The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

Submission for General Comment on Migrants' Rights to Liberty

Subject: Answers to the questions found in the form as part of the promotion of migrant workers and their family members rights.

By reference to the abovementioned subject please find below the answers to the questions found in the form.

Part A: General information

1- Please describe the process by which migrants are detained in your country. Which authorities are tasked with the responsibility? Who or what body oversees these authorities?
Illegal migrants are arrested by any official security forces, they are then sent before a Judge that will determine their legal status. Lebanese Security Forces are the authorities responsible for detaining illegal migrants. The Ministry of Interior is the body that oversees these authorities.

2- Where do arrests and detentions take place? Is force typically used during arrest or detention? Are there standards for treatment of migrants during an arrest? To what extent are migrants informed of what is going on during an arrest (why they are being detained, possible charges against them, etc.)?

Arrests and detention of migrants take place in usual arrest and detaining facilities, Illegal Migrants are then placed in the General Security forces’ detaining facilities. The use of force or any kind of coercion are considered criminal acts by the Lebanese Law, any security officers that transgresses these laws can be reported. There are legal boundaries that must be respected by the authority which is making the arrest, and there are standards stipulated in the Lebanese Constitution and international convention joined by Lebanon that requires the respectful treatment of arrested people in general (illegal migrant or any other arrested person), and guaranties the respect of Human Rights protected by the Constitution and the Law. In the same context Judges handling investigations are legally bound to inform migrants of the charges held against them and the reasons for their arrest.
3- Who are the personnel that staff facilities that hold people in detention (corrections officers, law enforcement, social workers, etc.)? What are the professional qualifications of staff at these detention facilities? Who oversees staff at detention facilities?

The personnel that staff detention and arrest facilities are Internal Security officers. Security forces have military and security qualifications and do not have any qualifications for prison administration due to the lack of any specialized training for prison administration, acquiring these qualifications is done by practical experience on the ground. The Ministry of Interior and Municipalities oversees detention facilities personnel.

4- Who owns the facilities used to house migrants who are detained? Who operates the facilities used to house detained migrants? Are facilities that house detained migrants public or private?

The Lebanese government owns the facilities used to detain migrants and these facilities are subsequently public and operated by the body in charge of arrests (i.e. Ministry of Interior and Municipalities and Ministry of Defense).

5- Does your country monitor detention facilities? Who monitors detention facilities? What are the standards that detention facilities must adhere to?
The Lebanese Government monitors arrest and detention facilities.
The monitoring is done by the Ministry of Interior and Municipalities which has under its authority all arrest and detaining facilities (jails, prisons). Another monitoring is done by the Ministry of Justice through its Prison Directorate which has according to article /29/ from its decree of establishment the task of “paying attention to prisoners’ situations and improve their living condition”.
Standards followed in detention and arrest facilities are those commonly accepted locally and internationally and most notably the UN standard minimum rules for the treatment of prisoners – Nelson Mandela Rules-

6- During detention, do detainees have access to communication with their families, legal counsel, and their own consular authorities? Are detainees provided with information on the process they are going through?

Detainees are given the right to call their families, a lawyer and receive the assistance of a doctor and a translator by force of article /47/ of the code of criminal procedure. They can, in practice, contact their countries' diplomatic authorities. They are informed of the process they are going through.

7- Are the particular needs of women and other groups of people met? Is consideration given to the status of asylum seekers, victims of fortune and trafficking, and other migrants who are particularly vulnerable?
The policy of separating women from men is followed by arrest and detention facilities. Regarding Jails (arrest facilities), a separate space is dedicated to women, as for prisons some of them are dedicated to women. All arrested women are treated in the same way, they are legally allowed to demand the use of their legal rights as stated above.

8- Does the detention process look any different if minors are involved?

Minors are separated from other detainees. Law number 422/2002 imposes specific and different procedures that applies on minors and a special trial procedure regarding juvenile trials. The abovementioned Law imposes the assistance of a lawyer and a specialized social worker in order to safeguard the supreme interest of the minor.

Part B: Legal treatment

1- What is the legal basis for detaining migrants in your country? What purpose does detention of irregular migrants serve? How has this purpose been articulated through legislation and through the judicial system and public policies? Please identify any relevant cases in your country’s court system.
The legal basis used to arrest and detain illegal migrants is provided by article /32/ et seq. of law number /173/ issued on 10/7/1962 “Entry to and residing in and exit from Lebanon”.
Residing illegally in Lebanon is a crime in accordance to Lebanese laws. Arresting and detaining illegal migrants aims generally to punish them as they have committed a criminal act in accordance to Lebanese laws and should be held accountable and be expelled if needed.
Executive and legislative authorities through legislative decrees and enactment of laws has adopted a public policy aiming to organize migrants' presence in our country and secure the means to their return to their country of origin.

2- Is immigration governed by criminal law or administrative law?

In our country, immigration is governed by criminal law.

3- Does the immigration detention proceed ex officio or there is an individualized analysis of its pertinence and proportionality?

No detention can be done ex officio, and all investigations are done individually in accordance to legal proceedings.
4- Does legislation establish a maximum amount of time for immigration detention? What is the maximum amount of time that someone can be detained? Are there any exceptions or extensions allowed by law?

Distinction should be done between initial arrest and being held in custody.
Lebanese law determines a maximum arrest time limit and its duration cannot exceed /96/ hours. No arrest can be made without a motivated decision of the attorney general. As for custody holding, its duration depends on the crime committed (misdemeanor or felony).

5- Does legislation provide any mechanism to challenge the legality of the detention?

Arrest should not breach any of the proceedings determined by law, and any breach of these legal principles and proceedings lead to a challenge of their legality in order to cancel their effects.

6- Is there any national legislation that guarantees legal representation or interpreters in immigration proceedings? Is there a guarantee of access to free legal representation?

Lebanese law – article /47/ of the code of criminal procedure guarantees in all trials the right to appoint a lawyer and to assisted by a translator. Every litigant has the right to request a judicial aid in order to receive a free legal representation.
7- Is there any legislation that establishes the right to consular assistance for migrants? Is this right guaranteed in practice?

There are no legislations that guarantees obtaining a consular help for migrants, but this matter is guaranteed in practice.

8- Does your country recognize the due process rights of non-citizens to the extent that it recognizes the due process rights of citizens? If not, what are the differences?

Our country recognizes the due process rights of non-citizens and citizens in an equal manner, in accordance to the Lebanese Constitution and Laws in force, without any distinction between Lebanese citizens and foreigners.

9- Is information available to detainees regarding the process of requesting asylum or applying for refugee status?

Upon asking, detainees are given information regarding the process of requesting asylum or applying for refugee status.

10- What do proceedings that determine migration status look like? Who is the decision-maker or decision-makers? What are the qualifications of the decision-makers? Are they appointed or elected?
There are no specific body or agency given the authority to grant or refuse refugee status and creating this body or agency is done by issuing a law by the legislative. The civil Lebanese courts can within the scope of a particular dispute apply international conventions that defines the refugee status.

11- Is there a duty to ensure that decisions are duly motivated by legal reasoning? How is that ensured in practice?

Judges are legally required to duly motivate their decisions otherwise they are subject to an appeal.

12- How much time elapses after arrest before a determination of migration status is made? How long does the initial determination of status process take?

The duration is determined by law and depends on the type of the offense committed.

13- If families are involved, are their cases determined separately or together? Is consideration given to the special circumstances of children?

Families are not usually separated, their cases are determined together, and consideration is given to the special circumstances of children.
14- What are the consequences of a finding of irregular migration? Is an individual who is found to have entered the country in an irregular manner returned to detention or moved to a different facility? Are the conditions different for individuals found to be irregular migrants? Are irregular migrants eligible to be released on bond/bail until a final determination has been made?

Illegal migration is punished by Lebanese law and everyone that commits this crime should be sentenced accordingly. If an individual is found to have entered the country in an irregular manner, he is transferred to the General Security forces’ detaining facilities. Irregular migrants are eligible to be released on bond/bail until a final determination has been made, in order to guarantee their presence during the trial proceedings.

15- Is there a right to appeal of findings of irregular migration status? What does the appeal of a finding of irregular migration status look like? How much time elapses from a judgment of irregular migration status to an appeal? What due process guarantees are given during the appeal process of a finding of irregular status? Does the appeal process have suspensive effect regarding deportations?

Lebanese law guarantee the right to appeal all expulsion decisions whether it is given by a judicial body or any security or official agency, and the appeal mechanism differs depending on the type of the decision.
Appeal is presented by a lawyer in accordance to laws in force. Appeal process have suspensive effect regarding expulsion decisions.

Part C: Impact on Detainees

1- Please describe the impact that detention has on detainees’ physical and mental health.

Every detainee can request a medical exam which includes a psychological and a physical exam.

2- Please describe the varying impacts on particularly vulnerable groups, including racial and ethnic minorities. What systems or practices are in place to prevent discrimination in both proceedings and detention?

Every detainee can request a medical exam which includes a psychological and a physical exam. Lebanon has by force of law number /44/ issued on 24/6/1972, joined the International Convention on the Elimination of All Forms of Racial Discrimination that has been approved by the General Assembly of the United Nations by its decision number /2106/ issued on 21/12/1965. Lebanon guarantees the equal access to justice for all without any discrimination based upon race or religion.

3- Please describe the way in which detention of migrants in your country particularly affects children who are
detained. How does the detention affect education? Are educational resources available in the facilities in which they are held? Please describe any of these programs.

The Ministry of Justice is working through its Juvenile Department on establishing rehabilitation programs for Juvenile, and a rehabilitation follow up, by acquiring skills and learning certain professions with the help of civil society organizations and international organizations. These programs help rehabilitating arrested minors, and a social and psychological follow up is done with them with the collaboration of the ministry of social affairs.

4- Is consideration given to keeping families together?

There are several considerations to be taken in order to maintain the family unity and most importantly not to disperse family members and strengthen family ties, and in case security or other conditions lead to the displacement of the family or its dispersion, this will undoubtedly have negative consequences on these families.

5- Are children typically kept in detention? How long?

Children are not typically kept in detention; this detention take place in the prisons juvenile ward. Law number 422/2002 determines minors (Minors in violation with the law and minors at risk) arrest and detention procedures, their detention duration depends on the type of crime committed.
The Juvenile Court (single Judge for small offenses and first-degree court for felonies) imposes the right sentence for each case.

6- How does the detention of migrants in your country particularly affect women? Are health resources for women made available to women in detention? How are pregnant women accommodated with respect to the conditions of detention?

Every detainee including women have the right to ask for a medical exam, and the law has determined specific procedures for pregnant women. The Ministries of Justice, social affairs and interior work in collaboration with many national and international organization on improving the situation of detained women and give attention to their needs.

Part D: Alternatives to Detention

1- What alternatives to detention exist in your country? Please describe these alternatives to detention and how they are generally perceived and implemented in your country.

Alternatives to detention are provided by law number 422/2002 in its Article /5/ regarding juveniles, these alternatives measures are sentences without deprivation of liberty like: Supervised release, public interest work or work to compensate the victim.
Regarding adults, some texts has given the Judge the right to replace custody arrest by imposing measures provided by article /111/ of the code of criminal procedures.

2- Have all detainees access to alternatives to detention? How many persons get an alternative to detention in comparison with the number of detainees?

Alternatives to detention are only available to juveniles. Regarding adults, some texts has given the Judge the right to replace custody arrest by imposing measures provided by article /111/ of the code of criminal procedures.

3- Have there been any policies proposed in your country that could achieve the same objectives as detention? How have these proposals for alternatives to detention been received in your country? Are proposals for alternative to detention generally met with favor or have they been rejected? Please describe the criticisms of the policies for alternatives to detention by the general public. If these proposals have been rejected. What was the rationale for rejecting them?

Policies proposing alternatives to detention are currently seriously presented to the public but they are still in the preliminary stages of study. In this matter, the Ministry of Justice has proposed a bill that deals with work for public benefit for adults and minors and it’s still being discussed before the parliament.

Part E. Additional information
Please add any other information that you consider to be relevant for the CMW to take into account in the elaboration of this general comments.