

Overview of the legal framework governing the work of Human rights defenders

on Gender and Sexuality

“in Lebanon”

Developed by: lawyer Nayla Geagea

2014

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I. Existing general legal framework governing human rights in Lebanon

Lebanon, unlike Tunisia and Morocco, has not taken part in the “Arab Spring.” There has not been popular, human rights mobilization in the Lebanese scene, except for an initiative made by Lebanese civil society under the slogan “the campaign to overthrow the sectarian system” which started in 2011 and stopped two years later without reaching its objectives.¹

This does not mean that there is no need for fundamental change in the political, economic, social, and human rights situation in Lebanon. The situation in the country is better understood when we take into consideration two specificities of the Lebanese situation, whether it is the regime or the people:

- Unlike the situation in other countries Middle East and North Africa (MENA) in which popular uprisings erupted against their rulers; power dynamics, political decision-making, and administration in Lebanon have historically taken place outside the formal, constitutional institutions, namely executive and representative bodies. Such functions are confiscated by powerful economic, sectarian, and political forces, forces that are difficult to hold accountable or liable, forces that are even difficult to refuse and overthrow within existing democratic frameworks or revolutionary uprisings. Each revolutionary attempt at reform in the country faced this problem;

- On the other hand, general and personal freedoms in Lebanon enjoy a seemingly larger margin of freedom and progressiveness than in other Arabic speaking countries, a double-edged sword that makes the motives for change more complex, slow, and less urgent.

Also, in the aftermath of the civil war and in light of the Taif agreement (1989), Lebanon underwent a fundamental constitutional amendment. In regard to human rights, the amendment constitutionalized the general legal framework governing human rights and guaranteed a number of public and private rights and freedoms in Lebanon, namely litigation and public opinion debates, as we will be demonstrating in this report.

In this section, we will address the general legal framework governing rights and freedoms as verbalized (1) in the constitution, namely the preamble and the chapter one, as well as (2) human rights structures and bodies.

1. Assessment of the general legal framework governing rights and freedoms: a reading into the Lebanese constitution in light of the 1991 amendment which constitutionalized international human rights conventions

In 1989, Lebanese parliamentarians unanimously approved the Taif agreement to put an end to the violence that had engulfed the country for fifteen years already. The agreement was received with praise by some and criticism by others, but aside from the reactions it provoked and still provokes, it is important to highlight one fundamental amendment established by the constitutional law of the twenty first of September 1990 that followed the Taif agreement. We are talking here about the introduction of a preamble, with ten fundamental points that would define the political, economic, and social features of the Lebanese state. The point that interests us the most here is (B), which states the following:

“Lebanon is Arab in its identity and in its affiliation. [...] Lebanon is also a founding and active member of the United Nations Organization and **abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception;**”

¹ For more information, read the critical and analytical article on the subject by Lebanese journalist and civil activist, Vanessa Bassil, titled “ حملة إسقاط النظام الطائفي في لبنان: ماذا حدث؟ ” (Campaign to Topple the Sectarian Regime in Lebanon: What Happened?), published in Adab Magazine, Issue of autumn 2012. Available on the following page: <http://www.adabmag.com/node/509>

This clause was utilized several times by the Lebanese justice system, especially when it came to the human rights that were guaranteed by this clause but lacked the necessary statutes to prevent their violation.

Also, Art. 2, of the penal procedure code, established the hierarchy of legal texts, requiring that courts give prevalence to international treaties over normal legal provisions in the case of conflicting provisions.

Of the court rulings that implemented these principles in human rights cases we name the following:²

- Refugees in Lebanon:

The judicial system upheld the right of refugees to defense, using the universal declaration of human rights and international convention against torture (ratified by the state of Lebanon) to condemn their deportation;³ similarly, there has been several court rulings which forced the Lebanese state to release refugees, imposing a financial fine in the case of non-compliance. The ruling considered this a case of arbitrary detention, thus lacking legal basis and constitution a violation of the person's personal freedoms.⁴

- Families of the kidnapped and disappeared in Lebanon:

On the fourth of March 2014, the high court of Lebanon (room one) annulled an administrative decision issued by the head of the prime minister to refuse access to the outcomes of the investigation developed by the investigation committee on what happened to all those kidnapped and disappeared in Lebanon, to the families of the latter. The ruling upheld the right of the families to have such data as part of their right of access to information. The court reached this ruling by verbalizing a new fundamental right, the right of families of the kidnapped and disappeared, on the basis of this being a natural right emanating from the right to life, the right to a decent life, the right to dignifying burial, the family's right to the protection of the foundations of the family unit and family reunion, and the child's right to familial, emotional, and stable care. All are rights guaranteed by international conventions and charters ratified by the state of Lebanon, and which result in the declaration of the right of the families of the kidnapped and disappeared to access all relevant investigations, a right which accepts no restriction, derogation, or exception without explicit provisions, provisions that are not present in the case in question.⁵

²For more information on the most prominent rulings which upheld human rights and freedoms in 2013, read the Legal Agenda magazine, Issue of the fourth of February 2014, available on the following link <http://legal-agenda.com/article.php?id=646&lang=ar>

³For more information, read the ruling of Ziad Makna, single judge in Beirut, on 15/4/2008, which states the following: "The right to seek asylum does not derive of the provisions of natural law alone, it is also enshrined in positive law, which has made it binding, as protected by the international community, United Nations' charters and provisions, to which Lebanon is bound to comply, as stated in the preamble to the Lebanese constitution. This principle does not contradict the application of the Lebanese positive law in relation to refugees, who are still under the obligation to respect and comply with the laws of the country to which they have taken refuge (...) Also, Art. 3, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Lebanon has acceded under Law No. 185 of 24 May 2000, stipulates that no State Party shall expel, return or extradite any person to another State if there are reasons to believe they may be subjected to torture. Based on the text of the previously mentioned convention, and which does not contradict with the Lebanese positive law, the state cannot deport a person who may be subjected to serious violence and ill-treatment, on the basis of their ethnic, religious, or political identity (...) Therefore, the provisions of this treaty, which has precedence over ordinary law, as indicated in Art. 2, of the civil procedure code, prohibit removal the defendant from Lebanon legally, and to the country of origin, in accordance with Art. 22 foreigners, as such a measure would contradict aforementioned treaties in letter and essence." Also read the ruling of the judge in the Court of Urgent Matter, Zalfa al-Hassan, on 5/12/2013, in which it is said that the Lebanese state must 60 million L.L. to an Iraqi refugee, after it was proved that the general security continued to detain him for more than a year, despite the judicial decision issued for his release.

⁴Judge Zalfa al-Hassan, of the Court on Urgent Matters in Beirut, issued a ruling on the eighth of June 2010, requiring the state to immediately release an Iraqi refugee being arbitrarily arrested, setting a fine of 250 thousand L.L. for each day of delay. Similarly, Judge Cynthia Qasarji, of the Court on Urgent Matters in Zahle, issued a ruling on the first of December 2009, requiring the state to immediately release an Iraqi refugee who had detained for months without charges. The text of the ruling stated the following: "The administration detention of the plaintiff in the Zahle prison for women constitutes a violation of her right to personal liberty and compels the Judge on Urgent Matters to intervene and put an end to her detention, requiring the state to immediately release her." Also, Judge Zalfa al-Hassan, of the Court on Urgent Matters in Beirut, issued a ruling on the fifth of December 2013, in which it is said that the Lebanese state must 60 million L.L. to an Iraqi refugee, after it was proved that the general security continued to detain him for more than a year, despite the judicial decision issued for his release.

- Protection of women from domestic violence:

Prior to the enactment of the Law on the Protection of Women and Other Family Members from Domestic Violence in April 2014, and in the legislative vacuum this has produced, judges ruled in favor of the protection of women from marital rape on several occasion. In one such case, the ruling aimed to "cover any legislative gap, particularly in regard to violence against women and provide adequate physical and moral protection until the law is enacted."⁶ In another case, the judge issued a restraining order on the violent husband, prohibiting him to enter the family household where the wife and daughter live, on the basis that "the safety of a person is above all other considerations, therefore, trumps property rights."⁷ Finally, the public prosecution office issued a statement obliging the husband to provide his wife and two daughters with an alternative residence, thus consecrating the right to shelter.⁸

- The right to defense:

On the fifteenth of March 2012, the Single Judge Criminal Court in Beirut, issued a ruling relating to postponement of trial on the basis of inability to bring the defendants to court. The ruling indicated that such an inability is an unnatural, exceptional situation which violates basic human rights, namely to fair trial in general, and the defendant's right to appear before a judge in specific. This right is enshrined in the Universal Declaration of Human Rights, which is ratified by the Lebanese constitution, and which has unquestionable precedence over ordinary law.

While in some cases, the preamble of the Lebanese constitution and international agreements allowed the Lebanese judiciary to add a human rights angle to the Lebanese legislation, or to fill legislative gaps, the general principles, fundamental rights and freedoms, and despite their constitutional enshrinement, are still limited and often violated by national legislation and administrative practices.⁹

⁵For more information read the decision made by the State Consultative Committee on the fourth of March 2014.

⁶Judge Ralph Karkabi, of the Court on Urgent Matters in Jdeidet Al-Matn, issued a ruling on the eighteenth of March 2014, forbidding a man from disseminating pictures of his wife, setting a penalty of 20'000 USD for each picture disseminated or leaked to any party and by any means, on the basis of the need to protect women against emotional marital violence.

⁷Ruling of Judge Antoine Tohme, of the Court on Urgent Matters in Metn, on the eighth of May 2012.

⁸Notice made by Public Defender of Appeals in Mount Lebanon, Judge Arlette Tabet.

⁹For more information, read Amnesty International's report on the state of human rights in Lebanon in 2013, available on the following link: <http://www.amnesty.org/ar/annual-report/2013>

2. Official structures and bodies governing human rights in Lebanon

In Lebanon there are three types of human rights structures and bodies that are distinguishable, the first depends on the Lebanese government, such as the National Committee for Lebanese Women's Affairs, established in 1996 pursuant to the of the Fourth World Conference on Women in Beijing for Women Advancement and Gender Equality;¹⁰ the second operates within the framework of the parliament, for example the Parliamentary Human Rights Commission;¹¹ and the third are non-governmental organizations established on the basis of the Ottoman Law on Associations (1909), which have proliferated significantly since the early nineties.¹² As of 2013 the number of non-governmental organizations was close to 8000, and according to available figures,¹³ this lack of partnership and coordination between official bodies and civil society organizations is a double edged sword, on one hand, this causes diversity, but on the other hand this produces a significant waste in human resources and efforts in the same areas.¹⁴

In view of the large number of these associations in Lebanon and the activities, projects, and campaigns for the defense of human rights at different levels, we will refrain from naming all of them in the context of this report, but we will highlight some of their achievements, and not focusing on a single case study as it was the case if the reports on Morocco and Tunisia.

- Situation of individual rights and freedoms and their effect on humanitarian and rights' movement:

Contrary to the methodology followed in the reports of Tunisia and Morocco, and the fact that Lebanon has not recently undergone constitutional and legislative reforms, we will be focusing in particular on the analysis of the legal framework that promotes rights and freedoms that specifically affect the work of human rights defenders. To this end, we will deal with the reality of individual rights and freedoms and their reflection on the humanitarian and human rights movements, since the violation or oppression of these individuals would restrict the work of human rights defenders and exploit their private lives against them. Accordingly, we will deal with the legal framework governing (1) the principles of equality and non-discrimination, (2) personal liberty, (3) the right to physical integrity, (4) freedom of belief, and the freedom of private life.

1. Equality and non-discrimination

Though principles of equality and non-discrimination between Lebanese citizens are established in the constitution,¹⁵ discriminatory provisions remain, causing damage and marginalizing communities in Lebanon.

Lebanese statutes do not condemn or criminalize acts of discrimination or racism committed by individuals. The only exceptions come either to the service of sectarian communities, under the pretext of maintaining domestic peace and preventing damage to the reputation of the Republic; or to avert sectarian and racial strife by restricting freedom of expression in publications, as well as cinematic and theatrical artwork, as we will show below.

¹⁰ In 1996, the Lebanese state established the National Committee for the Follow-Up of Women's Issues, which included civil and official figures and presided by the first lady at the time, Mona Hraoui. On the fifth of November 1998, Law No. 720 was issued by President Elias Hraoui and Prime Minister Rafic Hariri: <http://www.nclw.org.lb/About>.

¹¹ <http://www.lp.gov.lb/ViewContentRecords.aspx?id=39>

¹² The development of civil society in Lebanon, from the Ottoman Empire to the XXist century: a driver of political changes? By Geoffroy d'Aspremont available on the following link: <http://www.lbn-lb.org/details.aspx?id=822>

¹³ <http://mtv.com.lb/News/234528>

¹⁴ For more information, read Bassam Qantar article " لبنان وحقوق الإنسان: على الوعد يا خطّة " (Lebanon and Human Rights: An Unfulfilled Promise), which highlights civil society's critique of the National Human Rights Plan for 2012. Available on the following link: <http://www.al-akhbar.com/node/173506>

¹⁵ Paragraph (C), of the preamble of the constitution, states: "Lebanon is a democratic parliamentary republic based upon the respect of public freedoms, freedom of opinion and freedom of belief; and of social justice and equality in rights and duties among all citizens, without distinction or preference;" and Art. 7 establishes equality before the law, stating: "All Lebanese are equal before the law. They equally enjoy civil and political rights, and assume obligations and public duties without any distinction among them."

In the penal code, we find only two articles condemning sectarian or denominational strife. The first article falls under the section addressing damaging the reputation of the Republic and the national sentiment. It sets a sentence of provisional arrest for anyone who "resides in Lebanon at a time of war, or in which war is expected, and promoting information intended to weaken national sentiment or stir racial and denominational strife."¹⁶ The second article falls under the section addressing crimes against national unity or acts that disturb good relations between the people of the nation. It condemns "any act, publication, or speech which provokes racial or denominational strife; or incite conflict between the different sects in the country."¹⁷ It would be fair to say that the legislator's intervention was limited to the observance of sectarian and denominational affiliations. It is not sufficient to condemn discriminatory acts and statements against individuals or entities that lack sectarian protection.

The Lebanese legislation contains numerous texts and provisions that go against the provisions of UN conventions (signed by the Lebanese State and being implemented), thus creating conflict between Lebanon's commitments and the statute laws in place. Art. 2, of the penal procedure law, came to address this "conflict" by declaring the prevalence of international conventions of which the Lebanese state is signatory over statute laws in the case of contradiction.¹⁸ The Lebanese state has, as we will show below, signed a number of international treaties and conventions but failed to amend local legislation to conform to their provisions, with a few notable exceptions. In fact, the Lebanese legislator kept a number of discriminatory texts, and refused to introduce other clauses that would criminalize acts of flagrant discrimination against individuals, and in many fields.

For the purpose of this study, we will give a brief breakdown of how different forms of discrimination are defined and set in international charters, conventions, and treaties:

A. Art. 1, of the **Universal Declaration of Human Rights**, states that all human beings are born free and equal in dignity and rights and that everyone has all the rights and freedoms set forth therein without any discrimination;

B. Art.1, of the **Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation**,¹⁹ (1958) defines discrimination as "any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies;"

C. The **UNESCO Convention against Discrimination in Education**²⁰ (1960) defines discrimination in education as "any distinction, exclusion, limitation or preference which, being based on race, color, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education;"

¹⁶ Art. 295, of the penal code.

¹⁷ Art. 317, of the penal code.

¹⁸ Art. 2, of the civil procedure code, states: "The courts shall comply with the principle of the rules of hierarchy. In the event of conflict between the provisions of international treaties and those of ordinary law, the former shall take precedence over the latter. Courts shall not declare null the legislative authority's activities on the grounds of inconsistency of ordinary laws with the constitution or international treaties."

¹⁹ Ratified by the International Labor Organization in 1958 and concluded by Lebanon under Legislative Decree No. 70 issued on the twenty-fifth of June 1977 in a series of international labor agreements.

²⁰ Concluded by the Lebanese state under Law No. 17 of the nineteenth of February 1964.

D. Art. 1, of the **International Convention on the Elimination of All Forms of Racial Discrimination**,²¹ (1965) defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life;”

E. Art. 2, Paragraph 1, of the **International Covenant on Civil and Political Rights**, (1966) states: “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;”

F. Art. 2, Paragraph 2, of the **International Covenant on Economic, Social, and Cultural Rights** (1966) states: “States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;”

G. Art. 1, of the **International Convention on the Elimination of all Forms of Discrimination Against Women**,²² (1979) defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field;”

H. Similarly, the **Convention on the Rights of the Child**²³ (1989) obligates States Parties to respect and ensure the rights set forth in the present convention “to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status;” and guaranteed the child’s right to “be protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members;”

I. The **Convention on the Rights of Persons with Disabilities**²⁴ (2006) defines “discrimination on the basis of disability” as “any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;”

J. The **Arab Charter on Human Rights** (2008), recently signed by the government of Lebanon²⁵ obligates all States Parties “to ensure to all individuals within its territory and subject to its jurisdiction the right to enjoy all the rights and freedoms recognized herein, without any distinction on grounds of race, color, sex, language, religion, political opinion, national or social origin, property, birth, physical and mental abilities,” and “take the necessary measures to ensure de facto equality in the enjoyment of all the rights and freedoms set forth in the present charter, so as to protect against all forms of discrimination for any of the reasons stated above;” the charter dedicated separate provisions for the prohibition of discrimination in employment, education, and health in particular, as well as explicit endorsement of the principle of equality between women and men in all fields.

²¹Joined by the Lebanese state under Law No. 44 of twenty fourth of June 1971.

²²Ratified by the Lebanese state in 1966, with reservations on all matters relating to personal status and citizenship.

²³Ratified by the Lebanese state in 1990.

²⁴Ratified by the Lebanese state, along with its optional protocol in 2007.

²⁵Under Law No. 1, issued on the fifth of September 2008.

This list shows the extent and ramification of the fields and issues that the legislator needs to address and develop texts for, if we want to prevent discrimination against individuals. It is also worth noting that Lebanon refused to sign a number of convention, including the Convention on the Status of Refugees and the International Convention on the Protection of the Rights of All Migrant Workers and their Families, the Additional Protocol to the CEDAW Convention, the Convention on the Freedom of Marriages, and other treaties for considerations governed by the discriminatory, sectarian, and racist policies of the Lebanese state in these regards.

2. Personal freedom and presumption of innocence

The Lebanese constitution guarantees the protection of personal freedom. Art. 8 states that «personal freedom is guaranteed and protected by the law,» and that «No one can be arrested, jailed or suspended except according to the rules of the law. No offense can be determined and no penalty can be imposed except according to the law». Similarly, Art. 9, of Covenant on Civil and Political Rights sanctified the right to liberty and security of person. It also prohibited arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. It also stated that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Accordingly, the Lebanese penal code has set a punishment of provisional hard labor to any public servant that arrests and imprisons anyone contrary to set procedures.²⁶

A. Protection of personal freedoms in the penal code: reforms with some shortcomings

Criminal investigation is a delicate process that requires a clear framework that organizes it, assigns necessary administrative bodies, and defines their role(s). These bodies need to operate in accordance with the principles of presumption of innocence, right to defense, and personal freedom. To this end, the penal procedure code has set rules through which the legislator defines the tasks and purview of judicial police, and put forth necessary restrictions to avoid violations against suspects.²⁷

In theory, judicial police functions are performed by public prosecutors and public defenders under the supervision of the public prosecutor at the Court of Cassation. Art. 38, of the penal procedure code, allows the general prosecutor to assign others to carry out its functions, including public servants such as governors, Qaem-Makams (caretakers), and security forces, namely the Internal Security Forces and General Security. The main assistance requested by judicial police officers is in criminal investigation and complaints **forwarded and assigned by the general prosecution**. The legislation has **exceptionally and exclusively** allowed security forces to conduct some general prosecution investigation work in the case of flagrante delicto.²⁸ In other criminal cases, security forces are only allowed to intervene by **commission from, and under the supervision of the general prosecution, within their fields of competence, as specified in this Code and in the legislation governing their profession**, and in accordance with the provisions of Art. 40, of the penal procedure code.

²⁶Art. 367, of the penal code.

²⁷“In 2001, and under the influence of a general humanization trend of the penal law on the basis of the universality of human rights, the Lebanese legislator adopted a set of laws that dealt particularly with the preliminary stages of investigations conducted by judicial police, public prosecution, and investigating magistrates. The amendments aimed to secure and respect the right to defense, derived from the right to fair trial as enshrined in Art. 6, of the European Convention;” Nabil Shedid Fadil Raad, Formal Pleas in the Penal Procedure Code: A Comparative Study, Arab Institute for Research and Publishing, Beirut 2009-2010, pp 32-33.

²⁸Art. 41-46, of the penal procedure code.

The legislator developed provisions to keep the work of judicial police assistants under control when assigned to investigate crimes and complaints, Art. 47, of the penal procedure code states:

Judicial Police officers, acting as assistants to the public prosecution office, **shall perform the duties assigned to them by the public prosecution office. They investigate offences not discovered at the time of their commission or immediately afterwards**, gather information, make inquiries aimed at identifying the perpetrators and accomplices and gather evidence against them, and carry out actions necessitated by these duties, such as the seizure of incriminating items, the conduct of physical searches of crime scenes, scientific and technical analyses of any samples, and taking statements from witnesses without requiring them to take an oath and of statements from persons complained of or suspects. If they refuse to make a statement or remain silent, this fact shall be mentioned in the record; they may not be coerced to speak or to undergo questioning, on pain of nullity of their statements.

Judicial police officers shall **inform the public prosecution office of the measures they take and shall abide by its instructions (...)**

Also, **Art. 47 allowed for the suspect to be arrested only by order from the public prosecution.** The article also defined the rights of the detainee as follows:

- To contact a member of his family, his employer, an advocate of his choosing or an acquaintance;
- To meet with the advocate he appoints by a declaration noted in the record; the official authorization to act prescribed by the rules shall not be required;
- To request a sworn interpreter if he is not proficient in the Arabic language;
- To submit a request for a medical examination to the Public Prosecutor either directly or through his advocate or a member of his family.

The article also required the judicial officer to **inform the suspect of these rights upon their arrested.**

As for the principle of legitimacy guaranteed in the constitution, the public prosecution is obliged to include **a description of the felony and the crime scene** when presenting the case to both the investigating magistrate²⁹ and the single-judge.³⁰

As the detention period, Art. 108, of the penal procedure code, sets the limit to two With the exception of a person previously sentenced to at least one year's imprisonment. Detention period may be extended to up to another two month "in cases of urgent necessity." However, the law does not identify the circumstances that constitute an urgent necessity, and does not require the provision of a reasoned decision, thus leaving the extension of the arrest period highly discretionary. The same article also states that, "with the exception of homicide, felonies involving drugs and endangerment of state security, felonies entailing extreme danger and crimes of terrorism, and with the exception of persons with a previous criminal conviction, the period of custody may not exceed six months for a felony." Indeed, some of the exceptions mentioned in the article, namely danger to the masses, are not precisely defined, thus giving ample scope to arbitrary detention. Moreover, it should be noted that the penal procedure code gives no mention of the principle of the presumption of innocence.

²⁹ Art. 62, of the penal procedure code, states: "The charges submitted by the public prosecutor to the investigating magistrate shall contain a **description of the offence**, specify the identity of all those who participated in its commission, **the place in which the criminal act occurred and the time of its occurrence, and state his requests.**"

³⁰ Art. 152, of the penal procedure code, states: "The public prosecutor brings charges of a misdemeanor before the single judge in cases involving a person whose identity has been ascertained. The statement of charges contains a description of the misdemeanor with which he is charged and the place in which it was committed and is accompanied by the record of the preliminary investigations, the complaint, and all documents supporting the prosecution. The public prosecutor may subsequently bring charges against a person whom he failed to charge so long as the case remains pending before the Single Judge."

B. Violations on the personal freedoms of human rights defenders in Lebanon

The legislator has taken the initiative to adopt a set of laws for two stages of building a criminal case. The first or preliminary stage includes investigations conducted by the judicial police and public prosecution. The second or interrogatory stage aims to secure and respect the protection of the right to defense, in accordance with the principle of fair trial as mentioned above. However, laws governing the work of security services in force are still in blatant contradiction with these principles. A look at these laws, most of which have not been updated in decades, reveals that the authority conferred to security services, and the vague terminology in which they are expressed, permit repressive security practices. Security forces do not hesitate to utilize these powers against human rights defenders as we will show below.

As a good example of this, we point out the powers conferred upon general security forces by Decree No. 2873 of the sixteenth of December 1959, which aimed to "regulate and define prerogatives within general security". Art. 5 states the following:

"The investigation services shall do the following:

- Political, economic, and social information on everything related to Lebanon;
- Combat espionage, by monitoring and prosecuting Lebanese and foreigners working for the benefit of foreign countries;
- Combat any source of threat to security, by monitoring and prosecuting individuals responsible for acts of vandalism, calls for chaos and unrest, dissemination of harmful information, and suspects of such acts, whether Lebanese or foreign;
- Combat dissolved parties, in all aspects of their activities, including meetings, demonstrations, strikes, distribution of leaflets and letters, by uncovering their formations and members, as well as monitoring and prosecuting their members and supporters;
- Combat secret or prohibited associations, demonstrations, gatherings, any act against the law, investigation of information and the collection of investigative evidence;
- Gather information on the activity of familial, charitable, religious, sporting, cultural, and scouting organizations, as well as trade unions;
- Monitoring gatherings and parties, whether licensed or not, whenever general security forces deem it necessary;
- Accompany the Lebanese statesmen and protect them during their movement inside and outside Lebanon;
- Accompany statesmen in Lebanon and protect them during their movement inside Lebanon;
- Be consulted when granting authorization for the transmission wireless stations, and monitor such stations whether authorized or not."

Practically speaking, an investigator from the General Directorate of General Security (GDGS) invites an individual for "cup of coffee and chat" or they arrest the person when attempting to leave at the airport, without giving any reasons. Eventually, the invitation is changed to an investigation, and then an arrest, without any respect to penal procedure code detailed above, particularly:

- The obligation to clarify the nature of the offense under investigation, in accordance with the provisions of Art. 76, of the penal procedure code, which obliges the investigating magistrate to **inform the defendant of the charges** against them upon their first hearing, providing a summary of the facts and informing them of evidence available or the suspicions raised against them, in order to allow them to refute them and defend themselves (...). This is a rule put on the work of the judicial police to impose the respect of the principle of proportionality at the different stages of an investigation;

- The **obligation to inform the defendant of their rights and note it in the report**, namely the right to contact with a family member, the employer, or an advocate of their choice; the right to meet with an advocate appointed by inclusion in investigation records, without the need for a legally formal hiring process; the right to medical examination upon a request made directly by a family member, the employer, or an advocate.

- In the same direction, Art. 47, of the penal procedure code, permits the detention of a suspect for needs of an investigation, and with a decision issued by the Public Prosecution Office, **only if the latter assigned the officer, as assistant to judicial police, to investigate a non-flagrante crime**. An officer that fails to uphold these procedures, is liable to prosecution for the offense of deprivation of liberty punishable with temporary hard labor, in accordance with Art. 367, of the penal code.

On the ground, and due to the vague and general terminology used in the legal texts, security forces have not hesitated to overtly violate the rights to personal freedom and defense. We have seen this happen to Saad Eddine Shatila, a researcher and activist working for Dignity International, when he was called in for investigation by military intelligence forces on the twenty-fifth of July 2011 for his work in documenting torture cases in Lebanese prisons;³¹ Samira Trad, activist with Frontiers Ruwad Association for resuming her work with refugees in Lebanon;³² activist Ismail Sheikh Hassan, arrested at the Beirut International Airport on the tenth of February 2011 for an article published under his name in Assafir newspaper; and Hikmat Sharif, journalist and reporter for Agence France-Press (AFP), detained by the intelligence office in Bekaa for receiving a call from inside Roumieh prison made by a prisoner asking for help to get medication.³³

3. Right to bodily integrity

Lebanon ratified the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment and Punishment in October 2000, and the relevant Optional Protocol in December 2008. Also, the penal code criminalizes the use of violence to extract confessions and information about a crime.³⁴

Unfortunately, most violations relating to bodily integrity take place in detention center, police stations, and prisons at the hands of those assigned to enforce the law. And despite the public nature of these acts, competent authorities seem incapable, or unwilling, to put an end to them. In this regard, we refer to a case of prison torture that shocked the Lebanese public opinion back in 2011 and was addressed by the United Nations Human Rights Council (UNHCR):

“On the twenty sixth of June 2011, the International Day in Support of Victims of Torture, the Ambassador of the International Organization for Human Rights Ali Aqil Khalil held a press conference in which he presented photographs of cases of torture in Roumieh prison, on the thirty-first of June 2011 the Public Relations Division of the General Directorate of Internal Security Forces issued a statement in which it denied Khalil’s allegations and declaring that it forwarded the file to the judiciary, prosecuting Khalil for providing the media with false information. As a result, an arrest warrant was issued and he will be present himself for investigation on the eighth of February 2012 before the President of the Military Court in Beirut.

³¹ <http://www.khiamcenter.org/ar/p.php?lang=ar&aid=264>

³² For more information, read the Human Rights Council session, nineteenth round, third item, from the twenty-seventh of February and until the twenty-third of March 2012, entitled “Human Rights Violations on the Rise in Lebanon,”

³³ <http://frontiersruwad.org/>

³⁴ Art. 401, of the penal code, states: “Anyone who inflicts extremely severe treatment on another person, which are not authorized by the law, with the intention to extract confessions or information, will be sentenced to prison for three months to three years. If the treatment results in any injury or damage, the sentence will be at least one year.

We note that Mr. Ali Khalil is being investigated after a series of investigations with activists from local and international organizations that have issued reports about torture in Roumieh prison like, namely scholar Saad Eddin Shatila representative of the World Association of Dignity. The trial of Ali Akil Khalil is a violation of human rights and a blatant assault on human rights defenders. Torture in Roumieh prison does not need pictures, statements by officials of the Ministers of Interior and Public Health, which came after their visits to Roumieh prison on the twenty-fourth of January 2010, testify to the tragic situation of the prisoners, confirm Khalil’s statements, as well as all reports issued by the humanitarian organizations about Roumieh prison in specific, and all Lebanese prisons as well. Rather than investigating activists and media professionals for documenting cases of torture, it is torture in Roumieh prison that requires investigation. It is prison officials that should be investigated for the presence of drugs and machetes within prison walls. It is the circumstances that have led to the murder of four prisoners in prison on the second of April 2011 that should be investigated. We consider the fact that Ali Akil Khalil standing investigation today, on the eighth of February, to be an assault on human rights activists.”

In this regard, we also refer to the report MP Ghassan Moukheiber raised on the situation of prisons in Lebanon (2010), describing “detention in a number of prisons in Lebanon as a form of torture and cruel, inhuman treatment.” Moukheiber also suggested a number of fundamental reforms, such as the establishment of a committee within the General Directorate of Internal Security Forces to combat torture, an enforcement of the law against torture in detention, legal follow-up on torture complaints, and prosecution of all those that engage in such practices instead of simply resorting to internal disciplinary measures.³⁵ Unfortunately, none of these reform measures were taken seriously. “Torture still begins with the first few hours in detention. Terrible cases are being reported, including battery and electrocution that would later be covered up by forcing the victim to put their feet in cold water for a long time.”³⁶

4. Freedom of belief

The principle of absolute freedom of belief is a fundamental part of the Lebanese system, it is stated in the preamble of the constitution, along with the principles of equality and non-discrimination between Lebanese citizens;³⁷ Art. 9, of the constitution, in addition to the freedom of belief, also guarantees the “system of personal status and religious interests of the people regardless of their different creeds.”³⁸

In fact, there is no legal text in Lebanon that forces citizens to adopt any specific religion, sect, or belief system, nor does it derogate from their rights to legally not belong to any recognized religious community.

On the contrary, Lebanese legislation guarantees the right to believe, or not, and belong, or not, to a specific religion or belief system, through the Decree No. 60 LR (1936) and Decree No. 146 LR (1948) which set the framework and the nature of the relationship between the civil state and religious sects in Lebanon, on one side, and individuals on the other.³⁹

³⁵ For more information, read the draft report titled “ السجون في لبنان: بين القانون والواقع وحاجات الإصلاح ” (Prisons in Lebanon: Law, Reality, and Needed Reforms), by Ghassan Moukheiber. Available on the following link: www.ghassanmoukheiber.com/uploads/000000426.doc

³⁶ For more information, read the article written by Juhaina Al-Khalidi, titled “ التوقيف والاحتجاز في المخافر والسجون: استنسابية وتغر قانونية ” (Detention and Arrest in Detention Centers and Prisons: Discretionary Practices and Legal Loopholes), Assafir, seven March 2012. Available on the following link: <http://www.yasour.org/2012/news.php?go=fullnews&newsid=826>

³⁷ Paragraph (C), of the preamble of the constitution, states “Lebanon is a democratic parliamentary republic based upon the respect of public freedoms, freedom of opinion and freedom of belief; and of social justice and equality in rights and duties among all citizens, without distinction or preference;” Art. 7, of the constitution, states “All Lebanese are equal before the law. They equally enjoy civil and political rights, and assume obligations and public duties without any distinction among them.”

³⁸ Art. 9, of the constitution, states: “Freedom of conscience is absolute. In assuming the obligations of glorifying God, the Most High, the State respects all religions and creeds and safeguards the freedom of exercising the religious rites under its protection, without disturbing the public order. It also guarantees the respect of the system of personal status and religious interests of the people, regardless of their different creeds.”

³⁹ Art. 10, Paragraph 2, of Decree No. 60 LR states: “Syrians and Lebanese belonging to a common law sect (Communauté de droit commun), as well as Syrians and Lebanese who are not affiliated with any sect, are subjected to civil law in matters pertaining to their personal status.” Here we make the distinction between common law sects and historical sects, as the latter lack independent legislative and judicial authorities, thus subjecting its subjects to national civil law in matters pertaining to their personal status.

Restrictions and limitations that are set by other laws in Lebanon are considered to be the exception and cannot prevail over the principle of freedom that is guaranteed in the constitution and is, therefore, the rule.⁴⁰

On the ground, however, such freedoms are not respected and anyone who decides to let go of sectarian affiliation or to strike out the mention of their sect from their official identification papers are subjected to discriminatory treatment. On the thirteenth of April 2007, a number of Lebanese citizens submitted a complaint to the Ministry of Interior, stating that their sect affiliation was done without their consent and that they would like to have it removed, as it constitutes a violation of their freedom of belief. This led the ministry, on the sixth of February 2009, to comply with the request and remove the mention of the sect from the official registry and, later, to confirm the legality of civil unions held within Lebanese territories. Defenders, supporters and officials of the sectarian system in official institutions and positions were quick to retaliate, “punishing” those that remove sect affiliation from their records by obstructing operations relating to the personal status of these citizens (marriage registration, birth certificates, etc.) or by preventing them from applying for employment in official positions – aside from grade-one posts – unless they “return” the mention of their sectarian affiliation to the official registry. Some were even accusing Lebanese citizens who had civil marriage of cohabitation, adultery, and having illegitimate children, even though their marriage was confirmed as legal by the High Commission for Legislation and Consultations in the Ministry of Justice.⁴¹

5. Right to private life and protection of personal data

The most dangerous form of restriction on personal freedoms and the inviolability of the individual’s private life is reflected in the penal provisions that continue to criminalize acts relating to individuals’ intimate life and sexual liberties. These provisions confer great powers to judicial police, public prosecution, and investigating magistrates, allowing them to violate private spaces and the privacy of individuals under the pretext of investigating “moral” crimes and misdemeanors. But despite the regressive nature of these provisions, and their failure to keep pace with social developments in Lebanon, the judiciary has managed to break this deadlock with important rulings. A development which may indicate the beginning of a serious debate on the concept of sexual freedoms in the Lebanese society, promising the advent of legal reforms that would be needed to consolidate them.

A. Penal policy on sexual freedoms (exclusively)

Legislative and governmental policies in Lebanon lack any provision, or attempt at making one, that would verbalize the state’s approach to sexual freedoms. The texts in place speak broadly about criminalizing certain acts considered immoral, turning a blind-eye to the needs or developments of the Lebanese society. Instead of developing a preemptive, awareness policy that would break taboos and misconception, authorities in Lebanon have settled for a purely punitive policy.

Religious legislation does not recognize sexual relations outside marriage, criminalizing and declaring them acts against the essence of religion. The Lebanese penal code criminalizes sexual contact with a person under the age of 18 (regardless of the age of the other person), but has not set a unified minimum age for marriage, leaving the issue to the discretion of religious, sectarian authorities, which permit early marriage. What this tells us is that the Lebanese legislator has not set a minimum age for sexual relationships in order to protect minors, ensuring individuals reach a certain level of maturity before making such decisions, but rather to criminalize sexual acts outside traditional, marital frameworks.

⁴⁰ For more information, read “ الزواج المدني: الحق والعقد على الأراضي اللبنانية ” (Civil Marriage: Rights and Contracts on Lebanese Territories”, Saqi, first edition, 2013.

⁴¹ <http://www.annahar.com/article/29562-%D8%AA%D9%88%D9%82%D9%8A%D8%B9-%D8%A7%D9%88%D9%84-%D8%B9%D9%82%D8%AF-%D8%B2%D9%88%D8%A7%D8%AC-%D9%85%D8%AF%D9%86%D9%8A-%D9%81%D9%8A-%D9%84%D8%A8%D9%86%D8%A7%D9%86>

Another example of indirect criminalization of extra-marital sex is the criminalization of abortion.⁴² Punitive laws on abortion expose women to various means of extortion and exploitation in private clinics and hospitals that are “known to provide abortion service.” How can these women protect themselves and get their rights if they are considered outlaws. The patriarchal, traditional, and regressive attitudes of the legislator become clearer when they criminalize any description or dissemination of information on the prevention of pregnancy, on one hand,⁴³ while reducing the sentence of the woman that has an abortion, those who help her, and those who force her, if it is done with the aim of protecting her honor.⁴⁴ Also, and to this day, the Lebanese law still criminalizes adultery for married men and women, while aggravating the sentences for the woman.

It is also important to mention that the Lebanese penal code still includes article with vague terminology, such as “infringement on public morality”, “infringement on public morals”, or “sexual acts against the order of nature.” Such articles are utilized by security forces to justify overt violations of privacy and intimate relations between individuals. In this regard, Art. 531 and 532, of the penal code, criminalize acts, talks, writings, and inscriptions that disturb or infringe on public morals, if they take place in a public space, or a space that is visible to the public, or were seen by someone who is not involved because of a mistake by the perpetrator. Art. 534, on the other hand, criminalizes sexual acts against the order of nature, but it has been reinterpreted judicially in recent years to uphold values of sexual freedoms, as we will be showing below.

B. Judicial rulings break the deadlock and uphold the principle of sexual freedoms

To the date of writing, there has been two court rulings that decriminalized homosexual relations. The first, attempted to reinterpret the concept of sexual acts against the order of nature, as defined by Art. 534, of the penal code.⁴⁵ The second built on the provisions of the first and went further in the direction of confirming the freedom of sexual acts, it stated that “the Lebanese constitution and the Human Rights Charter ensure equality for all before the law, protecting their right to personal freedom, especially when the practice of this freedom does not harm others. Naturally, these principles are not limited to transsexuals alone, but also include homosexuals, as the European Court of Human Rights previously used the same principles to condemn states that criminalize homosexual relation.”⁴⁶

Obviously, these significant rulings came as a result of great mobilization and struggle done by organizations and individuals advocating for sexual freedoms in general, and LGBT rights in specific. Another positive milestone was the statement proactively made by the Syndicate of Doctors in Lebanon, in which it put an end to anal examination and other clinical examinations that detainees in police stations were subjected to in the context of prosecution on the basis of Art. 534, of the penal code.

⁴² Art. 537-546, of the penal code.

⁴³ Art. 537, of the penal code.

⁴⁴ Art. 545 states: “If the act was done in defense of the woman’s honor, this is considered as a mitigating circumstance; it is also considered a mitigating circumstance when anyone who is convicted of the crimes indicated in Art. 542 and 543, if they were done with the aim of protecting the honor of offspring, or relatives to the second degree.”

⁴⁵ For more information on the two rulings, the first by Judge Mounir Sleiman in Batroun in 2009 and the second by Judge Naji Dahdah in Jdeidet Al-Metn, read the following page of the Legal Agenda: <http://legal-agenda.com/article.php?id=683&lang=ar>

⁴⁶ For more information, read the article by Youmna Makhoul, titled “ المجامعة خلافاً للطبيعة أمام القضاء الجزائي اللبناني: حكم ثان لإعادة تعريف 'أندروجين' ” (Androgyny Before the Lebanese Penal Judiciary: A Second Ruling Redefining Sexual Acts Against the Order of Nature). Available on the following link: <http://legal-agenda.com/article.php?id=676&lang=ar>

Unfortunately, and despite fundamental breakthroughs in this regard, security forces still resort to barbaric practices against individuals prosecuted on the basis of Art. 534, of the penal code, but also Art. 531 and Art. 532, of the penal code. The latest incident in this regard, was the raid on the Agha hamam under the pretext of protecting public morals and combating obscene acts. The raid was instigated by a tip indicating that men go to the hamam in order to solicit sexual acts with other men. As a result, twenty-seven individuals were arrested, including customers and workers.⁴⁷ The case is still pending before the criminal court, while some of the suspects may be deported, as they are foreigners, and are still arbitrarily detained at the General Security detention center.

Finally, it is important to note the absence of any provisions in Lebanese laws that would establish regulatory mechanisms for the collection and storing of personal data, which is essential for the protection of such sensitive data, unlike what has been the case in neighboring countries, namely Morocco and Tunisia.

⌘ Situation of general rights and freedoms and their effect on humanitarian and rights' movements

In this section, we will address rights and freedoms in the field of human rights organizing, humanitarian work, and the activism of human rights defenders. For this purpose we will review (1) the legal framework governing freedom of opinion and expression⁴⁸; (2) the right of access to information; and (3) the right to defense before Lebanese courts.

II. Freedoms of opinion, expression, and dissemination of ideas

Paragraph (C), of the preamble of the constitution, states that "Lebanon is a parliamentary democratic republic based on respect for public liberties, especially the freedom of opinion and belief." Art. 13, of the constitution, reiterates the "freedom to express one's opinion orally or in writing", emphasizing the importance of having protective national legislation. Art. 19, of the Universal Declaration of Human Rights, defines freedom of expression as "the freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers." As for Art. 19, of the International Covenant on Civil and Political Rights, it states that "everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other media of his choice." Art. 6 and 7, of the same document, guarantee the right to disseminate ideas and information relating to human rights and fundamental freedoms, in addition to developing and adopting new ideas and passing them on to others through studies, debates, and other legally permissible forms. Based on all these freedoms and rights, human rights defenders have every right to address criticisms and suggestions to the performance of governmental bodies and entities, in order to improve such performance and actively protect human rights.⁴⁹ In fact, the repeated emphasis on these rights, and the detailed descriptions provided, are essential, considering the importance and role of these mechanisms in upholding and invigorating militant, humanitarian, and human rights activism. How could any initiative, movement, or cause achieve any tangible, effective change in the field of human rights and fundamental freedoms without resorting to the mechanisms protected, guaranteed, and produced by the freedom of opinion and expression?

⁴⁷ For more information, read the joint statement made by the Arab Foundation for Freedoms and Equality (AFE, the M-Coalition, Helem, Sexual Health Center – MARSAs, and the Lebanese Medical Association for Sexual Health (LebMASH). Available on the following page: <http://www.helem.net/?q=node/238>

⁴⁸ Freedoms of opinion and expression can be considered as part of personal freedoms, however, we opted for their inclusion under public freedoms due to their great impact on humanitarian and human rights movement.

⁴⁹ Paragraph 8, Art. 2, of the Declaration.

However, the Lebanese law contains a number of provision that restrict the freedom to opinion and expression, some of which affect the work of public sector actors in general, while others affect individuals working, or trying to work, in fields relating to the press or cinematic arts:

- A public servant is prohibited to issue or publish speeches, articles, statements, or writings on any matter without written permission from the head of their department;⁵⁰ a public servant is also prohibited to organize or participate in organizing collective petitions, strikes, or joining trade unions;⁵¹ a public servant is also required to abandon any affiliation with any political party;⁵²

- Lebanese legislation also makes the distinction between political publications and non-political publications, setting a maximum limit on the number of permits available for political publication. In other words, the legislation prohibits the publishing of any new political periodicals unless the number of permits drops under a certain number.⁵³ As a result, entities began to sell or rent their permits, thus restricting press publications to those with significant financial means and, inevitably, causing damage to those who wish to work in this field;

- Theater performances⁵⁴ and movie screenings in all forms⁵⁵ are still subjected to prior censorship. This is the general rule for all forms of artistic and cultural work. It goes without saying that the conservative approach of the censorship body (namely the General Security) has damaged creative freedoms in these fields, as well as individuals working on them;

- The Lebanese penal code prohibits the publication of any form of information relating to the army, or military forces in general (Art. 157). There has also been instances in which the state has reacted harshly to such information, using legal clauses with vague terminologies such as the prestige of the institution in question, e.g. the prestige of the judiciary or the prestige of the military;

- The legislation also prohibits literary, artistic, and journalistic works that "ignite racial and religious strife," either through prior censorship for cinematic and theatrical works,⁵⁶ or through legal prosecution of literary and press publications.⁵⁷ These provisions, and their implementation, demonstrate the legislator's keenness to prohibit any act or writing that would touch upon the best interest of sectarian authorities.⁵⁸

⁵⁰ Under Law No. 144 of the sixth of May 1992.

⁵¹ Under Decree No. 15703 of the sixth of March 1964.

⁵² Art. 14, of the Law of 1953 requires that a "public servant renounces any affiliation with political parties, bodies, or councils; or similar sectarian entities of political nature; as well as tasks or responsibilities in such parties, bodies, councils or associations."

⁵³ Based on the provisions of Decree No. issued on the thirteenth of April 1953, it is prohibited to publish any political publication in case the number of licenses granted is twenty-five political dailies and twenty political periodical, consisting of at least fifteen Arabic dailies and 12 Arabic periodicals.

⁵⁴ Legislative Decree No. 2 of the first of January 1977 states: "Theater plays will be subjected to the censorship of the General Directorate of the General Security."

⁵⁵ Law issued on the twenty-seventh of November 1974 states: "Cinematic content will be subjected to the censorship of the General Directorate of the General Security."

⁵⁶ Art. 4, of the Law issued on the twenty-seventh of November 1974 states:

"Censorship authorities will take into consideration the following:

- Respecting to public order, morality, and good morals;
- Respecting to the feelings of the public and avoiding to incite for racial and religious strife;
- Maintaining the prestige of public authorities;
- Resisting propaganda which would not favorable to the interests of Lebanon."

⁵⁷ Art. 25, of Legislative Decree No. 104 of the thirtieth of June 1977 publications, states: "If a publication publishes a manifestation of an affront to one of the recognized religions in the country, or one that would cause sectarian or racial strife, disturb public peace, or jeopardize the State's sovereignty, unity, or borders; or Lebanon's external relations, the General Prosecutor shall have the right to confiscate its copies and to refer them to judicial authorities. In such a case, the court may impose a sentence of imprisonment from one to three years and/or a fine of 50 million to 100 million L.L. If the crime is repeated within seven years, the punishment will be doubled and the publication suspended for a minimum period of six months."

⁵⁸ For more information, read the study prepared by Nizar Saghie, Rana Saghie, and Nayla Geagea, titled "أعمال الرقابة قانوناً" (Legal Acts of Censorship). Available on the following link: http://www.lb.boell.org/downloads/Censorship_Book_Arabic.pdf

In recent years, we have witnessed a rise in acts of repression by the Office on Combating Information Crimes and Intellectual Properties. These interventions came for the protection of either ministers and high-ranking officials that were upset with criticism by individuals on their social media platforms; or influential, economic bodies that would not accept legitimate liability and accountability.⁵⁹

2. Freedom of assembly and peaceful organizing

Art. 13, of the Lebanese constitution, guarantees the freedom of association, which is to be protected by Lebanese laws. Art. 20, of the Universal Declaration of Human Rights, guarantees the right to engage in peaceful organizing as well as the freedom of association. Art. 29, of the Universal Declaration of Human Rights, comes to emphasize the freedom of engaging in peaceful protests and subjected to limitations only “as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” As for the Declaration on the Rights of Human Rights Defenders, it reiterates the same freedoms as follows: “For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to meet or assemble peacefully; to form, join and participate in non-governmental organizations, associations or groups; and to communicate with non-governmental or intergovernmental organizations, individually and in association with others, at the national and international levels.”⁶⁰

Such freedoms would practically be translated into the liberty to join and establish associations, and to be active in civil movements. What are the principles that govern these freedoms? What forms of discrimination can be observed in this field?

In theory, the guiding principle for the legislation governing non-governmental organizations is freedom. However, on the practical level, there are some provisions that limit the exercise of this freedom, either on the basis of the minimum legal age required to establish an organization, or on the basis of the declared purpose and objectives. This is done as follows:

- A NGO registration system that requires a notice of registration is not considered a restriction on the freedom of association, unlike the system that requires a prior permit. Art. 2, of the Law of Associations, states clearly that “establishing an association requires no prior permit but, by virtue of Art. 6, notifying the government of its establishment is a prerequisite.” Therefore, the establishment of an organization comes naturally with the mutual agreement of its founders and their signature of its regulatory systems, without any authorization from administrative authorities. Following its establishment, an organization is only required to inform administrative authorities of the fact (...). The law is very clear on this issue and does not accept any interpretation.

⁵⁹ For more information, read the paper published by Maharat, titled “ الاستدعاءات المتكررة أمام مكتب مكافحة المعلوماتية تشكل تقييداً للحريات العامة ” (Recurrent Summons by the Office for Electronic Crimes Constitutes a Restriction of Public Freedoms), on the thirteenth of March 2014. Available on the following link: <http://maharatfoundation.org/?p=1647&lang=ar>.

⁶⁰ Art. 20, of the Declaration.

⁶¹ For more information, read: <http://www.ghassanmoukheiber.com/showArticles.aspx?aid=16#sthash.scx9PNV.dpuf>

Lebanese jurisprudence has reiterated this principle more than once. In this regard we mention the ruling made by the State Consultative Council on the eighteenth of November 2003 (...) administrative authorities, particularly the Ministry of Interior, regularly and intensively violate the Law of Associations through a series of provisions, thus altering the current framework which upholds the principle of establishment according to the Press Law, turning it into an unlawful, unconstitutional, and restrictive system that resembles that of prior permit.⁶¹ Also, the Court of Cassation issued an important, if not unique, ruling that addressed the principle of freedom of association and its scope, defining the effect of the submission of the notice and the legal situation of the organization.⁶²

However, over the past two decades we have witnessed more and more limitations on the freedom of association, starting before 2006, practically turning the registration process closer to a prior permit system, rather than a notice of registration, a flagrant violation of the constitution and laws in place. As a result, more and more associations opting for a registration as “civil companies” (or non-trading companies). One tactic commonly used is for the Ministry of Interior to refuse to receive the notice of registration of a certain association, while refusing to publish it in the Official Gazette, as has been the case for Helem, an association for the protection of homosexuals in Lebanon. General Security has also been resorting to security measures to curtail the freedom of assembly of temporary committees, meaning groups that are not necessarily institutionalized and have decided not to submit a notice of registration to competent authorities. For these cases, it is better to follow the example of the French legislation which has been amended to explicitly acknowledge the concept of de facto associations (association de fait),⁶³ meaning that the Lebanese Law of Associations needs to be amended, including the article relating to secret societies, which is interpreted and utilized in contradiction with the principle of freedom of association. Also, the monitoring of the work of associations needs to be removed from the authority of security forces, as the ways the latter is constructed are not compatible with the nature of the work of associations;

- Also, the Law on Associations forbids anyone under twenty from joining an organization, a form of discrimination against a sizable youth population and their deprivation of fundamental social rights;

- Finally, sports associations, sports federations, sports associations for persons with special needs and their federations, the Lebanese Olympic Committee, scout associations and their federations, youth associations and their federations, and their popular clubs are excluded from the Law on Associations. They are organized by a separate law and their establishment requires prior permission given by the Ministry of Youth and Sports after consulting with the Ministry of Interior and Municipalities, thus imposing intervention from two ministries. This contradicts the principle of exempting associations from the requirement of prior permission.

⁶² Ruling No. 70 of the Court of Cassation, Chamber III, in the Fasaa/Terk case, on the twenty-fifth of July 1963, in which the court states: “Whereas the Ottoman Association Law is taken in most of its provisions from the French law of the first of July 1901, which, in Art. 6, abides by the rule of notice to the Ministry of Interior regarding the acquirement of legal entity status, which would qualify for the association its rights; and was inspired by the principle of freedom of association and meeting, that prevailed at the time, thus contradicting the prior principle of restrictive permission; withholding notice, even if it strips the assembly of entity status and therefore the ability to comply and act, does not prevent the association from forming legally, thus allowing for the association to acquire funds and some rights, including membership fees, venue for members to meet, and the right to collectively work towards an objective; Art. 2, of the Law on Associations, prohibits the formation of secret societies (...) and such an association cannot be considered secret due to the public nature of its property management and its organization of public events (...)”

⁶³ For more information, read the ruling of the French State Consultative Council, which stated: “CE 31 octobre 1969, N° 61310, Syndicat de défense des canaux de la Durance qui a décidé qu’une association de fait est un groupe formé de deux personnes ou plus qui décident d’associer leurs efforts pour poursuivre un but d’intérêt général, sans pour autant choisir de se déclarer selon les statuts réglementaires propres à chaque pays. Une association de fait est une forme possible d’association. Ses caractéristiques sont basées sur le fait que l’association n’est pas déclarée et n’a donc pas d’existence juridique propre. Cependant, le comportement de ses membres permet de penser qu’ils agissent en association. Les associations de fait sont parfaitement légales mais jouissent selon les pays de droits et possibilités juridiques souvent moindres que les associations déclarées selon un régime légal. En France, une association de fait est une des trois associations reconnues comme association loi de 1901, elle n’a pas de capacité juridique et en particulier ne peut percevoir de subvention publique. Elle peut cependant engager devant le juge administratif des recours pour excès de pouvoir pour contester la légalité des actes administratifs faisant grief aux intérêts qu’elle a pour mission de défendre.”

⌘ Lack of adequate legislation to monitor administration and hold them accountable

One of the major gaps in the Lebanese legislation is the lack of adequate provisions that would permit people's access to information, along with serious lack of transparency regarding the work of administrative authorities, thereby severely limiting the possibility of censorship and accountability.

One positive development in this regard has been the initiative recently launched by the Lebanese Transparency Association to pass a whistleblower protection law that will "protect whistleblowers by securing confidentiality and guaranteeing their employment and personal safety."⁶⁴ The draft law is still in processing at one of the subcommittees of the Administration and Justice Parliamentary Committee.⁶⁵

3. Right to defense

"The right to defense is not a privilege granted by the law, nor is it a provision that is recommended by some international convention, it is a natural right a person is born with. The latter may have the liberty to manage and define it, but not to renounce it. Not only is the right to defense a need for the person, it is also a need for justice system, if the right to defense is compromised the truth cannot be ascertained."⁶⁶

The right to defense is the cornerstone of the justice system and the work of human rights defenders. Right to defense includes a panoply of legal tools and mechanisms, including legal representation before courts, right to legal counsel during investigations, etc. Here, it would be important to address two problematics in the implementation of the right to defense in Lebanon, both (1) at the level of right to defense in court, and (2) at the level of administration, particularly security forces

A. Restrictions on right to defense in court

Based on the position expressed by the Penal Court of Cassation mentioned above, and on the principles of fundamental freedoms and rights, the Lebanese legislator approved in 2001 a number of amendments on the penal procedure code, particularly addressing the earlier stages of criminal prosecution, namely inquiries and investigations performed by the public prosecution and judicial police as mentioned above.⁶⁷ One of the most important amendments was on Art. 74, of the penal procedure code, which previously referred to pleas on the basis of formalities, and which was expanded to include annulment of any investigation findings on the basis of violations done at the hands of the judicial police. The amendment was made to protect the principles of assumption of innocence and fair trial, for which it is essential that suspects, and later defendants, are capable of exercising their right to defense. Here, it becomes more important to take note of the specificity of formality pleas in the penal procedure code as a tool that enables the defendant, by presenting such a plea before the beginning of court proceedings, to protect themselves from violations on freedoms and dignity that they were subjected to, or still are, particularly at the stages of preliminary and inquisitive investigations.

⁶⁴ <http://transparency-lebanon.org/index.php?lang=ar>

⁶⁵ <http://www.nna-leb.gov.lb/ar/show-news/111519/>

⁶⁶ Ruling of the Court of Cassation, on the twenty-ninth of June 1956, which defined the concept and nature of the right to defense; and Nabil Shedid Al-Fadil Raad, *ibid.*, p. 32, footnote no. 3.

⁶⁷ Refer to the humanization principle previously mentioned in footnote no. 22.

⁶⁸ Hatem Madi, *Penal Procedure Code, Al-Manshourat Al-Hokokiyya*, Second Edition, 2004, p. 198.

⁶⁹ Nabil Shedid Al-Fadil Raad, *ibid.*, p. 943.

The interpretation of such an objection needs to be done with the following considerations in mind:

- First, a broad understanding of the concept of investigation which ought to include investigations at the hands of the judicial police, acknowledging that the current plea and the amendments made in 2001 granted magistrates the right to monitor investigations made by judicial police;⁶⁸ this concept should not be limited to investigations made by the investigating magistrate as that would void the provision of its value;⁶⁹

- Second, the invalidity relating to general order which does not require an explicit prohibition if it relates to violations against fundamental rights such as the right to defense,⁷⁰ or personal freedom.⁷¹

However, Lebanese penal tribunals, at all levels, still refuse to rule on such objections, and simply annex them to the records, thus voiding the new provisions of their value and preventing the implementation of the reforms of 2001.

Despite the clear position expressed by Lebanese jurisprudence, particularly the ruling of the Cassation Court,⁷² in this regard we find ourselves forced to wonder on the validity of the legislative protections in question – especially that their enactment came after the amendment of the penal procedure code in 2001 – if criminal court judges retain discretionary authority which allows them to simply postpone ruling on objections. Weren't these provisions put in place to protect the principle of presumption of innocence, a cornerstone of the penal procedure code?

In fact, this question was raised by jurists in the country, therefore, we can say that the issue is not settled yet, even if courts adopt an almost unified position on the subject. Another opinion among jurists considers "formality pleas, i.e. Art. 73, in the absence of conditions preventing the processing can be considered an objection to right of defense." That is the approach adopted in French legislation on the subject, exercising cassation at the level of objections and allowing for the decision of inclusion to be challenged when they impede on the right to defense.⁷³ A similar approach should be adopted by the Lebanese Cassation Court as this would ensure the protection of the principle of assumption of innocence and the right to defense, therefore upholding the principle of fair trial.

However, in 2007, the Lebanese Cassation Court issued an exceptional ruling in which it considered the right to have objections on the basis of formalities an integral part of the right to defense, stating the following:

"(...) on the foundation:

Regarding the second point of Cassation: Under Art. 73, of the penal procedure code, the defendant is entitled to submit one, or more, objection(s) on the basis of formalities in the following cases:

- *Objection stating that the alleged act does not constitute an offense that is punishable by the law*
- *Objection stating the invalidity of one or more investigation procedure.*

*And since the defendant submitted a formal objection on the basis of formalities, it was the defendant's right and would have been the proper administration of justice to address these objections clearly at that stage, rather than including them in the basis of the court. It therefore became necessary to reverse the contested court decision without processing the other points of cassation."*⁷⁴

⁷⁰ Nabil Shedid Al-Fadil Raad, *ibid.*, p. 957.

⁷¹ Nabil Shedid Al-Fadil Raad, *ibid.*, p. 957.

⁷² "A cassation challenge is only permissible in the case where prosecution assesses a plea, or more than one, of the ones indicated in Art. 73, of the penal procedure code, meaning that pending cases cannot be challenged, based on Art. 311, of the law," Almerd Cassandre, ruling no. 9/2005, issued on the twelfth of January 2005, Criminal Cassation Court, Chamber III.

⁷³ Nabil Shedid Al-Fadil Raad, *ibid.*, p. 82.

⁷⁴ Ruling no. 144/2007, issued on the second of July 2007, Criminal Cassation Court, Chamber I.

B. Restrictions on right to defense against the administration

It has become common practice for the General Security to issue discretionary circulars that forbid human rights lawyers to represent foreigners, namely migrant workers or refugees, without any supporting legal basis, and in contradiction with the fundamental principles of justice and defense. In this regard, we would like to highlight an important decision issued recently by the State Consultative Council (April 2014) condemning such procedures and urging security forces to respect the autonomy of lawyers in accordance with the principles of justice and the right to defense.⁷⁵

⁷⁵ For more information, read Sarah Wansa's article titled "شورى الدولة في لبنان يدعو الأجهزة الأمنية إلى احترام استقلال المحامي: المحاكمة العادلة خط أحمر، حساسية الأمن العام ليست كذلك" (Lebanese State Consultative Council Calls Upon Security Forces to Respect the Independence of Lawyers: Fair Trials May be a Redline, General Security Sensitivities are Not). Available on the following page: <http://legal-agenda.com/article.php?id=759&lang=ar>

