

LEGALITY
VS.
LEGITIMACY:

***DETENTION OF REFUGEES
AND ASYLUM SEEKERS IN LEBANON***

LEGAL STUDY

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Frontiers first started working on a legal study of arbitrary detention in 2003. The paper followed a legal research methodology which consisted of researching primary legal texts, both international and Lebanese, in order to ascertain the law, as well as a study of relevant jurisprudence and commentary. In order to complement the legal study we added individual cases in order to show the existing gap between the stated legal texts and the actual practice.

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EXECUTIVE SUMMARY

International law protects refugees against arbitrary detention and detention for illegal entry

Unlike most other foreigners, refugees and asylum seekers are often forced by circumstance to enter a country illegal in order to escape persecution. As a result, art. 31 of the 1951 Convention relating to the Status of Refugees prohibits punishing refugees for illegal entry under circumstances which would be justified for other illegal aliens.

Incorporated directly into the Lebanese Constitution, the Universal Declaration provides the earliest statement of the general prohibition against arbitrary detention. Art. 9 simply states that “no one shall be subjected to arbitrary arrest, detention or exile.” The UN Human Rights Committee has further recognized that freedom from arbitrary detention or arrest is a peremptory norm *jus cogens*. Moreover, the UN Human Rights Committee has explained that the key in determining whether detention is “arbitrary” under art. 9(1) of the ICCPR is whether the detention is in compliance with international detention standards rather than merely authorized under domestic law and has moreover asserted that illegal entry itself, is not sufficient as a grounds for detention.

The UNHCR Executive Committee’s Conclusion on Detention of Refugees and Asylum Seekers sets out the limited accepted bases on which the detention of refugees or asylum seekers can be justified. These are: to verify identity; to determine the elements of the claim; where the claimant has destroyed their travel or identity documents or has used fraudulent documents with an intention to mislead the authorities; to

protect national security or public order. The requirement that detention be subjected to either an administrative or judicial review is an essential safeguard against arbitrary detention. Detaining asylum-seekers for other purposes, such as deterrence of future claims, or in an attempt to dissuade applicants from pursuing their refugee claims is contrary to international protection standards. UN guidelines make clear that detention as a form of punishment for illegal entry in and of itself is not justified, and cannot be used against those who have not been convicted of some other criminal offence. Any other punitive detention would be a breach of human rights.

Following from fundamental principles, detention of asylum-seekers may be considered arbitrary if: it is not in accordance with the law; if the law itself allows for arbitrary practices, or is enforced in an arbitrary way; when it is not accompanied by fair and efficient procedures for its review. It may also be arbitrary if it is disproportionate, or indefinite. For detention not to be arbitrary it should be prescribed by a law that is sufficiently accessible and precise, it should not include elements of inappropriateness or injustice.

All those who are detained have a right to be treated in conformity with internationally accepted norms and standards. Among these are those established in the United Nations Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and the United Nations Standard Minimum Rules for the Treatment of Prisoners. Like everyone in international law, refugees have a treaty and customary right to due process and judicial review. Thus, refugees have a right to due process in determining the lawfulness of detention; a right to a fair and public hearing by a competent tribunal without undue delay. Continued detention must be justified on evidence that the person will flee, harm society, or destroy evidence. It must be subject to periodic

review, and should not extend beyond a period which the state can objectively justify.

Arbitrary detention of asylum seekers and refugees occurs when they are detained for insufficient reasons, without an adequate analysis of their individual circumstances, without a meaningful opportunity to have their cases reviewed by an independent body, in the absence of an adequate legal framework, or for disproportionate or indefinite periods.

Asylum seekers are also protected by international human rights bodies. The UN Human Rights Commission created a specific body to address arbitrary detention, or detention contrary to human rights principles - the Working Group on Arbitrary Detention. Moreover, since 1997 the Working Group has been directed to pay special attention to the situation of immigrants and asylum-seekers “who are allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy.

**Lebanese practice of detaining refugees for illegal entry
is contrary to international law**

Through its constitution, Lebanon has itself created an obligation to respect the prohibition of arbitrary detention and the principle of non-refoulement. Rules of international law can be directly invoked in legal proceedings if they are sufficiently specific and concrete. In addition, and as Lebanese courts have affirmed, refoulement of a person to a country where they risk torture is prohibited under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Lebanon has ratified.

Despite the existence of a Memorandum of Understanding between UNHCR and General Security since the end of 2003, the treatment of refugees and asylum seekers in Lebanon continues to be regulated by the Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country of 1962 (Law of Entry and Exit). The detention of refugees and asylum seekers in Lebanon is largely based on their illegal entry into the country, and their continued detention is seemingly justified by the need to assure their removal. The state can hold foreigners in detention in order to establish their identity prior to their appearance before a court, and on the basis of an administrative decision by the director of General Security declaring a foreigner's continued presence a threat to the general safety and security, and ordering their removal. More commonly, a deportation order is the result of a simple conviction for the crime of illegal entry. Since Lebanese courts have acknowledged the right of non-refoulement based on provisions of the UN Convention Against Torture, it is possible to question the validity of keeping someone in detention where their deportation cannot be carried out based on an established risk of refoulement. If international law clearly states that detention is not to be used as a punishment for illegal entry; moreover, the UNHRC in interpreting the ICCPR has stated that illegal entry alone cannot justify detention, then Lebanon's detention policy violates its obligations at international law by blatantly ignoring the special protection granted to refugees and asylum seekers against detention for illegal entry.

Although in theory, refugees and asylum seekers registered with UNHCR in Lebanon enjoy the protection of the UNHCR regional bureau, UNHCR's role in monitoring detention of recognized refugees has not been encouraging. Lack of adequate access and attention by UNHCR in cases where refugees reported that friends or family members had been detained has become increasingly apparent.

In line with international standards, Lebanese authorities must justify a decision to hold someone in detention on the basis that it is the only means: a) to protect evidence, prevent tampering of evidence, intimidation of witnesses or victims, or prevent contacting accomplices; b) to protect the defendant; c) to stop the effects of the crime and prevent its repetition; d) to prevent flight; or, e) to prevent a danger to public order and security. Moreover, the Code of Penal Procedures also grants a certain oversight authority and supervision to the Procurator-General. It is, however, normal that detainees are held much longer than the proscribed 24 hours before being brought before a judicial authority. A number of refugees reported that between twenty to forty people are “tried” at the same time, with their convictions already written out before they arrive. The fact remains that under international human rights protection, the Lebanese practice of detaining asylum seekers and refugees on the grounds of their illegal entry is illegitimate and contravenes explicit human rights guarantees.

Judicial control of prolonged detention of foreigners, including asylum seekers, has been spotty at best. Court decisions suggest a nascent willingness to limit the use of unnecessary detention, but have yet to be used as precedent. The fact that these decisions are not used more frequently to prevent the prolonged detention of asylum seekers and refugees in Lebanon, points to the inherent weakness in the system: there is little will to put in place a consistent system of judicial review.

Without question, the government has a compelling interest in maintaining control over its borders and ensuring the safety and security of the state. However, these interests do not justify broad restrictions, such as a blanket policy of detention, narrowly targeting a vulnerable social class such as foreigners. Observation suggests that this type of practice

occurs regularly in Lebanon, and undermines already threatened right to seek and enjoy asylum from persecution in other countries.

The following recommendations are put forward as the beginning of a search to address the problem of arbitrary detention of asylum seekers:

Build awareness of the situation of refugees and asylum seekers in Lebanon and foster a public climate of accountability;

Encourage the use of domestic legal remedies, such as challenging detention in courts and raising the issue before the Parliamentary Human Rights Committee;

*Ensure **effective** remedies and access to the courts by providing legal aid;*

Pressure the government to make legislative amendments to the Law of Entry and Exit in order to adequately protect the rights of refugees and asylum seekers;

Push for rule of law and respect of procedural safeguards by the courts and detaining authorities to guard against refoulement and ensure respect for detention standards;

Lobby for proper access to information on detainees;

Pressure for an effective asylum system;

Promote the use of international legal remedies.

INTRODUCTION

Universally recognized human rights are not lost by virtue of being displaced. Since most asylum seekers and refugees have not committed crimes, and since international law specifically guards against their detention, the continued practice of detaining refugees and asylum seekers raises significant human rights issues in relation to the fundamental right to liberty.

Against a background of regular resort to detention of foreigners, the purpose of this paper is to draw attention to the increasing institutionalization of the practice and to inform more detailed discussion on detention practices in Lebanon.

According to a report from the Medical Association in Lebanon, 45% of the current prison population is made up of foreigners held in detention centers, scattered throughout the country¹. In other words of the 5,375 prisoners held in Rumieh prison as of November, 2004², roughly 2419 of them were foreigners. Public official statistics are not available on the total number of foreigners detainees and the reasons of their detention (though many of them are detained solely for the crime of illegal entry), nor on their length. The use of detention on the grounds of their illegal entry has been identified as a matter of major concern to UN bodies, NGOs and other international organizations³. Detention attempts to address the particular concerns of States related to illegal entry. However,

1) A study of the current state of prisons in Lebanon." Medical Association of Lebanon in Beirut. 4 December 2004...

2) World Prison Brief of the International Centre for Prison Studies, School of Law, Kings College London "Middle East – Lebanon" Available: http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/middle_east_records.php?code=179

3) See UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers (February 1999) at 10; See e.g. Amnesty International, "Lebanon: Amnesty International Reiterates its concerns on the situation of refugees and asylum-seekers" 3 May 2002 Public statement MDE 18/005/2002 Available: <http://www.amnesty.org>; Fédération Internationale des Ligues des Droits de l'Homme, "Réfugiés et demandeurs d'asile non-palestiniens au Liban: quel avenir?" Rapport: Mission d'enquête. No. 335, June 2002; See ACSRA Annual Report 2002 and Frontiers Center Annual Report 2003 and Frontiers Annual Report 2004 and 2005.

its use against refugees and asylum seekers, individuals fleeing persecution, requires great vigilance and caution to ensure that it does not undermine the fundamental principles of human rights and rule of law on which the modern state is based.

Lebanon is neither a party to the 1951 Convention related to the status of Refugees nor to the 1967 Protocol. Yet since 1963, the country has been a permanent member of UNHCR's Executive Committee, which sets international standards with respect to the treatment of refugees⁴. Lebanon has ratified the Convention against Torture, which prohibits returning any person to a country where he or she would be subject to torture. The Universal Declaration of Human Rights has been enshrined in Lebanon's constitution, and includes the right to seek and enjoy asylum in other countries. Lebanese law grants any foreigner "whose life or freedom is in danger for political reasons" the right to seek asylum in Lebanon⁵. Yet, in practice, refugees' security depends primarily on how much Lebanon abides by the customary principle of *non-refoulement*, which prohibits returning any person to any territory where his or her life or freedom would be in jeopardy.

Lebanon has only limited provisions in its domestic law to deal with refugee issues. The Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country of 1962 (Law of Entry and Exit) establishes an ad-hoc committee, composed of the Directors of the Ministries of Interior, Foreign Affairs and Justice in addition to the Director of the General Security, with the capacity to adjudicate asylum applications and grant refugee status. The law lacks any definition of a refugee. Even more problematic, these provisions are little known by the public and legal profession in general and no information is available about how often it has been invoked in the past, if ever.

4) UNHCR Beirut office Document dated 1st November 2004 (on file).

5) Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country (Law of Entry and Exit), Bulletin of Lebanese Legislation (Official Gazette), No. 28-1962, Entered into force 10 July 1962, art. 26

In September 2003, a Memorandum of Understanding (MOU) was signed between UNHCR and the Lebanese General Security Office (GSO). Lebanese authorities for the first time officially acknowledged that refugees and asylum-seekers have a temporary right to remain in Lebanon. According to the MOU, UNHCR will continue to adjudicate refugee claims, but will share asylum applications with the General Security in order to allow the government to legalize the status of asylum-seekers in Lebanon. Under the MOU, refugees must apply to UNHCR within two months of their arrival in the country. The General Security Office (GSO) issues refugees provisional circulation permits in the form of identification cards. This permit is valid for three months, renewable once, to asylum seekers with pending cases. During this period, UNHCR should process their refugee applications (which sometimes include appeals). Upon recognition by UNHCR, the refugee's circulation permit is extended for a further 6-9 months allowing UNHCR to find a durable solution for the refugee (generally resettlement in a third country). When requested by UNHCR, the period allowed to find a durable solution can be extended in some cases. It is important to note that the terms of the MOU do not apply to those who applied or received refugee status before its signing in September 2003.

Despite these improvements, the MOU does not embrace the principle of *non-refoulement*; indeed, *non-refoulement* is not even mentioned explicitly in the text. The MOU guarantees refugees a clear right to stay for only 12 months, and does not protect them from deportation or detention after this time. Under the terms of the MOU, after the 12 month period "the General Security would be entitled to take the appropriate legal measures," e.g. it would be entitled to prosecute foreigners for their illegal entry and residence.

The limited protection that is available to most non-Palestinian

refugees in Lebanon depends on the quality of UNHCR's refugee status determination procedures. If UNHCR RSD fails to correctly recognize a person in danger of persecution as a refugee, s/he will be in immediate danger of deportation, as well as prolonged detention. Refugee status determination is a high stakes and intensive process, requiring highly specialized training in interviewing victims of human rights abuses, research about foreign cultures and human rights issues, and legal analysis. When done correctly it is usually quite time consuming and resource intensive. Safeguards and basic standards of fairness are therefore essential; without safeguards the RSD procedure becomes less reliable.

Like most UNHCR RSD operations in the world, UNHCR-Beirut normally gave rejected asylum-seekers little or no specific explanations of their reasons for rejection. UNHCR-Beirut did not have an independent unit to consider appeals by rejected asylum-seekers. UNHCR-Beirut did not provide applicants access to all, or even most, of the evidence considered in their cases, including interview transcripts, country of origin information, and information obtained from other witnesses.

Because of these limitations, Frontiers is concerned that there was a higher than tolerable chance of RSD error at UNHCR in Lebanon in 2005. RSD error, where a person who is genuinely in danger is incorrectly denied refugee protection, may happen because a refugee lacked confidence in the UNHCR procedure and therefore failed to reveal all relevant facts. It may also occur because UNHCR erred in its assessment of the facts or law. Such errors are unlikely to be corrected in a system that lacks transparency and an independent mechanism for assessing appeals. Frontiers therefore uses the term "unrecognized refugees" to refer to rejected asylum-seekers, and considers that deportation of rejected asylum-seekers from Lebanon may constitute *de facto refoulement*, given

that there is no reliable system by which to determine whether a person is in genuine danger of persecution.

International customary and treaty based law, jurisprudence and other legal norms, set clear legal limits to a State's power to the detention of refugees and asylum seekers. An international perspective is essential when considering the rights of non-citizens because at least two governments are involved. The host country has certain obligations as the government responsible for granting rights to persons in its territory and under its jurisdiction. While a party to numerous conventions which guard against arbitrary detention, Lebanon continues to detain refugees and asylum seekers without regard to their specific circumstances and in violation of its international human rights obligations.

Part I, "Detention and the Refugee", sets out the particular protection of refugees against detention in general, and the specific reasons which may justify their detention at international law. It also examines the place of refugees and detention in Lebanese law. Part II, "Freedom from Arbitrary Detention", explains the basic human rights prohibition against arbitrary detention, and examines Lebanon's policy of detaining refugees and asylum seekers on the basis of their illegal entry as a possible case of arbitrary detention. Part III, "Required Safeguards and Remedies", examines the necessary procedural safeguards and remedies required by the international legal system, as well as Lebanon's existing remedies and safeguards in both theory and practice. The paper concludes with a general call to advocate for the largely ignored rights of refugees and asylum seekers in Lebanon, to ensure that the authorities respect at least a minimum of human rights, as well as making specific recommendations to the various stakeholders in Lebanon's policy of detention. The paper ends exactly where it begins: universally recognized rights are not lost by virtue of being displaced.

I. DETENTION AND THE REFUGEE

Special Status of Refugees and Asylum Seekers in International Law

Refugees and asylum-seekers form a special category of protected persons in international law, first mentioned in the 1948 Universal Declaration of Human Rights.⁶ Art. 14 of the Universal Declaration recognizes the right to seek and enjoy asylum from persecution in another country as a basic human right. Building on the generality of the Universal Declaration, the 1951 Refugee Convention defines a refugee as a 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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”⁷

International treaty and customary law thus protects refugees against refoulement to a country where their lives, or security would be in danger. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prohibits, without exception, refoulement to a country where there are substantial grounds for believing

6) While Declaration is not positive law, it forms Bill of Rights has status as customary law.

7) Convention Relating to the Status of Refugees, July 28, 1951, (entered into force Apr. 22, 1954) Art. 1(A).2 Although, the 1951 Convention only applied to refugees fleeing events in Europe prior to 1950, the 1967 U.N. Protocol Relating to the Status of Refugees extended the rights and duties under the 1951 Convention so that it applied to refugees from any country without any time limitation [Refugee Convention]. See Protocol Relating to the Status of Refugees, opened for signature Jan. 31, 1967, (entered into force Oct. 4, 1967).

that the person would be in danger of being subjected to torture: “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”⁸ This is a higher standard of protection than the Refugee Convention itself, which allows an exception where a state has reasonable grounds for regarding the asylum seeker as a danger to the security of the country, or where the asylum seeker, having been convicted of a particularly serious crime, constitutes a danger to the community⁹.

Refoulement is also prohibited by the Fourth Geneva Convention of 1949 (Art. 45, para. 4), the International Covenant on Civil and Political Rights (Article 7), the Declaration on the Protection of All Persons from Enforced Disappearance (Article 8), and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Principle 5).

A number of regional human rights instruments also prohibit refoulement either explicitly or through logical interpretation, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 3), the American Convention on Human Rights (Article 22), the OAU Refugee Convention (Article II), and the Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World (Article 2)¹⁰. The wide acceptance of the principle of non-refoulement has resulted in an accepted norm of customary international law. As a result, even States, such as Lebanon, that are not party to the Refugee Convention must respect the principle of non-refoulement.

8) UN Human Rights Committee, General Comment 20 (44) (art. 7) I/, UN Doc. CCPR/C/21/Rev.I/Add.3, 7 April 1992 at para. 9.

9) Refugee Convention, supra art. 33.

10) “Declaration on the Protection of Refugees and Displaced Persons in the Arab World” 4th Seminar of the Group of Arab Experts (16-19 November 1992), Available: <http://www.lnf.org.lb/migrationnetwork/un12/html>.

Article 2:: Reaffirms the importance of the principle prohibiting the return or the expulsion of a refugee to a country where his life or his freedom will be in danger and considers this principle as an imperative rule of international public law.

Illegal Entry and the Refugee

Since refugees and asylum seekers are by definition fleeing persecution and hence often enter illegally, the Refugee Convention dictates a general rule against the detention of asylum seekers and refugees. In particular, it obligates member states not to impose penalties on refugees who, coming directly from the state in which they fear persecution, enter or remain in a country without authorization, provided the persons show good cause for their illegal entry.¹¹ Further, member states must not apply unnecessary restrictions on the movements of refugees who enter illegally and “such restrictions shall only be applied until their status in the country is regularized.”¹²

There are, however, permissible exceptions to the general rule that detention should be avoided. Conclusion No. 44 of the UNHCR Executive Committee of UNHCR authorizes the detention of asylum-seekers in four cases:

- (i) *to verify identity;*
- (ii) *to determine the elements on which the claim for refugee status or asylum is based, although “this exception to the general principle cannot be used to justify detention for the entire status determination procedure, or for an unlimited period of time”;*
- (iii) *when an individual has destroyed or presented false documents in order to mislead immigration authorities, with the proviso that “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.”¹³*
- (iv) *to protect national security and public order.*

11) Refugee Convention, art. 31

12) Ibid., art. 31.

13) UN ExCom, Conclusion No. 44, Detention of Refugee and Asylum-Seekers, United Nations High Commissioner for Refugees, 37th Session, 1986.

Although, the latter requires the state to provide evidence establishing that the asylum-seeker has criminal precedents and/or affiliations which are likely to pose a risk to public order or national security in order to justify detention.

However, detaining asylum-seekers for other purposes, such as deterrence of future claims, or in an attempt to dissuade applicants from pursuing their refugee claims, is contrary to international protection standards. According to UNHCR Guidelines, detention “should not be used as a punitive or disciplinary measure for illegal entry or presence in the country,” and “should also be avoided for failure to comply with the administrative requirements or other institutional restrictions related residency at reception centers, or refugee camps”.¹⁴ Additionally, “detention [should] only be imposed where it is necessary and reasonable to do so and without discrimination. It should be proportional to the ends to be achieved and for a minimal period”¹⁵. The guidelines make clear that detention as a form of punishment for illegal entry in and of itself is not justified, and cannot be used against those who have not been convicted

14) UNHCR Guidelines on Detention, referencing Sub Committee of the Whole of International Protection Note EC/SCP/44 Paragraph 51(c). In fact, the UNHCR Revised Guidelines on Detention recommend alternatives to detention when dealing with asylum-seekers such as monitoring requirements, provisions of a guarantor or surety, release on bail, or the use of open centers.

15) Ibid. The UNHCR 1999 Revised Guidelines on Detention provide the following minimum procedural safeguards for the detention of asylum-seekers or refugees, guaranteeing the right:

- (i) to receive prompt and full communication of any order of detention, together with the reasons for the order, and their rights in connection with the order, in a language and in terms which they understand;
- (ii) to be informed of the right to legal counsel. Where possible, they should receive free legal assistance;
- (iii) to have the decision subjected to an automatic review before a judicial or administrative body independent of the detaining authorities. This should be followed by regular periodic reviews of the necessity for the continuation of detention...
- (iv) either personally or through a representative, to challenge the necessity of the deprivation of liberty at the review hearing, and to rebut any findings made. Such a right should extend to all aspects of the case and not simply the executive discretion to detain;
- (v) to contact and be contacted by the local UNHCR Office available national refugee bodies or other agencies and an advocate. The right to communicate with these representatives in private, and the means to make such contact should be made available.

of some other criminal offence. Any other punitive detention would be a breach of human rights¹⁶.

Outside of UNHCR, several other UN standards and rules adopted by the international community have clarified the grounds which justify detention generally. The UN Body of Principles for the Protection of all Persons under any form of Detention or Imprisonment (Principles) adopted by consensus by the UN General Assembly on December 9, 1988, sets out the basic standard of detention applicable to all detainees¹⁷. For detention to be justified it must be carried out “strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose,” and must be subject to the effective control of a judicial or other competent body.¹⁸ The Principles also provide additional rights where the detained or imprisoned person is a refugee, including the right to contact “the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization¹⁹.”

The UN Human Rights Committee (HRC) has further clarified that the government must establish by persuasive evidence that a person will either flee, destroy evidence, or pose a distinct threat to society in an individualized judicial determination in order to justify detention²⁰.

Relevant human rights treaty bodies have repeatedly recognized that illegal entry does not justify a policy of detention. In a 1997 decision the

16) UNHCR, Revised Guidelines on Detention for Asylum Seekers, para. 3. It should be noted that illegal entry is not considered a crime by international protection standards.

17) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly 9 December 1988, Use of Terms (a). The Principles define “arrest” as “the act of apprehending a person for the alleged commission of an offence or by action of an authority” Use of Terms (b), (d). Detention is defined more broadly to encompass all situations where any person is deprived of personal liberty, except as a result of conviction for an offence, while imprisonment is limited to persons deprived of personal liberty as a result of conviction for an offence. // Use of Terms (d) (e).

18) UN Body of Principles, supra Principles 2, 4. The text explicitly calls on member states to take definite steps to implement and enforce all provisions in the Principles.

19) UN Body of Principles, supra Principle 16.2.

20) See van Alpen, supra at para. 5.8.

HRC stated:

The fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individual, such as the likelihood of absconding and lack of cooperation, which may justify detention for a period. Without such factors detention may be considered arbitrary, even if entry was illegal...²¹

But, can a state justify detaining refugees and asylum seekers by simply passing a law prohibiting the illegal entry of foreigners, to legalize their arrest? Although this issue will be developed below, another case of the Human Rights Committee is worth mentioning here. In *David Alberto Campora Schweizer v. Uruguay*, the HRC found Uruguay to have arbitrarily detained an individual for his political views based on a local law that was not in compliance with the Covenant²². Uruguay justified the detention under its “Prompt Security Measures,” which allowed the government to keep someone in prison indefinitely. The Committee found the rule itself arbitrary and in contravention of art. 9, effectively drawing the distinction between domestic legality and legitimacy in international law²³.

21) *A v. Australia* Human Rights Committee, 3 April 1997 Communication No. 560/1993 at para. 9.4.

22) *David Alberto Campora Schweizer v. Uruguay*, as cited in Report of the Human Rights Committee, U.N. GAOR, 35th Sess., Supp. No. 40, at 117, U.N. Doc. A/38/40 (1983).

23) Even when dealing with detention on the basis of public security, the HRC still requires that this type of “so-called preventive detention...must be based on grounds and procedures established by law (para.1), information of the reasons must be given (para.2) and court control of the detention must be available (para. 4), as well as compensation in the case of breach (para.5).” UN HRC, General Comment No. 08, supra at para. 4.

Lebanon and International Law

What effect does all of this have on Lebanon? Is Lebanon bound by UN Conventions, principles and interpretations of human rights by various treaty bodies? In fact, as stated in the Constitution, Lebanon has a duty to respect UN conventions as well as standards of human rights enshrined in the Universal Declaration of Human Rights and customary international law. As stated in para. (b) of the Preamble:

Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception²⁴.

Implicitly then, Lebanon has itself created an obligation to respect the prohibition of arbitrary detention and the principle of non-refoulement.

Lebanon has also ratified several human rights treaties, including the ICCPR which provides explicit protection against arbitrary detention as well as several procedural safeguards²⁵. These treaties, in addition to being directly enforceable in Lebanese courts, point to emerging customary international legal norms relevant to the arbitrary detention. These norms include the right to liberty, the right to be free from prolonged arbitrary detention, the right to due process and the right to equal protection before the law.

24) Dr. A. Tschentscher, LL.M., "Lebanon Constitution" [Unofficial Translation]. International Constitutional Law, Constitution, Countries, World. Available at: http://www.oefre.unibe.ch/law/icl/le00000_.html

25) Lebanon has acceded to the following human rights treaties: CERD (12 November 1971), ICCPR (3 November 1972), ICESCR (3 November 1972), CRC (14 May 1991), CEDAW (21 April 1997) Convention Against Torture (5 October 2000).

Rules of international law can be directly invoked in legal proceedings if they are sufficiently specific and concrete. International treaties ratified by Lebanon²⁶ become an integral part of domestic law upon exchange of or deposit of instruments of ratification or accession²⁷. They are automatically incorporated in domestic legislation by their publication in the Official Gazette, through a Parliamentary law. In cases of a conflict between national and international law, judges are directed to accord priority to international law over domestic legislation²⁸.

Human rights treaties governing detention such as the ICCPR, and Convention against Torture are directly integrated into Lebanese law and can be used in court to defend against cases of arbitrary detention²⁹. Thus, refugees and asylum seekers, who are simply exercising their right to seek asylum from persecution under Article 14(1) of the Universal Declaration, are entitled to the protection of the fundamental human rights contained in UN conventions and their principles, such as those present in the ICCPR and the Universal Declaration.

In reality, Lebanese courts have only occasionally applied international treaties in their jurisprudence, including directly referencing the Torture Convention. However, the weight given to international law in Lebanon should not be easily overlooked since it represents an underused

26) See Article 52 of the Constitution: “[Negotiation of International Treaties] 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 Chamber 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 the Chamber.”

27) See Georges J. Assaf, “The Application of International Human Rights Instruments by the Judiciary in Lebanon, in Eugene Cotran and Adel Omar Sherif (eds.), *The Role of the Judiciary in the Protection of Human Rights*, CIMEL Book Series No. 5, Kluwer Law International, 1997 at 86. As cited in Redress, “Reparation for Torture: A Survey of Law & Practice in 30 Selected Countries (Lebanon Country Report), May 2003. Available: <http://www.redress.org/studies/Lebanon.pdf>

28) Article 2 of the Code of Civil Procedure. For references, see, Assaf, *Application of International Human Rights Instruments*, supra at 86.

29) See “Procedural Safeguards”, infra at 25.

method of ensuring compliance of international human rights norms by the state. There has been a few decisions that cited the international treaties as grounds for overturning decisions to deport or not to order the deportation and/or the detention of refugees and asylum seekers.

Refugees in Lebanese Law

International legal standards aside, how does Lebanon itself legally define the relationship between refugees and detention? Although Lebanon is not a signatory to the Refugee Convention nor its subsequent Protocol, the Law of Entry and Exit does recognize a limited right to asylum for those fleeing political persecution. Art. 26 grants all foreigners who are wanted or condemned by a foreign authority for a political crime the right to seek political asylum in Lebanon, where as a result their life or liberty is threatened for political reasons. In fact, the right to political asylum has only been used a handful of times, underlining its highly discretionary nature and general non-availability³⁰, and has not in any way led to the development of a national refugee law.

Additionally, the Memorandum of Understanding (MOU) signed on September 9, 2003 between Lebanon's General Security and UNHCR, represents the first official acknowledgement by Lebanese authorities that refugees and asylum-seekers in general have a temporary right to remain in Lebanon³¹. The aim of the MOU was to ensure that durable solutions to the problems of refugees residing in Lebanon could be found, including better legal protection, temporary residence permits and freedom of

30) Political asylum is granted only by virtue of an ad-hoc Commission composed of the Minister of Interior, the President, the Directors of the Ministry of Justice, Foreign Affairs, General Security, and Members. See, Law of Entry and Exit, art. 27. The decision of the commission is final and cannot form the basis of any appeal, even for abuse of power. According to art. 29 the Commission can refuse or withdraw the right to asylum, or restrict the individual to a specific place of residence without any obligation to provide reasons.

31) However, Lebanon still refuses to acknowledge that it has become a country of asylum, thus effectively blocking any development of a domestic refugee determination system. See, MOU, Introduction at 1.

movement. The Memorandum guarantees the right to temporary residence for 12 months, during which UNHCR must find a resettlement solution for the refugees.³² After this time there are no obligations on state authorities preventing them from arresting or deporting the claimants, although previous Lebanese court decisions could theoretically be invoked to prevent the return of applicants to countries where they risk torture.³³

Despite the MOU, the treatment of refugees and asylum seekers in Lebanon continues to be regulated by the Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country of 1962 (Law of Entry and Exit)³⁴. This law permits the arrest and detention and deportation of foreigners for illegal entry, or entry without authorization from the General Security, without the appropriate travel documents, or without authorization of a Lebanese representative abroad.³⁵ Article 32 of the 1962 Law of Entry and Exit specifies a punishment of one to three months imprisonment, a fine, and expulsion in the case of illegal entry into Lebanon. Moreover, foreigners who have perpetrated serious criminal offences, or are declared a danger to state security can be detained and sentenced to expulsion (criminal proceedings), removal (magistrate proceedings), or have their further stay denied (administrative proceedings)³⁶.

32) According to the terms of the MOU, General Security will grant temporary circulation permits justifying a foreigner's presence in Lebanon if they are an asylum seeker for three months, after which UNHCR must provide the General Security with a list of those who have been accepted as refugees and those who have not. See arts. 5,8. The temporary protection of a circulation permit is then extended for recognized refugees for a maximum of nine months, "after which the General security would be entitled to take the appropriate legal measures." Art. 9.

33) MOU, Art. 12 does provide UNHCR with access to information on detained asylum seekers. It explains that the Directorate General of the General Security will notify UNHCR of asylum seekers who are being detained on its premises. However, if UNHCR wishes to interview other detainees it must write an explanatory letter with proper documents to General Security, effectively asking for permission to gain access to detainees.

34) Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country (Law of Entry and Exit), Bulletin of Lebanese Legislation (Official Gazette), No. 28-1962, Entered into force 10 July 1962. Art. 1 defines foreigner as all natural persons without Lebanese nationality.

35) Ibid. art. 6.

36) See "Lebanon's Detention for Illegal Entry: Necessary and Reasonable?", *infra*.

Non-refoulement in Lebanese law

However, Lebanese courts have confirmed that the decision to remove a foreigner from Lebanon cannot be executed where this would expose him to the risk of torture, as provided for in Art. 3 of the Torture Convention. In the case of a recognized Sudanese refugee, Makir am din Nutout whose entry into Lebanon was illegal, the court of first instance refused to expulse him since returning him to his country would place him at risk of torture, based on his belief in a particular religion, relying on the Torture Convention. The court sentenced him to one month imprisonment on grounds of illegal entry but did not order his expulsion. In that, the court regularized his legal status in Lebanon until a permanent solution, in the form of third country resettlement, could be found by UNHCR. The case is significant since the court explicitly relied on an international covenant to challenge the deportation order. However, Nutout stayed in detention for over one year after the expiry of his sentence since the silence of the court on the issue of detention after the expiry of the sentence effectively gave a green light to the authorities³⁷. **During the prolonged detention**, Nutout did not feel sufficiently protected by UNHCR or sufficiently safe in Lebanon to challenge his arbitrary detention before the courts.

Another decision of the Beirut Court of Appeal overturned a deportation order for an Iraqi recognized refugee, Sajid Ilia, based on the credible threat of torture upon his return to Iraq³⁸. Judge Tanius al Khoury confirmed the decision of the first instance court of imprisonment for illegal entry, overturning Ilia's deportation as a result of his illegal entry, and authorized his stay in Lebanon until a durable solution could be found whereby Ilia could be resettled in another country with the assistance of UNHCR Beirut. Neither case, however, mentioned the prolonged detention of the defendants.

37) Court of First Instance in Beirut Decision No. 2003/1119. Appeared in As-safir Newspaper on 13 June 2003.

38) Decision of the appeal court in Beirut (room 9), Pres. Tanius al Khoury. No. 2001/580 on 20 June 2001.

II. FREEDOM FROM ARBITRARY DETENTION

A Basic Principle of International Law

Since detention itself is not a violation of human rights, international law has over time attempted to define the limits beyond which a detention, whether administrative or judicial, becomes arbitrary³⁹. Incorporated directly into the Lebanese Constitution, the Universal Declaration provides the earliest statement of the general prohibition against arbitrary detention. Art. 9 simply states that “no one shall be subjected to arbitrary arrest, detention or exile.” The Declaration further provides: “All are equal before the law and are entitled without any discrimination to equal protection of the law⁴⁰.” And further confirms that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as . . . national or social origin . . . birth or other status⁴¹.”

This same principle is found in the ICCPR. Article 9(1) of the Covenant provides without reservation that “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.” Like the Universal Declaration, the ICCPR clearly provides that the fundamental right to be free from arbitrary detention must be applied to “all individuals within [a state’s] territory and subject to its jurisdiction... without distinction of any kind⁴².” Moreover, the prohibition of arbitrary detention is not limited to those residing legally

39) Article 38(1) of the Statute of the International Court of Justice, names four sources of international law: international conventions, international custom, general principles of law, and judicial decisions and the teachings of “the most highly qualified publicists of the various nations.” Statute of the International Court of Justice, June 26, 1945, art. 38(1)(d), 59 Stat. 1055, T.S. No. 993.

40) Universal Declaration on Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948), art. 7.

41) *Ibid.* arts. 9, 7, 2.

42) ICCPR, *supra* art. 2(1); see *ibid.* art. 26 (prohibiting discrimination before the law on the basis of “national or social origin”).

within the territory, but applies whenever a state exercises its jurisdiction over a person⁴³.

The UN Human Rights Committee has further recognized that freedom from arbitrary detention or arrest is a peremptory norm *jus cogens* – a right of fundamental and preemptive importance, and has expressly declared that a state “may not depart from the requirement of effective judicial review of detention,” even in times of emergency⁴⁴. As a norm of customary international law, the prohibition of arbitrary detention is applicable to all countries, regardless of their accession to any human rights treaties.

Arbitrary detention is of course not limited to contraventions of local law. In its General Comments the HRC explains:

The drafting history of article 9[(1) of the Covenant] confirms that “arbitrariness” is not to be equated with “against the law,” but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest [and detention] must not only be lawful but reasonable in all the circumstances⁴⁵.

The Working Group on Arbitrary Detention, established by the UN Commission on Human Rights has adopted criteria for determining cases of arbitrary detention based on the Universal Declaration, the Covenant as well as the Body of Principles, cited above. It considers deprivation of liberty arbitrary if it falls into one of the following three categories:

43) Body of Principles on the Detention, supra, “Scope of the Body of Principles”.

44) General Comment No. 29 para. 11; General Comment No. 24 para. 16.

45) Hugo Van Alpen, supra at para. 5.8.

- A) *When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (Category I);*
- B) *When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by in the Universal Declaration and the ICCPR (Category II);⁴⁶*
- C) *When the total or partial non-observance of the international norms relating to the right to a fair trial, is so grave that the detention is considered having an arbitrary character (Category III)⁴⁷.*

Moreover, the HRC has explained that the key in determining whether detention is “arbitrary” under art. 9(1) of the ICCPR is whether the detention is in compliance with international detention standards rather than merely authorized under domestic law⁴⁸. As the HRC stated in *Van Alpen* arbitrariness is not merely limited to acts which are against law, whether domestic or international, but also includes elements of “inappropriateness, injustice and lack of predictability⁴⁹.” In fact, a large amount of the cases dealing with arbitrary detention under arts. 9(1) and 9(4) of the Covenant involve situations where state authorities are acting in compliance with domestic law, but in violation of the broader rights

46) In particular, articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights. See UN Working Group on Arbitrary Detention, Fact Sheet No. 26.

47) Ibid.

48) Hugo Van Alpen, *supra* at 108.

49) Ibid. at para. 5.8. This was again confirmed in Communication no. 560/1993: Australia, 30 April 1997 at para. 9.2 “...the Committee recalls that the notion of “arbitrariness” must not be equated with “against the law” but be interpreted more broadly to include such elements as inappropriateness and injustice

Moreover, the Human Rights Committee first inquires whether the detention violates local law. If local law has not been followed, the Committee usually finds that the state is in violation of Articles 9(1) and 9(4). See *id.* para. 5.6

contained in the Covenant. Speaking directly in the case of illegal entry the Committee stated:

For example, the fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individual, such as the likelihood of absconding and lack of cooperation, which may justify detention for a period. Without such factors detention may be considered arbitrary, even if entry was illegal⁵⁰.

Lebanon's Detention for Illegal Entry: Necessary and Reasonable?

In line with international legal standards, Lebanese law proscribes that detention can only be justified where it has a basis in law. The Lebanese Constitution clearly states: "No one may be arrested or detained except as provided for by law. No breach or penalty may be established other than by law." Any deprivation of liberty without legal justification, or without the reliance on any legal authority would be considered arbitrary and is itself punishable.

The detention of refugees and asylum seekers in Lebanon is largely based on their illegal entry into the country, and their continued detention is seemingly justified by the need to assure their removal. By law, all foreigners illegally in Lebanon can be detained at the General Security Service detention center following a judicial decision for the time necessary to implement their expulsion⁵¹. Additionally, the state can hold foreigners in detention in order to establish their identity prior to their appearance before a court, and on the basis of an administrative decision by the director of General Security declaring a foreigner's continued

50) UN HRC, Communication No. 560/1993: Australia. 30 April 1997
UN Doc.CCPR/C/59/D/ 560/1993. 59th Session.

51) Law of Entry and Exit, supra art. 18.

presence a threat to the general safety and security, and ordering their removal⁵².

In principle, the Director General of General Security, with the approval of the Procurator-General, can keep those against whom a deportation order has been issued in detention until their effective removal from the country⁵³. Alternatively, the Procurator-General can demand that the foreigner adopt a specific place of residence until leaving the country within a specified time⁵⁴. There is no stated obligation to provide proof of the specific reasons for a foreigner's threat to national security. Rather, this type of decision generally represents an executive order which is not lightly interfered with by the judiciary. What this seems to mean is that the Director General of the General Security can maintain a person in arrest without furnishing evidence of the specific threat posed by the detainees⁵⁵.

More commonly, a deportation order is the result of a simple conviction for the crime of illegal entry. Theoretically, having been given a deportation order under a separate legal procedure from their criminal conviction, a foreigner should be released in order to make preparations to leave the country at personal expense⁵⁶. Deportation can be ordered in all cases where is convicted of crime, whether enumerated in the Penal Code or in the Law of Entry and Exit, which is punishable by imprisonment of a week up to three years. The crimes enumerated by the Law of Entry and

52) Ibid. arts. 17, 18. According to Art. 89 of the Penal Code, a foreigner against whom a decision of deportation has been taken must leave the territory of Lebanon within 15 days. Non-compliance with a deportation order, whether judicial or administrative, is punishable by a term of imprisonment from one to six months.

53) Law of Entry and Exit, *supra* art. 18.

54) Decree No. 136 promulgated on 20 September 1969.

55) Fouad Abd Almunaim Riad, "Principles of Private International Law" Ed. 1. Beirut: 1969, at 312-313. Threats to national security includes those foreigners convicted of a crime, those who are begging, vagabonding or leading a corrupt or immoral life, spies, and those conspiring or plotting against the state, or working to provoke actions harmful to the state. The Penal code specifically numbers possible crimes against the general security and safety in Lebanon.

56) Art. 89 of the Penal Code.

Exit all concern illegal entry, not complying with a deportation order, illegal exit, or illegal return to Lebanon.⁵⁷

Since Lebanese courts have acknowledged the right of non-refoulement based on provisions of the UN Convention Against Torture, it is possible to question the validity of keeping someone in detention where their deportation cannot be carried out based on an established risk of torture if deported. The decisions of the courts directly concern the rights of recognized refugees, who have prima facie established a well-founded fear of persecution by their state. Hence, they suggest that until a final decision on a claimant's refugee status is made before the UNHCR and their relocation to another country is effected, Lebanese authorities are not authorized to detain or imprison the refugee in order to accelerate his forcible return. However, most refugees are not well represented or protected in the courts.

Mr. H A was a Sudanese asylum seeker⁵⁸ was arrested while crossing the border into Lebanon in September 1997. He was charged with illegal entry and sentenced to one month imprisonment, a fine and deportation. He was released in February 1998, four months after the expiry of his sentence and after refusing to sign his deportation order

57) The crimes established in the Law of Entry and Exit are the following:

(Art. 6) illegal entry, or entry by any other way except by the office of the general security or other legal authorization;

(Art. 32) evidence that the foreigner lied with the aim of concealing the truth about his identity or used a false identity;

(Art. 33) not leaving the country after being informed of the refusal of residence status;

(Art. 33, relying on art. 16) leaving the country in a way other than by the General Security;

(Art 34, mentioning art. 17) not leaving the country after a decision by the Director of General Security to deport the foreigner, on the grounds that their continued presence is a threat to the general security and safety of the state;

(Art. 35) returning to the country by illegitimate or illegal means;

(Art. 36) negligence of the foreigner in not obtaining the necessary permission within the allowable time limit to regulate his status in Lebanon.

Additionally, art. 89 of the Penal Code makes it illegal to contradict the terms of a judicial or administrative order of removal from Lebanon.

58) H.A was subject to appeal by ACSRA (Ad-Hoc Committee for the Support of Refugees and Asylum Seekers in Lebanon) and later Frontiers, Ruwad Association

because he feared persecution if he was returned to Sudan. He was arrested again in April 2000 and reportedly again charged with illegal entry, flying in the face of the prohibition of charging a person twice for the same crime (double-jeopardy). General Security pressured him to sign his deportation order, along with other Sudanese nationals, by holding groups of six to fifteen foreign prisoners in 2m² cells, forbidding visitors, showers, and at times resorting to violence. He was held in detention for over a year, until his release in October, 2001. In July 2004, he was again arrested, badly tortured and forcibly returned to Sudan in September 2004 despite the ongoing war and wide reports of torture at the hands of the government.

To give another example: in May 2001, a Sudanese asylum seeker, D., was arrested with his wife, their six year old son and one year old baby.⁵⁹ The entire family had been recognized as refugees by UNHCR. A month after his arrest, D. was finally brought before a court. When he tried explaining that he was a refugee, recognized by UNHCR, the judge ordered him not to talk. D. was charged with illegal entry, and given the standard punishment of one month imprisonment, a fine of 50 000 Lebanese pounds, and deportation. Despite the fulfillment of his prison sentence, D. was kept in detention for over three years until August, 2004.

If international law clearly states that detention is not to be used as a punishment for illegal entry⁶⁰; if, moreover, the UNHRC in interpreting the ICCPR has stated that illegal entry alone cannot justify detention⁶¹, then Lebanon's detention policy violates its obligations at international law by blatantly ignoring not only the special protection granted to

59) D.'s wife and children were released after one month in prison.

60) UNHCR Guidelines on Detention, referencing Sub Committee of the Whole of International Protection Note EC/SCP/44 Paragraph 51 (c). In fact, the UNHCR Revised Guidelines on Detention recommend alternatives to detention when dealing with asylum-seekers such as monitoring requirements, provisions of a guarantor or surety, release on bail, or the use of open centers.

61) UN HRC, Communication No. 560/1993: Australia. 30 April 1997
UN Doc. CCPR/C/59/D/560/1993. 59th Session.

refugees and asylum seekers against detention for illegal entry but also the standards forbidding arbitrary detention. In short, while it is true that Lebanese law does not allow detention without a basis in law, it is also true that illegal entry is sufficient grounds to detain and arrest an individual contrary to established human rights norms.

III. REQUIRED SAFEGUARDS AND REMEDIES

International Safeguards

Art. 2 of the ICCPR creates a positive obligation on member states to provide effective remedies for breaches of human rights, arbitrated before a competent judicial, administrative or legislative authority, and enforced by the state. This includes instances where the perpetrators are state authorities⁶². Like everyone in international law, refugees have a treaty and customary right to due process and judicial review. Thus, refugees have a right to due process in determining the lawfulness of detention; a right to a fair and public hearing by a competent tribunal without undue delay, and refugees legally present in a member state have a right to due process of law in any expulsion decisions⁶³.

The right to judicial review is further supported by the Human Right Committee, which explicitly requires judicial oversight of all detentions or arrests. Admitting that part of art. 9 is only applicable to persons against whom criminal proceedings are brought, the HRC noted “the rest, and in particular the important guarantee laid down in paragraph 4, i.e. the right to control by a court of the legality of the detention, applies to all persons deprived of their liberty by arrest or detention⁶⁴.” In addition, if criminal charges are brought in such cases, as in Lebanon where foreigners are often criminally charged with illegal entry into the country, the full protection of art 9(2) and (3), as well as art. 14 must also be granted⁶⁵.

62) ICCPR, supra arts. 2, 14(1).

63) ICCPR arts. 9, 10, 13, and 14; Refugee Convention, supra art. 32. Article 16 guarantees the right to access legal courts, and clearly states:

1. A refugee shall have free access to the courts of law on the territory of all Contracting States.
2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvendo*.

64) UN HRC, General Comment No. 8: Right to Liberty and security of persons (Art. 9): 30 June 1982 CCPR General Comments. 16th Sess. at para. 1.

65) *Ibid*.

The scope of art. 9 was explicitly extended to cases of immigration control by a Human Rights Committee General Comment⁶⁶. The HRC further underlined the importance of these procedural safeguards, by confirming the non-derogability of art. 9 even in times of national emergency:

“[T]he right to take proceedings before a court to enable the court to decide without delay on the lawfulness of the detention must not be diminished by a State party’s decision to derogate from the Convention⁶⁷.”

Moreover, the Committee has found that the continued detention must be justified on evidence that the person will flee, harm society, or destroy evidence⁶⁸. It must be subject to periodic review, and should not extend beyond a period which the state can objectively justify.⁶⁹ This same point is stressed again by the UN Body of Principles⁷⁰. Principle 11 provides the most detailed explanation of the right to an effective judicial review, outlining three key conditions:

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.

66) Ibid.

67) General Comment No. 29, paras. 11, 16 Freedom from arbitrary detention with necessary judicial review has been recognized as a non-derogable right by the Inter-America Court of Human Rights (Castillo Petriuzzi Case, Merits, Judgment, Inter-Am. C.H.R. (Ser. C) No. 52 (May 30, 1999). The European Court of Human Rights has recognized that detention by executive authorities without judicial review violates fundamental human rights law. (Al-Nashif v. Bulgaria, App. No. 50963/94, Eur. Ct. H.T. (June 20, 2002), <http://hudoc.echr.coe.int/hudoc/>

68) Ibid. at para. 5.8

69) UN HRC, Communication No. 560/1993: Australia. 30 April 1997 UN Doc. CCPR/C/59/D/560/1993. 59th Session.

70) Ibid., Principle 9: “The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.”

- 2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefore.**

- 3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.**

International Remedies

But what remedies exist at the international level for violations of these rights? The UN Human Rights Commission created a specific body to address arbitrary detention, or detention contrary to human rights principles: the Working Group on Arbitrary Detention⁷¹. The Working Group seeks to address violations of customary international law inherent in arbitrary detention, regardless of a state's accession to any particular human rights instrument⁷². The Group can seek and receive "information from Governments and intergovernmental and non-governmental organizations," as well as from the individuals concerned, their families, or their representatives, and with presenting comprehensive reports to the Human Rights Commission at its annual sessions⁷³.

Moreover, since 1997 the Working Group has been directed to pay special attention to the situation of immigrants and asylum-seekers "who are allegedly being held in prolonged administrative custody without the

71) The Working Group has a stated purpose "[o]f investigating cases of detention imposed arbitrarily or otherwise inconsistently with the relevant international standards as set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the states concerned." Commission on Human Rights, Report of the Working Group on Arbitrary Detention, U.N. ESCOR, 48th Sess., Item 10, at 3, U.N. Doc. E/CN.4 (1993) [1993 Report]; see also Working Group on Arbitrary Detention, Fact Sheet No. 26, *supra*

72) See Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, *supra* ; Universal Declaration of Human Rights, *supra* art. 9; 1993 Report, at 8-13.

73) *Ibid.* at 3.

possibility of administrative or judicial remedy⁷⁴.” Thus, the Working Group has recognized that arbitrary detention may result from the exercise of an individual’s right to seek and to enjoy in other countries asylum from persecution under Article 14(1) of the Universal Declaration⁷⁵. Indeed, the intervention of the Working Group can be particularly vital in cases where politically powerless asylum seekers or other foreigners have been deprived of their rights and subsequent remedies under domestic law.

Even when a state has followed its domestic law, the Working Group has recognized its obligation to consider “whether this internal law conforms to international standards⁷⁶.” The fact that Lebanon’s policy of prolonged detention of foreigners in its territory seems to be authorized under domestic law is no defense before the Working Group. Moreover, the procedure does not require the complainant to have exhausted local remedies before addressing the Working Group⁷⁷. However, like many monitoring bodies at the UN, the Working Group lacks explicit authority to order governments to conform their behavior to international norms.

Procedural Safeguards in Lebanese Law and Practice

Although in theory, refugees and asylum seekers registered with UNHCR in Lebanon enjoy the protection of the UNHCR regional bureau⁷⁸, UNHCR’s role in monitoring detention of recognized refugees

74) Commission on Human Rights, UN doc. E/CN.4/RES/1997/50, 15 April 1997. See also Report of the Working Group: UN doc. E/CN.4/1998/44, 19 December 1997; E/CN.4/RES/1998/41, 17 April 1998

75) Working Group on Arbitrary Detention, Fact Sheet No. 26, “Political Rights Relating to the Mandate of the Working Group on Arbitrary Detention”

76) 1993 Report, supra at para. 13.

77) Ibid. at para. 3.

78) General Assembly Resolution 428 (v) of 14 December 1950. Statute of the Office of the United Nations High Commissioner for Refugees. Annex I, Ch.I, s. 1. Available at: <http://www.unhcr.org>

The United Nations High Commissioner for Refugees, acting under the authority of the General Assembly, shall assume the function of providing international protection, under the auspices of

has not been encouraging. Lack of adequate access and attention by UNHCR in cases where refugees reported that friends or family members had been detained has become increasingly apparent. A number of refugees and asylum seekers reported of having to wait several hours before speaking to an official about the detention of their family members or friends. In one particularly egregious case, a refugee waiting to discuss the detention of her husband reported that a UNHCR official denied her entry into the office because “it’s not the day for the detention problem interviews.”

Where UNHCR does intervene, a clear imbalance of power is revealed between the detaining authority of the General Security and the ability of the UNHCR to protect the individuals under its mandate. For example, Frontiers documented a case where a Sudanese asylum seeker was arrested two days before an interview with UNHCR in June 2001. He was sentenced to one month in prison, a fine of 50 000 Lebanese pounds, and expulsion from the country. Five months after his arrest, he was transferred from Roumieh prison to the General Security Detention Center where he stayed for an additional eight months, before his eventual release in June 2002 – a year after his arrest, with UNHCR intervention. In another case, a Sudanese refugee B. A. was arrested on ground of illegal entry on 18 November 2005. He was tried two weeks after his arrest. He was sentenced to one month imprisonment, a fine and deportation. Five months expired after he served his sentence and was still arbitrarily detained awaiting his deportation.⁷⁹ Where does that leave refugees and asylum seekers in detention under Lebanon’s domestic legal system?

The procedural safeguards for detention in Lebanese law are largely found in the Code of Penal Procedures (CPP). Under art. 107 of the CPP

the United Nations to refugees who fall within the scope of the present Status and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within the new national communities.

79) Case was followed by Frontiers

“the examining magistrate must question the defendant immediately if he has been served with a summons or within 24 hours if he has been served with a warrant.” After 24 hours, the detaining authority must refer the defendant to the Procurator-General, who must in turn ask the examining magistrate to hear him. If the examining magistrate refuses, is absent or a legitimate reason prevents him from questioning the defendant, the Procurator-General will request the Chief examining magistrate to question him or one of his judges. If it is not possible to question the defendant, the Procurator-General must order his immediate release.

In line with international standards, Lebanese authorities must justify a decision to hold someone in detention on the basis that it is the only means: a) to protect evidence, prevent tampering of evidence, intimidation of witnesses or victims, or prevent contacting accomplices; b) to protect the defendant; c) to stop the effects of the crime and prevent its repetition; d) to prevent flight; or, e) to prevent a danger to public order and security. Moreover, the Code of Penal Procedures also grants a certain oversight authority and supervision to the Procurator-General. The Procurator-General is now obliged to visit persons under arrest in their region, once a month⁸⁰. Under art. 403, officials who do not go immediately to the prison and release persons held in illegal custody, or report them to the Procurator General will no longer be guilty of an offence, as under the former Code of Penal Procedures,⁸¹ but of an administrative infraction⁸².

Art. 109 states that a person arrested under a warrant must be referred without delay to the Department of the State Prosecutor in the court of the examining magistrate who issued the warrant. The official who executed the warrant is then given a receipt for the discharge of the

80) Code of Penal Procedures, Law No. 328, 2 August 2001 (Code of Penal Procedures), art. 402.

81) Human Rights Committee, Second period reports of States parties due in 1988: Lebanon. Submitted 22 November 1996. CCPR/C/42/Add. 14 (Lebanon Report).at para. 44.

82) Code of Penal Procedures, art. 403.

defendant, who is taken to the local prison, with the information passed on to the examining magistrate⁸³.

It is, however, normal that detainees are held much longer than the proscribed 24 hours before being brought before a judicial authority. In a case monitored by Frontiers, M., a Somali asylum seeker was arrested in July, 2001 with three other foreigners for illegal entry, despite the fact that two of them had UNHCR cards. It was one month before they were finally brought before a court to be tried and sentenced en masse, in a manner contradictory to the principle of individualized judicial hearing. After their arrest, they were taken to General Security and held standing for one day in a room 1.75m². They were then questioned by General Security, and transferred to another larger but equally overcrowded room for another two days, before being transferred to Roumieh prison where they continued to wait before finally being taken before a court.

The current court practice is a grave violation of the requirement for an individualized review. A number of refugees reported that between twenty to forty people are “tried” at the same time, with their convictions already written out before they arrive. They are asked only their name and where they are from and how they got here. UNHCR identity cards do not provide any protection from the mass trials and convictions, since those on trial are not given the chance to explain their case. The standard sentence is one month imprisonment, a fine of 50 000 Lebanese pounds, and deportation. However, many foreigners are kept in detention far beyond the expiry of their sentence, awaiting deportation. When M. was finally released in May, 2004, he had been held in detention for over two and a half years.

83) Code of Penal Procedures, art. 109.

Remedies for Arbitrary Detention in Lebanese Law

If violations of human rights occur – if refugees are being returned to countries where they face torture, tried en masse, and then held long past the expiry of their sentence, we must consider what remedies Lebanon provides for these clear violations of international treaties and principles? In short, is Lebanon fulfilling its obligation to give effective remedies for violations of human rights?

The Lebanese Constitution does not provide for a right to reparation or effective remedy for breaches of fundamental rights. However, individuals whose rights have been infringed by the wrongdoing of a public official may claim compensation from the Government, if necessary, by referring the matter to the Shoura Council (Majlis el Shoura)⁸⁴. However, this public law remedy is confined to instances where the act in question is considered to be within the scope of the official's duties. Where a public official has the power to detain or arrest an individual and does so arbitrarily he could be brought to court for abusing this power.

The Penal Code prohibits deprivations of liberty by unlawful means⁸⁵, and provides a sentence of forced labor for life where (a) deprivation of liberty exceeds one month, and (b) the person deprived of his liberty has been subjected to physical or psychological ill treatment. The affected person has up to three years to bring a case to court for offences deemed to be petty crimes and ten years for criminal offences⁸⁶. Art. 7 of the Code of Civil Procedures grants all foreigners the right to rely on judicial authorities in the same manner as Lebanese nationals⁸⁷. If

84) Art. 61 of the Act implemented by Decree No. 10434 of 4 June 1975 on the Organization of the Shoura Council (Majlis el Shoura).

85) This article was amended by Decree-Law No. 112 of 16 September 1983 to cover new cases of abduction in connection with the armed conflicts in the country.

86) Code of Penal Procedures, art. 10.

87) Code of Civil Procedure, art. 7.

international conventions truly form the law of the land, this could theoretically create an actionable right to challenge detention as unlawful.

Refugees and asylum seekers also have a right to appeal an administrative deportation order for reasons of state security issued by the Director of General Security.⁸⁸ The appeal is made by presenting evidence to the Shoura Council (Majlis el Shoura), an administrative court, which has the authority to control, examine and overturn administrative deportation decisions, as well as to review the jurisdiction and legitimacy of the decision based on a review of the substantive facts forming the basis of the deportation order. The Council is thus authorized to determine whether the foreigner in fact poses a threat to the general security and safety of the state, as well as what is necessary to protect state security and safety, and can order the release of a foreigner upon overturning the General Security decision. To avoid the situation where a deportation order is executed before the conclusion of any appeal process, the 23 May 1965 decision of the Shoura Council (Majlis el Shoura) authorizes an immediate stay of the order until the appeal is concluded⁸⁹.

Judicial control of prolonged detention of foreigners, including asylum seekers, has been spotty at best. Apart from the decisions discussed above, we cite here two additional decisions by the General Prosecutor suggest a nascent willingness to limit the use of unnecessary detention, but have yet to be used as precedent. In the case of Anderani Tiaritchi, the accused was kept in custody awaiting deportation after finishing her jail term, based on a judicial order of removal⁹⁰. The General Prosecutor ruled that keeping the accused in jail was unnecessary, and that

88) Art. 69 of proposed law 10434, promulgated as a legislative decree on 14 June 1975, gives a period of two months to appeal a removal order, beginning either from the date the order took effect or from the date of notification.

89) State Council (Majlis el Shoura) preparatory decision 23 May 1969 in case number 69/189, Administrative Collection 1969 at 95.

90) Decision of the General Prosecutor (Nadim Abd Almalik). in Beirut 1993/12/9 No. 14604. See Adib Zakkour, Legal Status of Foreign Workers , Beirut, p 463-464

her deportation would be facilitated by releasing her on the following conditions:

- 1. adopt a known place of residence in a decided/pre-determined area*
- 2. present herself to police authorities in the area of residence every 15 days*
- 3. work on the insurance/guarantee of her traveling ticket during/within three months*
- 4. review by the General Security Directorate at the end of the period of three months the execution of her removal from the country.*

A parallel decision in the case of Heilani Beidani determined the continued detention of Beidani unnecessary to ensure the execution of the deportation order⁹¹. Instead, the Prosecutor ordered her release, based on the same conditions listed above.

Viewed together, these cases question whether the decision to deport a foreigner from a country is a sufficient reason for continued detention. They demonstrate how the Procurator-General can block the prolonged detention of a foreigner, arrested under the authority of the Director of General Security. The fact that these decisions are not used more frequently to prevent the prolonged detention of asylum seekers and refugees in Lebanon, points to the inherent weakness in the system and the inadequate follow up of such cases by UNHCR in Beirut. Simply put, there is little will to put in place a consistent system of judicial review.

91) Decision of the General Prosecutor (Nadim Abd Almalik). in Beirut, 1993/12/9 No. 14605. See Adib Zakkour, *Legal Status of Foreign Workers*, Beirut, p 464-465

CONCLUSION AND RECOMMENDATIONS

To state it again, universally recognized rights are not lost by virtue of being displaced. Without question, the Lebanese government has a compelling interest in maintaining control over its borders and ensuring the safety and security of the state. However, these interests do not justify broad restrictions, such as a blanket policy of detention, narrowly targeting a vulnerable social class such as refugees and asylum seekers. Lebanon's deterrence policy is clearly intended to prevent asylum seekers from coming to Lebanon through the use of prolonged arbitrary detention. This policy is cruel, unfounded and violates international legal principles.

In order to conform to international law, Lebanese authorities must provide an individualized hearing to all asylum seekers and refugees presently held in detention, ensure that they are not deported to a country where they face a risk to their life or a risk of torture, inhumane, cruel or degrading treatment, and release all those who pose no danger to society and no risk of flight. This minimum of fair treatment would be a stepping stone towards finding a just solution for all refugees and asylum seekers in Lebanon.

To ensure that the minimum requirements of international human rights of refugees and asylum seekers are respected in Lebanon, Frontiers recommends the following:

1. Build awareness and foster a climate of accountability

There is a widespread lack of awareness of Lebanon's international human rights obligations. 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 interested parties, despite their direct applicability in Lebanese courts.

Most foreigners arrive in Lebanon with limited resources. Their presence can be a burden on local infrastructure, environment and resources, testing the limits of traditional hospitality and host-country capacity. Foreigners are too often now portrayed as a burden, a cause of social and economic instability, or even a threat to national security. Refugees can, however, be seen as an opportunity rather than a problem. Their capacity to contribute to the host-country should be recognized, and foreigners given the opportunity to adapt to their new environment and work towards their own durable solutions. After all, foreigners are a source of labor and expertise, expanding consumer markets for local goods.

In combating violations and abuse of foreigners and asylum seekers, attorneys and NGO workers should advocate suing Lebanese authorities under domestic legal provisions or international treaties mentioned above. The domestic law as well as international treaties, enforceable law under the Lebanese Constitution, would provide a means for countering illegal action by relevant Lebanese authorities. However, individual or group lawsuits against detention would likely be time consuming and take away from the energies spent on defending foreigners who are in detention. A more sensible strategy would be to advocate for reform of the detention system and the implementation of an effective asylum procedure.

2. Encourage the Use of Domestic Legal Remedies

Since 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, local lawyers should actively pursue

cases of arbitrary detention according to these provisions. Encouraging accountability of government action would not only strengthen the Lebanese legal system, but would also raise awareness of the common occurrence of arbitrary detention in Lebanon. Moreover, by fulfilling its domestic legal obligations and holding those responsible accountable to the full letter of the law, Lebanese authorities would also signal their growing respect for the rule of law and thus their proper status as a liberal and democratic state.

Moreover, there exists a Parliamentary body to examine violations of human rights in Lebanon. The Parliamentary Committee for Human Rights, set up in 1994, is the only public body with the specific mandate to investigate human rights issues. It may investigate complaints about human rights violations but only has the power to issue recommendations rather than making effective decisions. The ability of Parliamentary Committees to scrutinize immigration detention would effectively depend on their ability to obtain all relevant information either from the Government and its agencies or from other sources. There is a clear interest in promoting the rule of law through Lebanon's Parliamentary Committee for Human Rights, which could itself review the case of refugees and asylum seekers detained in Lebanese prisons. Abuses of power could thus be brought into relief, with the concomitant advantage of full public attention on a volatile issue. This again creates the possibility of fostering accountability and compliance with Lebanon's international obligations at the domestic level.

3. Ensure Effective Remedies and Access to the Courts by Providing Legal Aid

Legal aid must be viewed as a potential measure and as an important part of a larger effective remedy. When fundamental rights are at stake,

essential judicial guarantees and due process are also involved. By supporting legal aid a state is fulfilling its UN Charter obligation, as well as the concomitant obligation in the ICCPR, to provide access to the courts and effective remedies for all breaches of fundamental human rights without distinction.

To impose penalties without regard to the merits of an individual's presence, or claim as a refugee will not only violate the obligation of a State to ensure and to protect the human rights of everyone within its territory or subject to its jurisdiction. Such a practice is, moreover, a waste of national resources and an example of bad management. The penalty of detention imposes a significant cost on the State, which is further exacerbated when detainees are kept in prison long after the expiry of their sentence. The lack of proper legal counsel, and a lack of willing local lawyers to handle this issue on a pro-bono basis only add to the problem.

Currently the Lebanese government does not provide any legal aid program, nor does it provide funding for law firms or legal aid clinics which would accept low income clients. Instead, the current ad hoc legal aid program is administered by the Bar Society, which itself has strict criteria for the cases it will take under the legal aid program. Illegal entry and arbitrary detention are unfortunately off the radar screen for the Bar Society, which prefers instead to deal with criminal charges or civil suits over a certain amount of damages. A properly functioning legal aid program would ensure equal access to justice, and also ensure that detention was not used arbitrarily by state authorities acting outside the boundaries of law. It is perhaps the latter which is the most important, since equal access to justice can only be useful if its decisions are enforced.

4. Short-term Pressure to make Legislative Amendments

Art. 16 of the Law of Entry and Exit provides the main justification for detaining foreigners including refugees and asylum seekers, by making illegal entry into Lebanon a crime. To assure that arbitrary detention is not given the veil of legality it currently has, domestic pressure must be mounted in order to amend these provisions. Further pressures on the Lebanese government should entail a clear explanation of the legal status of art. 14 of the Universal Declaration, the right to asylum, in Lebanese law, given that the Universal Declaration in its entirety has been absorbed into the Lebanese Constitution. These clarifications can come either from the Parliament, or one of its UN delegate bodies such as the Human Rights Committee. Alternatively, these clarifications could also be provided by judges who sit on cases dealing with refugees through the presentation of this argument in lawyers' legal briefs.

Domestic pressure must be targeted towards bringing Lebanese practice in line with its international human rights obligations. To this end, the fact that the Lebanese government has refused to respond to the Human Rights Committee, and has missed two reporting sessions (one in 1999, the other in 2003,), should be brought to light. If Lebanon wishes to be a credible player on the global scene, it must ensure that it abides by the rules and procedures it has already committed itself to. This includes allowing independent monitoring of arbitrary detention. Access to prisons and prisoners by lawyers, doctors, and NGOs, including specialized agencies such as the ICRC must be allowed in order to assure that the justice system is not being abused or used for inappropriate goals. Moreover, NGOs counseling of prisoners should be encouraged since this relieves the burden on the state to provide legal counsel to those that have been in jail.

5. Push for Rule of Law and Respect of Procedural Safeguards

Even if the monitoring structures, visits to the prison and the Parliamentary human rights committee, as well as judicial review were completely effective, monitoring does not make for accountability in practice. There is a need to have an effective mechanism to ensure that below standard performance is avoided and remedied.

Despite stated legal remedies for arbitrary detention, its continued practice points to their unavailability in practice. Moreover, there is no remedy in domestic law which allows a victim to claim monetary compensation for their arbitrary detention. Despite all other guarantees in Lebanese law, the general policy of detaining foreigners as a result of their illegal entry as well as their subsequent deportation remains unquestioned and easily justified under the Law of Entry and Exit. The standard of judicial review for detention does not require the state to justify the detention of a foreigner beyond providing proof of their illegal entry.

In order to establish effective judicial review and prevent cases of arbitrary detention of foreigners, Lebanese law and practice should mandate periodic review of prolonged detention. Such a standard could entail that a detainee not serving a standard criminal sentence be taken before a judge every three months. This would force the state to justify the continued detention of foreigners, and explain why they are held rather than being deported or released.

Clear legislative standards enable all parties and stakeholders such as, lawyers, judges, Parliamentarians, to rely on a predictable legal framework, which not only ensures foreigners' access to their rights but also would respond effectively to the different interests at stake. Lebanon is failing to apply to foreigners the safeguards against arbitrary detention

that are enshrined in its own law. There is, in theory, no need for a specific law relating to the detention of migrants if the gap between theory and practice could be closed. Promoting and supporting the amendments of existing national laws, as well as the creation of new national laws which comply with international human rights law and standards is an invaluable part of ensuring that clear and predictable standards are used. The ability to preview the consequences of ones actions is of course one of the basic guarantees of the rule of law. Moreover, pushing for new or improved standards also entails the drafting of administrative instructions and operational guidelines which would provide clear standards for bodies such as the Ministry of Interior on the detention of foreigners in Lebanon.

6. Ensure Access to Information on Detainees

Without a doubt, UNHCR, as the body responsible for registering asylum seekers and refugees and subsequently searching for durable solutions, has unprecedented access to information on the refugees and asylum seekers presently in Lebanon. For those who have registered with the office, and those who come to the awareness of UNHCR through their visits to Lebanese jails, UNHCR plays not only an administrative but also an advocacy role. In the interest of ensuring that arbitrary detention of refugees is not seen as a normal part of the conditions in Lebanon, UNHCR should publish regular statistics on the known refugees and asylum seekers in Lebanese jails. Access to raw data would allow other organizations, in concert with the UNHCR, to campaign and advocate for their release.

Moreover, as the report by FIDH highlighted, there are only a handful of NGOs who have regular access to Lebanese prisons and detention centers. However, even those NGOs with regular access play a limited advocacy role, since their mandates are limited to providing social

services. The rest content themselves with an ad hoc system of information and the occasional report on the charity and social work of those NGOs who are present in the jails and work with foreign detainees. This general lack of information means that the full impact of this problem remains unknown, not only to the general public but also to the government itself, as well as public officials. If the full scope of arbitrary detention of foreigners is to be made known, and if the rule of law is to be brought into effect, it is incumbent on the Lebanese authorities, particularly General Security, to provide access to jails to ensure effective monitoring without draining more public resources.

7. Pressure for an Effective Asylum System

Strengthening protection capacities is an inherent function of UNHCR's international mandate⁹². After all, it is states, not UNHCR, which have primary responsibility for provided protection for refugees. A key aspect of UNHCR's function in Lebanon should thus be to exert pressure on the government to implement its responsibilities in an accountable manner. In Lebanon, where there does not even exist a rudimentary asylum system from the state, the first challenge will be to create the political will and interest to sign and ratify to the 1951 Refugee Convention and its 1967 Protocol. It is here, also, that the role of civil society structures sensitive to refugee protection issues (including NGOs) is of particular importance. These issues may well be low on the political agenda, competing with more immediate socio-economic concerns. Moreover, civil society must combat the unfortunate misconception that effectively functioning asylum structures or the treatment of foreigners would constitute a "pull-factor" for economic migrants.

There is also a role for the international community here. The international community should encourage and support the efforts of host

92) UNHCR, Global Consultation on International Protection, 3rd Meeting, "Strengthening Protection Capacities in Host Countries" EC/GC/01/198/ 19 April 2002.

countries to realize the socio-economic potential of refugee populations. Technical assistance programs are important opportunities to help countries, such as Lebanon, make the transition into a administering its own refugee determination system. There are numerous opportunities in this regard, including development aid to host countries to register refugees and asylum-seekers, or alternatively, deploying experience refugee adjudicators to train and help develop a refugee status determination system. The European Union's capacity building activities in institution-building and transfer of knowledge offer well functioning example.

At the regional meeting in Cairo there was a general call for regional responsibility sharing mechanisms both in and outside the region, which would also involve regular sub-regional meetings to promote cooperation, cross-border coordination, sharing protection strategies, refugee-related statistic information, as well as relevant legal experience and practical initiatives⁹³.

It should also be stressed that Lebanon has been a member of the UNHCR Executive Committee since the time of the Refugee Convention. This body itself examines and sets the standards on all issues dealing with international refugee protection. It is then very strange, that a country which has been a part of the ExCom has not yet signed the Refugee Convention. As a member of ExCom, UNHCR has a moral obligation no to act counter to the same standards it elaborates. By setting the standard for international protection through the formulation of conclusions, Lebanon has played a vital role in the formulation of refugee law. It is now time to start applying those standards at home.

93) UNHCR, Strengthening the Capacity of Countries of First Asylum in the Region to offer Adequate Protection, EC/GC/01/21, 20 September 2001 (Regional Meeting in Cairo) Available: <http://www.unhcr.org>

8. Promote the Use of International Legal Remedies

In the absence of available of effective domestic legal remedies, human rights organizations should consider seeking international intervention to stop the Lebanese government's continued violations of the rights of foreigners. The case work of the United Nations Working Group on Arbitrary Detention already establishes precedent for dealing with similar cases of arbitrary detention of foreigners. The working group has repeatedly stressed that its definition of arbitrary goes beyond mere compliance with domestic laws. Thus, it would be no defense before the Working Group that the Lebanese policy of prolonged detention of foreigners may be carried out in accordance with domestic laws. The problem remains, of course, that the body can do little else but order recommendations rather than binding decisions. However, it is still the case that public international exposure of this issue could provide sufficient pressure on the state to evaluate its policies.

As for Lebanon's accountability under the international legal system, the greatest deficiency of the international accountability mechanisms is that neither the observations made by the human rights treaty bodies on reports of state parties, nor the views they express on individual complaints are binding on the state parties concerned nor signatories to the convention. Moreover, Lebanon has shown a general disregard for treaty monitoring bodies, particularly the ICCPR. The state has missed two reporting sessions one in 1999 and another in 2003, effectively ignoring any international obligation of accountability by not submitting a report since 1995⁹⁴. However, it remains true that the public nature of such remedies can create pressure on governments to bring their practices in line with international standards.

94) UN, Human Rights Committee, ICCPR State Reporting Sessions. Available: <http://www.unhchr.org>

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