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LEBANON-UNHCR MEMORANDUM OF UNDERSTANDING

the Lebanese Government (Directorate of General Security) and the UN High Commissioner for Refugees (UNHCR) have signed a Memorandum of Understanding (MOU) concerning refugee protection in Lebanon in September 2003. This is an important initial step for Lebanon to live up to its humanitarian tradition, its constitutional commitment to human rights, and its obligations under international law. Such progress is befitting a country that is a member of the UNHCR Executive Committee.

This agreement was discussed and negotiated for a number of years before it was finally signed. Its conclusion is an important milestone. Most importantly, for the first time Lebanon has formally recognized the right of refugees whose lives or freedom are in danger in their home countries to remain in Lebanon, at least for a limited period.

Through a series of short permits granted to refugees and to asylum-seekers with pending cases, Lebanon will now allow refugees to stay in the country for up to 12 months. However, after these permits expire, Lebanese authorities can continue to take legal action against refugees, potentially including deportation.

Unfortunately, this new agreement can only be a first step, and if further steps do not follow refugees will be left vulnerable. The MOU does not address the core crisis facing refugees in Lebanon: the continuing gap between Lebanese refugee policy and international law. Despite this agreement, the principle of *non-refoulement* is still not recognized by the Lebanese authorities, and refugees are still regarded as illegal migrants who may be arrested and detained at any time. In addition, some areas of the new MOU raise important questions and concerns, which we hope that Lebanon and/or UNHCR will soon clarify.

Non-refoulement

The MOU, surprisingly, makes no mention of the principle of *non-refoulement*, the foundation of international refugee protection. We are discouraged that the MOU's preamble describes refugees and asylum-seekers as people "residing unlawfully in Lebanon and submitting asylum applications at UNHCR." It would have been more consistent with international law and humanitarian concern to describe refugees as people facing dangers of persecution and hence warranting special assistance and protection.

Lebanon is not obligated by international law to grant asylum to refugees. Asylum implies long term integration and residence. As the preamble to the MOU states, "Lebanon is not an asylum country and the only viable durable solution for refugees recognized under the mandate of UNHCR is the resettlement in a third country."

Yet, Lebanon is obligated to provide basic temporary protection to people with well-founded fears of persecution. Under the principle of *non-refoulement*, no person may be forcibly returned in any manner to a country where his or life or freedom would be in danger. This rule prohibits deportation for as long as the refugee remains in danger; a country cannot impose an arbitrary time limit. Lebanon is bound by this rule as a principle of customary international law and by virtue of having ratified the UN Convention against Torture, as well as the International Covenant on Civil and Political Rights. In at least three decisions in the public record, the Lebanese judiciary has admirably invoked these obligations to block the deportation of refugees, without time limit.

The MOU assumes that UNHCR will use the 12-month time period to find resettlement countries to take refugees after they can no longer remain in Lebanon. This is wholly unrealistic. Even in the best of times, refugees are rarely resettled within one year of their arrival in Middle Eastern countries, except in the rarest emergency cases. Fast resettlement is especially difficult since September 11 because the largest resettlement country, the United States, has stopped processing cases from Lebanon.

We recognize that Lebanon legitimately can seek to share the responsibility for refugee protection by not granting refugees long term asylum. We would like to urge the governments of wealthy countries to expand refugee resettlement, especially as they urge Lebanon to expand its law enforcement efforts against irregular migration. But realistically, resettlement processing can take years, and refugees must be able to remain protected in Lebanon for more than 12 months. We worry that relying on resettlement to compensate for the limits of the MOU will leave refugees in danger.

The maximum 12-months of residency allowed by the MOU is *not* a full acceptance by Lebanon of its obligations to protect refugees, since international law allows no preset time limit on the principle of *non-refoulement*. The terms of the MOU are better thought of as a short-term grace period for refugees and asylum-seekers before they become in danger of deportation, regardless of whether they remain in danger of persecution at home.

Arbitrary detention

Refugees often flee risks of imprisonment at home. Clearly, if refugee protection in Lebanon is to have any meaning, refugees here should be free from detention, unless they commit a crime in Lebanon.

For several years, the systematic arrests and detention of refugees and asylum-seekers has been one of the foremost human rights challenges in Lebanon. In some cases, UNHCR-recognized refugees have remained detained by Lebanese authorities months after they have served their court-imposed prison sentences for illegal entry. There is reason for concern that prolonged, even indefinite, detention could pressure refugees to abandon asylum claims or accept "voluntarily" to return to their own countries, despite risks of persecution.

We are therefore discouraged that the MOU contains no explicit protections for refugees and asylum-seekers from detention. The MOU's only explicit requirement is that General Security inform UNHCR of the names of asylum-seekers under its detention,¹ a provision that does not in any way assist people who may be detained by other branches of the Lebanese government. We would have hoped that Lebanon would commit itself to the principle that even refugees should be exempted from punishment for illegal entry if, owing to fears of persecution, they had no other choice to find safety. At the very least, Lebanon should not detain refugees and asylum-seekers for one hour longer than mandated by the judiciary and as required by criminal law.

Right to apply to freely to UNHCR, and to a fair hearing

The MOU involves Lebanon's General Security Directorate in assessing refugee claims in potentially problematic ways. It also does not guarantee that refugee claims will be decided fairly.

Under the MOU all refugee applications made to UNHCR must be forwarded to General Security.² This will mean that refugees must indirectly provide their addresses and other identifying information to Lebanese authorities, who may in turn arrest them. UNHCR is also bound to turn over the list of rejected applicants.³ This implicit threat may discourage genuine refugees from applying to UNHCR, encouraging them instead to live underground or seek out means of irregular migration to other countries, especially to Europe.

¹ Paragraph 12.

² Paragraph 3.

³ Paragraph 8.

Second, the MOU mandates General Security to investigate refugee claims and provide UNHCR its decision on them.⁴ Certainly, General Security has a duty to identify persons who may be genuine threats to Lebanon's security. But the MOU does not clearly limit General Security's role in this way. This is surprising given that the preamble of the MOU goes so far as to specify that "the term 'asylum-seeker' shall mean ... 'a person seeking asylum in a country other than Lebanon.'" This being the case, Lebanese authorities need not be extensively involved in assessing asylum claims.

In the current arrangement, refugee status determination has been assigned to UNHCR, and, for better or for worse, UNHCR is the most competent body in Lebanon to perform this role. UNHCR's decision-making on refugee claims must be kept independent of governmental interference. The role of Lebanese authorities in these adjudications should be narrowly limited to essential national security interests until Lebanon ratifies the 1951 Refugee Convention, enacts refugee legislation, and sets up an adequately trained and independent refugee status determination body of its own.

Third, we wish to note that the MOU does not specifically require UNHCR to provide fair and impartial hearings on all refugee claims. We would hope that such a provision would be unnecessary. Unfortunately, however, the fairness of UNHCR procedures in many countries has been criticized by scholars and human rights organizations, and UNHCR office have unfortunately not always completely implemented the standards of fairness that UNHCR itself advocates for others. In Lebanon specifically, we are concerned that acceptance rates in recent years for refugee claims made by Iraqis and Sudanese have been noticeably lower than in other asylum countries.

Other concerns

The MOU mandates to UNHCR an unusual, and we believe worrying, role in assessing "negative criticism or allegations made by Lebanese or other non-governmental organizations ... or other individuals."⁵ An ambiguously worded provision entitles UNHCR to inquire about such matters and publish its findings in the media. We hope that UNHCR will clarify the meaning of this provision, and provide assurances that it will not be involved directly or indirectly in investigating, punishing, or repressing the civil and political rights of NGOs or other human rights defenders who raise awareness about refugee issues in Lebanon.

The MOU requires UNHCR to issue a final decision on refugee claims within three months,⁶ which in ideal circumstances is desirable for all parties involved. However, many UNHCR offices and even wealthy governments are unable to make decisions on asylum cases so quickly. Should the number of asylum-seekers entering Lebanon grow, this short time limit

⁴ Paragraph 4.

⁵ Paragraph 18.

⁶ Paragraph 8.

could become a concern, and may impair the application and appeal processes. Though expediency is desirable, fairness can never be sacrificed when people's lives are potentially at stake.

Conclusion

In this statement, we have not addressed a range of social, economic, civil, and political rights which are inherent to refugees as human beings. This statement addresses the core concerns for refugees' most basic security and safety arising from the MOU.

We welcome the important step of signing the MOU in improvement of refugee protection in Lebanon, and look forward to prompt follow up steps to complete the process of implementing international law in Lebanon with regard to refugees and asylum-seekers. We hope that these comments will be helpful to Lebanese authorities and to UNHCR in this process, and look forward to their responses about the further steps that may be taken.