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Justice for stability

Addressing the impact of mass displacement on Lebanon's justice system

SUMMARY

This policy brief outlines options for strengthening rule of law in Lebanon to improve access to justice for both Lebanese citizens and Syrian refugees. It discusses stopgap measures for the temporary stay of Syrian refugees in the country and highlights opportunities for long-term reform of the justice system. The brief provides recommendations to key actors on actions to reduce the unsustainable pressure on the Lebanese justice system and to ensure protection of the displaced population.

Introduction

This policy brief draws on research, consultations, roundtable discussions and expert presentations on access to justice for Lebanese citizens and Syrian refugees in Lebanon. It is the result of International Alert's analysis and dialogue with partners from research institutions and non-governmental organisations (NGOs) working on security and justice provision between 2014 and 2016.

In the brief, we discuss formal and informal justice mechanisms. Formal mechanisms include state institutions responsible for justice provision – courts, prosecutors, prisons and the police. Although religious institutions are usually classified as informal or customary providers of justice, we discuss them as part of the formal justice system due to their jurisdiction over the personal status laws. In addition, local authorities (municipalities) are seen as formal actors that act as informal providers of justice in cases when they intervene to mediate or arbitrate disputes. Informal mechanisms comprise individuals, social networks and NGOs that intervene to offer or support the protection of refugees.¹

Challenges to accessing justice

The Lebanese judicial system is overburdened with cases related to invalid or missing residency documents for Syrian refugees, draining valuable resources and causing unnecessary delays in the judicial process. This situation is a result of government policies that have been unable to keep pace with the impact of the mass influx of Syrian refugees. Such policies are designed for a normal migration environment and not for the exceptional situation in which Lebanon finds itself today. Currently, Syrian nationals are required to obtain residency permits from the Lebanese authorities on an annual basis,² irrespective of their status with the UN refugee agency UNHCR. This is often difficult due to requirements for a Lebanese sponsor, which the majority of displaced individuals cannot secure, housing commitments that landlords are often reluctant to sign,³ and an annual fee of US\$200 per person,⁴ which is unaffordable for many, particularly families that are already overstretched due to the high cost of living and marginal income opportunities.⁵ As a result, as of August 2016, 85% of Syrian households registered with the UNHCR had family members with missing or expired residency documents.⁶ According to research, around 40% of all lawsuits against Syrians in Lebanon were related to residency, illegal entry



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Syrian refugees wait to register with UNHCR. Tripoli, 2014.

and forged documents, while 87% of illegal residency cases resulted in conviction. Around a thousand Syrians per month are arrested by the General Security Office (GSO)⁷ because of documentation issues, while 25% of Syrians in Lebanese prisons are held due to violations related to documentation.⁸

The growing number of irregular individuals in the country contributes to perceptions of insecurity among the Lebanese, who have perceived the refugees as a security threat since the start of the crisis.⁹ Incidents in border areas and an increased use of municipal curfews following the al-Qaa bombings in June 2016 reinforced perceptions among the Lebanese that Syrian refugees are a source of insecurity. These perceptions are further fuelled by data on arrests, detentions and imprisonment of Syrian nationals, which are presented as a response to a threat, although in reality they are often the result of irregular stay, as discussed above. The lack of documentation also affects the refugee population, furthering their marginalisation by preventing them from reporting crimes, exploitation and abuse. The unwillingness of many Syrians to report suspicious behaviour due to fear of arrest on the grounds of lacking identity and residency documents also undermines efforts by security agencies to deal with security threats.

Syrian refugees in Lebanon have inadequate recourse to justice. Lack of documents, low trust in the authorities and a culture of relying on informal channels for resolving disputes hinder refugees' access to the justice system. Out



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Government policies have been unable to keep pace with the impact of the mass influx of Syrian refugees into Lebanon. Tripoli, 2014.

of 807 lawsuits involving Syrian nationals between 2012 and 2015, none was filed by a Syrian plaintiff against a Lebanese defendant.¹⁰ According to a representative survey conducted in 2015,¹¹ 4% of respondents have filed charges during their stay in Lebanon and half of them were not satisfied with the outcome. At the same time, case study research¹² reveals that Syrians, as well as many Lebanese, seek justice informally through their social networks. While Lebanese enjoy better social networks and understanding of the complexity of the formal justice system, Syrians have limited access to individuals and networks that can help. The research indicates that informal actors do not deliver justice per se; successful interventions can stop the recurrence of the violation but do not provide any form of sanction for the perpetrator or compensation for the victim.

Opportunities for enhancing access to justice for Syrian refugees

As discussed above, challenges to accessing justice have a direct impact not only on refugees' protection, but on Lebanese institutions and citizens as well. There is a need for both policy change and change in the way rule of law programme support is provided to achieve two objectives:

ensuring that the displaced population is protected from exploitation and abuse; and strengthening the ability of the justice system to provide access to justice for the most vulnerable.

Opportunities for accessing justice can be promoted through engagement of both the formal justice system and informal mechanisms. While the leading role of the state in addressing crimes is emphasised in the rule of law literature, there is growing acknowledgement of the role of informal justice mechanisms in addressing minor disputes and facilitating access to judicial process for crimes. Policy-makers also need to consider that displaced communities are often more reliant on informal mechanisms for resolving disputes both within the refugee community and regarding conflicts between refugees and members of the host community. This is due to the accessibility, efficiency and cultural sensitivity of such mechanisms.

Increasing access to justice through facilitating access to the formal judicial system

Access to the formal justice system is traditionally strengthened through increasing awareness among communities, and by providing legal aid and legal representation to the most vulnerable. Legal aid NGOs and Bar associations play a critical role in providing support to refugees and assisting vulnerable Lebanese and, according

to research,¹³ local NGOs have been successfully moving cases from the informal to the formal justice system. However, the research has found that the NGOs approach victims, instead of victims proactively seeking legal aid. Local NGOs therefore need to become more visible, and refugees and vulnerable Lebanese need to be better informed of the available support, in order to improve access to justice. Legal support should encompass both legal advice and financial support for covering legal fees and associated expenses such as medical and transportation costs, alongside empowering individuals to seek justice through the formal system.

A key prerequisite for Syrian refugees' access to the formal justice system is the availability of legal documents regulating their temporary stay in Lebanon. In the absence of a political decision to issue temporary identification for displaced Syrians, their ability to use any of the Lebanese state's institutions will be hampered. At the same time, legal stay would not in itself facilitate access to justice, as generating trust in the institutions' effectiveness would take time.

The multiple challenges to the Lebanese judicial system¹⁴ are inevitably reflected in the courts' ability to provide justice to affected refugees. More specifically, however, the shortage of legal professionals – both lawyers and judges – with specialised knowledge of Lebanon's international obligations under human rights instruments has direct implications for the ability of the system to provide justice to refugees. For example, legal professionals can be trained in using Lebanon's obligations under various conventions, including the international Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, in cases involving displaced persons. Improving judges' and defenders' understanding of international commitments will not only improve Lebanon's record in implementing its international obligations; it can also support the emergence of human rights law pioneers, who can more efficiently defend victims of human rights abuse and advocate for judicial reforms.

Maximising benefits of the informal justice system

In Lebanon and Syria, as in many other places, informal justice mechanisms are often preferred to the formal system. According to estimates, in the developing world "eighty to ninety percent of disputes are handled outside the state justice system".¹⁵ In Lebanon, informal justice mechanisms range from respected community members and NGOs supporting vulnerable groups to support from

political parties and even armed thugs. While some of these groups can broker a solution and stop a threat to a vulnerable individual, others can act with impunity and seek to 'restore justice' using illegal means. Engagement of informal justice mechanisms, therefore, needs to be based on sound understanding of what works in specific contexts and what the implications are for the broader quest to promote rule of law.

International Alert's case study research with Syrian refugees in Lebanon confirmed that "informal mechanisms are the first choice, while formal mechanisms are often perceived as last resort".¹⁶ Syrian refugees generally rely on their social circles when seeking assistance and resort to better-connected Syrians as well as Lebanese acquaintances – neighbours, employers, NGO staff and personal friends. Strengthening the accessibility of such mechanisms that facilitate a resolution using non-violent means would be aligned with local practice and has the potential to provide a more cost-effective and faster resolution of disputes. Informal justice provision can also directly contribute to social stability, by using principles of restorative justice and highlighting the role of Lebanese actors in supporting refugees' rights.

The primary challenge with informal justice for Syrian refugees in Lebanon is that informal justice providers are often not able to provide satisfactory outcomes for the affected individuals, such as compensation or apology. Ending the violation, when it occurs, is indeed a success but it classifies the intervention as a protective measure, and not necessarily a justice one. At the same time, NGO-run alternative dispute-resolution initiatives provide solid examples of addressing disputes between tenants and landlords, or employees and employers, but less frequently play a role in cases of threat or harassment. A major impediment to NGO-run dispute resolution is the legitimacy of mediators, who may not be well respected if alien to the area. Sustainable informal justice interventions would include respected local professionals and notables in different positions and functions, depending on the geographical, cultural or religious background of the community.

In contrast to countries where informal justice providers are well established, often linked to tribal or religious leaders, in Lebanon the role is assumed on an ad hoc basis by people who have networks and are trusted by the affected party. In a context of growing disconnect between host communities and refugees, networking and trust-building for Lebanese and Syrians need to be facilitated by civil

society organisations. Such initiatives, often classified as 'social stability interventions', can have a direct impact on refugees' access to protection and justice. By improving the social capital of Syrians, initiatives by Lebanese, Syrian and international NGOs can empower individuals and build networks that allow vulnerable women and men to seek justice informally. For the Lebanese community, social stability activities can enhance a sense of security, which is disturbed by the arrival of refugees to otherwise tight-knit communities.

NGOs can also consider integrating elements of restorative justice into their programmes, especially in rural areas to strengthen the ability of informal justice mechanisms to protect Syrian refugees more effectively. Interventions can target individuals from the Syrian and Lebanese communities who are likely to be approached by Syrians seeking justice, such as social workers and frontline staff of aid organisations, Lebanese landlords who lease out land or apartments to Syrians, and owners of key businesses that employ seasonal Syrian workers. Sensitising such people about refugee rights and women's rights, and informing them about the legal process and available legal aid, including alternative dispute-resolution services offered by NGOs, can empower them to both act as informal mediators and facilitate access to the justice system.

Within the Syrian communities, NGOs make efforts to integrate their approaches. For example, the Norwegian Refugee Council's (NRC) Information, Counselling and Legal Assistance (ICLA) programme complements legal support with shelter rehabilitation and cash assistance. While ICLA focuses primarily on landlord-tenant disputes, dispute resolution on more sensitive topics such as assault and harassment can be combined with economic and women's empowerment interventions.

Ideally, state institutions, especially those at the local level, should be engaged in programmes supporting informal actors. Such engagement can at a minimum reassure authorities that informal justice initiatives do not contest, but rather support the formal system. Municipalities are usually the first point of contact for NGOs operating in their area, and have an overview of humanitarian and development programmes, including protection and social stability initiatives. Local representatives of the justice system, such as police stations and prosecutors, should also be informed of informal justice programmes, supported to build a trust-based relationship with community mediators and included in a system for responding to crime cases referred to them by informal justice actors.



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Oum Ali recounts her family's escape from Aleppo. Beirut, 2014.

The level of engagement with state institutions would be expected to vary across locations, according to different circumstances – for example, in terms of the level of acceptance of refugees by the local community and the position of local authorities. For instance, driven by the principle of 'do no harm', NGOs would refer refugees to officials who are sympathetic and supportive, and avoid representatives who have been biased or disengaged in the past. This is particularly the case in Lebanon, where the interpretation and implementation of regulations can differ significantly across locations.

Lastly, support to informal justice providers requires close monitoring to track incremental change and ensure that programmes do not cause harm. An example of unintended negative impact of refugee assistance programmes in Lebanon is the emergence of the *shawish* – the informal leader of Syrian settlements who coordinates with aid agencies. The *shawish* may establish himself as an informal leader, consolidating power with no accountability and no system of checks and balances. Programmes engaging informal justice actors have the ability to influence the local power balance. Therefore, they need to be designed through broad consultations with the communities they are meant to serve and implemented in a conflict-sensitive manner with monitoring systems in place.

Three scenarios for enhancing access to justice

Our recommendations provide a holistic response to justice needs and concerns of Syrians and Lebanese. The following three scenarios illustrate different ways in which these responses could play out in the current political and social climate. They present the best case scenario for justice provision to Syrian refugees and vulnerable Lebanese; a feasible case of change, which requires reasonable efforts from institutions and aid agencies; and the absolute minimum case, which focuses on programmes in the event of unchanged policy.

In the best case scenario, the government would facilitate a temporary legal stay for Syrian refugees in Lebanon, while maintaining its efforts to address security threats emanating from developments in Syria. State efforts to promote access to the justice system for everyone would include establishing campaigns for reporting violations directly to the police, promoting emergency phone lines and online reporting, creating internal regulations allowing the police to investigate incidents reported by Syrian refugees who may lack all required documents, as well as working with civil society actors to raise awareness among all communities on how the system works. As part of broader efforts to strengthen the rule of law, courts would be supported to shorten court proceedings and minimise administrative detention. Available legal aid and legal representation services for Syrian refugees would be used as a basis for developing a nationwide system of legal assistance for vulnerable individuals. Community mediation mechanisms involving key informal actors – such as employers, landlords and community leaders within the Syrian community – would be promoted as an avenue for resolving minor disputes without overloading the judicial system.

The second scenario is based on what appears to be more easily feasible within the current system. In the absence of a new policy regulating the stay of refugees, security institutions would refrain from initiating court procedures against individuals solely on the grounds of expired or missing residency documents. Administrative detention would be replaced with a process of screening individuals with expired or invalid documents, aimed at establishing the presence or absence of a security threat. Additional support would be provided to judges and lawyers to better equip them to use international law to defend refugees' rights, and to refrain from issuing deportation orders on criminal cases. Civil society organisations would engage key informal actors such as employers and landlords, as well as community leaders within the Syrian community, training them how to mediate local disputes and to report serious violations to the justice system.

The bare minimum scenario foresees minimal improvement. Civil society actors and Bar associations would have sufficient funding to intensify their efforts in providing legal aid and representation to vulnerable individuals, including Syrian refugees. The UN and international donors would continue working with the government to facilitate access to documents for displaced people. International and local NGOs would actively support social networking activities in all programmes to increase opportunities for refugees to use informal channels for seeking justice.

Recommendations

The recommendations outlined below are targeted at the Lebanese authorities, international donors, civil society organisations and academics.

To the Lebanese government and political leaders

- Facilitate a process of providing temporary legal stay for Syrians displaced by violence or fearing persecution until they are able to return to Syria or resettle in another country that meets safety conditions.
- As a short-term measure, adopt a policy of refraining from prosecuting Syrian nationals solely on the basis of missing documents. Introduce a procedure for screening individuals with invalid or expired documents and refrain from detention of individuals who do not pose a security threat.
- Seek opportunities to provide customised training to judges on the use of international human rights law as part of continuous education initiatives – for example, similar to training provided by the Institute of Judicial Studies.

To donor agencies, UN agencies, and local and international NGOs

- Strengthen support for legal aid and legal representation of Syrian refugees and vulnerable Lebanese. Ensure that assistance covers all costs, including transportation and medical examinations. Legal aid should embrace a holistic justice approach that combines awareness raising among refugees of their rights in Lebanon, legal consultation, mediation, arbitration and other forms of alternative dispute resolution. Legal aid should also provide for legal representation for prosecuted individuals and assist victims of crime to claim their rights through the formal legal system.
- Provide customised training to lawyers and judges on the use of international law in cases involving displaced Syrians. Such training should promote the application of international human rights instruments, to which Lebanon is a signatory, such as the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, including Article 3 on non-refoulement.

- Provide opportunities for networking and trust-building between Syrian refugees and Lebanese communities as part of all programmes, in addition to targeted social stability interventions. Social networks for refugees provide the primary point of access to informal justice.
- Support local initiatives aimed at improving access to informal justice by engaging influential individuals from both communities who are likely to be approached by affected individuals in cases of violations. Provide training and mentoring to such influential individuals to strengthen their understanding of rights and systems, so that they can better support refugees seeking informal dispute resolution or who wish to access the formal system.
- Advocate more vocally with the Lebanese government to facilitate the legal stay of refugees from Syria and provide protection. Advocate for and support a rights-based screening process that would facilitate the regularisation of Syrian refugees by Lebanese authorities, without undermining efforts to maintain security.

To academic institutions and think tanks

- Conduct further research into the role of informal justice provision in Lebanon, including within displaced communities. Such research should help to provide a basis for analysis of the interactions between formal and informal systems and the role of local political and religious leaders in facilitating access to these systems.

Acknowledgements

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Endnotes

- 1 For a broader discussion of informal justice, see G. Swenson, Understanding and engaging informal justice, Clingendael and The Hague Institute of Global Justice, October 2016.
- 2 Requirements for obtaining a residency permit include: national ID or passport, housing attestation, passport photos and a pledge to abide by Lebanese laws, which replaced the earlier required pledge not to work, as well as a pledge of responsibility by a Lebanese sponsor. Although the regulation allowed refugees registered with UNHCR to renew their residency without providing a pledge by a sponsor, in practice this was systematically required from male Syrian refugees. The annual fee of US\$200 was waived by the General Security Office on 10 February 2017 for holders of a UNHCR certificate, but it remains applicable to Syrians who have previously obtained residency through sponsorship.
- 3 Since June 2016, the requirement for a housing commitment was replaced by a housing attestation, which is issued by the UNHCR for refugees holding a UNHCR certificate.
- 4 The fee is administered for individuals aged over 15.
- 5 The annual fee has been waived as of 10 February 2017 for holders of valid UNHCR certificates issued before 1 January 2015.
- 6 Centre International des Sciences de l'Homme (CISH), Access to justice for Syrian communities – Formal challenges, informal opportunities, Conference report, 22–23 September 2016 (forthcoming)
- 7 The General Security Office is the agency responsible for monitoring the entry, stay and residency of foreign nationals in Lebanon.
- 8 CISH, Op. cit. (forthcoming)
- 9 International Alert, Citizens' perceptions of security threats stemming from the Syrian refugee presence in Lebanon, February 2015
- 10 K. El Mufti, Survey of court cases against Syrian nationals in Lebanon, September 2015, CISH (forthcoming)
- 11 T. Fakhuri, Syrian refugees' access to formal and informal justice in Lebanon: Contextualizing the survey and sharing its findings, August 2016, CISH (forthcoming)
- 12 M. Al-Masri, M. Altabaa and Z. Abl, Informal justice mechanisms used by Syrian refugees in Lebanon, September 2016, International Alert/CISH (forthcoming)
- 13 Ibid.
- 14 See, for example, M. Manosur and C. Daoud, Lebanon: The independence and impartiality of the judiciary, Euro-Mediterranean Human Rights Network, 2010
- 15 P.A. Albrecht and H.M. Kyed, Justice and security: When the state isn't the main provider, 2010, quoted in G. Swenson, Understanding and engaging informal justice, Knowledge Platform Security & Rule of Law, 2016
- 16 M. Al-Masri et al, Op. cit. (forthcoming)

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