

Human rights violation under the UDHR and ICCPR:

The imprisonment of Lebanese citizens in Syria and their ill treatment have raised many concerns that remain unresolved. Many of the detentions are held incommunicado without charge or fair trial while others are sentenced for lengthy prison periods after trials that fail to meet fair international trial standards. Additionally, the fate and status of political suspects arrested in previous years, remains unknown. While the government denies the detention of any of them, the task to have any information on their whereabouts becomes a very difficult one. But many of the released prisoners from Syria have given testimonies on their previous status and the treatment they have received. Grave human rights violations are taking place in Syrian prisons and clear violations of the Universal Declaration of Human rights. Since this paper focuses on the violations of human rights according to the UDHR, the latter and the International Covenant on Civil and Political Rights (ICCPR) will be used as a reference for these violations. The treatment of Lebanese prisoners in Syria and their imprisonment violates many articles of the UDHR and the ICCPR. There are three main human rights concerns to focus on:

- i) Arbitrary Detention and Long-term Detention without Charge or Trial
- ii) Violations of the Right to Fair Trial

iii) Torture and Ill-Treatment

i) Arbitrary Detention and Long-term Detention without Charge or Trial

The arrested suspects, like in the case of Mr. Abou Dehn, have been subjected to long term detention without charge or trial and were denied the most basic rights guaranteed by international human rights standards. Mr. Abou Dehn was never brought before a judge or a judicial authority, and hence he was never able to defend himself from these accusations. According to both article 9 from the UDHR and the ICCPR this is a violation of human rights.

*UDHR- **Article 9:** No one shall be subjected to arbitrary arrest, detention or exile.*

*ICCPR- **Article 9:** (1) No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law*

Every arrest and detention that is arbitrary or inconsistent is a breach of both articles; hence, arresting someone because he belongs to the Lebanese Forces or to any other political movement is a clear violation of this article. The detention of someone for an arbitrary reason is an even more severe violation. The detention of human beings like Mr. Abou Dehn or Dr. Hallit for such a long period is an abuse of the article and their fundamental human rights.

ii) Violations of the Right to Fair Trial

According to Kamal Battal a human right activist, many of the prisoners are brought in mass trials, or individual ones that would not qualify as fair in any possible way under international standard. Many cases are similar to the case of Dr. Hallit where the prisoner spends many years in detention without charge or trial. Most of the trials even if they take place are unfair trials. According to article 10 and 11 from the UDHR, and the article 14 and 9 (2) from the ICCPR that are stated below, there is an obvious violation of human rights.

*UDHR- **Article 10:** Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.*

*ICCPR- **Article 14:** "...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."*

The right to a fair trial is a norm of international human rights law designed to protect people from the unlawful and arbitrary curtailment or deprivation of other basic rights, most notably the right to life and liberty. No such trial was provided to any of the illegally detained. They were arrested and sentenced to imprisonment without a trial let alone a fair trial. Dr. Hallit was not even allowed to see his own file, and was forced on several occasions to sign blindly on papers. A fair and impartial public trial was to be provided in both cases where justice was to decide their guilt or innocence. No trial is likely to be fair, nor will it be seen to be fair, if the people in charge of passing judgment and sentence lack

independence or impartiality. A lack of bias in the judiciary is absolutely fundamental for a trial to be a fair one. Hence, a fair trial would be one where the judges would not act in a way that would promote one side and giving any advantage or support to the latter. Everyone has the right for prompt justice, one that is to be quick and efficient (Article 14(3) (c) of the ICCPR states that everyone is entitled "*To be tried without undue delay*"). There should be equality before the law: Article 14(1) of the ICCPR provides that "*All persons shall be equal before the courts and tribunals*". This means that everyone must be granted, without discrimination of any kind, equal access to a court, and that fair trial guarantees must be equally available to all. Everyone is entitled for a public hearing with media presence: Article 14(1) of the ICCPR guarantees the right to a public hearing as an essential element of a fair trial. The hearing should as a rule be conducted orally and publicly, and the court or tribunal should make available information about the time and venue of the hearing. The public and the media may be excluded from part or all of a trial but only in exceptional circumstances (such as if material in the case would genuinely threaten national security if publicized) and for specific reasons, as spelled out in the article.

Article 11: *(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.*

The presumption of innocence inflicts a moral obligation upon the accusing party for the search of solid proof before any trial. In our case, the Syrian government has the responsibility to provide valid proof for any accusation they made or any justification for their arrest. The accused is considered to be innocent until proven guilty (also found in Article 14(2) of the ICCPR). An important element here is the application of this article which is the difficult part. A fair trial is definitely a must because otherwise there would be no real value for this article. A violation of the previous article would systematically be a violation of this one.

*ICCPR- **Article 9** : (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.*

*ICCPR- **Article 14**: (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it*

According to article 9(2), it is a prisoner's right to be informed of the reason of his arrest. While article 14 (d) states that he is to have the right of having a lawyer, someone to help him defend himself by being a legal assistance.

iii) Torture and Ill-Treatment

According to Battal, a pattern of torture and ill treatment by Syrian guards is a well documented fact which is backed by hundreds of testimonies. Torture has been used as a means of extracting information, a mean of punishment and sometimes as a daily routine with no real purpose. Most common methods of torture reported to Amnesty International: *Al falaqa*-beatings on all part of the body; *Al kursi al Almani* (The German chair) - a metal chair with moving parts to which the victim is tied by the hands and feet, the back of the chair bends backward causing pressure on the neck and limbs while causing an extension of the spine. Many methods of torture are reported to be applied on prisoners. These treatments are in clear violation of article 5 of the UDHR and article 10 (1) of the ICCPR. Similar information is found in Article 7 of the ICCPR.

UDHR- **Article 5:** *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

ICCPR- **Article 10 (1):** *All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

The most important breach of the UDHR is the violation of article 5. Degrading punishment and in our case, forcing a prisoner to “eat” a bird is included as both cruel and inhuman. The “breathing exercise” is a clear breach of article 5: flogging body parts, forcing them to lie on their backs and raise their legs to beat them until they bleed; forcing prisoners to lie on their stomachs while the

guards step on their heads, necks or backs or whip them. The imprisonment of these prisoners is similar to the imprisonment for life, since all hope of freedom and even survival is taken away. This fact alone is considered a cruel punishment, and is breach of article 5. The ill treatment of prisoners, their constant torture, the dehumanizing, degrading treatment, and the bad conditions they face are considered as a violation of the UDHR under this article. Article 14 (3) (g) of the ICCPR, states that in the determination of any criminal charge against him, everyone shall be entitled to the right to “Not be compelled to testify against himself or to confess guilt”: This article forbids the compelling of defendants to testify or confess guilt. And the article 15 of the convention against torture, states that “*each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made*”. Hence, the statements extracted though torture are inadmissible and cannot be used as evidence against the accused which discourage the violation of article 5 of the UDHR. Similarly article 10(1) of the ICCPR demands that anyone who has been arrested be treated with humanity and respect keeping him in humane conditions. This imposes a positive obligation on Syria to provide reasonable conditions of detention and to respect detainees' rights, something that is done accordingly (See Appendix 1&2).

In conclusion, these standards address fundamental rights and freedoms that are violated by detaining Lebanese prisoners in Syria and the most important ones are as follows: Freedom from arbitrary arrest and detention, rights for a lawyer and a fair trial, right to inform family of the arrest and right to be free from torture.

All the above articles and human right foundations have been bluntly violated and accountability remains unseen, even worse unheard of.

These violations under the Syrian Law:

The Lebanese prisoners that are detained in Syrian prisons abide by the Syrian constitution. We have analyzed the above violations of human rights with the detention of the Lebanese prisoners in Syria under the UDHR and the ICCPR. In this part we look into the Syrian constitution to approve that the breach of these rights is also true under the constitution. In part 4 of the Syrian constitution that was adopted the 13th of March, 1973, on Freedom, Rights and Duties, the article 28 on defense states the following:

- (1) Every defendant is presumed innocent until proven guilty by a final judicial decision.
- (2) No one may be kept under surveillance or detained except in accordance with the law.

(3) No one may be tortured physically or mentally or be treated in a humiliating manner. The law defines the punishment of whoever commits such an act.

(4) The right of litigation, contest, and defense before the judiciary is safeguarded by the law.

Since the Syrian government has signed the Universal Declaration of Human Rights, it has inserted these rights in the constitution and has made them binding. Hence, article 11 of UDHR is taken into consideration in the constitution and is in accordance to article 28 (1). This article coupled with part (2) of the article would prohibit under the Syrian Constitution any detention of a prisoner unless he is proven to be guilty. Additionally, torture is prohibited by the Syrian Constitution (Article 28) and punishable by imprisonment under the Penal Code (Articles 319 and 391). Torture has been used as a means of extracting information and also as a form of punishment. Methods of torture have been used on prisoners, some of which I have cited previously. All of these acts are prohibited under the Syrian constitution and should be punished. Similarly, I may add that the conditions in which the prisoners are held (Especially in Tadmur Prison), which fall short to the Standard Minimum rules for the Treatment of Prisoners adapted by the UN in 1977, are themselves forms of torture that could be considered cruel, inhuman and degrading treatment. Those should be punished: The dormitories are filthy, damp, cold in winter, very hot in summer, and infested with cockroaches and other

insects. There are no beds; Space for sleeping is usually very restricted because the dormitories are overcrowded. Some reports have claimed that at times prisoners do not even have enough space to lie down on their backs (Refer to Appendix 1). Similarly the food in very small rations is inadequate. Furthermore, article 28 (4) states that it is a right to have the opportunity to stand in defense before the judiciary. Hence, the Syrian constitution prohibits the actions that are happening in Syrian prisons with the Lebanese prisoners.

In conclusion, the incommunicado detention of Lebanese people in Syria, which many are feared to be tortured and held in very harsh and bad conditions, is a human right issue that we can no longer ignore. They are detained arbitrarily and imprisoned for many years even decades in some cases without charge or trial. The right for a fair trial is not at their disposal and most importantly they are tortured and treated in a cruel, dehumanizing, degrading, and humiliating way. Both the UDHR and the ICCPR approve that these are grave human rights violations that should be dealt with accordingly. Additionally, the Syrian constitution also approves that these are indeed violations that are punishable by the law. Hence, these are also violations of the Syrian constitution. Most of these prisoners are prisoners of conscience, detained for exercising their right to freedom of expression. These violations have endured for decades and it is a matter that should be dealt with urgently: It is no longer acceptable to remain silent! Luckily, human

rights associations continue to increase pressure on the responsible government to be more active and efficient on the matter, especially knowing that many Lebanese are still held in Syria and maybe start demanding compensation for the harm done to the Lebanese people and their families.