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February 24, 2010

Your Excellencies:

We are a group of Lebanese and international organizations working on human rights issues in Lebanon. We are writing to voice our concern regarding the continued detention of migrants and refugees after they finish serving their sentences, without any legal basis for the continued detention and to recommend ways to put an end to this violation of Lebanese and international human rights law.

The detention of foreigners in Lebanon following the end of their sentences is a long-standing problem. According to a report by the Internal Security Forces, as of August 24, 2009, 13 percent of detainees in Lebanese prisons were foreigners

who had finished serving their sentence and yet remained in jail. The group included asylum seekers and refugees who cannot safely return to their country.

Over the last two months, Lebanese courts issued four decisions deeming that the continued detention of four Iraqis who had finished serving their sentences was illegal under Lebanese law and under Lebanon's international obligations.¹ Three of the Iraqis had remained in detention for more than a year following the end of their sentence. These decisions highlight a broader problem that currently exists in Lebanon when it comes to the protection of the basic rights of detained foreigners.

Under the current system, whenever a foreign detainee finishes serving his or her sentence, the Internal Security Forces, which manages the prisons, do not release him or her but rather refer the case to the Directorate General of General Security, regardless of whether the court has ruled that he or she should be deported.² These foreign detainees are then either kept in the prison where they served their sentence, transferred to Roumieh central prison or referred to the custody of General Security in their detention facility in Adlieh. Regardless of their place of detention, many are kept for months after the expiry of their judicial sentence before they are either released or deported.

There are a number of problems with this situation. As the courts pointed out in their four decisions, there is no legal basis for detaining a foreigner following the end of his or her sentence. Lebanese law generally provides that in cases where the court orders the deportation of a foreigner, that person has 15 days to exit the country "by his or her own means" (Art. 89 of the Penal Code). The only provision in Lebanese law that allows General Security to detain a person is if the person represents a threat to national security or public security. In such a case, but only in such a case, Article 18 of the 1962 Law on Entry and Exit allows the director general of General Security to detain a foreigner administratively with the approval of the public prosecutor until his or her deportation.³

Your excellencies, the detention of foreigners after the end of their sentence has become widespread practice in Lebanon, but it takes place outside the realm of the law and beyond the purview of judicial oversight: the continued detention of foreigners following the end of their sentence is generally not based on any sort of judicial or administrative order. The Lebanese judiciary has finally recognized this important fact. In the four rulings mentioned above, the

¹ Judgement of Juge des Referes of Zahle in the case of Yusra al-Amiri, December 11, 2009 ; Judgement of Juge des Referes of Mount Lebanon in the case of Riad Ali Jawad Hashem, January 28, 2010; Judgement of Juge des Referes of Mount Lebanon in the case of Wisam Samah Fazza` al-Yusef, January 28, 2010; Judgement of Juge des Referes of Mount Lebanon in the case of Maytham Jawad al-Bay`i, January 28, 2010.

² There is a standing instruction from the Public Prosecutor's office to initiate such a referral. Public Prosecution Instruction No. 4662/M/2004 of December 16, 2004.

³ Article 18 of the 1962 Law on Entry and Exit states that "the Director General of General Security may with the approval of the office of the public prosecutor detain someone who is subject to a deportation decision until the deportation procedures are completed." However Article 18 is dealing with the situation of foreigner whose presence represents "a danger to public security or health." (Art. 17 of the 1962 Law on Entry and Exit).

judges determined that detention was neither based on a judicial decision nor an administrative decision of General Security and accordingly could not be upheld.

There are today more than 230 foreigners, including at least 13 refugees, who have finished serving their sentence and yet remain in prison. The Lebanese judiciary has highlighted the need to reform this system. It is now up to the Lebanese authorities to enact the necessary measures to ensure compliance with Lebanon's constitution, notably Article 8, which states that "no one may be arrested, imprisoned, or kept in custody except in accordance to the provisions of the law." as well as Lebanon's obligations under international law, notably the International Covenant on Civil and Political Rights. Article 9 of that treaty states that "No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

To ensure compliance, we propose the following measures to tackle the issue:

A. As an immediate step, we urge:

- The Minister of Interior, as the minister responsible for prisons, to enforce the three judicial decisions deeming the continued detention of Riad Ali Jawad Hashem, Wisam Samah Fazza` al-Yusef, and Maytham Jawad al-Bay`i illegal. At the time of the writing, only Yusra al-Amiri had been released.
- The Ministry of Justice and Interior to form a joint committee to prepare a list of all foreigners who have finished serving their sentence and remain in detention without legal basis. The committee should coordinate its work with UNHCR to determine if any of the detained foreigners are asylum seekers or recognized refugees.
 - All foreigners should be released from prison and other detention centers immediately at the end of their sentence. Instructions should be sent out to all detention centers making this clear, and that detaining someone without lawful authority is a criminal offense (Art. 368 of Penal Code)
 - With respect to asylum seekers or refugees: the Ministry of Interior should grant them temporary renewable residence permits, commonly referred to as circulation permits in Lebanon.
 - With respect to migrants who are subject to deportation orders: they should normally be at liberty pending deportation. Under Lebanese law (Art. 89 of Penal Code), they have 15 days to arrange for their departure. The committee should consider extending this timeframe in cases where their departure may be delayed because of circumstances outside their control: for example, if their employer is responsible to pay for the outbound

ticket (as in the case of domestic workers) and the employer is not being responsive, or their country of origin does not have an embassy in Lebanon to issue them needed papers.

B. As an intermediary step, we urge you to:

- Reform Policy towards Migrants in Irregular Situation:
 - Detention of migrants in irregular situation should be the last resort. Alternatives that ensure rights, dignity and well-being should be considered and pursued before detention, such as supervised release, regular reporting requirements, or posting bail. The UN Working Group on Arbitrary Detention, in a report issued on February 16, 2009, reiterated that "immigrants in irregular situations should not be qualified or treated as criminals nor viewed only from the perspective of national security. Detention should be of the last resort, permissible only for the shortest period of time."⁴

- Reform Policy Towards Asylum Seekers and Refugees:
 - Amend the 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country so as to exempt asylum seekers and refugees from penalties for being in the country illegally.

We would like to thank you for considering this letter and hope that you will be able to release the foreigners who have finished serving their sentence as soon as possible,

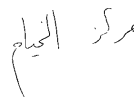
Sincerely,



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Director, HRW



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Executive Director,
Restart Center
For Rehabilitation Of
Victims
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Khiam Rehabilitation
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Jendoubi,
President of EMHRN

⁴ Report of The Working Group On Arbitrary Detention, "Promotion And Protection Of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development," A/HRC/10/21, February 16, 2009, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/110/43/PDF/G0911043.pdf?OpenElement>

MECC

Middle East Council of
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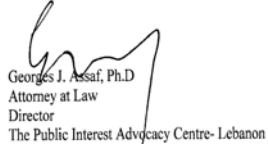
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