

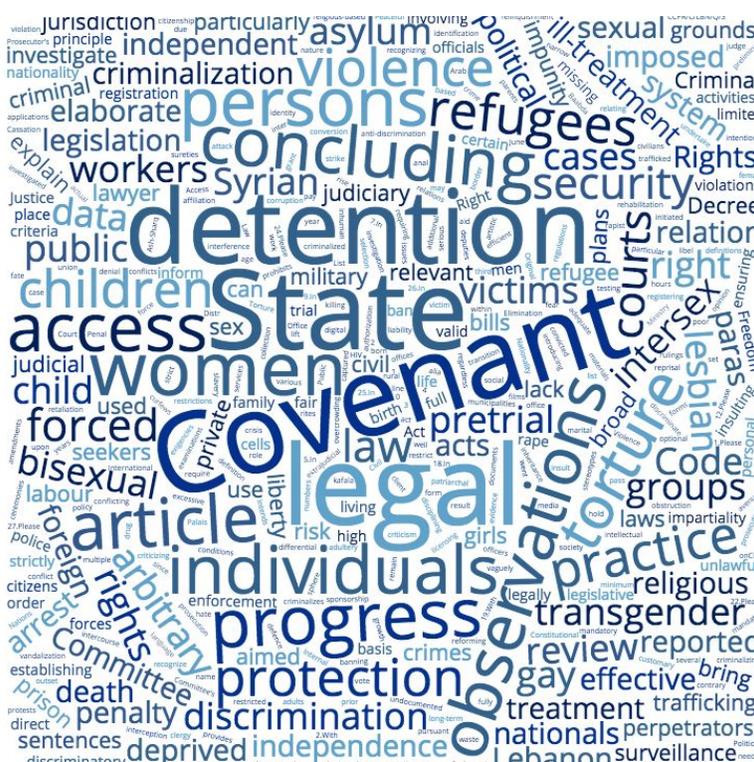
# Civil society report on the implementation of the International Covenant on Civil and Political Rights in

# Lebanon

The Rights to Privacy, Freedom of Expression, Peaceful Assembly, and Freedom of Association

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With the support of



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## I. Introduction

### a. Joining organisations

This joint report is prepared by ALEF – act for human rights, the Lebanese Centre for Human Rights (CLDH), Maharat Foundation, Samir Kassir Eyes, and SMEX. We hereby submit this report evaluating the implementation of the International Covenant on Civil and Political Rights (ICCPR) in Lebanon, with particular focus on the rights to privacy, freedom of expression, peaceful assembly, and freedom of association. This report aims to highlight the main concerns of civil societies in Lebanon based off the State's submission, while addressing recommendations to the State Party.

### b. Methodology

This report is based on extensive desk research and past reports by various NGOs mentioned above. Contributors from Lebanese NGOs and CCPR met for a two-day national civil society consultation in Lebanon, where NGOs were introduced to the reporting process, and were subsequently able to participate actively in the drafting of this report based on their fields of expertise. This report is the final result. While the joining organizations made all efforts possible to cross-check information and reproduce only accurate facts and events, this does not overrule the possibility of inaccuracies or oversights, for which we express hereby our regrets.

### c. Contact details

The joining organizations are pleased to express their gratitude to all those who contributed, directly or indirectly, to the production of this report, including



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## II. Replies of Civil Society to the List of Issues (CCPR/C/LBN/Q/3)

### a. Right to privacy (art. 17) ISSUES 21-25

**Issue 21:** *Please respond to allegations of mass surveillance of digital communications and provide information on legal safeguards in place against arbitrary interference with the privacy of individuals in practice. Please report on measures taken to ensure that interception of private communications and access to data, retention of communications data (metadata) and other surveillance activities require prior judicial authorization and conform with the State party's obligations under the Covenant, and clarify how the relinquishment of judicial oversight of telecom data requests to security agencies is compatible with the Covenant. Please also report on measures taken to ensure that such surveillance activities are subject to independent oversight mechanisms. Please provide information about the legal framework governing data protection, including the use of biometric data.*

#### Comments from Civil Society

A retired President of the Court of Audits has acknowledged that the actual role of the judiciary in authorising or overseeing the administrative authorisation of interceptions, as per Law No. 140 created in 1999, is merely symbolic. In practice, the Prime Minister routinely circumvents the requirement for judicial authorisation by directly authorising intercepts himself.<sup>1</sup> In September 2014, the Lebanese Council of Ministers relinquished its authority to approve or deny telecom data request by giving full telecom data access to security agencies. In April 2016, the Council extended this access for one additional year. These decisions not only breached the Lebanese constitution but also Law 140, which states that surveillance should be limited to a specific number of people, for a specific time period, and must be pre-approved by a judge. As a result, security services have been granted full access to data, violating previous norms that required either judicial or administrative authorisation to intercept data only related to suspects of a crime or national security issues such as terrorism.<sup>2</sup> These new measures do not conform with Lebanon's obligations under article 17 of the International Covenant on Civil and Political Rights.<sup>3</sup>

Law 140 also stipulates that the right to secrecy of communications, both internal and external, wired or wireless is guaranteed and protected by law and cannot be subjected to any forms of tapping, surveillance, interception or violation except in cases of extreme urgency and upon obtaining a judicial or administrative order.<sup>4</sup> As a safeguard against abuse, article 16 of Law 140 stipulates that such administrative decisions must be verified by an independent judicial

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<sup>1</sup> Mohamed Nazzal, Al-Akhbar, "The surveillance state: No privacy for the Lebanese", May 2014, available at: <http://english.al-akhbar.com/node/19751>

<sup>2</sup> Articles 2, 3, 9 of Law No. 140/1999. See also, Social Media Exchange, Privacy International and Association for Progressive Communication, The Right to Privacy in Lebanon, Universal Periodic Review - Stakeholder Report: 23<sup>rd</sup> Session – Lebanon (March 2015), §21-3.

<sup>3</sup> ICCPR, Art. 17.

<sup>4</sup> Privacy International and SMEX, "State of Privacy Lebanon", January 2018, available at: <https://privacyinternational.org/state-privacy/1081/state-privacy-lebanon>

commission, which consists of the first president of the Court of Cassation, the president of the State Shura Council, and the president of the Court of Audits, or three judges from separate and independent judicial bodies.<sup>5</sup> Despite this, this provision is not often respected in practice.<sup>6</sup> In Lebanon, data is shared among all the different security bodies, risking the violation of article 17 of the ICCPR.<sup>7</sup> The surveillance measures that these bodies may deem necessary and proportionate for one legitimate aim, may not be legitimate for other aims.

On June 7, 2013, Lebanese internet service providers (ISPs) were instructed by the general prosecutor to, "do whatever it takes to activate and save all internet log files going through their servers and routers, and prepare a periodical backup copy to save these files from being lost, for at least one year." The order specified that data collected and held should include username, IP address, the sites accessed, protocols used, and the user's location. One ISP CEO confirmed that his company was logging "who emails who" but not "the content of the messages."<sup>8</sup>

On January 18<sup>th</sup>, 2018, privacy and surveillance organizations released a report alleging that a malware espionage campaign was responsible for stealing hundreds of gigabytes worth of personal data. The gigabytes were tracked to a building owned by Lebanon's General Security agency. Supposedly, the campaign started in 2012, and affects thousands of civilians, journalists, lawyers and institutions in over 20 countries. Attackers were able to use fake messaging applications to hack into private phones to take photos, retrieve location information and capture audio. General Security has denied the campaign, claiming "[General Security] does not have these types of capabilities." Yet, Lebanese law 140 allows the interior minister, who oversees General Security, to order the interception of specific communications that may indicate terrorism, crimes against state security, and organized crime, based on written decisions approved by the prime minister.<sup>9</sup>

Certain security agencies claim that third-party data retention is legal since they only include logs, and not the actual content of the messages. However, it is important to recall that any capture of communications data is a potential interference with privacy and, the collection and retention of communications data interferes with digital privacy whether or not it's used. Therefore, the very existence of a mass surveillance programmes creates an interference with privacy.<sup>10</sup>

Plans to liberalize or privatize the telecom sector have been afoot since 2002, when a new law (Law 431) to privatize and regulate the telecom sector-including the establishment of an independent Telecom Regulatory Authority (TRA)-was passed. While the TRA was established,

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<sup>5</sup> Ibid.

<sup>6</sup> See: Mohamed Nazzal, Al-Akhbar, "The surveillance state: No privacy for the Lebanese", May 2014, available at: <http://english.al-akhbar.com/node/19751>

<sup>7</sup> The Daily Star, Lebanon's Cabinet Extends Security Agencies Telecoms Data Access, (27 April 2016), available at <http://www.dailystar.com.lb/News/Lebanon-News/2016/Apr-27/349488-telecoms-data-to-top-government-meet.ashx> (last accessed on 11 January 2018).

<sup>8</sup> Social Media Exchange, Mapping the Landscape of Digital Surveillance in Lebanon, §29.

<sup>9</sup> "Lebanon: Investigate Large-Scale Surveillance Reports." ALEF. January 24, 2018. Accessed January 24, 2018. <https://alefliban.org/press/lebanon-investigate-large-scale-surveillance-reports/>.

<sup>10</sup> *Ibidem*, §20.

privatization has not materialized. In effect, the ministry acts as operator, regulator and supervisor of the telecom sector, which is one of the government's biggest sources of income.

In the last half of 2015, General Security announced that biometric technology would be implemented for all Lebanese passports. The Lebanon-based provider, Encrypt, with the support of a Dutch digital security company, Gemalto, would work together to implement the technology. However, the biometric technology is being used without any data protection guarantees.<sup>11</sup>

## **Recommendations:**

### The State Party should:

- Respect and enforce Lebanese Law No. 140, which mandates the right to secrecy of all wired and wireless communications, and requires prior written authorisation by an investigative judge to perform a phone search and hold officers who breach the law accountable
- Ensure that security services' access to data complies with the necessity and proportionality requirements guaranteed by strict judicial oversight in order to avoid an arbitrary interference of citizens' privacy
- Ensure the prohibition of mandatory third-party data retention
- Ensure those living in Lebanon are able to access justice in a manner that enables them to hold the Lebanese government accountable for both preserving their universally declared right to privacy and the protection of their personally identifiable data
- Create a structured framework that protects the identity of citizens found in biometric passports, IDs, car registrations, electoral registration abroad, residency permits, phone chips and all other biometrics available
- Establish a new cyber-crime legal framework in line with international practices

### **b. Freedom of expression (art. 19)**

**Issue 22:** *Please respond to reports of arrest and prosecution of individuals criticizing State authorities and policies, including through social media. Please explain how the following legal provisions are compatible with the State party's obligations under article 19 of the Covenant: (a) the criminalization of defamation, of criticism of public officials, including insulting the President, and of insulting State symbols; (b) blasphemy (art. 473 of the Criminal Code), disparagement of religious rites in public (art. 474), obstruction of religious ceremonies and destruction of places of worship (art. 475) and violation by the clergy of the legal provisions governing religious conversion (art. 476). Please respond to concerns that the vague and broad definitions of "defamation", "libel" and "insult", and the broad authority and grounds for censorship and for the banning of any foreign publication, and of any intellectual or artistic work, including films and printed materials, can be used to unduly restrict freedom of expression. Please also report on the progress in investigating the attack and vandalization of the Beirut offices of the pan-Arab Ash-Sharq Al-Awsat newspaper.*

<sup>11</sup> Social Media Exchange, Mapping the Landscape of Digital Surveillance in Lebanon, §31.

## Comments from Civil Society

Criminal defamation laws, and laws criminalizing criticism of public officials and symbols, continue to stifle freedom of expression in Lebanon. The press law, penal code, audio-visual media law, and military code of justice don't have adequate safeguards to protect the right to freedom of expression. "Libel," "defamation," and insult" continue to be used loosely since they are not well-defined in Lebanese law.<sup>12</sup> These provisions are not compatible with Lebanon's obligations under article 19 of the Covenant.

In Lebanon, the government uses an outdated law from 1947, to decide how to censor media and artistic expression. The censorship bureau, within the General Security, issues broadcasting licenses for new artistic productions and Lebanese media, and does not provide justification for its decisions. Any production deemed to affect national security, incite sectarian tensions or threaten the relationship between Lebanon and friendly countries is forbidden under this law.<sup>13</sup> In May 2017, the Interior Ministry of Lebanon banned the film *Wonder Woman* because the lead actress served in the Israeli army and has publicly praised their operations.<sup>14</sup> *Annabelle 2: Creation* was banned by Lebanese authorities the night of its release, following claims by members of the Christian Media Committee that the movie contained scenes offensive to Christianity.<sup>15</sup> On September 10, 2017, Lebanese director Ziad Doueiri was arrested at the Beirut airport and sent to the Military Court on the same day, for shooting his previous film, *The Attack* in Israel. He was released without charges the following day. According to Doueiri, the timing of the arrest just before the release of his new film "The Insult", was aimed at suppressing and disrupting the release and to intimidate him.<sup>16</sup>

Since November 2016, there have been at least 18 arrests of Lebanese citizens who have made public comments criticizing Lebanese authorities or political figures. Most of whom were accused by the cybercrime bureau, a part of the judicial police, which often interrogates and intimidates civilians for anything from one young individual who posted a picture commenting on a minister's facial features to much more serious posts questioning the unethical business practices among Lebanese companies.<sup>17</sup> The Cybercrime Bureau has investigated and often arbitrarily deprived the liberty of: Bassel el Amin, Hassan Saad, Ahmad Amhaz, Firas Bou Hattoum, Tarek Abou Saleh, Hanady Gerges, Fidaa Itani, and Rabih Damej. Although all of these individuals have been released from detention, Mr. el Amin and Mr. Amhaz, have waited over a year for their indictment; the rest have been charged under Articles 383 to 386 of the Lebanese Criminal Code which relate to contempt, slander, and libel of public officials.

Those arrested by military intelligence were: Selman Samaha who was tried in a military court and indicted on charges of "offending the reputation of the military institution", Pierre Hashash,

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<sup>12</sup> See Lebanese Criminal Code, Articles 383 to 386

<sup>13</sup> Lebanese Center for Human Rights (CLDH), Civil and Political Rights Lebanon – 2014 (November 2015), p. 49.

<sup>14</sup> Francis, E., & Kanaan, A. (2017, June 1). *Lebanese ministry bans 'Wonder Woman' film over Israeli actress*. Retrieved June 16, 2017, from Reuters: <http://www.reuters.com/article/us-lebanon-israel-film-boycott-idUSKBN18R2GX>

<sup>15</sup> Step Feed, "Annabelle 2' was just banned in Lebanon for religious reasons", August 18, 2017, <https://stepfeed.com/annabelle-2-was-just-banned-in-lebanon-for-religious-reasons-1969> (accessed November 6, 2017)

<sup>16</sup> Variety, "Ziad Doueiri: I Was Detained in Lebanon in Attempt to Suppress 'The Insult'", September 11, 2017, <http://variety.com/2017/film/global/lebanese-director-ziad-doueiri-the-insult-detention-military-tribunal-censor-suppress-1202554106/> (Accessed November 6, 2017)

<sup>17</sup> Habib Battah, BOLD Magazine, Who's got your data?, June 2015, available at: <http://www.beirutreport.com/tag/cyber-crime-bureau>

and Hanin Ghaddar who was charged in absentia. Journalist Mohamad. Zbib appeared in front of a criminal judge but his trial was adjourned till April 2018, while the process started in May 2017. The judiciary transferred his case from the Court of Publications to a criminal court. These cases are in addition to the arrests of, Omar Kaskas, Ziad Itani, Ahmad Ismail, and Nabil el Halabi who was released after signing a pledge that he would write about ministers or the minister's advisor.

The government has also failed to investigate attacks on media outlets, facilities and assaults on individual journalists.

**Issue 23:** *Please clarify whether the State party intends to comply with the Committee's recommendation in paragraph 25 of the previous concluding observations to amend the provisions of the Radio and Television Broadcasting Act No. 382/94 and Decree No. 7997/96 and establish an independent broadcasting licensing authority with the power to examine broadcasting applications and to grant licences in accordance with reasonable and objective criteria. Please also report on any progress in adopting a law on access to information (see CCPR/C/LBN/3, para. 119).*

Article 18 of the 1994 Broadcast Law seeks to secure the independence of the National Audio-Visual Council (NAC) members and to deal with conflicts of interest by prohibiting them from being members of elected bodies or civil servants in public administration, or from conducting any activity "in contradiction with their function within the council". The NAC's independence and efficiency are challenged as its members are designated by political authorities, and its work is purely consultative rather than executive. However, the term of the current NAC expired in 2005. Ever since, politicians have failed to appoint new committee members. The current NAC was formed when Lebanon was under direct Syrian tutelage and it has always acted in a politicized way.

The same article specifies that these members are to be chosen among, "Lebanese intellectuals, artists, scientists, and professionals". The loose description of the qualifications of NAC members makes it easier to select a council, "consisting of a wide selection of individuals who have the needed qualifications" for such a position. This same loose description, however, is abused by not requiring the appointment of telecommunications engineers or media scholars and lawyers. The NAC members often lack the qualifications necessary. So far, there have been no attempts to change the law.

The law on access to information was approved by parliament in January 2017. It, "prescribes that virtually all government entities – including public administrations, judicial authorities (civil and religious), municipalities, state-owned enterprises, private companies managing public assets and government concessions ... – are required to automatically publish: an annual report and the laws, decrees or decisions they issue and the rationale behind issuance; and expenditures on their websites." The law also allows for specific requests of information held by the government, "any individual or organization can request access to view and receive copies

of the requested information,” accessing this information however, could be problematic.<sup>18</sup> Administrative records are hard to track down because, based on observational evidence, they’re neither regularly digitized nor systematically archived.<sup>19</sup>

Moreover, “[i]nformation requests relating to national security, foreign relations, financial and economic interests of the state and safety of the national currency, individuals’ private information, including mental and physical health records, and trade secrets can be denied under this new legislation. Appeals are possible, but the organization responsible for hearing these appeals is the Anti-Corruption Commission (ACC), which has yet to be established. Possible alternative routes are the civil courts and the State Council. However, the law must clearly state where appeals of denied requests should be heard in the absence of the ACC.<sup>20</sup>

## **Recommendations:**

The State Party should:

- Make libel, slander and defamation civil cases, not criminal cases, with guaranteed fair access to the justice system and protection of vulnerable parties, while ensuring that the laws regarding defamation do not jeopardize the right to freedom of expression.
- Precisely define concepts related to content controls such as “defamation” and “libel” in order to prevent abuses in their application and a consequent decrease in the margin of freedom of expression in the country
- Guarantee freedom of access to information, at a minimum, introduce a related provision in the text of media laws
- Further accelerate the process of creating an Anti-Corruption Commission, and guarantee the independence and transparency of its members
- Ensure that the interpretation of the criteria of exemption from disclosure of information under the law on access to information are compatible with international human rights law standards
- Reduce the cost of broadcasting licenses not use them as a structural mechanism for excluding some qualified applicants
- Limit the scope of the Ministry of information so that the NAC becomes the agency in charge of content control. In order to carry out its duties, the latter should therefore be transparent, allow public hearings when allocating or reviewing licenses, be provided with its own facilities and personnel in order to carry out its monitoring function, and be able to issue warnings and penalties when stations infringe upon content requirements.

### c. Peaceful assembly (art. 21)

**Issue 24:** *Please comment on reports of excessive use of force by security forces during some demonstrations, including during the 2015 protests related to the waste collection crisis and*

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<sup>18</sup> Executive Magazine, A step toward transparency: Obstacles, benefits and the need for anti-corruption commission, 8 March 2017, available at <http://www.executive-magazine.com/special-feature/a-step-toward-transparency> (last accessed on 11 January 2018).

<sup>19</sup> *Ibidem.*

<sup>20</sup> *Ibid.*

*corruption, and on impunity for such acts. Please inform the Committee of measures taken to investigate such incidents, prosecute perpetrators and provide remedies to victims.*

### **Comments from Civil Society**

During the 2015 waste management protests, demonstrations that started peacefully turned violent after reactions and counter reactions by Internal Security Forces (ISF) and protesters. Protesters, mainly formed of young people and families with children, were attacked with water cannons, batons and sticks in addition to rounds of tear gas canisters. Police officers could not be identified by name or number tag, resulting in a close to impossible ability to complain in front of an impartial investigative body.

The ISF has established a department of human rights, a committee against torture, a Code of Conduct (CoC), and a memorandum that describes the role of ISF units in the application of the UNCAT. Unfortunately, these mechanisms remain far from being effective instruments in preventing torture or ill-treatment, and lack crowd control protocols. The ISF committee against torture is given the investigative power over offenses committed by its own members, questioning its ability to act effectively and non-biased. It has failed to adopt a victim friendly complaint mechanism, is unable to react to pervasive torture, and most importantly is unable, and often unwilling, to transparently report on the cases it has followed up on. Even if complaints were filed, the cases would be investigated and transferred to the military court, where adequate justice is difficult to pursue, since military court decisions are not available to the public. Investigations led by military authorities themselves are also a problem as they prevent independence and unbiased investigation. The military court also lacks mechanisms to provide proper remedy to victims.

Some protesters during the waste management demonstrations were detained by Internal Security Forces for up to eleven days, and fourteen of them faced trial before the military tribunal.<sup>21</sup> The case of nine of these protesters was transferred to a civilian court in March 2017, while the military court ruled that four of them were innocent, and one, a minor, was found guilty and transferred to the juvenile court for sentencing.

Current tactics used by law enforcement officials focus on the dispersion of protesters rather than on the principle of maintaining order and protecting the freedom of assembly.

On Friday June 16, 2017, protesters organized a demonstration in front of the parliamentary building in Beirut to protest the agreement, between the country's rival parties, that postponed parliamentary elections to May 2018. Lebanese security personnel countered the demonstration with violence, using batons and sticks against protestors as they entered Najmeh square, near the Parliament. A video has circulated over social media showing two women, partaking in the protest, being beaten by multiple soldiers. Another video shows members of the army moving past the security barrier and beating several protesters, without apparent justification. Protests

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<sup>21</sup> Human Rights Watch, "It's not the right place for us", January 26, 2017

organizers and participants reported to be treated with high brutality by security forces while they were only exercising their rights without using violence.<sup>22</sup>

### **Recommendations:**

The State Party should:

- Ensure transparent monitoring and accountability of practices by the Ministry of Interior and law enforcement which prohibit or limit the protection of peaceful protests and other forms of associations and assemblies
- Prosecute incidents of excessive and disproportionate violence by police enforcement during protests and strikes by an independent and an impartial tribunal instead of the military court
- Introduce crowd control protocols within the ISF code of conduct
- Ensure that the law enforcement complies with International Human Rights Standards, such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (*inter alia*, principles 12 and 13).

#### d. Freedom of association (art. 22)

**Issue 25:** *In reference to previous concluding observations (see paras. 27 and 28), please clarify whether the State party plans to review and lift the ban on the establishment of associations by civil servants. Please also indicate: (a) whether the State party envisages recognizing the right of domestic workers to form a trade union; and (b) whether steps have been taken to review the restrictions on the right to strike and to recognize such a right for civil servants.*

### **Comments from Civil Society**

The state has not announced any plans to lift the ban on the establishment of associations by civil servants. The Law decree No. 112 issued in 1959, bans civil servants from belonging to professional associations or unions. Judges are also affected by this ban. Article 132 of the Code of Judicial Conduct subjects judges to the same rules applied to civil servants.

Many judges want article 132 banned. Prohibiting civil servants, including judges, from forming professional associations not only prevents young judges from benefitting from the mentoring of more experienced judges, but deprives judges of a chance to discuss their cases with their peers. This prohibition contradicts articles 7 and 13 of the Lebanese Constitution and article 22 of the International Covenant on Civil and Political Rights.

A main obstacle preventing judges from forming professional associations is the centralized power of the Superior Council of Magistracy, which considers that professional associations of judges could contest its authority. In fact, article 44 of the Code of Judicial Conduct requires

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<sup>22</sup> Arwa Irahim, "Lebanese protesters beaten by soldiers in election law protest", June 16, 2017, <http://www.middleeasteye.net/news/least-seven-injured-lebanese-protesters-beaten-security-personnel-1261259630> (Accessed January 22, 2018)

judges to go through the Superior Council of Magistracy for all group or professional demands."<sup>23</sup>

In January of 2015, a Domestic Workers Union was formed with the support of the International Labour Organization, International Trade Union Conference (ITUC), and the National Federation of Worker and Employee Trade Unions in Lebanon (FENASOL); however, the Ministry of Labour does not recognize the union as legal. This is based on the exclusion of MDWs from the Lebanese Labour Law. Article 7 of the labour code does not allow house workers to organize themselves while article 92 allows foreign workers to join unions; however, they are denied the right to vote or be elected as members in a union. Because of the lack of political will of subsequent Ministers of Labour and the limitations imposed by the law, the right to freedom of association of MDWs in Lebanon is being violated and is exposing them to various forms of abuse.<sup>24</sup>

### **Recommendations:**

The State Party should:

- Recognize the domestic workers' union and extend labour protections to domestic workers
- Ensure the right to freedom of association and the right to collective bargaining without discrimination to all workers
- Amend Law Decree No. 112 issued in 1959 to allow civil servants (and by extension judges by virtue of article 132 of the Code of Judicial Conduct) to be members and/or founders of professional associations

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<sup>23</sup> CLDH, *The State of Freedom of Association in Lebanon: What Prospects for the Future?* (2010), p. 24.

<sup>24</sup> ALEF, "The Situation of Human Rights in Lebanon", March 2017