan*, 19/2/2008, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=briefing&cid=47bac3296> [accessed 7/12/2008]; UN High Commissioner for Refugees, *Note on International Protection*, 30/6/2008, A/AC.96/1053, available at: <http://www.unhcr.org/excom/EXCOM/488dd0e12.pdf> [accessed 7/12/2008]; The United Nations Security Council also re-affirmed its previous position calling for all parties to “create conditions conducive to the voluntary, safe, dignified, and sustainable return of refugees and internally displaced persons” in United Nations Security Council, Resolution 1830 (2008) of 7/8/2008, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N08/453/88/PDF/N0845388.pdf?OpenElement> [last accessed on 3/11/2008]

122 Daily Star, Friday, 27/6/2008, *US official visits Lebanon to assess needs of Iraqi refugees* (on file with FR)

special concerns about Lebanon's practice to 'voluntarily' return Iraqis in the wake of the continuous violence in Iraq. In light of concerns about arbitrary detention and coerced repatriation, Lebanon's emerging embrace of *non-refoulement* appears encouraging, but half-hearted at best. It appears that Lebanon may be making a strategic choice to avoid criticism and international pressure that grows from flagrant formal *refoulement*. At least for now, it appears to have opted for a policy of systematically maintaining refugees in detention after the expiry of their judicial sentences and pressuring them to accept their own deportations. We could say that Lebanon is pursuing a policy of *de facto refoulement*.

Some refugees reported that they had been advised by GSO officials not to reveal their UNHCR documentation in order not to complicate their deportation or release procedures. According to one Iraqi testimony, another Iraqi refugee was arrested because he was working in Lebanon on a tourist visa. He had entered legally. He was detained at the GSO. An officer told him: "*if you show your UNHCR certificate, you will remain in prison and no one will ask about you; if you don't show it, you can leave to Iraq immediately.*" As a result, he recently departed to Iraq although he did not want to return there.

Of the total FR sampling (66 arrest), 20 were deported while 46 were released. Of the 20 who were deported, 16 held UNHCR refugee status, two were asylum-seekers whose refugee claim had not been decided upon yet, and only two had declined to seek asylum or register with UNHCR.

When comparing the end of the detention with the court decision, it is positively noted that GSO does not appear to be deporting refugees who were not judicially sentenced to deportation. As to those who were sentenced by a judge to deportation, some were deported while others were released. Those where the judges referred them to the GSO and left the final decision to the immigration authority, had different outcomes. Half were deported; the other half were released.

IOM Return operations

IOM "Voluntary Return" operations continued in 2007 in collaboration with the Iraqi Embassy.¹²³ Detainees were regularly visited by the Iraqi

123 Meeting with Iraqi Ambassador, 10/8/2007 (on file with FR); Human Rights Watch Statement to the IOM Council, 27-30 Nov. 07, available on <http://hrw.org/english/docs/2007/11/29/17437.htm#10> [last accessed on 18/12/07]; US Country Reports on Human Rights Practices - 2007, *op. cit.*

Embassy and IOM¹²⁴ and asked whether or not they want to return to Iraq. UNHCR's role in these operations was limited to counseling the detainees prior to their return.¹²⁵

Many Iraqis reported that they or others have agreed to return to Iraq when the Embassy visited them because “everyone told [them] that the UNHCR cannot do much to release [them]”, “they could not remain in detention and wait for UNHCR [to release them] so they prefer to return to Iraq”, or “they cannot stand the conditions in the prison. These conditions are unjust. One can die and cannot see a doctor. Therefore, they prefer to go back to Iraq and die there and not remain in prison.”

It is FR's opinion that all returns from detention to Iraq are not based on acts of free will and cannot be considered as ‘voluntary’ returns. Since “their rights are not recognized” and “they are subjected to pressure and restrictions [...], they may choose to return, but this is not an act of free will.” These return operations amounted in practice to *refoulement*.¹²⁶

In August 2007, steps were taken by IOM and the Iraqi Embassy to organize a return convoy of approximately 250 detained Iraqis. On 25/9/2007, FR initiated a public appeal that was co-signed by 13 NGOs against the imminent ‘voluntary returns’ of Iraqi detainees to Iraq¹²⁷ as such returns are “coerced” and violate the principle of *non-refoulement*

124 Following UNHCR counselling, IOM visited the detainees who had expressed their preference to return to Iraq and asked them to sign a voluntary repatriation form. Once the form was signed, IOM arranged for the airplane ticket back to Iraq and covered half of its costs while the other half was covered by Iraqi airlines. The process took no more than 3 weeks. Once they arrived to the airport, returnees were greeted by IOM staff and offered secondary transportation to the city centre; later, they could approach IOM office for assistance. (Interview with his Excellency the Ambassador of the Republic of Iraq in Lebanon, 5/2/2007; Meeting with IOM and UNHCR on 30/7/2007)

125 Upon receiving the list of Iraqi detainees who were potentially to be returned from IOM, UNHCR conducted a 15-minute counseling session stressing that it did not support the return to Iraq, that as Iraqis, they are considered as refugee by UNHCR, and that they have the right to seek international protection in Lebanon. They were also told that UNHCR will request from authorities to release them. In the course of counseling, refugees were asked whether or not they want to seek asylum or maintain their refugee status. In case of a refusal, UNHCR made sure that the person does not wish to seek asylum and preferred to return to Iraq. (Meeting with IOM and UNHCR on 30/7/2007)

126 UNHCR Handbook on Voluntary Repatriation

127 *Appeal Against the Imminent “Voluntary Returns” of Iraqi Detainees to Iraq, 25/9/2007*, available at FR website: <http://www.frontiersruwad.org>; Prior to this appeal, NGOs had also issued an appeal calling for IOM to halt its operation: *NGOs Public Statement on the Security Situation of Iraqi Refugees in Lebanon, 26/7/2007*; available at FR website; IOM responded in the press denying that it organized the return operation against UNHCR guidelines and in such a way as to undermine them, *Annahar Daily, 1/8/2007* [in Arabic], “*IOM Replies to NGOs*”

and UN Security Council Resolutions. They also undermine UNHCR's position on 'non-returnability' of Iraqis and IOM Constitution which stresses on the requirement of voluntariness in order to provide its services for voluntary repatriation.¹²⁸ As a result, IOM suspended its 'voluntary return' operations immediately after the appeal.¹²⁹

Lebanese government return operations

Following the halting of the 'voluntary return' convoys by IOM, they were continued by the Iraqi Embassy and the Lebanese government without intervention from UNHCR or IOM. Indeed, the halt of IOM operations forced the Lebanese authorities to take action. Based on a request from GSO, the government agreed, in November 2007, to cover the deportation costs – estimated at USD 530,000 – for more than 1200 foreigners including refugees who have completed their sentence.¹³⁰ This measure was mainly motivated by the need to alleviate overcrowded Lebanese prisons. Reminding the Lebanese government of its *non-refoulement* obligation, UNHCR requested from authorities to clarify their decision, but the government failed to do so.¹³¹

One released Iraqi detained for violation of the Labor law reported that GSO insisted on deporting him, although he had been accepted for resettlement and had been set a departure date:

A GSO First Lieutenant told me that they had taken a final decision to deport me on their own costs and that the deportation date was set three days later. I told him I cannot be deported because I am accepted for resettlement to Sweden. He told me I did not have a choice because the Lebanese State has decided to deport me back to my country.

128 Article 1 (1) (d) of IOM Constitution, adopted on 19/10/1953, entered into force on 30/11/1954, available at: http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/about_iom/iom_constitution_eng_booklet.pdf [accessed on 19/12/2008]

129 UNHCR Annual Consultation with NGOs, 2007, Meeting of the MENA Bureau (on file with FR); US Country Reports on Human Rights Practices 2007, *op. cit.*; IOM sent a letter to the Iraqi Ambassador informing him of the suspension of its 'voluntary return assistance' and assured him that the operations will resume "in the near future after the UNHCR, according to their agreement with the Lebanese government, assesses the care for the expected returnees outside of arresting agencies"; Human Rights Watch Statement to the IOM Council, *op. cit.*

130 Hassan Oleik, Al-Akhbar Daily 13/11/2007, "1200 Foreigners Ended Their Sentences and Still in Prison" (<http://www.al-akhbar.com/ar/node/53755>), also see the opening article in Assafir Daily on 12/11/2007 [in Arabic]

131 Communication with UNHCR, 23/1/2008

UNHCR Responsibility to Prevent Deportation

UNHCR assessment of its protection role in Lebanon noted that “[w]hile detention remains a major concern in Lebanon, UNHCR has been able to stop deportations whenever it was informed about potential cases.”¹³² Yet, it appears to FR that UNHCR has not yet been able to provide a protection space free of deportation risk for all the refugees in Lebanon.

The first step towards protection against deportation is through UNHCR refugee status. In 2007, the policy of *prima facie* group recognition was implemented to Iraqis in detention, a few months after the policy was issued, though few continued to have their asylum claims individually assessed similarly to non-Iraqi detainees. Registration and/or Refugee Status Determination (RSD) processing in detention have long been a concern to FR, since procedures do not always meet the required standards of fairness. Asylum-seekers are interviewed by UNHCR staff in prisons that are not equipped for such purposes and do not always ensure the applicant’s comfort or right to confidentiality. An Iraqi refugee who had been arrested after crossing the border and sought asylum while in prison said that his registration interview with UNHCR was conducted from behind bars while ISF prison staff were standing nearby:

40 days after my arrest, UNHCR visited me in prison to open a file for me. I spoke to the UNHCR staff from behind the bars. There were four or five guards standing near, so they heard everything we said.

One Sudanese asylum-seeker reported that he conducted the RSD interview in a language other than Arabic (his mother tongue) because it was taking place in the prison’s kitchen where inmates and ISF prison staff could overhear him:

The interview lasted around two hours in the prison’s kitchen in the presence of the detainees who worked in the kitchen. Even the policemen passed through occasionally. To avoid being heard, I did the interview in English because I was not comfortable with the conditions of the interview.

Such circumstances raise serious concerns about the confidentiality of

132 UNHCR, Country Operations Plan, Lebanon 2008-2009, *op. cit.*

the RSD process in detention that directly affects applicants' readiness to share information with UNHCR. This may be detrimental to their recognition as refugees. FR is also not aware of any applicant who benefited from legal representation in the RSD process in detention. Interviews are sometimes brief and do not provide applicants with the time to clearly articulate their refugee claims.

Once a detainee is under UNHCR protection, his protection against deportation is still not guaranteed. As per clause 12 of the MoU, GSO should inform UNHCR of all refugees and asylum-seekers detained at their detention centre. Since 2007, UNHCR established a system of regular visits to prisons and places of detention to intervene on behalf of detained refugees and asylum-seekers.¹³³ It also systematically sends letters to the Lebanese authorities requesting the release of refugees and asylum-seekers and the halt of their deportation. Yet, the monitoring today is still far from comprehensive. As one UNHCR Representative said, "*there are loopholes and there might be some cases [of detention] that we have not been notified about.*"¹³⁴

Detainees often perceive that UNHCR is not doing enough for them. One detainee said that "*all detained refugees consider UNHCR as a head of the family and hope that the Agency will save them from their conditions in prison.*" Yet, many feel that they have been neglected by UNHCR. Some said they were never been visited by UNHCR or that they were visited only once but were not informed of the results of the processing of their files. The more the detention lasts, the stronger the feeling of neglect. Refugees who feel neglected by UNHCR are more inclined to 'agree' to return to Iraq.

One refugee reported that he had 'changed' his mind on his agreement to return to Iraq after he was counseled by UNHCR:

The Iraqi embassy staff visited me five or six times. They asked me if I wanted to return to Iraq. Initially I refused. The third time, I agreed and signed a document to be sent back to Iraq because everyone told me that the UN cannot do much to release me. Following this, UNHCR saw me to make sure I wanted to go back to Iraq. They told me that they do not encourage Iraqis to go back especially if they have problems back in Iraq. They encouraged me to apply for asylum. I informed the

133 *Ibid.*

134 Interview with UNHCR, Beirut Office, 1/3/2008

embassy of the change of my opinion. I think the embassy knew that I had applied with HCR. I did not myself tell them.

UNHCR visits and counseling of detainees is of high importance not only to prevent the feeling of neglect and resentment but especially to prevent *refoulement*. Yet, deportations also occurred despite UNHCR intervention. As noted above, most of the deported Iraqis in the FR data sample were recognized refugees at the time of their deportation but their UNHCR status did not provide them with protection against deportation.

UNHCR is unable to intervene once a refugee has been deported outside Lebanon except by following-up with their offices in the country of deportation. In at least one instance, a refugee who had been detained and deported with his father, returned to Lebanon after his deportation and said that his father had been killed upon return to Iraq; both were reported to have 'agreed' to return to Iraq.

RELEASES

The day of my release, I was transferred from Roumieh prison to GSO. There, two UNHCR staff members were waiting for me. When I saw the UNHCR staff woman my spirit went flying high in the sky. She was holding the release green card in her hand. She gave me the card, which was valid for three months. She told me that I am free now.

Releases from detention continue to occur on an *ad hoc* basis. Refugees are not systematically released upon the expiry of their judicial sentences. They wait in Lebanese prisons and detention centers until they can either regularize their status or benefit from effective UNHCR intervention. There is no telling when or on which ground a refugee will be released. Furthermore, while releases ensure that refugees regain their freedom, they do not inherently contain any guarantee for the refugee not to be

arrested in the future, nor offer any durable solutions.

Between 2007 and 2008, more than 350 refugees and asylum-seekers, including at least 300 Iraqis, were released,¹³⁵ most of them after months in arbitrary detention following the expiry of their prison terms, irrespective if sentenced to deportation or not. The basis of releases varied between UNHCR interventions or regularization of status.

Release on the Basis of Regularization

Legal framework for release on grounds of regularization

Regularization of status has long been used by Lebanese authorities to legalize undocumented migrants. Authorities regularly issue decisions opening an exceptional time-limited “grace” period¹³⁶ during which undocumented migrants are encouraged to approach immigration authorities and settle their legal status in order to either legally exit the country or initiate procedures for a residency application.¹³⁷ Lebanon grants the opportunity for regularization of status only during exceptional time periods. Like previous years, two ‘grace’ periods were opened by the General Security in 2007 and 2008.¹³⁸

In practice, regularization is also used by the immigration authority as grounds for release even outside the time-frame of these grace periods. Detained foreigners have the possibility to be released on a case-by-case basis if they can provide proof that they meet the regular criteria to obtain an annual residency. Usually, this entails paying administrative

135 Correspondence from UNHCR on 21-12-07 and 17-11-08

136 The first regularization period was decided in the 1962 Law of Entry and Exit at Art. 38 and was implemented by Decision No. 319 of 2/8/1962.

137 Regularization of status is also commonly used in several countries as a means to reduce the undocumented migrants’ phenomena. However, most of these countries have State-regulated asylum procedures which often result in reducing the use of regularization procedures to non-refugee migrants. Nonetheless, humanitarian grounds such as family unity and medical reasons can sometimes justify regularization in these countries. In France regularization procedures can be initiated based on general rules (*dispositions de droit commun*) related to immigration (Art. L313-14 Code of entry and stay of foreigners and of the right of asylum) as well as on exceptional grounds.

138 General Security Website [Arabic], News, *Regularization of status for Arab and Foreign Nationals in violation of the entry and presence regulations*, 3/3/2007, available at: <http://www.general-security.gov.lb/English/News/new6/> [accessed in 2007]

General Security Website [Arabic], News, *Regularization of status for Arab and Foreign Nationals in violation of the entry and presence regulations*, 19/2/2008, available at: http://www.general-security.gov.lb/Arabic/News/new_kilsa/ [accessed on 5/5/2008]

finances for the illegal entry or presence¹³⁹ and proof of a sponsorship by an employer according to regular residency requirements.

As UNHCR refugee status is not recognized, and hence local integration is not available for refugees even on a temporary basis, they are forced to consider regularization - a legal migration procedure - that is open to all migrants in order to avoid arrest, prolonged detention and the risk of deportation.

Grounds for regularizations of legal status in Lebanon do not include humanitarian, medical, or asylum-related reasons. Legal migration procedures can mainly be obtained on the basis of a work permit, a Lebanese spouse, child or parent, or enrolment in an educational institution.¹⁴⁰ A regularization application generally grants the applicant with a three-month temporary stay on Lebanese territories. During this period, the migrant is expected to provide all required proof that he or she is eligible for an annual residency. The conditions and procedures for regularization are cumbersome, tedious, and vary depending on each basis.¹⁴¹ For example, the cost of a work residency often reaches USD 2,000 and the results are not guaranteed.

Given that regularization of status does not take into consideration a refugee's fear of persecution upon return and that conditions are difficult to meet, many refugees prefer not to initiate regularization procedures out of fear of being rejected and thus put themselves at risk of deportation to their country of origin.¹⁴²

UNHCR Refugee Status vs. Regularization

In 2007, UNHCR assisted 222 individuals to regularize their status in Lebanon, most were Iraqis, but only 167 Iraqi nationals applied to regularize their status during the 2007 grace period.¹⁴³ It is however not clear how many of those assisted were successful in their residency

139 Art. 31 of Budget Law No. 670 of 4/2/1998

140 For a list of other grounds, see Decree 10188 of 28/7/1962 implementing the Law of Entry and Exit and GSO website, *Conditions for Residencies*, [accessed on 24/11/2008]

141 For instance, a work residency will require a work permit obtained on the basis of an employment contract and a sum of USD 1000 deposit in a bank as a guarantee (Ministry of Labor Decision 263/1 of 22/6/1995). A residency on the basis of the wife's Lebanese nationality will require an attestation of non-employment in Lebanon. A student residency will require a proof of enrolment for day courses in a Lebanese school, university or educational institute, GSO website, *Conditions for Residencies*, [accessed on 24/11/2008]

142 Art. 33 of the Law of Entry and Exit

143 Human Rights Watch, 2007, *op. cit.*, p 22

application. The number of applications had significantly decreased compared to 2006 when more than 700 work permits were issued for Iraqis,¹⁴⁴ probably due to the fact that many had received negative decisions in 2006.

A number of refugees reported that they were asked by GSO to renounce their refugee status in order to be able to regularize their status. According to UNHCR, 15 Iraqis had renounced their refugee status in 2007.¹⁴⁵ This policy seems to have changed in 2008. Those who had UNHCR refugee certificates and residency application at the same time had two choices: either renounce their refugee certificates so they could be released on the basis of their residency application, or renounce the latter but they would have to wait in detention until UNHCR can obtain their release. One refugee summarized his dilemma in the following way:

Between the residency and the refugee status, I am forced to choose the residency because if I refuse the residency I will be arrested again. But I want to keep both.

Refugees also perceive residencies not to be compatible with refugee status. Many believed that if they obtained residencies, they would no longer benefit from UNHCR protection or would no longer process them for resettlement.

This practice clearly indicates that for immigration authorities, UNHCR refugee status and resident status are two separate legal statuses which cannot be mixed. There is an implicit recognition of UNHCR refugee status as a separate legal status, yet it is not enforced or translated into practice. By pressuring refugees to abandon one for the other, the immigration authorities are attempting to reduce the refugee population and thus seriously endangering their protection.

UNHCR-GSO Release Agreement

In February 2008, UNHCR and GSO reached an agreement to release hundreds of Iraqi refugees in prolonged detention, on grounds of the normal regularization procedures mentioned above. Hence, under this agreement, which came simultaneously with a regularization “grace period” open to all foreigners, Iraqi refugees were given the opportunity

144 Letter from the General Director of the Ministry of Labor dated 27/2/2007

145 Communication with UNHCR, 23/1/2008

to regularize their status not as refugees but as migrants, if they meet one of the regular regularization conditions. Contrary to other releases on the basis of regularization, Iraqi refugees were released on “UNHCR temporary sponsorship” until they could secure a regular sponsor. Yet, many of the released Iraqis under this agreement were unable to meet the terms and conditions in order to obtain residency as regular migrants.

More than 200 refugees and asylum-seekers were released from detention under the terms of this agreement.¹⁴⁶ When the agreement entered its third month in May 2008, only two Iraqis had reportedly approached the General Security to submit residency applications.

This agreement was wrongly perceived by the media to be recognition of the refugee status.¹⁴⁷ FR issued a public statement co-signed by the International Federation for Human Rights (FIDH) clarifying the misperception.¹⁴⁸ Particularly, the agreement did not recognize the special legal status of refugees, as opposed to other migrants, nor acknowledged that refugees have a right to *non-refoulement* and to freedom from arrest and detention. It was no novelty either, as it came in line with previous Lebanese regularization policies and was mainly motivated by the need to alleviate prison over-crowdedness. The agreement constituted another *ad hoc* basis for release that did not establish durable protection for refugees in Lebanon.

Releases on the Promise of Resettlement

While UNHCR has succeeded in securing some releases solely on the basis of its requests for releases, many refugees were only released on the basis of a promise of resettlement. In practice, Iraqi refugees seem to be released after they are registered under the MoU¹⁴⁹ and/or after they had been submitted to or accepted by resettlement countries. Between April 2007 and May 2008, UNHCR referred 223 refugees for resettlement

146 Communication with UNHCR, 14/7/2008

147 UNHCR, *UNHCR welcomes Lebanon's recognition of Iraqi refugees*, 20/2/2008, UNHCR News Stories, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=news&id=47bc55824> [accessed 7/12/2008]

148 FR and FIDH, *UNHCR-GSO Agreement Fails to Protect Refugees in Lebanon*, 20/3/2008 available at FR website (<http://www.frontiersruwad.org>)

149 Under the MoU, UNHCR has nine months to find countries to accept the refugees for resettlement. During this time, the Government issues circulation permits valid for six months and renewed only once “for a final period of three months after which time the General Security would be entitled to take the appropriate legal measures.” (MoU, *op. cit.*)

during their detention.¹⁵⁰ Some of these resettlement applications were submitted to the countries on an urgent basis while the refugees were in detention in order to prevent imminent *refoulement*.

Due to the long resettlement process and the strict conditions for referral and acceptance, many refugees do not reach the end of the process nor do they obtain an acceptance for resettlement. As a result, their MoU circulation permits or their temporary releases expire. They are thus expected to leave Lebanon or fall into illegality, get arrested again, and deported. For instance, of the six refugees in the data sample granted an MoU circulation permit after their release in 2007, at least half saw their permits expire without being resettled and have now entered again into the vicious circle of illegality.

Due to the lack of possibilities of local integration and repatriation, resettlement becomes the only durable solution available to refugees in Lebanon, especially with the gravity of the Iraqi displacement crisis. Regardless of UNHCR advocacy, resettlement places remain limited, although countries are continuously encouraged to share responsibility with host countries.

The United States (US), the largest resettlement country, has received thousands of Iraqis since 2007.¹⁵¹ Following increased criticism of the slowness of the US resettlement process,¹⁵² US procedures were speeded up in 2008 and applications reportedly processed faster than in the past. Australia¹⁵³ and Canada¹⁵⁴ have also increased their resettlement

150 Communication with UNHCR, 17/11/2008

151 The US received since 2007 around 33,000 referrals of Iraqis refugees from UNHCR but only 15,000 Iraqis had arrived to the USA since February 2007, including cases of non-UNHCR referrals - Worldwide Refugee Programs, 30 Oct 08, <http://www.state.gov/g/prm/rls/110984.htm> [accessed on 3/11/2008]; Cumulative UNHCR Iraqi Submissions versus Arrivals to the United States (including non-UNHCR), 31/10/2008, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=491958c92> [accessed on 25/11/2008]

152 See for instance: Spencer S. Hsu and Robin Wright, *Crocker Blasts Refugee Process*, Washington Post, 17 Sept. 2007; available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/09/16/AR2007091601698.html> [accessed on 30/12/2007]

153 Amnesty International, *Millions in Flight: the Iraqi Refugee Crisis*, Sep 2007, available at <http://www.amnesty.org/en/library/info/MDE14/041/2007/en> [accessed on 8/3/2008]

154 Citizenship and Immigration Canada, *Government of Canada announces measures to help reunite families affected by the situation in Iraq*, 19/11/2007, available at: <http://www.cic.gc.ca/EnGLIsh/departement/media/releases/2007/2007-11-19.asp> [accessed 7/12/2008]; Citizenship and Immigration Canada, News Release: *Canada to double number of Iraqi refugees*, 19/3/2008, available at <http://www.cic.gc.ca/EnGLIsh/departement/media/releases/2008/2008-03-19a.asp> [accessed on 1/4/2008].

places for Iraqi refugees in the region. The European Union was more committed to provide humanitarian assistance to Iraqi refugees rather than make resettlement promises,¹⁵⁵ but appears, by the end of 2008, to be considering resettlement possibilities.¹⁵⁶

Since April 2007, UNHCR Beirut referred 4,000 Iraqis, of which only 800 departed to resettlement countries.¹⁵⁷ The number of referrals continues, by far, to exceed the number of refugees who departed from Lebanon.

UNHCR Beirut refers all non-Iraqis refugees registered under the 2003 MOU for resettlement.¹⁵⁸ Iraqi *prima facie* refugees, on the other hand, are prioritized for referral. As of early 2007, UNHCR identified eleven priority profiles for the resettlement of Iraqi refugees focusing on their reasons for fleeing Iraq - such as trauma victims, minority groups, affiliation to foreign countries - or their extreme vulnerability in the country of asylum.¹⁵⁹

Acceptance remains conditioned by the countries' criteria and national legislations. Procedures remain lengthy and slow. Countries also had restrictive policies towards medical cases and towards Iraqis associated

155 Council of the European Union, *Council conclusions on Iraq*, 23/4/2007, 2795th/2796th meetings, 8425/07 (Presse 80), available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/93798.pdf [accessed 7/12/2008]. Also, Al-Mustaqbal Daily, 21/4/2007, "The EU Opposes the Resettlement of Iraqis refugees to its countries"; UNHCR, *UNHCR urges reinforced EU commitment to protection of Iraqi refugees*, 23/9/2008, available at <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=briefing&id=48d8be5c6> [accessed on 19/12/2008]

156 Council of the European Union, 2890th Council meeting, Justice and Home Affairs, Press Release 12923/08, 25/9/2008, available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/jha/103072.pdf [accessed on 2/12/2008]

157 UNHCR, *Iraq Situation Update*, August 2008, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=SUBSITES&cid=491956a02> [accessed on 25/11/2008]

158 Correspondence with UNHCR, 23/1/2008

159 UNHCR, *Resettlement of Refugees from Iraq*, 12/3/2007 identifies the following eleven profiles for resettlement: (1) Persons who have been the victims of severe trauma (including SGBV), detention, abduction or torture by State or non-State entities in the country of origin (COO); (2) Members of minority groups and/or individuals which are/ have been targeted in COO owing to their religious/ethnic background; (3) Women-at-Risk in country of asylum (COA); (4) Unaccompanied or separated children & children as principal applicants; (5) Dependants of refugees living in resettlement countries; (6) Older Persons-at-Risk; (7) Medical cases and refugees with disabilities with no effective treatment available in COA; (8) High profile cases and/or their family members; (9) Iraqis who fled as a result of their association in COO with the MNF, CPA UN, foreign countries, international and foreign institutions or companies and members of the press; (10) Stateless persons from Iraq; (11) Iraqis at immediate risk of *refoulement*, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=SUBSITES&id=45f80f9d2> [accessed on 19/12/2008]

with the former regime, or who completed their military service during periods of wars or general repression in Iraq.¹⁶⁰ As a result, not all Iraqi refugees have access to resettlement.

Acceptance by resettlement countries is, however, not the end of the road. Refugees had to wait for long periods before they actually depart from Lebanese territories. Delays have however generally improved especially from US authorities during 2008. Travel logistics are organized by IOM in coordination with UNHCR. In the meantime, refugees are left in a state of limbo: they continue to live in the fear of arrest and insecurity.

160 Correspondence with UNHCR, 23/1/2008

CONCLUSIONS & RECOMMENDATIONS

National Responsibilities

Refugees and asylum-seekers in Lebanon continue to be denied the right to recognition. They are penalized for having fled their country of origin from fear of persecution and entered the country illegally and/or overstayed their legal entry visa and residency after they fail to meet the rigorous requirements. The Lebanese policy regarding asylum-seekers is simply one of denial. “Refugee, go home!” summarizes this policy. To implement this policy they are kept in prolonged arbitrary detention till they lose hope of obtaining any protection against their *refoulement*.

The judiciary is slowly, but half heartedly, building case law to stop the deportation of refugees and asylum-seekers through the use of Lebanon’s commitment and obligation to international human rights standards, particularly Article 3 CAT. However, the judiciary could not be seen today to be the body guaranteeing the protection of refugees and asylum-seekers. It is hoped that the so far few positive court decisions would be multiplied

in order to make a solid and irreversible jurisprudence leading to a protective legal framework for refugees. However, regardless of court decisions, their fates continue to be one of arbitrary detention once they are transferred to the administrative immigration authorities.

Arbitrary detention is a serious crime both in national and international human rights law. Yet, it is routinely and systematically practiced by the Lebanese administrative authorities. This unlawful practice appears to be condoned by the different branches of the government and particularly the judiciary and the legislature.

The matter is more serious when attempts to challenge arbitrary detention before the judiciary or the administrative hierarchical authorities are either ignored or do not result in putting an end to this unlawful practice. The crime of illegal entry committed by asylum-seekers is dealt with by committing a more serious crime. More serious is the fact that the 'conspiracy of silence' appears to involve all the different stakeholders, including civil society in general and human rights organizations in particular.

The Lebanese law provides clear remedies for those who have experienced abuse at the hands of the state, creating actionable rights and clear civil and criminal penalties. Lawyers rarely, if ever, pursue cases of arbitrary detention according to these provisions. Thus, in addition to the lack of accountability of government action that weakens the legal system, the common occurrence of arbitrary detention in Lebanon is not well monitored and condemned. Moreover, by not fulfilling its domestic legal obligations and not holding those responsible accountable to the full letter of the law, Lebanese authorities are signaling their disrespect for the rule of law and as such putting at stake their status as a liberal and democratic state.

Today, the solutions to the problem of recognition and security of refugees and asylum-seekers in Lebanon continue to be, at best, temporary and ad-hoc, such as the MoU and the UNHCR-GSO regularization agreement. This report has shown that, regardless of these arrangements, official policy remains one of denial of basic refugee security. This report has demonstrated that all involved authorities act in the same direction –the arresting authorities, the judiciary, and the immigration authorities. The government has clearly demonstrated this policy when it decided to fund the 'return' of Iraqi refugees despite the opposite advice of UNHCR.

Furthermore, FR is seriously concerned that, at no level, refugees were given the opportunity to defend themselves. The arresting police ignores their refugee certificate and sometimes do not record it in the interrogation report. The prosecutor rarely, if ever, probes into the circumstances and reasons that led them to enter the country illegally, and refers them to court systematically, sometimes over the phone, on charges of illegal entry. The courts condemn them routinely and systematically, often using pre-set decision forms, for prison terms, fines, and deportation. They often are not assisted by defense lawyers in court. Nevertheless, few breakthroughs have taken place when refugees were defended by lawyers.

International Obligations

Lebanon is member of the international community. It is proud to have participated in the drafting of the Universal Declaration for Human Rights. It ratified the core human rights instruments and enshrined the international human rights principles in its Constitution. It has repeatedly asserted its respect of international human rights, and UN principles and resolutions. Yet, Lebanon has not completely incorporated human rights principles in its legislation and policy in order to be coherent between words and deeds. As such, Lebanon seems to resist any move to become a full fledged member of the international community, in terms of sharing responsibility of the plight of refugees, by at least granting them a temporary legal stay and prohibiting their *refoulement*.

Migration, in general, and forced migration, in particular, is a global issue. Lebanon should be active in the search for a balanced policy that takes in consideration the balance between security and respect of human rights principles. Today, both the judiciary and the relevant administrative authorities have shown some restraint from deporting refugees and asylum. But both bodies have integrated that principle on a case by case basis, a situation that leaves rooms to errors that may have serious consequences on refugee protection.

There continue to be widespread lack of awareness of Lebanon's international human rights obligations regarding refugees and asylum-seekers. International rights and international case law do not factor strongly into the general education or specific legal education in

Lebanon. As a result, these fundamental rights are often not recognized by lawyers, judges, and other parties, despite their direct applicability in Lebanese courts.

The threat of arrest, detention, and deportation undermines the role and mandate of UNHCR. There has been minor positive improvement recognizing the value of UNHCR certificate to block deportation, but this is far from being the norm today.

The report further concludes that there is no systematic review of human rights abuse. The Parliamentary Committee for Human Rights that is mandated to investigate human rights issues has not publicly made any statement on arbitrary arrest of foreigners during these two years. The lack of control leads to abuses of power and is reducing the possibility of fostering accountability and compliance with Lebanon's international obligations at the domestic level. More worrying is the fact that the Parliamentary Committee for Human Rights has been working on a National Action Plan for Human Rights since 2005. Most other themes have been discussed but the question of Palestinian and non-Palestinian refugees continue to be differed to unknown dates.

Recommendations

We call on the Lebanese authorities to:

- Insure the respect for the rights to personal liberty and take immediate steps to end all forms of arbitrary detention. Prison authorities should refuse to keep someone in arbitrary detention in conformity with the national legislations in force;
- Make a thorough investigation into the practice of arbitrary detention of foreigners including refugees and asylum-seekers; publish the findings and take the necessary action against the perpetrators by bringing them to justice;
- Insure that the judiciary does not penalize refugees and asylum-seekers on grounds of illegal entry or presence, and that they are not sentenced to deportation in conformity with Lebanon's obligations under international human rights law, particularly the *non-refoulement* obligation
- Take concrete steps to bring Lebanese Laws and regulations in conformity with international standards; particularly, make legislative amendments to the Law of Entry and Exit of 1962 in order to exempt asylum-seekers from the crime of illegal entry, as a first step towards an effective protection system of refugee rights.
- Adopt a national legislation regulating asylum in Lebanon, as no protection regime - whether it is individual status determination, temporary protection, or *prima facie* recognition - can be effective when it is solely implemented by UNHCR without the involvement of the Lebanese authorities and in the absence of a national legal framework for the protection of refugees in Lebanon
- Set up a permanent independent judicial committee that has the authority to automatically review deportation orders, to provide procedural safeguards against refoulement and ensure respect for detention standards

Concerning Iraqi refugees, we call on the Lebanese authorities to:

- Acknowledge the UNHCR guidelines regarding refugees from Iraq and establish a mechanism to receive and protect refugees from Iraq fleeing the generalized violence in their country
- Grant the refugees from Iraq temporary residencies on humanitarian grounds

- Ensure that arrest of refugees from Iraq is limited to identification of identity and for security reasons or other criminal charges
- Halt “returns” and adhere to UNHCR guidelines and advisory concerning the non-returnability of refugees from Iraq to Iraq

We call on UNHCR, and the International Community to:

- Assist the Lebanese government in order to grant the refugees from Iraq access to basic services such as health and education, and allow self-reliance opportunities
- Share the responsibility of the humanitarian crisis suffered by the Iraqi people by softening the conditions for admission of Iraqi refugees into their countries, increasing the assistance provided to the disadvantaged Iraqi refugees and ensuring that available resources are channeled directly to Iraqis refugees
- Address the root causes of the plight of the Iraqi people inside and outside Iraq in order to come out with substantial recommendations to end the occupation and the escalating violence in Iraq
- Increase funding to UNHCR and independent NGOs providing legal aid and counseling to refugees
- Increase funding to professional legal aid NGOs for training of the legal professions, security forces, judges on issue of asylum

ANNEXES:

1. SELECTED INTERNATIONAL STANDARDS

RIGHT TO SEEK ASYLUM

Universal Declaration of Human Rights, 1948, Article 14:¹

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Convention Relating to the Status of Refugees, 1951, Article 1 (a) (2):²

The term refugee applied to any person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.”

PROTECTION AGAINST ARREST AND DETENTION FOR ILLEGAL ENTRY

Convention Relating to the Status of Refugees, 1951, Article 31(1):³

The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence

UNHCR Executive Committee Conclusion, No. 22 (XXXII), 1981, Protection of Asylum Seekers in Situations of Large-Scale Influx, Paragraph 2:⁴

1 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, available at: <http://www.unhcr.ch/udhr/lang/eng.htm> [accessed 8 December 2008]

2 UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, available at: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> [accessed 8 December 2008]

3 UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, available at: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> [accessed 8 December 2008]

4 UN High Commissioner for Refugees, *Protection of Asylum-Seekers in Situations of Large-Scale Influx*, No. 22 (XXXII) – 1981 available at: <http://www.unhcr.org/excom/EXCOM/3ae68c6e10.html> [accessed 8 December 2008]

[...] asylum-seekers who have been temporarily admitted pending arrangements for a durable solution [...] should not be penalized or exposed to any unfavorable treatment solely on the ground that their presence in the country is considered unlawful.

RIGHT TO A FAIR TRIAL

International Covenant on Civil and Political Rights, 1966, Article 14:⁵

1) [...] In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. [...] 2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. 3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [...] (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; [...] (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

PROTECTION AGAINST ARBITRARY DETENTION

International Covenant on Civil and Political Rights, 1966, Article 9:⁶

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his [or her] liberty except on such grounds and in accordance with such procedure as are established by law.

Working Group on Arbitrary Detention, Deliberation No. 5, 1999⁷

5 UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, available at: <http://www2.ohchr.org/english/law/ccpr.htm#part4> [accessed 8 December 2008]

6 UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, available at: <http://www2.ohchr.org/english/law/ccpr.htm#part4> [accessed 8 December 2008]

7 Working Group on Arbitrary Detention, *Deliberation No. 5*, in Report of the Working Group on Arbitrary Detention, 28 December 1999, available at: <http://daccessdds.un.org/>

In order to determine the arbitrary character of the custody, the Working Group considers whether or not the alien is enabled to enjoy all or some of the following guarantees: [...] Principle 3: Any asylum-seeker or immigrant placed in custody must be brought promptly before a judicial or other authority. [...] Principle 6: The decision must be taken by a duly empowered authority with a sufficient level of responsibility and must be founded on criteria of legality established by the law. Principle 7: A maximum period should be set by law and the custody may in no case be unlimited or of excessive length. Principle 8: Notification of the custodial measure must be given in writing, in a language understood by the asylum-seeker or immigrant, stating the grounds for the measure; it shall set out the conditions under which the asylum-seeker or immigrant must be able to apply for a remedy to a judicial authority, which shall decide promptly on the lawfulness of the measure and, where appropriate, order the release of the person concerned. Principle 9: Custody must be effected in a public establishment specifically intended for this purpose; when, for practical reasons, this is not the case, the asylum-seeker or immigrant must be placed in premises separate from those for persons imprisoned under criminal law. Principle 10: The Office of the United Nations High Commissioner for Refugees (UNHCR), the International Committee of the Red Cross (ICRC) and, where appropriate, duly authorized non-governmental organizations must be allowed access to the places of custody.

UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, 1999⁸

In conformity with ExCom Conclusion No. 44 (XXXVII) -1986 the detention of asylum-seekers may only be resorted to, if necessary:

(i) to verify identity[...] (ii) to determine the elements on which the claim for refugee status or asylum is based [...] (iii) in cases where asylum-seekers have destroyed their travel and /or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum [...] detention is only permissible when there is an intention to mislead, or a refusal to co-operate with the authorities. Asylum-seekers who arrive without documentation because they are unable to obtain any in their country of origin should not be detained solely for that reason. (iv)

doc/UNDOC/GEN/G99/165/70/PDF/G9916570.pdf?OpenElement [accessed 8 December 2008]

⁸ UN High Commissioner for Refugees, *UNHCR's Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers*, 26 February 1999, available at: <http://www.unhcr.org/protect/PROTECTION/3bd036a74.pdf> [accessed 7 December 2008]

to protect national security and public order. This relates to cases where there is evidence to show that the asylum-seeker has criminal antecedents and/or affiliations which are likely to pose a risk to public order or national security should he/she be allowed entry.

Detention of asylum-seekers which is applied for purposes other than those listed above, for example, as part of a policy to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is contrary to the norms of refugee law. It should not be used as a punitive or disciplinary measure for illegal entry or presence in the country. Detention should also be avoided for failure to comply with the administrative requirements or other institutional restrictions related residency at reception centers, or refugee camps.

PROTECTION AGAINST REFOULEMENT

Convention Relating to the Status of Refugees, 1951, Article 33(1):⁹

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.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Article 3:¹⁰

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.

9 UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, available at: <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf> [accessed 8 December 2008]

10 UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: resolution / adopted by the General Assembly*, 10 December 1984, A/RES/39/46, available at: <http://www2.ohchr.org/english/law/cat.htm> [accessed 8 December 2008]

2. Status of Lebanon's ratification of Human Rights Instruments¹¹

Instrument	Status	Signature Date	Entry Into Force Date	Record. of Instrument
Convention Relating to the Status of refugees	No action			
Protocol Relating to the Status of refugees	No action			
Convention Relating to the Status of Stateless Persons	No action			
Convention on the Reduction of Stateless	No action			
CAT-Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	Accession		04/11/2000	05/10/2000
CAT-OP-Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment	Accession*		18/09/2008	
CCPR-International Covenant on Civil and Political Rights	Accession		23/03/1976	03/11/1972
CCPR-OP1-Optional Protocol to the International Covenant on Civil and Political Rights	No Action			
CCPR-OP2-DP-Second Optional Protocol to the International Covenant on Civil and Political Rights	No Action			
CED-Convention for the Protection of All Persons from Enforced Disappearance	Signature only	06/02/2007		
CEDAW-Convention on the Elimination of All Forms of Discrimination against Women	Accession		16/05/1997	21/04/1997
CEDAW-OP-Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	No Action			
CERD-International Convention on the Elimination of All Forms of Racial Discrimination	Accession		12/12/1971	12/11/1971
CESCR-International Covenant on Economic, Social and Cultural Rights	Accession		03/01/1976	03/11/1972

11 Status of ratifications available at: <http://www.unhchr.ch/tbs/doc.nsf/newhvsstatusbycountry?OpenView&Start=1&Count=250&Expand=96#96> [accessed 6 December 2008]

CMW-International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	No Action			
CPD-Convention on the Rights of Persons with Disabilities	Signature only	14/06/2007		
CPD-OP-Optional Protocol to the Convention on the Rights of Persons with Disabilities	Signature only	14/06/2007		
CRC-Convention on the Rights of the Child	Ratification	26/01/1990	13/06/1991	14/05/1991
CRC-OP-AC-Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	Signature only	11/02/2002		
CRC-OP-SC-Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	Ratification	10/10/2001	08/12/2004	08/11/2004

* Lebanon acceded to OPCAT by Law no. 12/2008 of 5 September 2008 published in the official gazette No. 38 of 18 September 2008.