

# **The Lebanese Commission for Human Rights and Its National Preventive Mechanism: Report for its Initial Activities on Human Rights in Lebanon and Best Practices for NHRIs**

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## Abbreviations

- ACJ** Advisory Council of Jurists  
**ANNI** Asian NGOs Network on National Human Rights Institutions  
**APF** Asia Pacific Forum  
**APT** Association for the Prevention of Torture  
**CAT** Convention Against Torture  
**CEDAW** Convention on the Elimination of all Forms of Discrimination Against Women  
**CESCR** Committee on Economic, Social and Cultural Rights  
**CESR** Center for Economic and Social Rights  
**CLDH** Lebanese Center for Human Rights  
**CSO** Civil Society Organization  
**ENNHRI** European Network of National Human Rights Institutions  
**FAO** Food and Agriculture Organization of the United Nations  
**GANHRI** Global Alliance of National Human Rights Institutes  
**HRC** Human Rights Committee  
**HRW** Human Rights Watch  
**ICCPR** International Convention on Civil and Political Rights  
**ICERD** International Convention on the Elimination of All Forms of Racial Discrimination **ICESCR** International Covenant on Economic, Social and Cultural Rights **ICPPED** International Convention for the Protection of All Persons from Enforced Disappearance **ILO** International Labour Organization  
**ISF** Internal Security Forces  
**MENA** Middle East and North Africa  
**MoSA** Ministry of Social Affairs  
**NAC** The National Audio-Visual Council  
**NANHRI** Network of African National Human Rights Institutions  
**NRCS** National Institutions, Regional Mechanisms and Civil Society Section **NGO** Non-Governmental Organization

**NHRI** National Human Rights Institution  
**NPM** National Preventive Mechanism  
**OHCHR** Office of the United Nations High Commissioner for Human Rights  
**OPCAT** Optional Protocol to the Convention Against Torture  
**SCA** Sub-Committee on Accreditation  
**SPT** Sub-Committee on the Prevention of Torture  
**UNDP** United Nations Development Programme  
**UNEP** United Nations Environment Programme  
**UNHCR** United Nations High Commissioner for Refugees  
**UNICEF** United Nations Children's Fund  
**UPR** Universal Periodic Review  
**VDPA** Vienna Declaration and Programme of Action  
**WHO** World Health Organization

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## **About CLDH**

The Lebanese Center for Human Rights (CLDH) is a local non-profit, non-partisan Lebanese human rights organization based in Beirut. CLDH was created in 2006 by the Franco-Lebanese Movement SOLIDA (Support for Lebanese Detained Arbitrarily), which has been active since 1996 in the struggle against arbitrary detention, enforced disappearance and the impunity of those perpetrating gross human rights violations.

CLDH monitors the human rights situation in Lebanon, fights enforced disappearance, impunity, arbitrary detention and racism and rehabilitates the victims of torture. CLDH regularly organizes press conferences, workshops and advocacy meetings on human rights issues in Lebanon and collects, records and documents human rights abuses in reports and press releases. The CLDH team on the ground supports initiatives aimed at determining the fate of all missing persons in Lebanon.

CLDH regularly follows up on numerous cases of arbitrary detention and torture in Lebanon in coordination with Lebanese and international organizations, and with the United Nations Working Group on Arbitrary Detention (WGAD) and the UN Special Rapporteur on Torture.

CLDH opened in 2007 a Rehabilitation Center for the victims of torture in Beirut, Centre Nassim, member of IRCT (International Rehabilitation Council for Torture victims), which provides multi-disciplinary professional support and case management for victims of torture and their families. Since 2012, CLDH has administered a legal aid program for vulnerable persons. Several lawyers assist vulnerable migrants, refugees, asylum seekers and Lebanese through legal consultations and before courts, institutions and security services. CLDH compiles a daily press review on human rights violations and on-going

judiciary cases in Lebanon and updates several human rights blogs.

CLDH is a founding member of the Euro-Mediterranean Federation against Enforced Disappearance (FEMED), a member of the Euro-Mediterranean Network of Human Rights (REMDH), a member of the SOS Torture Network of the World Organization against Torture (OMCT), and of the International Federation of Human Rights Leagues (FIDH).

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## **Executive Summary**

Lebanon recently took a historic step by creating a National Commission of Human Rights with a subcomponent National Preventive Mechanism (NPM). In doing so, it joined the ranks of over a hundred countries around the world that have legislated and implemented national human rights institutions (collectively referred to herein as “NHRIs”). National human rights institutions take a number of forms – they may be ombudsmen, commissions, consultative councils, or research institutes. They all share in common, however, that they have been constituted in accordance with the Paris Principles, a set of standards established in the early 1990s. NHRIs’ existence and methods of operation are derived from the Paris Principles, and from the shared understanding of the international human rights community reflected therein and in subsequent conferences and conventions.

NHRIs are powerful instruments for governments wishing to institute change. While independent from the government, they are a part of its mechanism. This gives them the authority to investigate, access and collect data, fund research and reports, and make recommendations on society, laws, and the state of human rights in the country. Over the past few decades, NHRIs have increasingly played a central role in bringing governments into compliance with human rights norms, providing assistance and information about human rights to the public, and calling attention to abuses and violations of human rights in their home country, and around the world.

Lebanon’s National Commission for Human Rights provides the government and the people with an invaluable opportunity to recognize the status of human rights in the

nation and to affirm the importance of human rights in Lebanon's governing strategy. Where the Commission identifies gaps and violations, it can also assist with designing a plan to address and remedy them, and can recommend practical, targeted actions that will improve the human rights situation in Lebanon.

The Commission's structure will contribute significantly to its ability to achieve these goals. The Commission is structured along the commission model of NHRIs, meaning that it has a diverse set of Commissioners selected by appointment and supported by staff. The founding statute specifies that the Commission will have 10 members, 5 of whom will sit on the NPM. These Commissioners will be nominated from a broad cross section of society, including the judiciary, academics, medical doctors, lawyers, press and CSOs. They will have immunity from prosecution for their activities in office, and may not take up any other office or position while serving on the Commission. They serve a six-year, non-renewable term. The initial Commission will design rules of procedure, rules of ethics and a financial system that will outline its methods of operation and the standards to which Commissioners and staff will adhere.

To support this effort, CLDH has compiled a report in order to assist the Commission in swiftly taking up its duties. The report aims to prepare the Commission for its initial activities by discussing the history and significance of NHRIs, their methods of operation and support mechanisms available to them, and the specific features of Lebanon's National Human Rights Commission. The report then discusses several key human rights issues facing Lebanon, pairing them with a discussion of the role of NHRIs in addressing them and the best practices used by NHRIs that have already addressed them. The human rights topics discussed herein include

- Torture;
- Access to justice;
- Arbitrary detention and due process;
- Enforced disappearances;
- Refugees and asylum-seekers;
- Migrant domestic workers;
- Women and girls;
- Sexual orientation and gender identity;
  - Health, hygiene, sanitation and social security;
  - Freedom of expression and association and assembly; and
- The use of the death penalty.

Torture and arbitrary detention were discussed in greater detail for two reasons: 1) the Committee for the Prevention of Torture created within the Commission was designed specifically to "protect the rights of persons detained and deprived of their liberty" and to be a reference "in all matters relating to torture and its prevention;"<sup>1</sup> and 2) CLDH has special expertise in arbitrary detention, having been active on these issues since 1996, and currently operating a torture rehabilitation center and a legal aid program for vulnerable persons. Consequently, the legislative, enforcement, and procedural gaps preventing the State from eradicating torture are discussed in detail, as is the specific role of the Committee in preventing and addressing violations of the laws prohibiting torture.

This report includes legal research into Lebanese law, human rights instruments, treaty bodies, and data collected from NGOs and international institutions, as well as data collected by CLDH on a yearly basis. The report does not focus on all human rights situations in Lebanon, but only those deemed most relevant to the mandate of the Lebanese Commission for Human Rights. The report draws best practices and examples from international instruments, regional networks of NHRIs, individual NHRIs and the reports of knowledgeable NGOs.

<sup>1</sup> Establishment of the National Human Rights Commission, Which Includes the Committee for the Prevention of Torture, Law No. 62 of 2016.

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## **History and Significance of National Human Rights Institutions**

This section provides background on the history and significance of NHRIs, including international standards for their creation and operation, methods of operation, support networks for NHRIs, and the path to accreditation. NHRIs have a long history of implementation within the international human rights framework and UN system. As time has passed, they have strengthened the internal mechanisms available to them, as well as the external support in the form of regional networks and international human rights instruments. This network of support systems ensures that an accredited NHRI has a number of resources available to it at every stage of its operation.

### ***What is a national human rights institute?***

National human rights institutions (NHRIs) are State-created, independent entities that exercise the powers of the State to protect and promote human rights within the nation. They are established by national constitutions or acts of legislatures with a broad mandate for the promotion and protection of human rights. Although not directly under the executive, legislative or judicial arms, NHRIs are part of the government apparatus and are primarily or exclusively funded by the government.<sup>2</sup> Yet, they maintain independence from both the government and from civil society, while also providing a “bridge” between the two and facilitating communication and an accurate understanding of the domestic human rights situation.<sup>3</sup>

NHRIs are largely a development of the last 50 years. As early as 1946, the Economic and Social Council invited nations to consider establishing local human rights committees.<sup>4</sup> It was not until the late 1970s and 80s, however, that nations started establishing NHRIs as they exist today. In 1991, when the first International Workshop on National Institutions for the Promotion and Protection of Human Rights was held in Paris, there were still fewer than 20 NHRIs.<sup>5</sup> That workshop produced a draft of the Paris Principles, a set of international standards for the creation and administration of NHRIs, which were adopted by the United Nations General Assembly in 1993.<sup>6</sup>

<sup>2</sup> ASIA PACIFIC FORUM, A MANUAL ON NATIONAL HUMAN RIGHTS INSTITUTIONS (May 2015).

<sup>3</sup> OHCHR, NATIONAL HUMAN RIGHTS INSTITUTIONS: HISTORY, PRINCIPLES, ROLES AND RESPONSIBILITIES 13 (2010) [hereinafter “OHCHR REPORT ON NHRIS HISTORY AND RESPONSIBILITIES”]; EUROPEAN NETWORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS (ENNHRI), *Role and Functions*, <http://ennhri.org/Role-and-functions> (February 24, 2016).

<sup>4</sup> OHCHR REPORT ON NHRIS HISTORY AND RESPONSIBILITY, *supra* note 3, at 7. <sup>5</sup> ASIA PACIFIC FORUM, A MANUAL ON NATIONAL HUMAN RIGHTS INSTITUTIONS (May 2015).

<sup>6</sup> Principles Relating to the Status of National Institutions (The Paris Principles), G.A. Res. 48/134 (Dec. 20 1993).

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In 1993, NHRIs also received strong endorsement from the Second World Conference on Human Rights at Vienna when attending parties embraced the Paris Principles as the benchmark for the credibility and efficacy of NHRIs.<sup>7</sup> NHRIs played a crucial role at the conference, speaking for the first time on their own behalves, instead of as part of their government delegations. They contributed substantially to the final Conference statement, the Vienna Declaration and Programme of Action (VDPA). The Conference promoted NHRIs as a means of furthering human rights within the domestic sphere, stating

The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.

The World Conference on Human Rights encourages the establishment and strengthening of national institutions . . . recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.<sup>8</sup>



After the Vienna Conference, the number of NHRIs proliferated, and today, there are 78 accredited NHRIs worldwide that are fully compliant with the Paris Principles, and an additional 33 NHRIs that are partially compliant.<sup>9</sup>

*An Important Note: NHRIs Are Not NGOs*

NHRIs are not NGOs, nor should they have the same goals or methods as an NGO. NHRIs are created by law, and have legal standing and legal responsibilities as part of the national government. Thus, NHRIs have capabilities that NGOs do not, as well as limitations that NGOs do not. NHRIs have the power to investigate, hear complaints, request documents, and issue findings in an official capacity. As part of the State apparatus, NHRIs often also have greater budgets or resources than NGOs.<sup>10</sup> Their findings may also be given more credence than NGOs, since they are a part of the government and have a duty to remain impartial. This is a limitation on them as well; unlike NGOs, NHRIs must remain independent of both government and public sector

<sup>7</sup> Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/23 (June 25, 1993).

<sup>8</sup>*Id.*

<sup>9</sup> GHANRI, *Chart of the Status of National Institutions Accredited by the Global Alliance of National Human Rights Institutions: Accreditation Status as of 26 May 2017* (May 26, 2017), available at [http://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf).

<sup>10</sup> ASIA PACIFIC FORUM, A MANUAL ON NATIONAL HUMAN RIGHTS INSTITUTIONS 12 (May 2015) [hereinafter APF MANUAL ON NHRIS].

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influence, issuing recommendations and opinions only after thorough investigation and impartial fact-finding. NHRIs are also limited by their statutory mandate; their powers extend only as far as the law enabling them allows.<sup>11</sup>

***What standards exist for NHRIs?***

The Paris Principle set forth the international minimum standards for NHRIs.<sup>12</sup> They contain guidance on the composition, responsibilities, and available methods of operation for NHRIs. This document will highlight the main criteria set forth by the Paris Principles in each of these areas. In broad terms, the Paris Principles set out six main criteria that NHRIs must meet:

- A broad mandate based on international human rights standards and legal competence to promote and protect human rights;
- Autonomy from government;
- Independence guaranteed by statute or constitution;
- Pluralism;
- Adequate resources; and

- Adequate powers of investigation.<sup>13</sup>

All NHRIs have a core responsibility to both **protect** and to **promote** human rights. To adequately protect human rights, the NHRI must have adequate power to investigate and report on human rights and rights violations.<sup>14</sup> Such power depends on its independence from the government, including having its own staff and premises. In order to adequately protect human rights, NHRIs must also be free from financial control that could affect independence. Their members' appointment must be stable and protected by official mandate.

They must be composed in a manner that ensures the pluralist representation of all segments of society, in particular

- Non-governmental organizations;
- Trade unions;
- Social and professional associations;
- Trends in philosophical or religious thought;
- Universities and qualified experts;
- Parliament; and
- Government departments (in an advisory capacity).

<sup>11</sup> OHCHR REPORT ON NHRIS HISTORY AND RESPONSIBILITY, *supra* note 3, at 13. <sup>12</sup> Principles Relating to the Status of National Institutions (The Paris Principles), G.A. Res. 48/134 (Dec. 20 1993).

<sup>13</sup> GANHRI, *GANHRI Sub-Committee on Accreditation*, <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx> (last visited Mar. 12, 2018).

<sup>14</sup> OHCHR REPORT ON NHRIS HISTORY AND RESPONSIBILITY, *supra* note 3, at 76.

The Paris Principles also set forth the core responsibilities of NHRIs. These responsibilities include advising the government, contributing to the State's reports to UN and regional bodies, educating the public, and promoting the widespread national adoption of human rights norms.<sup>15</sup>

In its advisory capacity, an NHRI should submit to the government recommendations and opinions on proposed and existing legislative or administrative provisions related to human rights. Where necessary for compliance with fundamental human rights norms, the NHRI should propose new laws or amendments to the law.<sup>16</sup> An NHRI should also, in its discretion, submit and publicize reports regarding domestic situations involving the violation of human rights. The NHRI may alert the government to the location of human rights violations, making proposals to end the violations and, where necessary, "expressing an opinion on the positions and reactions of the Government."<sup>17</sup> Finally, NHRIs have a responsibility to submit reports on both the state of human rights in the

nation in general, and on specific human rights issues of concern in the nation.

NHRIs also have an important role as an intermediary between the State and the UN, as well as treaty bodies, regional authorities, and other entities with a role in the international human rights framework.<sup>18</sup> In this role, NHRIs can encourage the ratification of human rights treaties and promote national laws that uphold State obligations under international treaties to which it is a party. NHRIs also regularly contribute to State reports to UN bodies, regional bodies, and treaty bodies, and express opinions on the State reports where necessary.<sup>19</sup> NHRIs should establish working lines of communication with such bodies, and cooperate with them, and with the NHRIs of other countries that may seek to collaborate in the protection and promotion of human rights.

As part of their mandate to promote human rights, NHRIs also have the responsibility of educating the populace and disseminating public awareness of human rights norms. NHRIs should foster a culture of human rights and shared societal values reflective of human rights norms.<sup>20</sup> Accordingly, under the Paris Principles, NHRIs have a responsibility to assist with the formulation of teaching, research and awareness programs, and to publicize human rights and efforts to combat discrimination.

It is important that NHRIs abide by the Paris Principles and adhere to the standards created by them in order for them to seek accreditation from the Global Alliance of National Human Rights Institutions (GANHRI). This report will discuss accreditation in more detail in a subsequent section.

<sup>15</sup> Paris Principles ¶ 3.

<sup>16</sup> APF MANUAL ON NHRIS, *supra* note 5, at 12–13.

<sup>17</sup> Paris Principles ¶ 3(a)(iv).

<sup>18</sup> *Id.* ¶¶ 3(b)–(e).

<sup>19</sup> APF MANUAL ON NHRIS, *supra* note 5, at 136, 259.

<sup>20</sup> OHCHR REPORT ON NHRIS HISTORY AND RESPONSIBILITY, *supra* note 3, at 57.

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### ***What methods of operations exist for NHRIs?***

The Paris Principles also identify some primary methods of operation for NHRIs, including to

- (a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;
- (b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

- (c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- (d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
- (e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- (f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- (g) In view of the fundamental role played by the nongovernmental organizations in expanding the work of the national institutions, develop relations with the nongovernmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.<sup>21</sup>

Subsequent resolutions from the U.N. General Assembly and Human Rights Council have stressed the importance of these methods and their ability to effect change, and have emphasized the need for cooperation and support from States, the U.N., and international bodies. A 2016 Report of the Secretary-General to the HRC<sup>22</sup> also outlined some effective working methods for NHRIs, including regular cooperation with legislative and policy-making State organs, formalized relationships with civil society organizations, disseminating information on the protection of human rights defenders, and advocacy for independent participation in relevant U.N. mechanisms.

<sup>21</sup> Paris Principles, “Methods of Operation,” ¶¶ (a)–(g).

<sup>22</sup> HRC, Report of the Secretary-General, *National Institutions for the Promotion and Protection of Human Rights*, U.N. Doc. A/HRC/33/33 (July 4, 2016).

### ***What support exists for NHRIs?***

Several international and regional entities and organizations support the creation, strengthening, and ongoing work of NHRIs.

#### *International Entities Supporting NHRIs*

At the international level, OHCHR’s National Institutions, Regional Mechanisms and Civil Society Section (NRCS) supports the establishment and strengthening of NHRIs.

This office coordinates offices across OHCHR offices, other UN entities, particularly the UNDP, and regional networks of NHRIs to build the capacity of NHRIs.<sup>23</sup> OHCHR provides technical & legal assistance, legislative advice and financial support, and conducts comparative analyses, evaluations and needs assessments in connection with strengthening and advising efforts.<sup>24</sup>

OHCHR also supports the efforts of the Global Alliance of National Human Rights Institutions (GANHRI). GANHRI was originally constituted as the International Coordinating Committee of NHRIs (ICC) at an international conference held in Tunis by NHRIs in 1993. The ICC changed its name to GANHRI in 2016. A Swiss statute establishes GANHRI as a legal entity under Swiss law that “promotes and strengthens NHRIs to be in accordance with the Paris Principles and provides leadership in the promotion and protection of human rights.”<sup>25</sup> GANHRI has annual meetings of its general body, the GANHRI Bureau, and of the Sub-Committee on Accreditation. GANHRI also holds international conferences in cooperation with NRCS.<sup>26</sup>

GANHRI supports NHRIs in a number of ways, including

- Accrediting NHRIs in accordance with the Paris Principles;
- Facilitating NHRI communication with the HRC and treaty bodies;
- Facilitating information sharing among NHRIs;
- Conducting an annual meeting and biennial conference of NHRIs;
- Collaborating with the OHCHR for capacity building of NHRIs;
- Assisting NHRIs under threat; and
- Assisting government to establish NHRIs upon request.<sup>27</sup>

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> OHCHR REPORT ON NHRIS HISTORY AND RESPONSIBILITY, *supra* note 3, Annex III art. 5.

<sup>26</sup> OHCHR, *OHCHR and NHRIs*, <http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx> (last visited Mar. 12, 2018).

<sup>27</sup> GANHRI, *A Brief History of the GANHRI*, <https://nhri.ohchr.org/EN/AboutUs/Pages/History.aspx> (last visited Mar. 12, 2018).

Several regional bodies also support NHRIs. These include the Network of African National Human Rights Institutions (NANHRI), Network of National Institutions for the Promotion and Protection of Human Rights in the Americas, European Network of National Human Rights Institutions (ENNHRI), and the Asia Pacific Forum of National

Human Rights Institutions (APF).

Since Lebanon is in the Asia Pacific region, once it is accredited by GANHRI, it may join the APF. The APF includes 24 NHRIs from nations around the Asia Pacific. It supports NHRIs in the region in a number of ways, including performing capacity assessments, delivering thematic training, assisting with accreditation, promoting cross-NHRI partnerships and collaborations, and otherwise providing advice and expertise.

### *Resolutions on NHRIs by the General Assembly and Human Rights Council*

The UN General Assembly and Human Rights Council also regularly pass resolutions on NHRIs. These resolutions formally recognize the role of the United Nations and OHCHR in fostering the establishment and growth of effective NHRIs and reaffirm the importance of NHRIs in the promotion and protection of human rights. These resolutions also often call on the Secretary General to give high priority to requests from Member States for aid and to support them in establishing strong NHRIs.<sup>28</sup> The resolutions advise the OHCHR to ensure that appropriate budgetary funds are allocated to the maintenance of NHRIs. The General Assembly also regularly requests that the Secretary General continue to provide support for international and regional meetings of NHRIs.<sup>29</sup>

### ***How can an NHRI get accredited?***

An NHRI may gain “accreditation” – the official recognition that it fully complies and continues to comply with the Paris Principles – from GHANRI. GHANRI’s Sub Committee on Accreditation (SCA) handles and reviews applications for accreditation from NHRIs. The SCA is composed of four members – one each from an “A-status” accredited NHRI from one of the four regions of NHRIs (Africa, the Americas, Asia Pacific and Europe).

The three levels of accreditation status indicate an NHRI’s level of compliance with the Paris Principles, as determined by the SCA. “A-status” indicates an NHRI’s full compliance with the Paris Principles; “B-status” indicates partial or indeterminate

<sup>28</sup> See, e.g., National Institutions for the Promotion and Protection of Human Rights, G.A. Res. 66/169 (Apr. 11, 2012).

<sup>29</sup> See, e.g., National Institutions for the Promotion and Protection of Human Rights, G.A. Res. 70/163 (Feb. 10, 2016).

compliance with the Paris Principles; “C-status” indicates non-compliance with the Paris Principles.<sup>30</sup>

Because the SCA requires a recent annual report to evaluate an application, only an

organization that has been existence one year or more can apply for accreditation. After one year, an NHRI may submit its application for accreditation, including a statement of compliance with the Paris Principles, the founding statute for the NHRI, a description of the NHRI's organizational structure, and its most recent annual report.<sup>31</sup> Once accredited, NHRIs must re-apply for accreditation every 5 years.

A-status accreditation yields many benefits to NHRIs. It grants NHRIs access to UN Committees. Accredited NHRIs have speaking rights and seating at meetings of human rights treaty bodies and other UN organs, especially the Human Rights Council.<sup>32</sup> Accredited NHRIs can also participate in the work and decision-making of the GANHRI, its SCA, and the work of the Human Rights Council and other UN mechanisms. Additionally, accreditation gives an NHRI international recognition, and the protection and assistance of GANHRI, OHCHR, and the regional networks of NHRIs.

<sup>30</sup> APF, *Assisting Members with International Accreditation*, <http://www.asiapacificforum.net/support/international-accreditation> (last visited Mar. 12, 2018).

<sup>31</sup> GANHRI, *Rules of Procedure for the GANHRI Sub-Committee On Accreditation*, at 6 (Feb. 22, 2018).

<sup>32</sup> *Id.* at 7.

On October 19, 2016, the Lebanese Parliament passed legislation creating a National Human Rights Commission (“NHRC” or “the Commission”) for Lebanon. The Commission includes a subcomponent National Preventive Mechanism (NPM), named the Committee for the Prevention of Torture (CPT), to investigate the use of torture and ill treatment in centers of detention. The passage of the law was the culmination of years of efforts by civil society organizations, international human rights organizations and OHCHR, and parliamentarians.<sup>33</sup> The law brings Lebanon into compliance with the Optional Protocol to the Convention Against Torture (OPCAT), which it ratified on December 22, 2008.

### *The Statute*

The law creating the Lebanese National Commission for Human Rights has several features worth discussing in more detail. This section discusses the goals of the law and the structure and capabilities of the Commission.

#### *Goals of Lebanon’s National Commission for Human Rights*

The Commission has a clear mandate and goals, as outlined by members of Parliament and the text of the law. According to a press release by members of Parliament Ghassan Moukheiber and Michel Moussa, the Commission

works to protect and promote human rights in Lebanon in accordance with the standards of the Lebanese Constitution, the Universal Declaration of Human Rights, international human rights conventions and treaties, and Lebanese laws in accordance with these standards, as well as the specific tasks specified in this law.<sup>34</sup>

The Parliament members outlined several functions served by the National Commission for Human Rights, including

- Monitoring the human rights situation in Lebanon;
- Opining on draft laws to ensure compliance with human rights standards;
- Receiving complaints of violations of human rights;
- Contributing to the development of a human rights culture and promoting and developing the implementation of education programs on human rights; and
- Advising the relevant authorities on all matters.<sup>35</sup>

<sup>33</sup> Press Release, *Members of Parliament Ghassan Moukheiber and Michel Moussa Co Sponsor a Bill Introduced in the Lebanese Parliament to Establish a “National Human Rights Institution including an Independent Committee to Prevent Torture”*, available at <https://www.apt.ch/content/files/region/mena/LebaneseNPM.pdf> (last visited Mar. 12, 2018)[hereinafter “Moukheiber and Moussa Statement”].

<sup>34</sup> Law No. 62 of 2016 art. 15.

<sup>35</sup> Moukheiber and Moussa Statement, *supra* note 33.



The National Commission will make observations, collect data, and draft reports in connection with its monitoring objective.<sup>36</sup> It will receive and investigate individual complaints of human rights violations and eventually refer them to the general prosecution, or otherwise contribute to their resolution.<sup>37</sup> In this way, it will be an instrument for victims of abuses to raise violations that remain largely underreported and uninvestigated, and provide for redress mechanisms. The Commission will also generally advise and advocate with the relevant authorities on the implementation of human rights obligations and on all human rights matters,<sup>38</sup> and disseminate human rights in the public opinion.<sup>39</sup>

The CPT is an autonomous committee within the Commission with its own subset of objectives: to visit places of detention and prisons in Lebanon, to ensure the full respect of the rights of detainees and prisoners, and to prevent and put an end to the practice of torture.<sup>40</sup> The CPT will provide a place for victims of abuses to raise violations, request investigations, and seek out redress. As part of its investigations, the CPT will make periodic and unannounced visits to places of detention without prior permission, and to carry out interviews with detainees in private, and should aim to conduct a sufficient number of visits to have a clear idea of the detention conditions around the country. The CPT will also work to improve the treatment of detainees and to prevent the practice of torture through recommendations, reports, and other forms of advice.

#### *Structure of the National Commission for Human Rights*

While several models of organizations of NHRIs that comply with the Paris Principles exist, the Lebanese National Commission for Human Rights is organized according to the model most common in the Asia Pacific region: the commission model.<sup>41</sup> Commissions consist of multi-member governing bodies whose members are appointed and supported by full-time staff. The Lebanese Commission will have 10 members, 5 of whom will sit on CPT.<sup>42</sup> They are to be appointed amongst individuals from the judiciary, academics, medical doctors, lawyers, press and members of civil society. Appointments will be made by the Council of Ministers from a list proposed by the following bodies:<sup>43</sup>

- **Supreme Judicial Council** (1/6)

<sup>36</sup> *Lebanon: Parliament Approves Law Instituting a National Human Rights Institution and a National Preventive Mechanism Against Torture*, ALKARAMA, <https://www.alkarama.org/en/articles/lebanon-parliament-approves-law-instituting-national-human-rights-institution-and-national> (last visited Mar. 12, 2018). <sup>37</sup> Law No. 62 of 2016 arts. 17-20; *Members of Parliament Statement*, *supra* note 33. <sup>38</sup> ALKARAMA article, *supra* note 36.

<sup>39</sup> *Id.*

<sup>40</sup> Law No. 62 of 2016 art. 15.

<sup>41</sup> APF MANUAL ON NHRIS, *supra* note 10, at 30–31.

<sup>42</sup> Law No. 62 of 2016 art. 2.

<sup>43</sup> The number of members that will be selected out of the set number of nominees is marked in parentheses next to the selecting body. E.g., “(1/6)” indicates that the selecting body shall nominate 6 candidates, of whom 1 will be selected as a Commissioner.

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- **Beirut & Tripoli Bar Associations**: Candidates experienced in criminal, human rights or common law (1/6)
- **Beirut & Tripoli Bar Associations**: Candidates experienced in international humanitarian law (1/6)
- **Beirut & Tripoli Doctors Unions**: Candidates must be medical specialists in psychiatry and forensic medicine, with one in each discipline selected (2/6)
  - **Council of Deans at the Lebanese University**: Candidates must be professors who are human rights or public freedoms specialist (1/3)
- **Press unions and editors** (1/4)
- **Parliamentary Committee for Human Rights**: Candidates must be human rights activists nominated by at least 3 Lebanese associations (3/12).<sup>44</sup>

Commissioners will be appointed for a six-year term by decree upon the decision of the Council of Ministers. They may not hold any other position while serving on the Commission, including positions in the government, public institutions, or trade unions.<sup>45</sup> They will have immunity from prosecution, and can only be dismissed for health reasons or upon conviction for a crime.<sup>46</sup> The statute also ensures the provision to the Commission of its own staff and funding. Terms are non-renewable. These measures are aimed at “ensuring the independence and pluralism of the institution,”<sup>47</sup> and are vital to safeguarding the Commission’s ability to perform its duties as an accredited NHRI.

#### *Responsibilities and Methods of Operation*

The initial set of Commission members will have a number of responsibilities. The statute specifies that they must, within two months, set up internal rules and procedures and a financial system.<sup>48</sup> They must also establish ethics rules for all members and staff to adhere to in carrying out their functions.<sup>49</sup> Commissioners will appoint the president, secretary and treasurer by secret ballot. The members of the CPT shall also meet and appoint a Chairperson, who will also serve as Vice President of the Commission.<sup>50</sup> The Commission must also set up regular meetings of the Commission to occur at least once a month.<sup>51</sup>

In order to achieve its mandate, the Commission has several actions available to it. The Commission may establish committees on a permanent or temporary basis as it sees fit to

<sup>44</sup> Law No. 62 of 2016 art. 2.

<sup>45</sup> Law No. 62 of 2016 art. 4.

<sup>46</sup> Law No. 62 of 2016 arts. 9, 10.

<sup>47</sup> ALKARAMA article, *supra* note 36.

<sup>48</sup> Law No. 62 of 2016 art. 7.

<sup>49</sup> *Id.*

<sup>50</sup> Law No. 62 of 2016 art. 6.

<sup>51</sup> Law No. 62 of 2016 art. 11.

work on specific issues.<sup>52</sup> The Commission also has the ability to request of Lebanese and foreign authorities documents and information useful to the performance of their functions, and the authorities must promptly comply.<sup>53</sup> It also has duties to monitor and report on Lebanon's compliance with international human rights and humanitarian law, contribute to the reports of the Lebanese State, and to make recommendations on matters it is consulted on.<sup>54</sup> The Commission also has a complaint mechanism, by which it can receive and investigate complaints from any natural or legal person, whether foreign or Lebanese, concerning human rights violations in Lebanon.<sup>55</sup>

The Commission also includes a five-member national preventive mechanism called the Committee for the Prevention of Torture (the "Committee" or "CPT"). The CPT has the powers to visit detention centers, interview detainees, interview others, obtain information from relevant authorities, and review complaints made by detainees.<sup>56</sup> The Committee shall record its observations and publish recommendations regarding places of deprivation of liberty, submitting them to the Commission and to relevant authorities. The Committee may also, through the Commission, make recommendations regarding laws that should be changed to improve the treatment of detained persons.<sup>57</sup>

In accordance with the Paris Principles, the Commission has a protection mandate and a promotion mandate.<sup>58</sup> Under its **protection mandate**, it acts as a guardian over the government and investigates and addresses any reported human rights violations. Under its **promotion mandate**, it plays a key leadership role in advising and moving the country towards becoming a human rights State. The broad functions and powers vested in it, including powers to summons witnesses, obtain information and documents, enter premises and conduct audits, will help it to achieve both mandates.

<sup>52</sup> Law No. 62 of 2016 art. 12.

<sup>53</sup> Law No. 62 of 2016 art. 14.

<sup>54</sup> Law No. 62 of 2016 arts. 15, 16.

<sup>55</sup> Law No. 62 of 2016 art. 17.

<sup>56</sup> Law No. 62 of 2016 arts. 22, 23.

<sup>57</sup> Law No. 62 of 2016 art. 26

<sup>58</sup> Law No. 62 of 2016 arts. 5, 15.

## **Human Rights Issues in Lebanon and Best Practices for NHRIs in Addressing Them**

This section identifies key human rights issues facing Lebanon. For each issue identified, the report also discusses the role of NHRIs in addressing them and the best practices employed by NHRIs in addressing them. The human rights topics discussed herein include

- Torture;
- Access to justice;
- Arbitrary detention and due process;
- Enforced disappearances;
- Refugees and asylum-seekers;
- Migrant domestic workers;
- Women and girls;
- Sexual orientation and gender identity;
  - Health, hygiene, sanitation and social security;
  - Freedom of expression and association and assembly; and
- The use of the death penalty.

Torture and arbitrary detention have been discussed in greater detail both because of the law's inclusion of the Committee for the Prevention of Torture to "protect the rights of

persons detained and deprived of their liberty,”<sup>59</sup> as well as CLDH’s expertise in those areas. Consequently, the legislative, enforcement, and procedural gaps preventing the State from eradicating torture are discussed in detail, as is the specific role of the Committee in preventing and addressing violations of the laws prohibiting torture.

Each section aims to give an overview of the information the Commission will need in formulating a strategy to address human rights issues in Lebanon. First, they briefly outline the major components of the human rights issue identified within the context of Lebanon, including its legal, social, and economic dimensions. Second, each section contains a subsection addressing the roles of NHRIs in addressing the identified human rights issue, including recommendations regarding changes to the law, interaction with treaty bodies and international human rights instruments, and methods of operation available in the long- and short-term, including investigative approaches, report-writing, and public education and awareness-raising.

## **TORTURE**

NHRIs have great potential to prevent, address, and end torture. GANHRI and other UN bodies have been working with NHRIs in tandem to come up with coordinated, targeted, and effective approaches to preventing torture. NHRIs can support the efforts of the state to end torture by assisting with the preparation of reports to these U.N. bodies,

<sup>59</sup> Establishment of the National Human Rights Commission, Which Includes the Committee for the Prevention of Torture, Law No. 62 of 2016.

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coordinating with other international and national human rights organizations, and facilitating the observations and inquiries made by CAT, OPCAT’s Sub-Committee on the Prevention of Torture (SPT), and the Special Rapporteur on Torture. NPMs also provide a powerful method of intervening and preventing torture. In addition, projects developed by members of the APF’s groundbreaking Torture Ambassadors program provide powerful examples of country-specific routes to addressing torture.

### ***Torture in Lebanon***

Most of Lebanon’s various law enforcement agencies use torture regularly and systematically. Data collected from the accounts of detainees indicate that about 60% of prisoners in government custody are tortured. Torture is used both to extract confessions of suspected crimes, and to punish those whose guilt is assumed by their torturers.<sup>60</sup> The systematic use of torture is enabled and exacerbated by several factors, including insufficient legislative protection, problems with the enforcement of existing legal protections, inadequate procedural safeguards in judicial proceedings, and inhumane conditions of detention.

#### *Legislative Gaps*

Many gaps remain in Lebanon’s implementation of international standards into their

national law. A new law passed in late 2017 finally made torture a crime in Lebanon.<sup>61</sup> The law recognized that no excuse or defense of national security, necessity, or superior order shall be allowed to justify the use of torture. However, in its report to CAT, Lebanon stated that its increased exposure to terroristic threat necessitated doubled efforts from security agencies to “combat the terrorism endangering national security and public safety.”<sup>62</sup> The State should officially recognize that under its international obligations, it may not violate the prohibition against torture, even to address terroristic threat. Additionally, the law failed to make cruel, inhuman and degrading treatment criminal, and included a statute of limitations of 3 to 10 years, despite CAT’s recommendation to remove any statute of limitations from a draft version of the law.<sup>63</sup> The statute provides for penalties that are too lenient to adequately reflect the seriousness of torture, despite CAT’s recommendation to adjust the penalties be adjusted to reflect the grave nature of the crimes. CAT also recommends that Lebanon pass laws eliminating hard labor as a punishment for crime.<sup>64</sup>

<sup>60</sup> CAT, *Concluding Observations on the Initial Report of Lebanon* ¶ 14, U.N. Doc. CAT/C/LBN/CO/1 (May 30, 2017) [hereinafter “CAT Concluding Observations on Initial Report of Lebanon”].

<sup>61</sup> Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Law No. 65 of 2017.

<sup>62</sup> CAT, *Initial Report of Lebanon under CAT art. 19*, ¶ 80, U.N. Doc. CAT/C/LBN/1 (Apr. 14 2016).

<sup>63</sup> CAT Concluding Observations on Initial Report of Lebanon ¶ 13.

<sup>64</sup> *Id.* ¶ 27.

### *Enforcement Gaps*

Even where laws protecting detainees and preventing torture exist, enforcement remains issue. Impunity for acts of torture is the norm, as allegations of torture are rarely investigated, and even more rarely prosecuted and convicted. For example, of the two cases offered in the government’s report to CAT to demonstrate the punishment of acts of torture, one took 9 years to reach a final verdict, and sentenced the perpetrator to only a fine of 400,000 LBP (\$266),<sup>65</sup> and the second involved a retired Brigadier General who was eventually declared innocent.<sup>66</sup> The State was unable to provide CAT with any information on the number of complaints of torture, sentences imposed on perpetrators of torture, or whether the perpetrators have been removed from public service during the investigation.<sup>67</sup> Judges also contribute to impunity by failing to take into consideration torture allegations, pretending not to hear the detainee assert torture, or even threatening detainees with future torture.<sup>68</sup> Additionally, despite existing protections under the law for non-citizens in Lebanon who might face torture in their country of origin, Lebanese authorities frequently violate the international principle, codified in CAT and the Refugee Convention, of non-refoulement, which forbids repatriation where the threat of torture exists.<sup>69</sup> They also systematically use torture to get detainees to sign “voluntary

deportation” documents so that they may be ejected from the country.<sup>70</sup> Although the government asserts that it provides training for judges and law enforcement agencies on their human rights obligations, such programs need to be statistically evaluated for their impact and further developed.<sup>71</sup>

### *Gaps in Procedural Safeguards in Judicial Proceedings*

Insufficient procedural safeguards in judicial proceedings also contribute to the continuation of the practice of torture. Although there exists a 48-hour limit to pre-trial detention without an appearance before a judge, this law is frequently flouted, and detainees may spend weeks or months in prison without ever appearing before a judge.<sup>72</sup> Lawyers are usually not able to meet with their clients during the investigation phase, and detainees are frequently denied translators, leaving them completely ignorant of the status of their case, their rights, and sometimes even the charges against them.<sup>73</sup> Additionally,

<sup>65</sup> CLDH, SHADOW REPORT: SUBMISSION TO THE COMMITTEE AGAINST TORTURE IN RELATION TO ITS EXAMINATION OF THE INITIAL REPORT OF LEBANON (MARCH 2016) 29 (December 15, 2016) [hereinafter “CLDH SHADOW REPORT TO CAT”]. <sup>66</sup> *Id.* at 34–35.

<sup>67</sup> CAT Concluding Observations on Initial Report of Lebanon, *supra* note 60, ¶ 40.

<sup>68</sup> CLDH SHADOW REPORT TO CAT, *supra* note 65, at 21.

<sup>69</sup> David Weinstein, *Lebanon’s Deportation of Syrians en Route to Turkey*, HUMAN RIGHTS BRIEF (Mar. 18, 2016), <http://hrbrief.org/2016/03/lebanons-deportation-of-syrians-en-route-to-turkey>.

<sup>70</sup> CLDH SHADOW REPORT TO CAT, *supra* note 65, at 31.

<sup>71</sup> CAT Concluding Observations on Initial Report of Lebanon, *supra* note 60, ¶¶ 38–39.

<sup>72</sup> *Id.* ¶ 16.

<sup>73</sup> *Id.*

military courts can obtain jurisdiction over civilians, including children, but do not afford them the same procedural protections that civilian courts do; military tribunals may conduct secret investigations and routinely employ torture as an investigative device.

Even in civilian courts, judges often fail to utilize the procedural protections that are available for persons subjected to torture. They rarely, if ever, pursue allegations of torture from detainees. While Article 47 of the Criminal Procedure Code protects suspects from coercion or interrogation on penalty of invalidating their statements,<sup>74</sup> in practice judges do not invalidate or exclude confessions obtained under torture or coercive interrogation.<sup>75</sup> Additionally, when victims or witnesses of torture come forward with allegations of the torture, the court system does not protect them from reprisals and intimidation, despite that this is a frequent law enforcement response to allegations.<sup>76</sup> No victim has filed a lawsuit against the State because victims don’t believe in the capacity of the courts to vindicate their rights, and lawyers fear reprisals for taking such cases. Rehabilitation is provided exclusively by NGOs.

### *Conditions of Detention*

The conditions experienced by pre-trial and post-conviction detainees, who are frequently held together, fall short of international standards. As recognized by CAT, the inmates of the penitentiary institutions suffer from severe overcrowding, insufficient ventilation, high humidity levels and extreme temperatures.<sup>77</sup> Although detainees should be able to obtain a private, confidential medical examination under the law, in practice, the confidentiality of such examinations is not respected.<sup>78</sup> The State has not made publicly available, or provided to CAT, information about deaths in custody or their causes.<sup>79</sup> The State also frequently denies NGOs access to facilities, despite their acknowledged role in monitoring detention facilities.<sup>80</sup> The State also has yet to establish an independent and impartial complaint mechanism to handle complaints of torture and ill treatment.<sup>81</sup>

The detention conditions are particularly hard on more vulnerable populations, including LGBT people, women and child. Men who are suspected of being gay are frequently targeted and subjected to torture and ill treatment, including rectal exams, beatings, sexual abuse, and forced HIV testing.<sup>82</sup> Female prisoners, meanwhile, are guarded only

<sup>74</sup> The relevant provision states that suspects may “not be coerced to speak or to undergo interrogation, on penalty of nullity of their statements.”

<sup>75</sup> CLDH SHADOW REPORT TO CAT, *supra* note 65, at 50–51.

<sup>76</sup> CAT Concluding Observations on Initial Report of Lebanon, *supra* note 60, ¶ 44; *see also, e.g.*, the case of Faysal Moqalled, described in detail in the CLDH SHADOW REPORT TO CAT, *supra* note 65, at 45–46.

<sup>77</sup> CAT Concluding Observations on Initial Report of Lebanon, *supra* note 60, ¶ 20.

<sup>78</sup> *Id.* ¶ 16.

<sup>79</sup> *Id.* ¶ 24.

<sup>80</sup> *Id.* ¶ 30.

<sup>81</sup> *Id.* ¶ 42.

<sup>82</sup> *Id.* ¶ 14.

by male officers, and are not allowed privacy, even to use the bathroom.<sup>83</sup> They may also be subject to sexual abuse.<sup>84</sup> Additionally, juveniles have been housed with adults, in violation of international standards; this subjects them to abuse and exploitation by other detainees.<sup>85</sup>

### ***Role of the NHRI and NPM in Addressing Torture***

In order to prevent torture, three elements are needed: 1) an effective legal framework; 2) effective implementation of the law, including procedural safeguards, training of the public officials, and attacking impunity; and 3) control and maintenance mechanisms, including regular visits to places of detention and scrutiny by IHR mechanisms.<sup>86</sup>



*The Foundation: Developing an Effective Legal Framework*

NHRIs can support State efforts to develop an effective legal framework to address torture in a number of ways. First and foremost, NHRIs may advise the State on the degree to which the domestic legal framework reflects the State's international treaty obligations. NHRIs should make recommendations to the State to make or amend laws where the national laws fall short of compliance with international norms regarding torture.

Torture is prohibited by a number of treaties in international law, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), and the Optional Protocol Against Torture (OPCAT), as well as international humanitarian law (the law of armed conflict) and international criminal law. The prohibition on torture is so widely recognized as a superseding principle of law that is considered a *jus cogens* principle of law – a peremptory norm that overrides any contrary law. The prohibition on torture is thus absolute; a State may not derogate from the prohibition for any reason, including threats to national security or public emergencies.

NHRIs can ensure that national law reflects this principle of absolute prohibition, and that government entities, from law enforcement to lawmakers, understand that torture is not acceptable under any circumstances. In this connection, they can issue advisory statements, make recommendations for changes to the law, publish reports on the state of the law, and take other actions to encourage the State to bring the law into conformity with international human rights standards regarding torture.

<sup>83</sup> CLDH SHADOW REPORT TO CAT, *supra* note 65, at 15.

<sup>84</sup> *See, e.g.*, CLDH SHADOW REPORT TO CAT, *supra* note 65, at 46–48 (description of the case of Layal al-Kayaje).

<sup>85</sup> CLDH SHADOW REPORT TO CAT, *supra* note 65, at 27.

<sup>86</sup> APF & APT, THE TORTURE PREVENTION AMBASSADORS' GOOD PRACTICE REPORT 10 (May 2016) [hereinafter "TPA GOOD PRACTICE REPORT"].

NHRIs should also ensure that laws prohibiting torture define torture consistently with international human rights law. *See, e.g.*, the definition set forth in CAT. A compliant State must criminalize torture as a separate and specific crime that defines torture in a manner that, at a minimum, adopts all the elements of article 1 of the Convention Against Torture. <sup>87</sup> NHRIs should advise governments that laws prohibiting torture should not have a statute of limitation, as this undermines the seriousness of the offense and its continuing effects on victims of torture. <sup>88</sup> Similarly, the penalties should be harsh enough to reflect the gravity of torture, and neither amnesty nor immunity should be granted to

perpetrators.<sup>89</sup>

### *Ensuring the Implementation of the Legal Framework*

In order for legal frameworks prohibiting torture to be fully effective, NHRIs must also ensure that the state implements and enforces the laws that prohibit torture and protect detainees. NHRIs can take action to do so a number of ways, including

- organizing training for members of law enforcement, the judiciary, and lawmakers;
- promoting public awareness of human rights norms and violations; • launching cooperative programs with law enforcement;
- gathering data and statistics relating to detention and torture;
- assisting with the design and enforcement of procedural safeguards; and • receiving and investigating complaints from victims and their families.

The APF's ground-breaking Torture Ambassadors program provides a few examples of country-specific actions taken by NHRIs to further the implementation of torture laws. In Timor Leste, for example, the NHRI developed a reliable database with which to collect, organize and record data on the prevalence of torture.<sup>90</sup> In the Philippines, members of the NHRI met with police officers in a constructive dialogue to identify risk factors for torture in prisons, and to develop policy advisories and a position paper for NHRIs working with police on detention monitoring.<sup>91</sup>

NPMs also have a special role to play in ensuring the implementation of the legal framework preventing torture. NPMs should design plan that, over time, allows visits to any and all actual or suspected places of deprivation of liberty that are within the jurisdiction of the State. These visits should be unannounced and unpredictable. During such visits, members of the NPM should observe and record the conditions of detention, confidentially interview prisoners, and interview other personnel as needed. Norway's

<sup>87</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 4, 10 Dec. 1984, 1465 U.N.T.S. 85; CAT Concluding Observations on Initial Report of Lebanon, *supra* note 60, ¶ 13.

<sup>88</sup> CAT General Comment No. 3, U.N. Doc. CAT/C/GC/3 ¶ 40 (Nov. 19, 2012).

<sup>89</sup> *Id.* at ¶¶ 38, 41, 42.

<sup>90</sup> TPA GOOD PRACTICE REPORT, *supra* note 86, at 43.

<sup>91</sup> TPA GOOD PRACTICE REPORT, *supra* note 86, at 39–41.

NPM also provides a useful index for what each visit to a prison or detention center can include:

- Inspection of the place of detention
- Meeting with the management
- Private interviews with persons deprived of their liberty

- Interviews with staff, health care personnel, safety representatives, trade union representatives, next of kin, experienced consultants and other relevant parties
- Review of documentation
- Concluding meeting with the management.<sup>92</sup>

The National Human Rights Commission of Mongolia, in cooperation with the APF and APT, has developed a Manual on Detention Monitoring that provides useful guidance on materials to prepare before a detention visit, model questionnaires for interviews in pre trial detention centers, documents to examine in detention centers, and documenting the outcome of visits. These visits will allow NPMs to monitor the conditions in detention centers, and follow up where necessary by issuing reports and recommendations, requesting documents, and conducting further interviews. The NPM can thus be a powerful part of the fight against impunity by promoting recognition of gaps in implementation in detention centers and prisons, and applying pressure to fill these gaps and bring the conditions into compliance with human rights norms.

#### *Control and Maintenance Mechanisms for Continuing Compliance*

NHRIs can also contribute to the prevention and abolition of torture by promoting cooperation with international human rights mechanisms, continuing monitoring of places of detention, promoting public awareness of the prohibition on torture, and building public support for the abolition of torture.

NHRIs also serve as intermediaries between States and international human rights instruments. For treaty bodies such as CAT and the Human Rights Committee (HRC) that ask States to submit regular reports, NHRIs should take action to, at a minimum, submit its own report, responding if necessary to the State party's report, and attending the presentation of the State's report to the treaty body. NHRIs may also provide pre reporting coordinating assistance and information to their Government. NHRIs can also assist international human rights bodies during their inquiries by providing them with reliable information, making arrangements for them to gather information, and meeting with the delegation.

NHRIs may also monitor government progress on the recommendations of the treaty body, and encourage the State's adoption of compliance measures. After a treaty body makes findings and recommendations, NHRIs may follow up by publishing, translating

<sup>92</sup> NORWEGIAN PARLIAMENTARY OMBUDSMAN, NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, ANNUAL REPORT 2016 12 (2016–2017).

and disseminating the report, holding dialogues, and spreading public awareness. NHRIs may also raise awareness of treaty bodies that have complaint mechanisms, and assist with the filing of complaints or file complaints on behalf of victims. NHRIs should also

work with GANHRI, APT and APF to communicate, share resources and knowledge, and coordinate efforts to end torture.

NHRIs should also maintain a system of monitoring detention systems through NPMs and compliance with OPCAT's Sub-committee on the Prevention of Torture (SPT). NPMs should continue to visit places of detention and to follow up on items of concern from earlier visits. The NPM and NHRI should also maintain communication with OPCAT, and assist with its country visits by meeting with the OPCAT delegation, providing them with relevant information, and discussing all aspects of the NPM program with them. The NPM may also request an advisory visit from OPCAT to assist in establishing the NPM or to build its capacity. Working in conjunction with OPCAT to ensure regular visits to detention centers to monitor and report on conditions forms the lynchpin of any successful torture prevention strategy.

NHRIs may also craft public awareness and education campaigns as a useful means to prevent torture. Public education programs targeted at specific groups of professional or vulnerable people are especially effective. For example, programs may be designed and tailored for professional groups such as doctors, lawyers and law enforcement. NHRIs may also seek to raise more broadly the public awareness of the prevalence and impact of torture, as well as human rights laws prohibiting it. The Uganda Human Rights Commission, for example, used OHCHR's official Dignity and Justice for Detainees Week to engage a diverse cross-section of stakeholders in activities and discussions centering on the vulnerabilities and rights of detainees.<sup>93</sup> NHRIs may also inform detainees of their rights through leaflets, posters displayed in prisons, pocket cards, and other spoken and printed information to promote their ability to recognize and resist violations of their rights.<sup>94</sup>

## **ARBITRARY DETENTION**

### ***Arbitrary Detention in Lebanon***

Law enforcement agencies and security forces frequently violate the right to freedom from arbitrary detention. Law enforcement agencies frequently arbitrarily detain people without a warrant or hearing, and keep them in incommunicado detention, without access to a lawyer. A high number of prisoners are kept in pre-trial detention for a year or more, without appropriate access to judiciary relief, and for crimes that may result in penalties of less than a year.<sup>95</sup> Poor recordkeeping contributes to the late release of detainees who

<sup>93</sup> TPA GOOD PRACTICE REPORT, *supra* note 86, at 95.

<sup>94</sup> *Id.* at 9.

<sup>95</sup> CAT Concluding Observations on Initial Report of Lebanon, *supra* note 60, ¶¶ 16, 18, 20.

have completed their sentence.<sup>96</sup> Additionally, law enforcement will accept the transfer of detainees from armed groups, who are permitted to arrest and hold prisoners on their own initiative. In the overcrowded cells of Baabda Palais de Justice, juveniles have been held in long-term detention with adults, despite laws requiring that they be held separately from adults.<sup>97</sup>

### ***Role of NHRIs in Addressing Arbitrary Detention***

NHRIs can help prevent and address arbitrary detention in a number of ways. They can encourage and monitor the ratification of treaties that encode freedom from arbitrary detention, including

- Universal Declaration of Human Rights, art. 9;
- International Covenant of Civil and Political Rights, art. 9;
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment;
- Standard Minimum Rules for the Treatment of Prisoners;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Rights of the Child;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment;
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Convention on the Rights of Persons with Disabilities; and
- United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (A/HRC/30/37).

They may also monitor prisons and record data such as i) whether people held there are pre-trial or post-conviction, ii) what offense they are held for iii) its corresponding penalties, iv) whether they have had access to lawyer, and v) whether they have appeared in court. NHRIs can also exhort their governments to improve recordkeeping in prisons and make such records open to public, so that the scope of the problem is understood. NHRIs can help ensure the access of defense counsel to persons held in detention by taking actions such as creating reporting mechanisms for lawyers having issues contacting clients. NHRIs may also work with local authorities and prison officials to develop training and resolve resource-related issues, and to develop a more effective policy for protecting detainee rights. NHRIs may also encourage judges and prosecutors to pursue alternative measures to pre-trial detention, such as probation and supervised release, and analyze and report on impediments to alternative punishments. NHRIs can also, through NPMs, monitor detention centers and make observations regarding

<sup>96</sup> U.S. STATE DEPARTMENT, *LEBANON 2016 HUMAN RIGHTS REPORT 5* (March 3, 2017) [hereinafter “STATE DEPARTMENT COUNTRY REPORT”].

<sup>97</sup> HRC, *List of Issues in Relation to the Third Periodic Report of Lebanon*, ¶ 14, U.N. Doc No. CCPR/C/LBN/Q/3 (Aug. 31, 2017).

conditions, whether juveniles are housed with adults, and whether prisoner's rights are adequately upheld.

In addition to the above-mentioned actions, the Lebanese Commission, in particular, can recommend that the parliament pass a law barring law enforcement from accepting arrests and transfers from armed groups, and encourage the State to invite the Working Group on Arbitrary Detention to visit and report on Lebanon's compliance with international human rights standards.

## **ACCESS TO JUSTICE AND DUE PROCESS**

### ***Due Process, Right to a Fair Trial and Military Tribunals***

Lebanese law provides several procedural safeguards to guarantee due process, including the right to contact a person of their choosing, the right to meet with a lawyer, the right to an interpreter, the right to be examined by a medical doctor upon request, and the right to speedy judicial review of their detention. Article 47 of the Code of Criminal Procedure requires police to inform detained suspects of these rights. Additionally, the law sets forth a maximum 48-hour period for preliminary investigation before detainees must appear before an investigative judge. In practice, however, most of these provisions are routinely flouted.<sup>98</sup> In a 2013 Report by Human Rights Watch, the vast majority of individuals reported not being informed of their rights by police. As previously described, detainees are also routinely held for periods far exceeding the 48-hour period before they appear before a judge. CAT has also noted unjustified delays between the first hearing and subsequent hearings. Detainees are often held incommunicado, and frequently report being denied access to their lawyer and to a medical examination.

For certain crimes, military tribunals have jurisdiction over civilians, including children, and can issue criminal penalties against them. Military tribunals are not appropriate to try civilians or children because they don't have the proper procedural protections in place to provide them access to trial by a competent, independent and impartial court. Children tried by military courts are not afforded the protections that the Ministry of Social Affairs (MoSA) typically provides to children in custody.<sup>99</sup> Military investigators routinely torture suspects, and detain them before trial without access to family members or legal representation.<sup>100</sup> Under the justification of "national security," they can keep part or all of the investigation and trial confidential, in contravention of ICCPR Art. 14, which states that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." The military tribunal acts with

<sup>98</sup> HRW, "IT'S PART OF THE JOB": ILL-TREATMENT AND TORTURE OF VULNERABLE GROUPS IN LEBANESE POLICE STATIONS 2, 12 (June 26, 2013).

<sup>99</sup> ALEF, ALTERNATIVE REPORT: CONVENTION AGAINST TORTURE AND OTHER CRUEL,

impunity because of this secrecy and the lesser degree of procedural safeguards to which they must adhere.

***Role of NHRIs in Addressing Due Process, Right to a Fair Trial and Military Tribunals***

NHRIs can help protect due process rights in a number of ways. They may serve as an alternative dispute resolution mechanism where traditional sources of justice fail, helping disadvantaged people reach otherwise inaccessible remedies. NHRIs should be allowed to file cases in court or to have the prosecutor file cases at their request.<sup>101</sup> They must collaborate with the judiciary and law enforcement to pursue redress for victims and combat impunity. NHRIs should maintain communication and strengthen coordination with the judiciary, prosecution, police and prison institutions to expand their access to persons in detention, develop institutional capacities, and promote the rights of persons in detention. NHRIs can also create the “necessary space for human rights dialogue between the executive and non-governmental entities,” and monitor and hold the executive accountable for actions within both the justice system and law enforcement agencies.

Additionally, at the Universal Periodic Review (UPR), the UPR Working Group recommended that Lebanon ensure that the penal justice system functioned efficiently to protect the fundamental rights of detainees during arrest and investigation, in pretrial detention and after conviction. The Working Group counseled the State to strengthen the fundamental legal safeguards in the Code of Criminal Procedure, and to adopt effective measures to ensure that all detainees enjoyed in practice all fundamental legal safeguards. It also recommended the establishment of an independent complaints mechanism with the authority to investigate promptly, impartially and effectively all reported allegations of and complaints about torture and ill-treatment. Courts and law enforcement must also protect complainants against reprisals and ensure that the alleged perpetrators were duly prosecuted.

The Working Group on Arbitrary Detention has also set forth five minimum criteria for the protection of rights in military tribunals, including:

- (a) Military tribunals should only be competent to try military personnel for military offences;
- (b) If civilians have also been indicted in a case, military tribunals should not try military personnel;
- (c) Military courts should not try military personnel if any of the victims are civilians;
- (d) Military tribunals should not be competent to consider cases of rebellion, the sedition or attacks against a democratic regime, since in those cases the victims are all citizens of the country concerned;

<sup>101</sup> UNDP, ACCESS TO JUSTICE: PRACTICE NOTE 15 (Sept. 3, 2004).

(e) Military tribunals should never be competent to impose the death penalty.<sup>102</sup>

The Commission should recommend that the government bring its laws and procedures into conformity with these criteria.

## **ENFORCED DISAPPEARANCES**

### ***Enforced Disappearances in Lebanon***

Many people in Lebanon were forcibly disappeared during the civil war (1975-1990).<sup>103</sup> The Syrian army, Israeli army, and other armed groups systematically used enforced disappearance as a tactic of war. Thousands of Lebanese disappeared during this period, and the fate of many of them remains unknown today. While it is likely that many were executed, evidence suggests that many were transferred to Syrian and Israeli prisons.<sup>104</sup> It is estimated that several hundred Lebanese citizens remain incarcerated and held incommunicado in prisons in Syria.

Despite repeated requests and campaigns by the families of the missing and the public, the government has refused to undertake any serious investigation into the fate of the missing. The State's actions in this regard have all been aimed at dismissing the issue, without attempting to identify the bodies of those buried in known mass graves or to inquire with foreign governments as to the fate of Lebanese citizens.<sup>105</sup>

In addition to causing continued pain to the families of the missing, this failure to take action by the government flouts their international human rights. The State has violated right to truth,<sup>106</sup> recognized in international humanitarian law, and enshrined in the International Convention for the Protection of all Persons from Enforced Disappearances (ICPPED). ICPPED Article 24 states that, to protect the right of victims to know the fate of disappeared persons, State Parties have the obligation to “search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.” The State has also violated its obligation to help uphold the right of victims to access justice,<sup>107</sup> including locating, investigating, prosecuting and appropriately

<sup>102</sup> HRC, Report of the Working Group on Arbitrary Detention, ¶ 69, U.N. Doc. A/HRC/27/48 (June 30, 2014).

<sup>103</sup> CLDH, LEBANON: ENFORCED DISAPPEARANCES AND INCOMMUNICADO DETENTIONS 5



(Feb. 21, 2008).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 32, 8 June 1977, 1125 UNTS 3.

<sup>107</sup> International Convention for the Protection of all Persons from Enforced Disappearances art. 4; International Covenant on Civil and Political Rights art. 2, ¶ 3; Report by Diane Orentli, the independent expert charged with updating the set of

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sentencing perpetrators. Additionally, through its failure to address the needs of victims, the State has violated the right to reparation,<sup>108</sup> encompassing the right to restitution, compensation and rehabilitation.

### ***Role of NHRIs in Addressing Enforced Disappearances***

NHRIs have an active and important role to play in addressing enforced disappearances, both through utilizing international human rights instruments, and through advising the domestic government.

They may take action through interaction with international human rights instruments. As made clear by the treaty body for the International Convention for the Protection of all Persons from Enforced Disappearances (the Committee on Enforced Disappearances), NHRIs can encourage their national governments to promote and implement the ICPPED.<sup>109</sup> As Lebanon has not yet ratified the treaty, the Commission can advise the State on the ratification and implementation of the Convention, and encourage ratification as quickly as possible. Members of the NHRI can also attend sessions and meetings of the Committee on Enforced Disappearances, seek out and share information with other NHRIs and human rights bodies in addressing Enforced Disappearances, and conduct public awareness campaigns regarding the importance of ratifying the ICPPED. The NHRI can also encourage the State to invite the Working Group on Enforced Disappearances to visit Lebanon, and assist the Working Group with any arrangements and information it may need. As part of global outreach, the Commission may also ensure the accessibility of documents published by the Working Group and Committee on Enforced Disappearances by translating them into the local languages and making them widely available, and by participating in and recognizing the International Day of Victims of Enforced Disappearance on August 30.<sup>110</sup>

The Commission may also advise the government to request that the UN Security Council create an international inquiry commission into the matter of enforced disappearances in Lebanon. Such an inquiry would have several advantages, including i) drawing on the expertise and competence of international human rights experts, ii) recognizing of the systematic pattern of enforced disappearances as a crime against humanity, and iii) allowing an independent, impartial and external body to investigate and publish conclusions regarding the disappearances.

principles for the struggle against impunity, supplement: Updated Set for the Protection and Promotion of Human Rights Through the Fight Against Impunity. E/CN.4/2005/102/Add.1.

<sup>108</sup> *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, G.A. Res. 60/147 (Dec.16, 2005). <sup>109</sup> ICPPED, *The Relationship of the Committee on Enforced Disappearances with National Human Rights Institutions*, Doc. No. CED/C/6 (Oct. 28, 2014). <sup>110</sup> *Id.* ¶ 45.

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The Commission can also advise the government to make several more immediate legal reforms. They can advise judicial reforms, including to

- Amend the criminal code to include the crime of enforced disappearance;
- Remove any statute of limitations for crimes of enforced disappearance; and
- Re-define the practice of enforced disappearances during the civil war as a crime against humanity, removing the protection of the 1991 Amnesty Law.

The Commission may also encourage the creation of a competent Truth, Justice and Reconciliation Commission. Many international examples of such bodies exist and may provide a reference for a Lebanese version.<sup>111</sup> Such a body could, among other functions, investigate and publish findings on ossuaries, mass graves, and any information available about the disappeared in Israel and Syria. It could excavate mass graves and record DNA and other identifying information in database to cross-reference with victims' families, and investigate and substantiate number of Lebanese persons still missing. Such a commission would also be an effective way to provide compensation, reparations, and other necessary assistance to victims.

## REFUGEES AND ASYLUM-SEEKERS

### *Refugees and Asylum-Seekers in Lebanon*

Refugees and asylum seekers in Lebanon face many human rights challenges. Lebanon is host to large numbers of long-term Palestinian refugees (280,000), as well as more than 20,000 refugees from other countries.<sup>112</sup> Since the start of the Syrian conflict in 2011, Lebanon has also become host to large numbers of Syrian refugees. About 1 million of these refugees are registered with the UNHCR, but it is estimated that the actual number of Syrian refugees living in Lebanon is about 1.5 million.<sup>113</sup> In 2013, the Lebanese government reversed its open door policy and began imposing restrictions on Syrians.<sup>114</sup> In April 2015, the government stopped allowing the UNHCR to register Syrian refugees. The government agreed to a Lebanon Crisis Response Plan with the U.N. in 2014.<sup>115</sup> While this plan included the a goal of ensuring humanitarian protection and assistance to Syrian refugees and Lebanese poor, in the same year the government

<sup>111</sup> See, e.g., the Fairness and Reconciliation Body created by Morocco in 2004; see also Kenya National Commission on Human Rights regarding the creation of an effective Truth, Justice & Reconciliation Commission; see also OHCHR, GUIDANCE NOTE ON NHRIS AND TRANSITIONAL JUSTICE 31–34 (Sep. 27, 2008).

<sup>112</sup> AMNESTY INTERNATIONAL, ANNUAL REPORT: LEBANON 2016/2017, available at <https://www.amnesty.org/en/countries/middle-east-and-north-africa/lebanon/report-lebanon> (last visited March 12, 2018) [hereinafter “AMNESTY REPORT ON LEBANON 2016/2017”].

<sup>113</sup> CLDH, LEGAL CHALLENGES FACED BY REFUGEES FROM SYRIA IN LEBANON 26 (2016).

<sup>114</sup> *Id.* at 12.

<sup>115</sup> *Id.*

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published a policy paper stating its intention to encourage Syrian nationals to return to Syria and to increase its policing of the Syrian population.

Syrian refugees in Lebanon face many difficulties. While UNHCR registration entitles Syrian refugees to coverage of some health expenses and food support, unregistered Syrians may struggle without these resources or a legally recognized status from the Lebanese government. The lack of legal residency is a major hurdle for most Syrian refugees -- in 2016, as many as 86% of Syrian refugees in Lebanon did not have legal residency permits.<sup>116</sup> The lack of a legal residency permit limits refugees’ ability to move around, reduces their safety, makes them more vulnerable to arbitrary arrest, detention and torture.

The lack of legal residency permits also places economic restrictions on Syrian refugees. According to current regulations, Syrian refugees may only work in the agriculture, construction and environmental sectors, seriously limiting their ability to find work and to match their skills and education to a job that fulfills their earning potential.<sup>117</sup> Additionally, approximately 250,000 school-age Syrian children were out of school during the 2015-2016 school year, due to various impediments, including prohibitive transportation fees, child labor, and arbitrary enrollment requirements.<sup>118</sup> Finally, the Lebanese government has arbitrarily deported large numbers of Syrian refugees on previous occasions, exposing them to the risk of torture and persecution, in violation of the human rights principle of non-refoulement.<sup>119</sup>

Palestinian refugees also experience difficulties. They face systematic discrimination, arbitrary arrest and detention, and economic deprivation.<sup>120</sup> Like Syrian refugees, they face restrictions on their ability to move freely and to work. Additionally, due to an agreement between the Lebanese government and late Palestinian leader Yasser Arafat, Palestinian camps are largely self-governed; Lebanese forces do not enter them.<sup>121</sup> This can result in de facto and arbitrary systems of justice. Palestinians also face forcible

detention to Syria.<sup>122</sup>

### ***Role of NHRIs in Addressing the Human Rights of Refugees and Asylum-Seekers***

NHRIs can take several actions to promote and protect the human rights of asylum seekers and refugees. In Lebanon, the Commission can take action in particular to protect refugees' rights to freedom of movement, non-refoulement, freedom from discrimination,

<sup>116</sup> *Id.* at 17.

<sup>117</sup> *Id.* at 14.

<sup>118</sup> HRW, WORLD REPORT 2017: LEBANON (2017).

<sup>119</sup> David Weinstein, *Lebanon's Deportation of Syrians en Route to Turkey*, HUMAN RIGHTS BRIEF (Mar. 18, 2016), <http://hrbrief.org/2016/03/lebanons-deportation-of-syrians-en-route-to-turkey>.

<sup>120</sup> *Id.*

<sup>121</sup> STATE DEPARTMENT COUNTRY REPORT, *supra* note 96, at 10.

<sup>122</sup> HRW, WORLD REPORT 2017: LEBANON (2017).

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and freedom from torture and ill treatment. In a statement at the United Nations Summit for Migrants and Refugees on September 19, 2016 GANHRI described several commitments that NHRIs could undertake to address and ameliorate the plight of migrants and refugees.<sup>123</sup> In host countries such as Lebanon, NHRIs can work with immigration officials to ensure that the non-refoulement principle is respected, refugees are treated with dignity, and human trafficking is identified, prosecuted, and prevented.<sup>124</sup> NHRIs should also monitor the situation of refugees and asylum-seekers, identifying and responding to those at risk. This may entail receiving complaints, working with authorities to develop complaint handling mechanisms for refugees and asylum-seekers, or launching *ex officio* investigations.<sup>125</sup> NHRIs should also monitor detention centers and immigrant populations to prevent the inhuman or degrading treatment of migrants and refugees, and to ensure that no migrant children are detained.<sup>126</sup>

In November 2015, over 100 NHRIs, national ombudsmen, NGOs, and international organizations attended a conference in Belgrade to address challenges in the refugee migrant crisis. The conference concluded in the Belgrade Declaration on the Protection and Promotion of the Rights of Refugees and Migrants.<sup>127</sup> This declaration sets some forth some guiding principles and methods of work useful to NHRIs. Among other things, NHRIs should work with authorities and legislatures to ensure that safe pathways exist for refugees and migrants to seek legal recognition and redress for rights violations, and to access without impediment adequate asylum procedures. NHRIs should also undertake to prevent discrimination toward these vulnerable populations. They may do this through raising public awareness about human rights, opposing discriminatory or hateful statements and practices, and encouraging a “spirit of tolerance and compassion.”<sup>128</sup>

The Belgrade Declaration also encourages NHRIs to engage in partnerships across a number of different sectors.<sup>129</sup> Partnerships with CSOs can better enable both NHRIs and CSOs to protect the human rights of refugees and to provide humanitarian assistance, including access to adequate food, housing and hygiene. Cross-border cooperation with regional, transnational and global entities allow the mobilization of a comprehensive approach to addressing refugee needs, and to preventing border security policies that violate human rights. Finally, NHRI collaboration with international human rights mechanisms will allow them to benefit from the aid of these instruments and to keep

<sup>123</sup> Statement by the Global Alliance of National Human Rights Institutions (GANHRI), United Nations Summit for Refugees and Migrants, New York, (Sep. 19, 2016). <sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Belgrade Declaration on the Protection and Promotion of the Rights of Refugees and Migrants, Conference of Ombudsman/National Human Rights Institutions: Human Rights Challenges in Refugee/Migrant Crisis, Belgrade, Republic of Serbia, 23–24 Nov. 2015.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

international actors apprised of the situation as it develops. In connection with such collaboration, NHRIs should publish reports it makes to human rights bodies, as well any independent reports on the situation of refugees and asylum-seekers that it deems necessary.

## MIGRANT DOMESTIC WORKERS

### *Migrant Domestic Workers in Lebanon*

In Lebanon, migrant domestic workers are especially vulnerable to human rights abuses. Around a quarter million migrant domestic workers reside in Lebanon, participating in the kafala (sponsorship) system, wherein their legal residency is tied to the specific employer who has sponsored their residence in the country.<sup>130</sup> Workers within the kafala system are explicitly excluded from the protections provided to other workers under the Lebanese labor code, leaving them with limited or nonexistent legal recourse when they experience exploitation and abuse.<sup>131</sup> Common abuses include non-payment or delayed payment of wages, forced confinement, refusal to provide time off, sexual harassment and assault, and verbal and physical abuse.<sup>132</sup> Domestic workers often work long hours without holidays. Their sponsors may lock them inside when they leave the house, severely limiting their freedom of movement. The deaths of many domestic workers in Lebanon are classified as suicides, but the Special Rapporteur on slavery has reported that the ISF frequently does not conduct an appropriate investigation into the cause of

death.<sup>133</sup>

Their exclusion from the Lebanese legal code means they have no minimum wage protections, and no freedom of association or ability to form unions under the law. The Ministry of Labor has promulgated a Standard Unified Contract that provides some protections to workers, including rights to a clean and private place in which to relax in their free time, short breaks during the day and a weekly rest period of 24 hours, annual leave and sick leave. While domestic workers whose rights are violated may theoretically bring claims against the perpetrators in civil or labor courts, in reality this rarely happens.

<sup>134</sup> If victims do bring suits, judges are unlikely to rule in their favor, as

<sup>130</sup> KAFA, POLICY PAPER ON REFORMING THE “SPONSORSHIP SYSTEM” FOR MIGRANT DOMESTIC WORKERS: TOWARDS AN ALTERNATIVE GOVERNANCE SCHEME IN LEBANON 9 (January 2012) [hereinafter “KAFA POLICY PAPER ON MIGRANT DOMESTIC WORKERS”].

<sup>131</sup> KAFA POLICY PAPER ON MIGRANT DOMESTIC WORKERS, *supra* note 130, at 9. <sup>132</sup> HRW, WORLD REPORT 2017: LEBANON (2017); KAFA POLICY PAPER ON MIGRANT DOMESTIC WORKERS, *supra* note 130, at 5.

<sup>133</sup> HUMAN RIGHTS COUNCIL WORKING GROUP ON THE UNIVERSAL PERIODIC REVIEW, *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, UN Doc. A/HRC/WG.6/23/LBN/2, ¶ 77 [hereinafter “Working Group on UPR Compilation”] (Aug. 31, 2015).

<sup>134</sup> KAFA POLICY PAPER ON MIGRANT DOMESTIC WORKERS, *supra* note 130, at 12.

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demonstrated by a 2010 Human Rights Watch Report that analyzed over 114 cases and found that in none of them were employers charged for offenses such as locking workers inside homes, confiscating their passports, or denying them food.<sup>135</sup>

#### ***Role of NHRIs in Addressing the Human Rights of Migrant Domestic Workers***

NHRIs around the world have already taken an active role in protecting and promoting the rights of domestic migrant workers through a number of meetings and statements. These collaborations have resulted in several declarations regarding the human rights of migrant workers, including the:

- Seoul Statement on the Cooperation of NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia;<sup>136</sup>
- Santa Cruz Declaration;<sup>137</sup>
- Zacatecas Declaration;<sup>138</sup> and
- Rabat Declaration on Migration and Human Rights.<sup>139</sup>

The Declarations set forth a number of commitments and principles for NHRIs addressing the human rights situation of migrant domestic workers in their country. The Declarations should be referred to in full for best practices in approaching the issues of

migrant domestic workers, but they include the following recommendations:

1. Lobby the government for ratification of international instruments which provide for the protection of migrant domestic workers, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and relevant ILO conventions, including the
  - Migration for Employment Convention 1949;
  - Migration for Employment Recommendation 1949; and
  - Migrant Workers Convention of 1975.

<sup>135</sup> HRW, WITHOUT PROTECTION: HOW THE LEBANESE JUSTICE SYSTEM FAILS MIGRANT DOMESTIC WORKERS (September 16, 2010), available at [https://www.hrw.org/report/2010/09/16/without-protection/how-lebanese-justice-system-fails-migrant-domestic-workers#\\_blank](https://www.hrw.org/report/2010/09/16/without-protection/how-lebanese-justice-system-fails-migrant-domestic-workers#_blank).

<sup>136</sup> Seoul Guidelines on the Cooperation of NHRIs for the Promotion and Protection of Human Rights of Migrants in Asia; International Conference on Human Rights of Migrants and Multicultural Society; Seoul, Korea; 10–12 November 2008. <sup>137</sup> Santa Cruz Declaration; 8th International Conference of National Institutions for the Promotion and Protection of Human Rights; Santa Cruz, Republic of Bolivia; 24–26 October 2006.

<sup>138</sup> Zacatecas Declaration; International Workshop of National Institutions for the Promotion and Protection of Human Rights: Causes, Effects and Consequences of the Migratory Phenomenon and Human Rights Protection; Zacatecas, Mexico; 14–15 October 2004.

<sup>139</sup> Rabat Declaration on Migration and Human Rights; 3rd Arab-European NHRIs' Dialogue on Migration and Human Rights; Rabat, Morocco; 6–8 May 2008.

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2. Lobby for the enforcement of relevant treaties that protect migrant domestic workers' rights, such as the ICCPR (especially Articles 22 and 13 related to freedom of association and due process), ICESCR (especially Articles 7–10 relating to the right of everyone to the enjoyment of just and favorable conditions of work) and relevant ILO conventions, including the
  - Convention on Private Employment Agencies 1997;
  - Abolition of Forced Labour Convention, 1957; and
  - Discrimination (Employment and Occupation) Convention of 1958.
3. Promote awareness of the human rights of migrant domestic workers and publicize their plight through education, training, and publicity campaigns.
4. Cooperate with civil society organizations, regional networks, and global organizations to coordinate joint action, identify and exchange best practices, and share research.
5. Make use of options offered by UN treaty bodies and the reporting cycle to protect migrants' rights and advocate for action on their behalf.

## ***Women and Girls in Lebanon***

Women and girls in Lebanon experience discrimination under the law and in practice. Personal status laws and confessional courts, gaps in domestic violence laws, and the nationality law discriminate against women. Additionally, discriminatory attitudes persist in the nation and contribute to inequalities in political representation, employment, and other forms of societal representation.

Lebanon's 15 personal status laws dictate the resolution of family-related matters such as marital disputes, divorce, custody of children, property, and inheritance in confessional courts, where the applicable law depends on the religious affiliation of the parties. The law of confessional courts frequently discriminates against women by, for example, subjecting them to greater penalties for offenses such as adultery, or by making it more difficult for them to divorce or to obtain custody of their children.<sup>140</sup> The law on nationality also discriminates against women, preventing Lebanese women from the ability to give nationality to her spouse or children, although Lebanese men can.<sup>141</sup>

Additionally, despite 2014 amendments to the domestic violence laws, several gaps remain. Marital rape, for example, is not a crime.<sup>142</sup> Acts of domestic violence and gender-based killings remain subject to very light penalties, as demonstrated by the cases of Roula Yaacoub and Mana Assi, who were both beaten to death by their husbands. Assi's husband was sentenced to 5 years in prison after a judge reduced his original life sentence on the basis of a criminal provision allowing for a reduced penalty for a crime committed in a state of extreme outrage caused by "dangerous and wrongful action

<sup>140</sup> AMNESTY REPORT ON LEBANON 2016/2017, *supra* note 112.

<sup>141</sup> HRW, WORLD REPORT 2017: LEBANON (2017).

<sup>142</sup> Working Group on UPR Compilation, *supra* note 133, ¶ 13.

committed by the victim."<sup>143</sup> Yaacoub's husband was initially dismissed from charges, but after an appeal, an in-absentia warrant was issued for his arrest almost two years after her death.<sup>144</sup>

In addition to discriminatory laws, discriminatory attitudes persist and impact women in a number of ways. The Committee on the Elimination of Discrimination Against Women has noted that a "stereotyped image of women" and "entrenched patriarchal attitudes" impact the daily life of many women in Lebanon.<sup>145</sup> As a result, while legally allowed to, few women participate in political leadership. Lebanon has one of the lowest levels of female participation in the legislature in the Middle East: out of 128 members, only four are women; only Oman, Kuwait and Yemen have fewer.<sup>146</sup> Party leadership often effectively bar women from entering legislature roles, while societal attitudes also place pressures on women not to seek political roles.<sup>147</sup> Women also participate at a low rate of 23.5% in the labor force, and are paid less for their work,<sup>148</sup> with a gender wage gap



ranging from 23% to 38% depending on the sector.<sup>149</sup>

As a consequence of the recent Syrian crisis, large numbers of Syrian women and girls have fled to Lebanon, where they face increased vulnerability. Because they have less access to resources, and may face legal and cultural barriers, refugee women and girls are at increased risk of human trafficking, gender-based violence and exploitation, and forced

<sup>143</sup> Foutoun Raad, *REPORT: Manal Assi Was Killed Twice, Says Head of LCW*, LBC INTERNATIONAL (Aug. 16, 2016), <https://www.lbcgroup.tv/news/d/news-bulletin-reports/277547/report-manal-assi-was-killed-twice-says-head-of-lc/en>. <sup>144</sup> Nadine Mazloum, *Roula Yaacoub's Mother, A Hero To All Lebanese Women*, NEWS ROOM NOMAD (May 17, 2016), <https://newsroomnomad.com/roula-yaacoub-mother-a-hero-to-all-lebanese-women>.

<sup>145</sup> Working Group on UPR Compilation, *supra* note 133, ¶ 28.

<sup>146</sup> *Why Do Few Lebanese Women Make it Into Parliament?* AL JAZEERA (Jan. 21, 2008), <http://www.aljazeera.com/news/2018/01/lebanese-women-parliament-180121090809191.html>.

<sup>147</sup> *Id.*

<sup>148</sup> William Robert Avis, *Gender Equality and Women's Empowerment in Lebanon*, K4D HELPDESK REPORT (Aug. 16, 2017) <https://reliefweb.int/sites/reliefweb.int/files/resources/'175-Gender-Equality-and-Womens-Empowerment-in-Lebanon.pdf>. <sup>149</sup> Pascal Saouma, *Lebanese Women Still Face Discrimination*, AL-MONITOR (Mar. 11, 2014) <https://www.al-monitor.com/pulse/ar/culture/2014/03/lebanon-women-social-economic-political-discrimination.html>.

early marriage.<sup>150</sup> Syrian refugees often fear reporting abuse to the police because of a lack of legal residency and general discriminatory attitudes toward Syrian refugees.<sup>151</sup>

### ***The Role of NHRIs in Addressing the Human Rights of Women & Girls***

NHRIs have, as stated by the Committee on the Elimination of Discrimination Against Women, an important role to play in the protection and promotion of the human rights of women and girls.<sup>152</sup> They can encourage the ratification of important instruments for the protection of women's human rights, such as CEDAW and its Optional Protocol, the ICCPR, ICESCR, CRC, the Protocol to Prevent, Suppress and Punish Trafficking in

Persons, Especially Women and Children, and relevant ILO Conventions.<sup>153</sup> Lebanon has ratified most of these treaties, but the Commission can recommend the adoption of CEDAW's Optional Protocols. NHRIs may also be instrumental in influencing governments to withdraw treaty reservations that stymie the rights of girls. The Commission may recommend to the government that it withdraw its reservations regarding nationality and equal treatment of women in family and marriage, as well as to reform the domestic laws to treat women equally under the law.

NHRIs should monitor the laws generally and make recommendations regarding laws affecting political and public participation, economic and social rights, violence against women and girls, and reproductive rights. NHRIs should recommend that laws discriminatory against women and girls be amended. NHRIs may also recommend the drafting of laws that promote the equal participation of women in all aspects of society, such as temporary special measures to ensure that women are sufficiently representing in the executive, legislative and judicial arms of the government.<sup>154</sup> CEDAW has also recommended several actions that NHRIs can take to ensure implementation of the treaty and to forward the rights of women and girls, including:

- Consideration of complaints;

<sup>150</sup> AMNESTY REPORT ON LEBANON 2016/2017, *supra* note 112; Lebanon: Syrian Women at Risk of Sex Trafficking, HUMAN RIGHTS WATCH (July 28, 2016), <https://www.hrw.org/news/2016/07/28/lebanon-syrian-women-risk-sex-trafficking>; *New Study Finds Child Marriage Rising Among Most Vulnerable Syrian Refugees*, RELIEFWEB (Feb. 1, 2017), <https://reliefweb.int/report/lebanon/new-study-finds-child-marriage-rising-among-most-vulnerable-syrian-refugees>.

<sup>151</sup> AMNESTY REPORT ON LEBANON 2016/2017, *supra* note 112.

<sup>152</sup> Statement by the Committee on the Elimination of Discrimination Against Women On its Relationship with National Human Rights Institutions, annexed to the Results of the fortieth session of the Committee on the Elimination of Discrimination against Women Annex II, Doc No. E/CN.6/2008/CRP.1, ¶ 3 (Feb. 11, 2008).

<sup>153</sup> For a more complete list of instruments central to women's and girls' human rights, see the Amman Declaration at Annex 1.

<sup>154</sup> Amman Declaration and Programme of Action, Eleventh International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Amman, Jordan, 7 Nov. 2012, ¶ 4 [hereinafter "Amman Declaration"].

- Recommendations on laws and policies;
- Ensure that human rights education programs are based on the principle of equality between men and women;
- Ensure access for women to services provided by the NHRI;
- Publicize and disseminate CEDAW & its Optional Protocols, concluding observations and general recommendations;
- Provide comments and suggestions on State Party's report;

- Provide assistance to alleged victims of HR violations; and
- Provide reliable information to the Committee for Inquiries.<sup>155</sup>

The Amman Declaration and Programme of Action also sets forth important guidelines for NHRIs in the protection and promotion of the rights of women and girls.<sup>156</sup> The Declaration and Programme of Action was developed by a coalition of NHRIs at the Eleventh International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, hosted in Amman, Jordan.<sup>157</sup> The focus of the Conference was “The human rights of women and girls: Promoting gender equality: The role of national human rights institutions.”<sup>158</sup> The declaration sets forth broad principles for NHRIs in addressing the human rights of women and girls, such as implementing training for staff members on gender equality and conducting investigations into allegations of violations of their rights.<sup>159</sup> The Declaration also includes a program of action for NHRIs on issues including political and public participation, economic and social rights, violence against women and girls, and health and reproductive rights. The Declaration is a useful guide and starting point for any NHRI seeking to address the rights of women and girls.

## SEXUAL ORIENTATION AND GENDER IDENTITY

### *Sexual Orientation and Gender Identity in Lebanon*

Lebanon still has many gaps in protection for persons of persons of diverse sexual orientation and gender identity (“SOGI”). Homosexuality is outlawed in Lebanon via article 534 of the Penal Code, which criminalizes “any sexual intercourse contrary to the order of nature.” This provision is mainly used by law enforcement agencies to penalize homosexuality, adultery, sodomy and fornication.<sup>160</sup> Although the UNHCR has recommended that this law be repealed,<sup>161</sup> law enforcement agencies continue to use it to

<sup>155</sup> Statement by the Committee on the Elimination of Discrimination Against Women On its Relationship with National Human Rights Institutions, annexed to the Results of the fortieth session of the Committee on the Elimination of Discrimination against Women Annex II, Doc No. E/CN.6/2008/CRP.1, ¶ 3 (Feb. 11, 2008).

<sup>156</sup> Amman Declaration, *supra* note 154.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> CLDH, ARBITRARY DETENTION AND TORTURE IN LEBANON 11 (2013).

<sup>161</sup> Working Group on UPR Compilation, *supra* note 133, ¶ 16.

harass and persecute lesbian, gay, bisexual, transgender, and intersex (“LGBTI”) persons. In recent years, authorities have raided establishments in an effort to arrest people involved in same-sex relationships.<sup>162</sup> People arrested on suspicion of same-sex relations are routinely subjected to abuse and torture, including forced anal examinations.<sup>163</sup>

Lebanese society has taken positive steps in removing homosexuality from classification as a mental disorder,<sup>164</sup> and through the decision in a recent case to recognize the right of a transgender man to change his official papers and to receive necessary treatment.<sup>165</sup> Local NGOs such as Helem, have made progress in advocating for greater acceptance of LGBT persons. Generally, however, despite Lebanon's position at the forefront of LGBTI rights in the Arab world, discriminatory attitudes toward LGBTI persons persist, and can result in negative stereotyping, harassment, abuse, employment consequences, arbitrary detention, and torture.

### ***Role of NHRIs in Addressing Sexual Orientation and Gender Identity in Lebanon***

NHRIs have a vital part to play in advocating for persons of diverse SOGI, and in protecting and promoting the rights of LGBTI people. First and foremost, NHRIs seeking to protect SOGI rights should look to the Yogyakarta Principles<sup>166</sup> and the recent update to them, the 2017 Recommendations and the Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles.<sup>167</sup> The Yogyakarta Principles were developed in 2006 at a meeting of the International Commission of Jurists, the International Service for Human Rights and human rights experts from around the world in Yogyakarta, Java. They set forth principles and standards to address abuses of the human rights of LGBTI people.

NHRIs may find the following other developments, research and reports useful, as well: •  
The Global Fund Strategy in Relation to Sexual Orientation and Gender Identities (2009);

<sup>162</sup> HRW, WORLD REPORT 2017: LEBANON (2017).

<sup>163</sup> *Id.*; CLDH SHADOW REPORT TO CAT, *supra* note 65, at 40.

<sup>164</sup> Dan Littauer, *Lebanon Says: Being Gay Is Not a Disease and Needs No Treatment*, HUFFPOST (Dec. 7, 2013), [http://www.huffingtonpost.co.uk/dan-littauer/gay-treatment-lebanon\\_b\\_3585192.html](http://www.huffingtonpost.co.uk/dan-littauer/gay-treatment-lebanon_b_3585192.html).

<sup>165</sup> Anealla Safdar, *Transgender Ruling in Lebanon an 'Empowering' Moment*, AL JAZEERA ENGLISH (Feb. 6, 2016) <http://www.aljazeera.com/indepth/features/2016/02/transgender-ruling-lebanon-empowering-moment-160206125311413.html>.

<sup>166</sup> International Commission of Jurists (ICJ), *Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (March 26, 2007).

<sup>167</sup> Yogyakarta Principles Plus 10, *Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles* (Nov. 10, 2017).

ESCAP Resolution 66/10 Regional call for action to achieve universal access to HIV prevention, treatment, care and support in Asia and the Pacific (2010); • ESCAP Resolution 67/9 Asia-Pacific regional review of the progress achieved in realizing the Declaration of Commitment on HIV/AIDS and the Political Declaration on HIV/AIDS (2011);

- ANNI Statement at Bangkok (2011);
- HIV and the Law: Risks, Rights & Health, The Global Commission on HIV and the Law (2012); and
- APF Regional Report: The Capacity of National Human Rights Institutions to Address Human Rights in Relation to Sexual Orientation, Gender Identity and HIV (2013).

As discussed in these documents, NHRIs can take action in a number of ways to address SOGI rights.

One of the most important ways NHRIs can act is to influence and effect legislative change. NHRIs may report on, advise, and recommend a number of legislative measures to ensure non-discrimination against LGBT people, including

- Recommend the repeal of all laws that criminalize consensual sex between adults of the same-sex and/or laws that punish homosexual identity;<sup>168</sup>
- Recommend the amendment of anti-discrimination laws to expressly prohibit discrimination based on sexual orientation and gender identity;<sup>169</sup>
- Recommend the passage of legislation recognizing same-sex marriage;<sup>170</sup> • Recognize and publish statements regarding LGBTI people's entitlement to equal protection of rights, including right to life and dignity, and freedom from arbitrary detention and torture;<sup>171</sup>
- Recommend formal recognition of the rights of transgender people, including creating official routes to changing the gender on identification documents and ensuring access to sex change surgery without making it a requirement of officially changing one's gender.<sup>172</sup>

NHRIS can also work on building their capacities to respond to, promote and protect SOGI-related rights in a number of ways. NHRIs should foster relationships with diverse stakeholders, especially the LGBTI community.<sup>173</sup> NHRIs should also ensure that the institutional structure and staffing policies are inclusive of and sensitive to LGBTI persons. NHRIs should ensure they have up-to-date research on SOGI-related rights violations around the world, and they should undertake research and documentation of

<sup>168</sup> Yogyakarta Principles, Principle 2.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at Principle 24.

<sup>171</sup> *Id.* at Principles 1 and 2.

<sup>172</sup> APF, REPORT FROM BALI CONFERENCE, ACJ REPORT: HUMAN RIGHTS, SEXUAL ORIENTATION AND GENDER IDENTITY 16 (Aug. 3-5, 2010); Yogyakarta Principles at Principle 3.

<sup>173</sup> *Id.* at 33.

the domestic impact of laws adversely affecting LGBTI persons or laws that are selectively enforced against them.<sup>174</sup> For example, the National Human Rights Commission of Mongolia conducted a survey of LGBTI people to determine types of abuses and discrimination they experienced, and at the same time comprehensively analyzed the national legal framework for provisions discriminatory toward LGBTI rights; the National Human Rights Commission of Mongolia published its findings in its annual report, and used them in trainings with police and law enforcement and lobbying efforts with the Mongolian government.<sup>175</sup>

NHRIs may also undertake advocacy efforts to support LGBTI rights. These may include education and training programs of important stakeholders, such as law enforcement, teachers, and the judiciary, in addressing discrimination and violence against LGBT people. NHRIs may also seek to raise awareness of patterns of ongoing rights violations in the public, and to make LGBT persons aware of their rights and resources available to them. NHRIs may either provide their own complaint mechanisms for rights violations, or assist people with their cases, by intervening or filing the case on their behalf. For example, the Human Rights of the Philippines intervened as a friend of the court in a high profile case wherein the Electoral Commission refused to allow a political party representing LGBTI rights, Ang Ladlad, to gain accreditation; the Supreme Court then overturned the refusal to accredit, in a landmark victory for LGBTI rights.<sup>176</sup>

## HEALTH, HYGIENE, SANITATION AND SOCIAL SECURITY

### *Health, Hygiene, Sanitation and Social Security in Lebanon*

Lebanon is a State party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 12 of this convention requires states to take active steps to realize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” This includes ensuring access to adequate healthcare, water, sanitation and hygiene. Lebanon still faces several gaps in the implementation of ICESCR when it comes to these areas.

In the area of healthcare, Lebanon has made strides in recent years but still has room to improve. While the majority of people have access to healthcare, the level of service provided can vary highly.<sup>177</sup> Public sector healthcare is still developing, and healthcare services are provided through a system of “highly fragmented” public and private entities

<sup>174</sup> *Id.* at 33–34.

<sup>175</sup> APF, PROMOTING AND PROTECTING HUMAN RIGHTS IN RELATION TO SEXUAL ORIENTATION, GENDER IDENTITY AND SEX CHARACTERISTICS 156 (June 2016). <sup>176</sup> APF, APCOM & UNDP, REPORT OF THE WORKSHOP ON THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN PROMOTING AND PROTECTING THE RIGHTS, INCLUDING HEALTH, OF LGBTI PEOPLE IN ASIA AND THE PACIFIC 6 (February 24-25, 2015). <sup>177</sup> CESCR,

*Concluding Observations on the Second Periodic Report of Lebanon*, UN Doc. No. E/C.12/LBN/CO/2, ¶ 57 [hereinafter “CESCR Concluding Observations”] (Oct. 24, 2016).

that can sometimes delay the provision of healthcare.<sup>178</sup> The Committee on Economic, Social and Cultural Rights (CESCR) has also noted the “imbalanced geographic distribution of health facilities, including those with contracts with the Ministry of Health,” calling for the government to reassess distribution to meet the needs of citizens.<sup>179</sup> In recent years, however, Lebanon has succeeded in reducing maternal mortality rates, and expanding maternal healthcare.<sup>180</sup> The UPR country team has called for increased mechanisms to detect potential pregnancy complications, and to deliver health services to women.<sup>181</sup> The team also noted the lack of psychological services and specialized medical services in the country.<sup>182</sup>

The Lebanese government also faces significant difficulties with regard to sanitation and hygiene. Since 2015, there has been an ongoing waste management crisis, wherein the municipalities, often left to their own devices by the central government, struggle to handle their garbage. Even in Beirut and the surrounding Mt. Lebanon area, garbage collected on the streets.<sup>183</sup> Many municipalities resorted to open burning of waste, a practice that is linked to serious short- and long-term health consequences, including heart disease, cancer, skin diseases, asthma, and respiratory illnesses.<sup>184</sup> The government largely failed to provide information to citizens regarding the health risks of open waste burning and advise citizens of precautions to take, and both at the national and local level, often ignored citizens’ pleas to find other solutions.<sup>185</sup> While some municipalities have recovered and found alternatives to open burning, many still struggle with sanitation and waste management. Open burning is still occurring at alarming rates, and disproportionately in low-income areas, including the Bekaa Valley, Nabatieh, and the South.<sup>186</sup>

Access to safe drinking water also remains an issue across the nation, but is especially severe in under-resourced or far-flung areas such as the Bekaa Valley, Hermel, and northern Lebanon.<sup>187</sup> ESCR has recommended that the government ensure access to safe drinking water without discrimination, invest in infrastructure, and establish an independent regulatory system to monitor the provision of water, sanitation and waste management services.<sup>188</sup>

<sup>178</sup> REGIONAL HEALTH SYSTEMS OBSERVATORY, WORLD HEALTH ORGANIZATION, HEALTH SYSTEM PROFILE: LEBANON 3 (2006).

<sup>179</sup> CESCR Concluding Observations, *supra* note 177, ¶ 57.

<sup>180</sup> Working Group on UPR Compilation, *supra* note 133, ¶ 68.

<sup>181</sup> *Id.* ¶¶ 68, 71.

<sup>182</sup> *Id.* ¶ 70.

<sup>183</sup> HUMAN RIGHTS WATCH, “AS IF YOU’RE INHALING YOUR DEATH”: THE HEALTH RISKS

OF BURNING WASTE IN LEBANON 8 [hereinafter “HRW Report on Waste in Lebanon”] (Feb. 26, 2018).

<sup>184</sup> HRW Report on Waste in Lebanon, *supra* note 183, at 23.

<sup>185</sup> *Id.* at 6.

<sup>186</sup> *Id.* at 6–7.

<sup>187</sup> Working Group on UPR Compilation, *supra* note 133, ¶ 69.

<sup>188</sup> CESCR Concluding Observations, *supra* note 177, ¶ 55.

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Article 11 of ICESCR also obligates States to recognize “the right of everyone to an adequate standard of living,” and to take cooperative measures to improve methods of food production and ensure equitable distribution of food around the world. Many people living in Lebanon still face significant difficulties in meeting their basic needs and obtaining an adequate standard of living. Although the State has increased measures to guarantee access to healthcare through the social security system, CESCR has noted that a significant proportion of the State’s population in need of social security benefits remain uncovered, and that the fragmented nature of the social security system means that an overly-limited number of social risks are accounted for.<sup>189</sup> UNICEF has also noted that Palestine refugees are unable to meet their basic food and non-food needs, and that conditions in Palestinian refugee camps remain substandard due to poor infrastructure and over-crowding.<sup>190</sup>

#### ***Role of NHRIs in Addressing Health, Hygiene, Sanitation and Social Security***

NHRIs can use their relationship with the State to take a number of steps toward protecting and promoting the human rights to health, hygiene, sanitation and social security. Network-building, research, investigation and report-writing are all important activities in this area, but monitoring is especially important in the realm of economic and social rights. NHRIs are uniquely positioned to access government data and, as permanent institutions, track trends over time.<sup>191</sup> Several resources exist to guide and support NHRIs as they engage in monitoring activities. These include the Committee on Economic, Social and Cultural Rights (CESCR), the Merida Declaration, the APF, the Center for Economic and Social Rights (CESR) (an international NGO focused on economic and social rights), ESCR-Net (a networking group devoted to creating and sharing resources), and water-focused NGO WaterLex.

As stated by CESCR, “[t]he right to water, like any human right, imposes three types of obligations on States parties: obligations to respect, obligations to protect and obligations to fulfil.”<sup>192</sup> Obligations to respect water, sanitation and health rights require States to refrain from interfering with the rights; for example, States may not unlawfully pollute or diminish water.<sup>193</sup> Obligations to protect mean that States may not allow third parties to interfere with the right to water, such as corporations polluting or diverting water sources.<sup>194</sup> The obligation to fulfill entails taking affirmative action to ensure that all



<sup>189</sup> *Id.* ¶ 42.

<sup>190</sup> Working Group on UPR Compilation, *supra* note 133, ¶ 67.

<sup>191</sup> CENTER FOR ECONOMIC AND SOCIAL RIGHTS (CESR), *National Human Rights Institutions*, <http://archive.cesr.org/section.php?id=177> (last visited Feb. 28, 2018).<sup>192</sup> CESCR, *General Comment 15: Substantive Issues Arising in The Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. No. E/C.12/2002/11, ¶ 20 (Jan. 20, 2003)[hereinafter “CESCR General Comment 15”].<sup>193</sup> CESCR General Comment 15, *supra* note 192, at ¶ 21.

<sup>194</sup> *Id.* at ¶ 23.

people may enjoy their rights.<sup>195</sup> As explained by CESCR, it “can be disaggregated into the obligations to facilitate, promote and provide,” meaning that the State must take legislative, administrative and policy measures to ensure the full realization of the economic and social rights of those they govern.<sup>196</sup>

NHRIs in States that have ratified the ICESCR, such as Lebanon, may assist the State in meeting its international obligations. Through networks and organizations with other NHRIs, they may organize regional support for economic policies and models for building infrastructure necessary to uphold rights to water, sanitation, health and food. As always, NHRIs can and should participate in State interactions with and reports to treaty bodies such as CESCR; CESCR’s rules in fact specifically confirm that information may be sought from NHRIs.<sup>197</sup> NHRIs may also engage in monitoring and advising activities in order to record, analyze, investigate, and gather facts regarding the situation of economic and social rights in the country. NHRIs that can gather previously unknown data about access to water, sanitation, health and social security may provide an invaluable service in this regard.

In reporting on human rights and advising governments, the NHRIs should pay special attention to indicators as identified by the ESCR and UN. Indicators are benchmarks by which a country may evaluate the state of the realization of rights, and whether progress has been made toward the full realization of the right by all. Developing and recording relevant indicators is crucial to making progress in the area of economic and social rights. CESCR has advised that “States parties may obtain guidance on appropriate indicators from the ongoing work of

- WHO,
- the Food and Agriculture Organization of the United Nations (FAO),
- the United Nations Centre for Human Settlements (Habitat),
- the International Labour Organization (ILO),
- the United Nations Children’s Fund (UNICEF),
- the United Nations Environment Programme (UNEP),
- the United Nations Development Programme (UNDP) and
- the United Nations Commission on Human Rights.”<sup>198</sup>

Indicators are also particularly important in measuring progress toward the Sustainable

Development Goals, a collection of development goals set by the United Nations to be achieved by 2030. Particularly relevant in this context are Goal 2 (end hunger), Goal 3 (ensure access to health care), and Goal 6: “Ensure availability and sustainable

<sup>195</sup> *Id.* at ¶ 25.

<sup>196</sup> *Id.* at ¶ 26.

<sup>197</sup> CESCR, Provisional Rules of Procedure Under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Adopted by the Committee at its Forty-Ninth Session (12-30 November 2012), Rule 27, U.N. Doc. E/C.12/49/3 (Dec. 3 2012).

<sup>198</sup> CESCR General Comment 15, *supra* note 192, at ¶ 53.

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management of water and sanitation for all.”<sup>199</sup> Each Goal has several associated targets, each with their own indicator(s). For example, Target 6.1 for Goal 6 is “By 2030, achieve universal and equitable access to safe and affordable drinking water for all;”<sup>200</sup> the indicator for this target is the “proportion of population using safely managed drinking water services.”<sup>201</sup> The entirety of Goal 2, 3 and 6’s targets and associated indicators can be found on the UN website for the Sustainable Development Goals.<sup>202</sup> NHRIs have also agreed, through the Merida Declaration, to “collaborate in mutual capacity building and sharing of experiences, and to consider the practical functions they can assume to contribute to a human rights-based approach to implementation of the Agenda.”<sup>203</sup> The Declaration provides guidance as to concrete steps NHRIs can take to help implement the Agenda and achieve its Goals.<sup>204</sup>

NHRIs working on issues involving economic and social rights may also seek guidance from a number of other networks and organizations. The APF has developed a number of manuals and guidance documents for NHRIs seeking to vindicate economic and social rights.<sup>205</sup> The APF has also worked with the Center for Economic and Social Rights (CESR) to develop guidance for NHRIs. CESR works to increase the number of NHRIs around the world producing high quality reports on economic and social rights, and it has developed a number of informative resources, guiding principles and operational frameworks for NHRIs working on economic and social rights.<sup>206</sup> ESCR-Net also seeks to strengthen the efforts of stakeholders addressing economic and social rights, and may provide a valuable method of networking and seeking out information.<sup>207</sup> NHRIs seeking to address water and sanitation issues may also seek out the National Human Rights Institutions Initiative for Good Water Governance – a joint project between non-profit organization WaterLex and the Hungarian Parliamentary Commissioner for Future

<sup>199</sup> GA Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1 (Oct. 21, 2015).

<sup>200</sup> *Id.* at 18.

<sup>201</sup> GA Res. 71/313, *Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development*, UN Doc. No. A/RES/71/313 (July 10, 2017). <sup>202</sup> UN, *Sustainable Development: Knowledge Platform*, <https://sustainabledevelopment.un.org/sdgs> (last visited March 1, 2018). <sup>203</sup> Mérida Declaration on the Role of National Human Rights Institutions in Implementing 2030 Agenda for Sustainable Development, ¶ 17, Twelfth International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights; Mérida, Yucatàn, Mexico, 8–10 October 2015 [hereinafter “Mérida Declaration”].

<sup>204</sup> *Id.*

<sup>205</sup> See, e.g., APF & CESR, *DEFENDING DIGNITY: A MANUAL FOR NATIONAL HUMAN RIGHTS INSTITUTIONS ON MONITORING ECONOMIC, SOCIAL AND CULTURAL RIGHTS* (January 2015).

<sup>206</sup> CESR, *National Human Rights Institutions*, <http://archive.cesr.org/section.php?id=177> (last visited Mar. 13, 2018).

<sup>207</sup> ESCR-NET, <https://www.escr-net.org> (last visited Mar. 13, 2018).

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Generations.<sup>208</sup> This project has had success in compiling and publishing good practices reports, training manuals, and creating a comprehensive online platform where NHRIs can share knowledge and resources with each other.<sup>209</sup>

### FREEDOM OF EXPRESSION AND ASSOCIATION AND ASSEMBLY

#### *Freedom of Expression, Association, and Assembly in Lebanon*

In recent years, the range of freedom of expression and association in Lebanon has been shrinking. Authorities have increasingly arrested and prosecuted journalists, CSO members and other citizens for making politically inflammatory statements in public fora, especially for criticism of government officials. The laws in Lebanon also do not yet fully reflect their obligations under international instruments and human rights standards.

Lebanon has some of the strongest speech and associations in the MENA region, but in many cases, the law does not protect these freedoms to the extent needed. Although Lebanese law does guarantee freedom of speech, press and assembly in Article 13 of the Constitution,<sup>210</sup> this freedom is subject to limitations by law. The Lebanese Penal Code criminalizes libel, slander and defamation; these laws are most frequently used to punish journalists and citizens posting on social media for criticism or perceived insults to politicians and officials.<sup>211</sup> A Publications Court, the original purpose of which was to protect the freedom of speech of journalists, has in practice been used by officials to obtain monetary settlements from journalists and citizens who have criticized them.<sup>212</sup> These settlements range from three million Lebanese liras (\$2,000) to much higher amounts.<sup>213</sup> Additionally, several groups are prohibited from exercising their right to freedom of association, including civil servants (judges included), migrant domestic

workers, and CSOs that are clandestine or based on “illegal grounds.”<sup>214</sup>

<sup>208</sup> WATERLEX, *National Human Rights Institutions Initiative for Good Water Governance*, <https://www.waterlex.org/national-human-rights-institution-initiative-for-good-water-governance> (last visited Mar. 13, 2018).

<sup>209</sup> *Id.*

<sup>210</sup> Lebanese Constitution, adopted on May 23, 1926, article 13: “*The freedom to express one’s opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association are guaranteed within the limits established by law.*”<sup>211</sup> HRW, WORLD REPORT 2017: LEBANON (2017).

<sup>212</sup> Eva Shoufi, *Is Lebanon’s Court of Publications in Service to Journalists or Politicians?*, AL-AKHBAR ENGLISH (Oct. 31, 2014), available at <http://english.akhbar.com/node/22288>.

<sup>213</sup> *Id.*

<sup>214</sup> CAMILLE JOSEPH, CLDH, THE STATE OF FREEDOM OF ASSOCIATION IN LEBANON: WHAT PROSPECTS FOR THE FUTURE? 13, 24 (Dec. 2010); *Lebanon: Recognize Domestic Workers Union: Add Labor Law Protections for These Employees*, HRW (March 10, 2015), <https://www.hrw.org/news/2015/03/10/lebanon-recognize-domestic-workers-union>.

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While Lebanon has a comparatively liberal system for registering associations for the region, requiring only notification to the government rather than authorization, in practice the notification system serves as a kind of de facto authorization system. A proposed association’s declaration and documents will be sent to several government agencies, who may give their opinion on the organization, and who frequently investigate the founding members in order to give their opinion.<sup>215</sup> CSOs must also annually send the government a list of its members, its accounts and forecasted budget, and a register of the associations’ decisions, correspondences and notifications, among other things.<sup>216</sup> The criminal courts can dissolve an organization if it is found to be “clandestine,” and thus CSOs must give a very detailed accounting of their purpose and founding members at the formation of the organization.<sup>217</sup> In practice, associations have also been dissolved for other reasons that are not included in the law, such as not reporting their activities to the government or conducting activities outside of those described in their founding statutes.<sup>218</sup> Additionally, CSO members and protesters have been subject to violent repression and referrals to military courts when demonstrating in public places, such as during protests against the Waste Crisis in 2015.<sup>219</sup>

A number of government entities contribute to the repression of freedom of expression. The ISF Bureau for Combatting Cyber Crimes is responsible for summoning and questioning journalists, bloggers and activists about their social media posts.<sup>220</sup> Several such journalists, as well as protesters and members of civil society, haven been arrested and prosecuted by military courts.<sup>221</sup> When it comes to broadcasting, a dedicated censorship bureau located within the General Security issues broadcasting licenses, and does not provide an explanation for decisions denying such a license.<sup>222</sup> The National

Audio-Visual Council (NAC), meanwhile, is an advisory body that can recommend sanctions against media outlets that violate the law. It consists of members appointed when Lebanon was under Syrian oversight, but the government has failed to appoint new council members since their term expired in 2005.<sup>223</sup>

<sup>215</sup> JOSEPH, *supra* note 214, at 20.

<sup>216</sup> *Id.* at 14.

<sup>217</sup> *Id.*

<sup>218</sup> *Id.*

<sup>219</sup> HRW, WORLD REPORT 2017: LEBANON (2017).

<sup>220</sup> STATE DEPARTMENT COUNTRY REPORT, *supra* note 96, at 16.

<sup>221</sup> CIVIL SOCIETY REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS IN LEBANON: THE RIGHTS TO PRIVACY, FREEDOM OF EXPRESSION, PEACEFUL ASSEMBLY, AND FREEDOM OF ASSOCIATION, 122 SESSION OF THE HUMAN RIGHTS COMMITTEE, §§ b, c (March 2018) [hereinafter “CSO PRIVACY AND FREE EXPRESSION REPORT”].

<sup>222</sup> *Id.* § b (March 2018).

<sup>223</sup> *Id.*

### ***Role of NHRIs in Addressing Freedom of Expression and Assembly in Lebanon***

NHRIs can play an active and crucial role in protecting and promoting the freedom of expression and freedom of assembly in their nations. First, NHRIs can ensure that their respective States are parties to the important treaties protecting these freedoms, including

- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Convention on the Elimination of All Forms of Discrimination against Women; and
- ILO Convention N° 135, Workers' Representatives Convention.

The Human Rights Committee and the Economic and Social Council have also issued comments and reports clarifying the nature of State parties' obligation to preserve freedom of expression and assembly, including:

- General Comment 10 [19] (Article 19) of the Human Rights Committee;<sup>224</sup>
- General Comment 11 [19] (Article 20) of the Human Rights Committee;<sup>225</sup> and
- The public's right to know: Principles on Freedom of Information Legislation.<sup>226</sup>

NHRIs may also contribute to the reports to these bodies, give their input on the drafting of general comments, and participate in their meetings, whether in their own right, or as

part of their State party convention. The HRC invites and encourages NHRIs to participate in their sessions, which usually occur three times a year.<sup>227</sup> In such meetings, NHRIs may provide oral information and give a country-specific view on the state of freedom of expression and assembly, and needed actions. NHRIs may also encourage States to invite the special rapporteur on the right to freedom of opinion and expression and the special rapporteur on the rights to freedom of peaceful assembly and of association to visit and to assess the situation of these freedoms.

An NHRI also has a duty to advise the government on how to bring its laws into compliance with international human rights standards, and its obligations under international treaties and domestic law. In Lebanon, the Commission may wish to recommend several changes to the law to bring the State into compliance with its international obligations, including

- Remove libel, slander and defamation from the Penal Code, and make them civil crimes alone;
- Amend Law Decree No. 112 issued in 1959 to allow civil servants (including

<sup>224</sup> Doc No. CCPR/C/21/Rev.1 (May 19, 1989).

<sup>225</sup> Doc No. CCPR/C/21/Rev.1 (May 19 1989).

<sup>226</sup> Annex II Report E/CN.4/2000/63.

<sup>227</sup> OHCHR NATIONAL INSTITUTIONS AND REGIONAL MECHANISMS SECTION, INFORMATION NOTE: NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIS) INTERACTION WITH THE UN TREATY BODY SYSTEM § 4.1 (Apr. 5, 2011).

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- judges) to organize and found professional associations;
- Recognize the right of migrant domestic workers to organize and to form a trade union;
- Strengthen freedom of information and transparency laws;
- Require that censorship decisions be published with an explanation of the reason for censorship;
- Guarantee freedom of access to information held by government officials; • Reform the notification system for forming associations to be less onerous; and • Appoint new members to NAC, in accordance with the law.

A report recently submitted to the HRC by a coalition of CSOs in Lebanon also provides additional guidance as to what changes CSOs recommend, including granting independence and enforcement powers to NAC.<sup>228</sup>

The new Lebanese Commission may also encourage and participate in regional discussions about freedom of expression, association, and assembly, and help to develop reports, guidance, and regional action plans to strengthen legal and social protections for these freedoms.

Since 2004, Lebanon has instituted an unofficial moratorium on the death penalty.<sup>229</sup> Prosecutors continue to request the death penalty, however, in terrorism cases<sup>230</sup> or cases where the crime is considered particularly heinous.<sup>231</sup> Thus, Lebanon has already achieved a de facto abolition of the death penalty. The death penalty is not compatible with international human rights standards, as it violates two fundamental human rights: the right to life, and the right to freedom from torture.<sup>232</sup> The next step for an NHRI working on this issue is to advise the government to pass a law officially abolishing the death penalty.

<sup>228</sup> See generally, CSO PRIVACY AND FREE EXPRESSION REPORT, *supra* note 221.<sup>229</sup>

Bassam Khawaja, *Lebanon: Don't Resume Executions: Resumption of Executions Would be a Step in the Wrong Direction*, HRW (Jun. 12, 2017),

<https://www.hrw.org/news/2017/06/12/lebanon-dont-resume-executions>.<sup>230</sup>

AMNESTY INTERNATIONAL, ANNUAL REPORT: LEBANON 2016/2017, available at <https://www.amnesty.org/en/countries/middle-east-and-north-africa/lebanon/report-lebanon> (last visited Mar. 13, 2018).

<sup>231</sup> *Lebanese Prosecutor Calls For Suspected Killer of British Diplomat to Face Death Penalty*, THE TELEGRAPH (Feb. 8, 2018), <https://www.telegraph.co.uk/news/2018/02/08/lebanese-prosecutor-calls-suspected-killer-british-diplomat>.

<sup>232</sup> Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, UN Doc. No. A/RES/44/128 (Dec. 15, 1989), entered into force July 11, 1991; G.A. Resolution 69/186, Moratorium on the Use of the Death Penalty, UN Doc. No. A/RES/69/186 (Feb. 14, 2015).