

Alternative protection in Jordan and Lebanon: the role of legal aid

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In the absence of a codified refugee rights framework in Jordan and Lebanon, legal actors must be creative in the development of strategies and approaches to ensure the protection of refugee rights in practice.

Jordan and Lebanon share common challenges in relation to refugee protection but are poles apart in practice. Neither has signed the 1951 Refugee Convention. Both host a disproportionate number of refugees. Both share the collective trauma of large-scale protracted refugee displacement, namely the influx of Palestinian refugees from 1948 onwards and of Syrian refugees since 2011. While protection gaps exist for refugees in both contexts, the chasm is considerably wider in Lebanon. However, legal aid actors, courts and national and local institutions can all play a constructive role.

A national legal framework for refugees

Although neither Jordan nor Lebanon has signed the Refugee Convention, both have signed Memoranda of Understanding (MOU) with UNHCR which set out basic points of agreement and cooperation. Jordan's MOU, signed in 1998, notes Jordan's commitment to treating asylum seekers and refugees in accordance with international standards and confirms their rights to education, health, religious practice and freedom of movement, plus access to courts and the right to legal assistance. The MOU between the Lebanese Directorate of General Security (GSO) and UNHCR, signed in 2003, authorises UNHCR to determine asylum claims and confirms that temporary residence permits are to be issued to asylum seekers and refugees. While the MOUs act as a statement of commitment by both States to certain levels of refugee protection, they are unenforceable and have little legal weight.

More significantly, neither country has a national legal framework setting out the rights owed to refugees. The treatment of refugees is covered by legislation governing the

entry and residence of foreign nationals. In Jordan, Law No 24 of 1973 on Residence and Foreigners' Affairs applies to all foreigners equally. The only references to refugees are for the recognition and issuance of travel documentation. Refugees in Lebanon are bound by the 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country. The law contains a limited number of provisions on the right to seek asylum and the issuance of identity cards but remains barely implemented. Due to Lebanon's fears and concerns surrounding the issue of permanent settlement (*tawteen*) generated by the Palestinian issue, Lebanon labels refugees as displaced persons and asserts that it is neither a country of asylum, nor a final destination for refugees, let alone a country of resettlement.

The lack of a comprehensive domestic legal framework covering refugees with dedicated implementation mechanisms has resulted in a plethora of directives, policies and rules which change frequently and do not always address the protection concerns faced by refugees. An entire system built on directives rather than anchored within a solid legal framework is weak and arbitrary and can erode basic rights. While legal aid actors have on occasion used human rights arguments in litigation, more often they are forced to resort to arguments of fairness, humanitarian consideration and consistency as 'alternative protection mechanisms' rather than relying on the law. Furthermore, different rules apply to refugees from different contexts, such as Palestinian Refugees from Lebanon (PRL) or from Syria (PRS) in Lebanon, and non-Syrian refugees in Jordan, including Iraqi, Sudanese, Yemeni, PRS and Somalis, thereby

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creating parallel systems that offer greater protection to Syrian than non-Syrian refugees.

The right to residence

The Refugee Convention obliges States to regularise the status of asylum seekers within their borders, including those entering illegally. Yet legal aid actors, both in Lebanon and Jordan, spend an inordinate amount of time advocating for the right to legal stay. Both countries generously opened their borders to Syrian refugees until they felt they had exceeded their capacity to support the growing numbers of refugees and given that the crisis was clearly becoming yet another protracted refugee situation. Lebanon effectively closed its border to Syrian refugees in 2014 and Jordan in 2015.

However, since that time, the vast number of the estimated 663,000 Syrian refugees in Jordan have obtained lawful residency permits while 80% of the estimated 865,000 Syrian refugees in Lebanon are without lawful residency permits. On the other hand, non-Syrian refugees continue to face challenges with entry and residence into Jordan. Following Jordan's 2013 policy of non-admission of PRS, many live irregularly in Jordan and are at risk of deportation. Non-Syrian refugees are required to apply for Jordanian visas before arrival and are often refused. Those who do enter struggle to obtain annual residency and are subject to fees for overstaying once their entry visa and/or residency permit expires.

In Lebanon, obtaining and maintaining legal residency remains extremely difficult for Syrian refugees, as is also the case for non-Syrian refugees in Jordan. In December 2014 Lebanon's GSO established new entry policies and restrictive residency regulations to curb the massive flow of Syrian refugees into the country, requiring Syrians to provide a complex and prohibitive set of documents and to pay an annual fee of US\$200 for residency permits. Moreover, in May 2015 the Lebanese Ministry of Social Affairs asked UNHCR to stop registering refugees arriving in Lebanon, which resulted in a continuous reduction in the rates of legal residency among Syrian refugees. An administrative circular issued

in 2017 to allow some refugees to renew residence permits without charge does not apply to the majority of refugees. Without lawful residence in Lebanon it is hard to move freely, work and access essential services such as health and schooling. Refugees face the risk of detention and the issuance of deportation notices. Even if such notices are typically not implemented, they create fear among refugees and are incompatible with Lebanon's international obligations.

Legal aid actors are limited in their strategies for ensuring legal residency. Advocacy efforts, often led by the UN and NGOs, have resulted in some concessions, such as time-limited amnesties on regularising legal status, and in some cases lawyers have been able to successfully challenge decisions to detain persons without legal residency. However, protection risks for family members without legal residence in the community and other adverse consequences for detainees (such as deportation) must be weighed up when considering legal action. In an important case in Lebanon, the court ordered the immediate release of an Iraqi refugee who had been convicted for illegally entering the country and issued with a deportation order. The court highlighted both the right to individual liberty under the Lebanese Constitution as well as the prohibition on arbitrary arrest, detention and exile under the Universal Declaration of Human Rights (UDHR).¹ Such cases remain the exception, however, and have not yet resulted in a change in administrative practice. Often lawyers can do no more than scrutinise eligibility requirements, advise refugees of any changes that may benefit them and advocate for the release of refugees who are detained on account of a lack of legal residency.

Legal protection against *refoulement*

Nevertheless, in recent years there have been increasing references by Lebanese courts to international human rights law obligations, including the principle of *non-refoulement*. While the majority of courts have penalised the unauthorised entry of Syrian refugees into Lebanon, other judges

have granted mitigating circumstances given the situations of *force majeure* and the de facto legal impossibility of Syrian refugees entering through lawful means when fleeing persecution. In one decision the court cancelled a deportation order of an Iraqi refugee with reference to the right (in the UDHR) to seek asylum as well as the prohibition against *refoulement* in the Refugee Convention and the Convention Against Torture.² In an important case in 2018 initiated by two legal aid NGOs, Lebanon's State Council – its highest administrative court – found that the 2015 regulations issued by the GSO which limited the entry and residence of Syrians to Lebanon were invalid because only the Council of Ministers could issue such regulations. The court held that the role of the GSO is limited to implementing regulations and confirmed that even the processes of security agencies are subject to judicial oversight.³ Despite the significance of this decision, and its use by lawyers in arguments, the regulations continue to be applied and in May 2019 Lebanon's GSO and Higher Defence Council declared that all Syrians coming into Lebanon illegally after 24 April 2019 should be deported.

Within Jordan, deportation decisions can be challenged in the Administrative Court although decision-makers enjoy wide

discretion with no obligation to provide reasons for deportation. The role of the Court is limited to ensuring that procedural requirements have been met. However, in cases where decision-makers do in fact provide reasons, the courts may review the legality and adequacy of the reasons to ensure that decisions are legally and factually grounded and do not exceed the authority of the decision maker. In some instances, local legal aid providers have been successful in persuading courts to rescind deportation orders based on breaches of the Residency and Foreigners' Affairs Law. Another innovative approach involves hotlines staffed by lawyers who can provide an urgent round-the-clock response to potential deportations. A future litigation strategy may involve invoking the right to a fair trial or due process in cases of potential deportation as well as strengthening legal arguments around international obligations on *non-refoulement*.

Courts and remedies

At the heart of rights protection lies the ability to claim an effective and enforceable remedy for rights owed under national or international law. Countries that have not signed the Refugee Convention are nevertheless bound to respect the human rights of refugees as stated by other



international human rights treaties that States have ratified, as well as by those provisions of the Refugee Convention that have become part of customary international law, such as the prohibition on *refoulement*. This provides a powerful 'alternative protection mechanism'

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in which domestic and international law arguments can be promoted by legal aid actors.

Jordanian law prioritises international treaty and human rights obligations in the interpretation of domestic law and courts have recognised this principle in various decisions such as the duty to investigate allegations of torture, the right to a nationality, the right to work, the prohibition on arbitrary detention and the presumption of innocence. Such judgements can help promote a normative framework for rights protection and influence legislators. Nevertheless, consultations conducted by the Norwegian Refugee Council with lawyers and legal aid providers in Jordan in February 2021 indicate that while lawyers sometimes use human rights arguments in court proceedings, judges only occasionally make references to international human rights principles in decisions, preferring to rely upon national legislation.⁴ Within Lebanon, judges are trained in the application of international conventions in the Lebanese legal system but the impact of such training is limited and inconsistent, particularly in relation to sensitive issues of refugee rights, and there is a general but notable lack of guidance on how to operationalise human rights law in jurisprudence and in practice.

A legal aid approach

Significantly, legal aid services are available to refugees in both countries to help them protect their rights within existing frameworks. Regulations governing legal representation in both countries authorise the provision of legal aid services for persons in financial hardship, typically at the request of the court or through the relevant Bar Associations. In practice, the majority of legal aid services for refugees is provided by non-governmental legal aid providers generally funded by the international community. Accessible and effective administrative remedies and informal dispute resolution mechanisms, such as mediation, are the clear preference of beneficiaries.

Within this restricted space, legal aid providers operate at a practical level by liaising with government officials,

accompanying refugees to obtain documents, negotiating disputes and providing legal awareness services. Lawyers can serve a critical intermediary role for refugees who are fearful of approaching authorities, going to court or doing anything that might attract attention to their situation. This allows births to be registered, disputes to be resolved, detention to be minimised and deportations to be challenged. Such efforts have previously resulted in time-limited amnesties by authorities in both Lebanon and Jordan which have allowed refugees to regularise their stay, register marriages and apply for the late registration of births of children (although such amnesties have sometimes required refugees to give up other rights and entitlements).⁵ However, legal aid providers are increasingly facing legal and administrative barriers which compel them to fight on two fronts: firstly to protect the legal rights of beneficiaries and secondly to maintain their own freedom to provide services.

Practical measures towards protection

It may be politically unrealistic for either Jordan or Lebanon to sign the Refugee Convention at this stage. Nevertheless, in both countries practical measures can be taken to strengthen protective frameworks under national law. Jordan has established the administrative and regulatory machinery to protect many refugee rights, despite having no national legal framework and despite the differential treatment it demonstrates towards Syrian and non-Syrian refugees which leads to inconsistent levels of protection. Lebanon, struggling with a fragmented political landscape and fearful of continuing refugee influxes and changing demographics, lags behind.

In the absence of a national refugee framework, courts, legal aid providers and national and local institutions can help fill the protection gap by interpreting national legislation through a human rights lens. This is entirely consistent with human rights treaties ratified by both Jordan and Lebanon. While no substitute for a formal legal framework, such an approach would

allow existing laws and regulations to be interpreted in the most protection-focused way possible through the use of greater judicial and administrative flexibility and discretion. This in turn should lead to regulatory changes to codify practice. Legal aid actors can play an instrumental role by raising human rights arguments, presenting compelling humanitarian considerations, negotiating outcomes and raising awareness of legal rights and options. In this way, alternative approaches to protection can maximise benefits for refugees living in the shadow of the law.

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