

Discrimination against Refugees and Asylum Seekers

- [english] - Region - North Africa & Middle East - Lebanon -

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This report is submitted to the Committee on the Elimination of Racial Discrimination (the "Committee") on the occasion of the examination of Lebanon's periodic report in March 2004.

I. Introduction

The report does not intend to address all the human rights issues related to racial discrimination in Lebanon. This report covers mainly refugees and asylum seekers who because of their de jure non-recognition by the Lebanese state suffer discrimination in almost every aspect of their lives. From the non-recognition grows their exclusion from a long list of various legal, civil, political, social and economic rights. This exclusion raises important human rights concerns in relation to Lebanon's obligations under international human rights law in general and under the Convention on the Elimination of Racial Discrimination (CERD) in specific. This report addresses only the most important specific aspects of discrimination against them, especially their non-recognition by the Lebanese State.

Asylum-seekers in Lebanon apply to the U.N. High Commissioner for Refugees (UNHCR) for their protection under the agency's mandate. Their security depends on Lebanon abiding by the customary principle of non-refoulement. UNHCR handles refugee status determination and makes resettlement referrals mainly to Australia, Canada, and the USA. Because Lebanon hosts a large population of Palestinian refugees and has no refugee law, it is above all a transit country for non-Palestinian refugees.

There are no official statistics of non-Palestinian refugees and asylum seekers in Lebanon. Their number is estimated to be between 30000 and 40000 (including refugees registered with UNHCR and de-facto refugees who do not have formal refugee recognition, but who nevertheless may have reasons to be unwilling to return home). The majority of the non-Palestinian refugees and asylum-seekers in Lebanon are Iraqis and the next largest group is Sudanese. The remainder includes Afghans, Somalis, Sierra Leoneans, Liberians and Africans

II. The Right to Protection

The core discrimination from which the denial of basic and fundamental rights (such as right to education, work, health, etc.) derives today is Lebanon's simple non-recognition of refugee status. Through non-recognition, foreigners in danger of persecution in their country of origin become by default a discriminated and marginalized class within Lebanon. Unlike other foreigners, refugees are inherently unable to turn to the protection of their own governments, either through returning home or through diplomatic protection abroad but through Lebanon's non-recognition of their exceptional status, they are unable to avail themselves of international protection.

Lebanon is not a party to the 1951 Convention related to the status of Refugees, nor its 1967 Protocol, and has not enacted any refugee legislation of its own. The right to seek asylum is mentioned in the law of 10 July 1962 related to "the regularization of the entry and residence of foreigners in Lebanon." Article 26 states "Every foreigner who is being prosecuted by a non-Lebanese authority for a political crime or his life or freedom is threatened on grounds of political reasons, could make a request to obtain the right to political asylum" (unofficial translation). Article 27 specifies that "the decision of granting asylum is made by a committee composed of the Minister of Interior, the Director-General of the Ministry of Foreign Affairs, the General Security, and the Ministry of Justice. No request for review including review to annul the decision for exceeding the limit of the authority can be made. (unofficial translation)."

The Lebanese Constitution of 1990 has embraced in its preamble all UN principles and conventions, including the Universal Declaration of Human Rights. Equally significant, Lebanon is a member of the UNHCR Executive

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Committee. Thus, Lebanon is tacitly bound by UN principles on refugee protection, and specifically UNHCR's principles

Furthermore, and although in general Lebanon may distinguish citizens from non-citizens in its general regulation of migration, it is obliged to provide protection to refugees and asylum-seekers. Lebanon may in fact make distinctions in some areas between citizens and non-citizens as provided for in Article 1 para.3 of the CERD. But, this limited exception, must be read in light of Lebanon's other obligations towards refugees and asylum-seekers under international law. In fact Article 1 para.2 of the CERD should not be interpreted to detract in any way non-citizens from the rights and freedom recognized and enunciated in other instruments binding Lebanon, such as the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹.

Despite all this, Lebanon continues to deny its national and international legal obligations in the field of refugees. This makes the situation of Non-Palestinian refugees and asylum-seekers in Lebanon extremely difficult. Their situation has grown more tenuous since the fall of 1998. Already on the rise in 1999, the arrest, detention, and deportation of undocumented foreigners, including asylum seekers and refugees, increased again during 2000. In August, the government decreed that all undocumented foreigners in the country had to regularize their status. This was repeated in the following years. Instead of granting legal status, however, the Lebanese authorities arrested and detained those who came forward, as well as others caught in street checks. The authorities reportedly did not differentiate between irregular migrants and asylum seekers who might have protection concerns. Their UNHCR identity papers or registration forms were and are still not recognized by the police. With a few exceptions, all are sentenced to prison terms and deportation on grounds of "illegal entry." Most of them are kept in detention long after the expiry of their prison terms. This constitutes a direct violation of article 5 (a) of CERD, as the Committee emphasized in General Recommendation XX (1996) that "many of the rights such as the right to equal treatment before tribunals are to be enjoyed by all persons living in a given State (the underline is ours). It is worth mentioning that by sentencing the refugees to prison terms on charges of "illegal entry" and deportation, the Lebanese judges too are ignoring the Lebanese Constitution and international human rights Conventions that the State has ratified.

Although Lebanon is not a party to the Refugee Convention, it is a party to other important human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture, both of which protect against forms of refoulement. The ICCPR and the International Covenant on Economic, Social and Cultural Rights, guarantee important rights to refugees as persons regardless of their citizenship. As a matter of customary international law, Lebanon is bound by the principle of non-refoulement. The Committee on the Elimination of Racial Discrimination, in its General Recommendation XXII at its forty-ninth session (1996), reminded all state parties of their obligations "to observe the principle of non-refoulement and non-expulsion of refugees." Indeed, in many cases, the persecution feared at home by refugees is highly related to racial discrimination, by threatening or seeking their forced return to such conditions (refoulement), Lebanon becomes a party to the discrimination.

Hundreds of asylum-seekers and refugees, both recognized and de-facto refugees have been deported to their country of origin in the last years and prior to the signing of a Memorandum of Understanding with UNHCR in September 2003. The Memorandum, long sought both by UNHCR and refugee advocates, included some important advances. In particular, Lebanese authorities for the first time officially acknowledged that refugees and asylum-seekers have a temporary right to remain in Lebanon. But the text on the whole was disappointing. It guarantees refugees only the right to stay for 12 months, and does not protect them from deportation or detention after this time. By comparison, international law does not place any fixed time limit on the principle of non-refoulement. Nor can a number of small decisions by the Lebanese judiciary over recent years that blocked deportations on the basis of the Convention against Torture be sufficient in view of Lebanon's international obligations. The Memorandum of Agreement involves General Security in UNHCR refugee status determination. It imposes on UNHCR unrealistic expectations of fast resettlement for all refugees, and pressures UNHCR to take unspecified measures to prevent refugees from remaining in Lebanon more than one year. It forces asylum-seekers to provide their full personal information to General Security, which could put them at risk without additional

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safeguards against arrest and detention. It also involves UNHCR in scrutinizing the work of NGOs and independent refugee advocates.

Today, the recognition and security of refugees continue to be of concern. While Lebanon now appears to be beginning to accept the principle of non-refoulement, there are reasons for concern that prolonged detention is used as a tool to coerce refugees to agree to leave Lebanon by means other than resettlement. Prolonged detention could also be used as a means of pressuring UNHCR to resolve cases quickly, whether by resettlement or by refusing refugee recognition. In other words, there is reason for concern that we may be seeing a shift in Lebanon from de-jure refoulement to de facto refoulement, coupled with systematic arbitrary detention. This would constitute a violation of Article 5 (a) and (b) of the CERD, in disregard of the latest recommendations addressed by the Committee to Lebanon. The Committee in fact asked Lebanon to: "take all measure to fully ensure that all persons, including members belonging to ethnic groups, refugees and foreign workers, be given equal treatment before the law"2(the underline is ours).

In general, Lebanon has opted for a very limited agreement with UNHCR, which though a step forward, does not bring Lebanon into compliance with international law. And, because Lebanon only signed a bilateral agreement with UNHCR, it still has not recognized any form of refugee status in its legislation. Hence, refugees' capacity to actually assert and enjoy their rights remains highly impaired.

III. RECOMMENDATIONS

Concrete measures should be taken by the Lebanese authorities and the international community to protect the refugees and asylum seekers in Lebanon against all sort of discrimination.

A) Lebanon should in the immediate term take the following steps:

The enactment of a refugee law incorporating international refugee law and human right principles.

To have an effective immigration and migration policy.

Judges, lawyers, the law enforcement agents, the police, the army should receive adequate training in human rights principles in accordance with Article 2 of the CERD;

Initiatives should have been taken to promote tolerance and comprehension and to combat racial discrimination in accordance with Article 2 of the CERD;

Take all appropriate measures to comply with its international obligations while handling the refugees, in accordance with article 1 of the CERD;

Ensure that refugees are not victims of arbitrary detention and are given equal treatment before the law as stated in article 5 of the CERD.

B) The international community should:

- ▶ Initiate programs and projects for the protection of refugees and asylum seekers. This area should not remain the exclusivity of UNHCR.
- ▶ Give full technical and financial support to Lebanon in order to cope with refugee as part of sharing responsibility.