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**INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF LEBANON**

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## **INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF LEBANON**

### **Introduction**

1. The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Lebanon.
2. In this submission, the ICJ wishes to draw the attention of the Working Group on the UPR to:
  - The independence of the judiciary and the use and jurisdiction of military courts;
  - The obstacles that continue to impede women's and girls'<sup>1</sup> access to justice for sexual and gender-based violence (SGBV); and
  - The inadequate framework and practices undermining migrants' and refugees' rights.
3. This submission is based on a number of recent ICJ publications, including on the [independence of the judiciary](#); [military courts](#); [gender-based violence](#); and a forthcoming publication on the human rights of refugees and migrants in Lebanon.

### **The independence of the judiciary and the use and jurisdiction of military courts**

4. The independence of judiciary is an indispensable component of the Rule of Law.<sup>2</sup> States must enshrine such independence in law and ensure that judicial matters are adjudicated independently and impartially.<sup>3</sup> The Lebanese Constitution guarantees the separation of powers and provides for judges to be "independent in the exercise of their functions."<sup>4</sup> Despite these guarantees, however, the executive's extensive influence over judicial matters has undermined judicial independence in the country.
5. Under Law No. 150/83,<sup>5</sup> the Minister of Justice (MoJ) is vested with wide powers over the career of judges. Under article 5(b),<sup>6</sup> judges are appointed by a Cabinet decree following the approval of the High Judicial Council (HJC). While the HJC plays an important role, the executive influences the appointment of eight out of 10 HJC members, and it is directly responsible for selecting and appointing five members of the HJC, and for selecting three *ex officio* members.<sup>7</sup> The appointment of a judge to a court is based on an agreement between the HJC and the MoJ. In cases where they do not agree, joint meetings are held to examine the points of contention. If no agreement is reached, the HJC may take a final, binding decision provided it is endorsed by a majority of at least seven of its members. Further, article 5(a) of Law No.150/83 provides that the HJC is in charge of preparing proposals for judicial transfers, assignments and secondments, and submitting them to the MoJ for approval.
6. The UN Human Rights Committee and the Special Rapporteur on the Independence of Judges and Lawyers have repeatedly recommended resort to bodies independent of the executive, composed mainly – if not solely – of judges and members of the legal profession to manage the career of judges.<sup>8</sup> The Lebanese authorities should therefore reform the HJC's legal framework and ensure its independence from the executive, including by amending its composition to ensure that the majority of its members be judges elected by their peers, and that it is pluralistic, gender and minority representative, and competent to manage the career of judges. If the membership of the HJC continues to contain *ex officio* members, these members must be appointed to their offices in an independent manner and through transparent procedures that are based on objective criteria, including skills, knowledge, experience and integrity. The ICJ considers that, if the procedure of electing and appointing the HJC members is not improved, the HJC's ability to function as an independent body will continue to be impaired.
7. The ICJ is concerned that the entire process for selecting and appointing judges is subject to extensive influence by the executive; does not provide for sufficient safeguards that protect

against undue interference; and is not based on objective and detailed criteria. Procedures governing the selection and appointment of judges must ensure the effective independence of the judiciary, both in appearance and in reality. This is particularly important because, in Lebanon, the appointment of senior judicial positions is subject, in practice, to a religion-based power-sharing agreement.<sup>9</sup> Accordingly, the First President at the Court of Cassation (CoC) is Maronite Christian; the Public Prosecutor at the CoC and the President of the Judicial Inspectorate are Sunni Muslim; and the Director of the Institute of Judicial Studies is Shia Muslim. The ICJ considers that it is important for the judiciary and the HJC to be representative of Lebanese society as a whole, including religious minorities. However, the selection and appointment of judges and members of the HJC should not be exclusively based on whether the concerned individuals belong to a specific religious group, but rather, on objective criteria provided for by the law and complied with in practice.

8. The ICJ is also concerned that the current framework fails to limit the jurisdiction of military courts in a manner that is consistent with international standards. The Code of Military Justice (CMJ)<sup>10</sup> bestows a wide jurisdiction on military courts to try civilians and military personnel for an array of offences that are not purely military in nature.<sup>11</sup> The CMJ<sup>12</sup> grants military courts jurisdiction over any perpetrator, accomplice, intervener or instigator in a crime falling under their competence. Consequently, Lebanese military courts have developed a decades-long practice of prosecuting civilians, including those critical of the military and the government, in trials that do not meet due process standards. Many civilians are currently facing charges before military courts, such as “resisting security forces,” in relation to their [involvement in ongoing protests](#) against the government.
9. This framework and practice run counter to international standards requiring that the jurisdiction of military courts be limited to military personnel for alleged military offences.<sup>13</sup> The Updated Set of principles for the protection and promotion of human rights through action to combat impunity explicitly stipulates that the jurisdiction of military tribunals “must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations...” The Decaux Principles further stipulate that the jurisdiction of military courts be set aside in favour of that of ordinary courts in cases involving serious human rights violations, such as extrajudicial executions, enforced disappearances and torture.<sup>14</sup>

### **Women’s and girls’ access to justice for SGBV**

10. SGBV against women and girls remains a pervasive human rights challenge in Lebanon. Despite concrete steps taken by the authorities to address it, such as the enactment of Law No. 293/2014 on the Protection of women and other family members from domestic violence (Law No. 293/14), multiple obstacles continue to hinder women’s and girls’ access to justice in cases of SGBV.
11. Legal obstacles comprise laws that discriminate against women, including the Criminal Code (CC), Nationality Law and Personal Status Laws (PSL), as well as laws that fail to criminalize certain violations of women’s rights, mainly due to inadequate or absent definitions of SGBV crimes, including rape, marital rape, sexual assault and sexual harassment. Article 503 of the CC defines rape as forced sexual intercourse against someone “other than the spouse” by violence or threat. By making force, violence or threat sine qua non elements of the offence, such a definition fails to proscribe rape as a non-consensual violation of one’s physical integrity and instances of marital rape.
12. Furthermore, the repeal of article 522 of the CC in 2017, previously enabling sexual assault offenders to evade prosecution by marrying their victims, is an incomplete step towards addressing SGBV. Under Article 505, it is an offence for anyone to have sexual intercourse with a minor under the age of 15. If the minor victim is between 15 and 18 years, marriage would exempt the perpetrator from prosecution. Similarly, under the article 518, if the perpetrator promised to marry a minor victim between 15 and 18 years and the minor “lost her virginity” as a

result of the sexual act, marriage would prevent the prosecution of the perpetrator. These provisions violate Lebanon's obligations under international law by perpetuating patriarchal, archaic norms about the so-called "honour" of the victims and their families being restored through marriage, shielding the perpetrators of sexual offences from liability, entrenching impunity, and subject SGBV victims to re-victimization.

13. Lebanon's legal system discriminates against women in additional ways. For example, there is no uniform PSL that applies to all Lebanese citizens. Rather, each Lebanese citizen is subject to the PSL of one of the 18 recognized religious communities. These laws regulate, among others, marriage, divorce, child custody and inheritance. While article 22 of Law No. 293/14 provides that all provisions contrary to the Law are annulled, it makes an exception for PSLs. This means PSLs discriminating against women on divorce, child custody and inheritance remain applicable, with many religious courts continuing to issue decisions that favour men, including by granting child custody to women only until a certain age, after which time the father obtains custody and guardianship rights. These discriminatory practices go unchecked since religious courts are not operating under the ordinary justice system.
14. Women's access to justice is also impeded by obstacles in the administration of justice, such as the lack of effective gender-sensitive investigations, lack of coherent and effective prosecutions and lack of adequate resources. For example, the Code of Criminal Procedure (CCP) and Law No. 293/14 do not contain detailed procedures for collecting evidence in SGBV cases, including the timely resort to medical and forensic evidence. This runs contrary to international standards, which call for States to ensure that adequate medical, legal and social services sensitive to the needs of victims be available to enhance the management of SGBV cases.<sup>15</sup>

#### **Rights of refugees and migrants**

15. With a population of around 6 million citizens, Lebanon currently hosts about 1.5 million Syrian refugees; 180,000 Palestinian refugees; 29,000 Palestinian refugees who fled to Lebanon from Syria; and 21,761 refugees and asylum-seekers from countries other than Syria and Palestine. As such, Lebanon has the highest refugee population per capita of any country in the world.<sup>16</sup>
16. Yet, Lebanon continues to lack an adequate legal framework and policies to meet its international obligations to protect the human rights of migrants, refugees, asylum seekers and stateless persons. In the absence of such a framework, it is the 1962 Law on the Entry, Stay in and Exit from Lebanon (Law 1962) that generally applies.<sup>17</sup> Under article 32 of Law 1962, the "illegal" entry of "a foreigner" to the Lebanese territory is an offence punishable by up to three years' imprisonment, a fine and deportation. The Law makes no provision for people who may be entitled to international protection.
17. Refugees, asylum seekers, migrants and stateless individuals entering Lebanon through unofficial channels may and have been subjected to criminalization, arrest and arbitrary expulsion without any process to determine whether they are entitled to international protection. In many cases, the General Security Office (GSO) detains foreign nationals without referring them to the Public Prosecution or the judiciary as required by Law 1962. Cases of indefinite and prolonged detention have been documented since 2007. Reports indicate that detainees in custody have been subjected to ill-treatment by security forces, with some cases resulting in death.<sup>18</sup>
18. The lack of legal status does not only undermine the rights of refugees, asylum seekers, migrants and stateless peoples' right to liberty and security of person, but also their rights to access housing, civil registration, employment, education, humanitarian aid and health-care, as well as access to effective remedies. Fearing arrest and detention, many are forced to work in the informal labour market, exposing themselves to risks of discrimination and exploitation at the hands of their employers, without avenues to seek remedies in cases of abuse.

19. In 2017, Lebanese politicians started to encourage the return of Syrian refugees to Syria, and began expressing hostile views against Syrian refugees publicly.<sup>19</sup> By November 2017, the GSO started announcing the number of “facilitated voluntary returns” of Syrian refugees to Syria.<sup>20</sup> This includes the return of 341,873 refugees between 30 November 2017 and 29 December 2019.<sup>21</sup> In April 2019, the GSO announced that any Syrian who “illegally” entered or re-entered Lebanon after 24 April 2019, would be deported and handed over to the Syrian authorities.<sup>22</sup> Subsequently, the GSO reported the deportation of 2,731 Syrians, handed over to the Syrian authorities between 21 May and 28 August 2019.<sup>23</sup> The ICJ is concerned about reports indicating that thousands of Syrian refugees returning to Syria were subsequently arrested and detained, with many subjected to torture and other ill-treatment, including cases resulting in death.<sup>24</sup> Under these circumstances, any deportation of Syrian refugees from Lebanon, whether it is the automatic deportation of those arriving at the Lebanese borders, or the deportation of Syrian refugees already present within Lebanon for “illegal” entry or stay pursuant to Law 1962, is a violation of the *non-refoulement* principle. The latter prohibits States from transferring – in any manner whatsoever – anyone to a territory, country or place where they face a real risk of persecution or other forms of serious harm. Lebanon is bound by this principle under customary international law and as a State party to the ICCPR, the CAT and other international human rights treaties.<sup>25</sup>

### **Recommendations**

20. The ICJ therefore calls on the WG and the Council to urge the Lebanese authorities to:

*Concerning the independence of the judiciary and the use and jurisdiction of military courts:*

- i. End executive control and undue influence over the judiciary, including by divesting the MoJ of any role in the selection, appointment, promotion, transfer, secondment or any other aspects of the management of the career of judges;
- ii. Ensure that the HJC is independent from the executive, including by amending its composition to ensure that the majority of members are judges elected by their peers, and that it is pluralistic, gender and minority representative, competent to decide on all issues relating to the career of judges, and empowered to uphold the independence of the judiciary;
- iii. Ensure that military courts have no jurisdiction to try civilians, and that such jurisdiction is restricted to military personnel over alleged breaches of military discipline or ordinary crimes not involving the commission of human rights violations, to the exclusion of human rights violations and crimes under international law.

*Concerning women’s access to justice for SGBV:*

- i. Repeal all discriminatory provisions against women, particularly those in the CC, the Nationality Code and the PSLs;
- ii. Adopt a unified civil PSL for all religious groups, where all customs discriminating against women and girls are overridden in accordance with article 2(f) of CEDAW; and ensure that issues related to divorce, inheritance and custody are adjudicated before ordinary courts consistent with international standards;
- iii. Amend Law No. 293/14 and the CC to ensure that it criminalizes all forms of SGBV, including by properly defining rape as a type of sexual assault characterized by a physical invasion of a sexual nature without consent or under coercive circumstances, and ensure that marital and all other acts of rape be criminalized; and, to this end, abolish provisions of Law No. 293/14 providing for a religion-based claim to marital rights;
- iv. Amend the CC, the CCP and Law No. 293/14 to include gender-sensitive investigations and evidence-gathering procedures in order to enable women to report violence against them, and take effective steps to address the social and practical factors that continue to impede women’s access to justice, such as gender-based stereotypes and prejudices that operate in

- society and in the justice system;
- v. Remove obstacles related to gender stereotypes, economic and social realities that continue to impede access to justice in SGBV cases, including by ensuring that where law enforcement officers fail to ensure an effective investigation into an incident of SGBV, their omissions be actionable as a breach of their duties and subject to disciplinary measures as appropriate;
  - vi. Provide routine capacity building training to justice sector actors on the application of international human rights law, including CEDAW and related jurisprudence.

*Concerning the rights of refugees and migrants:*

- i. Become a party to the 1951 UN Refugee Convention and its 1967 Protocol, and pass legislation to adequately protect the human rights of refugees, asylum seekers, stateless people and migrants, in compliance with Lebanon's international obligations;
- ii. Amend Law 1962 to ensure full compliance with these obligations, and that people entitled to international protection, chiefly refugees, asylum seekers, and stateless individuals, are not penalized, automatically arrested or deported for their "illegal" entry and stay in the country;
- iii. Ensure that no individual is deprived of their liberty solely on the grounds of their immigration status, and, to this end, amend articles 32 and 36 of Law 1962; until then, provide automatic, periodic judicial review of the lawfulness, necessity and proportionality of any immigration-related detention;
- iv. Strictly comply with Lebanon's *non-refoulement* obligations, including by ensuring that no individual is transferred to a country where they face a real risk of persecution or other forms of serious harm; that nobody is forcibly returned without an individualized, fair and effective procedure guaranteeing due process; and by establishing a moratorium on all removals to Syria.

## ENDNOTES

<sup>1</sup> Throughout this document, the term woman or women should be understood to include girl/s.

<sup>2</sup> This principle is affirmed in the United Nations Basic Principles on the Independence of the Judiciary (UN Basic Principles), which provide that it is the responsibility of all institutions, governmental and otherwise, to respect the independence of the judiciary. Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Principle 1.

<sup>3</sup> United Nations Basic Principles on the Independence of the Judiciary (UN Basic Principles), adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, Principles 1 & 2.

<sup>4</sup> Lebanese Constitution, art. 20.

<sup>5</sup> Legislative Decree No. 150 on the organization of the judiciary, 16 September 1983. Article 4 provides that the High Judicial Council is charged with ensuring "the proper functioning, dignity and independence of the judiciary, the proper functioning of courts, and with taking necessary decisions in this regard."

<sup>6</sup> Legislative Decree No. 150 on the organization of the judiciary, 16 September 1983.

<sup>7</sup> Including the President of the Court of Cassation, the Public Prosecutor and President of the Judicial Inspectorate. See, Law No. 150/83, art. 2.

<sup>8</sup> Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/11/41 (2009), para. 28; Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc A/HRC/26/32 (2014), para. 126.

<sup>9</sup> Despite article 95 of the Lebanese Constitution, which provides for the abolition of the confessional system, judicial appointment in Lebanon has been subjected, in practice, to the religion-based power-sharing arrangement governed by the Taif Agreement of 1990, which impacts on the composition of the Parliament, the Cabinet and the Judiciary. In the case of HJC members, this has resulted in a 50/50 ratio between Christians and Muslims determining their appointment.

<sup>10</sup> Law No. 24, 13 April 1968.

<sup>11</sup> Code of Military Justice, arts. 24 & 27.

<sup>12</sup> Code of Military Justice, arts. 27.

<sup>13</sup> Draft Principles Governing the Administration of Justice Through Military Tribunals, U.N. Doc. E/CN.4/2006/58 (2006), Principle 5; The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted by the African Commission on Human and Peoples' Rights in 2003, Principle A(L)(c).

<sup>14</sup> Draft Principles Governing the Administration of Justice Through Military Tribunals, U.N. Doc. E/CN.4/2006/58 (2006), Principle 9. These principles are the result of years of research and consultation among experts, jurists and military personnel from all over the world, as well as representatives of diplomatic missions and non-governmental organizations, and are based on the extensive jurisprudence developed by various United Nations bodies. Moreover, in her report on military tribunals, the UN Special Rapporteur on the independence of judges and lawyers recommended that the Decaux Principles be considered and adopted by the Human Rights Council and endorsed by the General Assembly. See Report of the Special Rapporteur on the independence of judges and lawyers – Military tribunals, UN Doc. A/68/285 (2013), para. 92.

<sup>15</sup> Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, adopted by the General Assembly under its resolution 65/228 (2010), paragraph 19(g). See also, United Nations Division for the Advancement of Women, Department for Economic and Social Affairs, Handbook for Legislation on Violence against Women, UN Doc. ST/ESA/329 (2010), p. 41.

<sup>16</sup> See, European Commission, European Civil Protection and Humanitarian Aid Operations, Lebanon *factsheet*, last updated on 4 February 2020; The government of Lebanon and the United Nations, *Lebanon Crisis Response Plan 2017-2020 (2019 Update)*, January 2019.

<sup>17</sup> Law on the Entry, Stay in and Exit from Lebanon, 10 July 1962.

<sup>18</sup> See, Human Rights Watch, *Lebanon: Deaths, Alleged Torture of Syrians in Army Custody. Investigate, Publish Results, and Punish Anyone Found Responsible*, 20 July 2017.

<sup>19</sup> See, International Commission of Jurists, "A Refugee is not a criminal," the treatment of refugees and migrants in Lebanon, forthcoming, section (5.3.2); Human Rights Watch, "*Our Homes are not for Strangers*", April 2018.

<sup>20</sup> The General Directorate of General Security, directorate activities, available in Arabic at: <http://www.general-security.gov.lb/ar/activities/directorate>.

<sup>21</sup> The General Directorate of General Security, Magazine, Issue No. 76 of 9 January 2020, available in Arabic at: <http://www.general-security.gov.lb/ar/magazines/details/334>.

<sup>22</sup> General Security also deported people who entered Lebanon before 24 April 2019. See Human Rights Watch, *Syrians Deported by Lebanon Arrested at Home*, 2 September 2019.

<sup>23</sup> See, Human Rights Watch, *Syrians Deported by Lebanon Arrested at Home*, 2 September 2019.

<sup>24</sup> The Washington Post, *Assad urged Syrian refugees to come home. Many are being welcomed with arrest and interrogation*, 2 June 2019.

<sup>25</sup> The Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child in the case of women and children, respectively.