

### Executive summary:

1- Maharat Foundation, author of the report, welcomes the opportunity to contribute to the Universal Periodic Review (UPR) third cycle of Lebanon. This report focuses on Lebanon's compliance with its international human rights obligations<sup>1</sup> with regard to freedom of opinion and expression and freedom to circulate information. This report raises the following detailed issues:

- The legal framework for the freedom of expression
  - Restrictions in the Lebanese Penal Code
  - Misuse of the Code of Criminal Procedure to target expression
- Media freedom
  - Organizational framework reforms and media independence
  - Arrests, trials, and harassment of journalists, civil society actors, and academics
  - Access to information
- Freedom of expression online
  - Criminalizing peaceful expression online
  - Applying different and more rigorous legal provisions online regarding freedom of expression

2- During the first cycle of the UPR in November 2010, Lebanon endorsed one recommendation seeking to improve freedom of expression by continuing to guarantee it and creating additional conditions for its fulfillment. In addition to endorsing the recommendation to ratify the UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions (Armenia); (Germany's) recommendation to end the powers of military courts to arrest and indict civilians was not supported by Lebanon. During the second cycle of the UPR in November 2015, Lebanon considered that Israel's recommendations to take concrete steps to guarantee freedom of expression and ensure the protection of peaceful protesters cannot be accepted because Lebanon does not recognize Israel, and believes that it is submitted by an occupying force of a part of the Lebanese territory. However, during the period under review, and in particular with regard to freedom of expression, there was no improvement in the legal and regulatory environment related to guaranteeing freedom of expression amidst stalled human rights reforms, and a surge in stringent measures against freedom of speech online. The Lebanese authorities have continued to suppress freedom of expression on social media by conducting investigations and prosecuting activists who criticize state officials, party leaders, and religious and public figures.

### The legal framework for the freedom of expression:

3- The Lebanese constitution provides protection for the right to free expression, personal freedom and free belief.<sup>2</sup> Furthermore, since the constitutional amendments<sup>3</sup> of 1990, Lebanon's obligations to the United Nations covenants and the Universal Declaration of Human Rights became stipulated in paragraph (B) in the introduction to the constitution and an integral part of the supreme constitutional provision<sup>4</sup>.

4- Lebanon has not recorded any progress in terms of guaranteeing freedom of opinion and expression in the context of implementing the recommendations that Lebanon accepted in the first UPR cycle of 2010. The same reality applies to the list of issues related to the third periodic report of Lebanon within the framework of the periodic review by the Human Rights Committee to implement Lebanon's obligations in relation to the International Covenant on Civil and Political Rights<sup>5</sup>.

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<sup>1</sup> Especially as Lebanon has ratified the International Covenant on Civil and Political Rights which provides broad protection for the right to freedom of expression and the circulation of information in Article 19 (2)

<sup>2</sup> The introduction to the Lebanese constitution includes the paragraph (C) entitled "Respect for public freedoms, foremost of which is freedom of opinion and belief". The various constitutional texts also guarantee the freedom to express opinions verbally and in writing (article 13), freedom of belief (article 9), personal freedom and the right to protection from unlawful arrest and detention (article 8).

<sup>3</sup> - Constitutional Law No. 18 - Issued on 9/21/1990

<sup>4</sup> - First Lebanese Constitutional Council Decision No. 1/97 Dated 12/6/97 Second decision No. 2/99 Dated 11/24/99.

<sup>5</sup> - Document CCPR / C / LBN / Q / 3, Paragraph 22 - freedom of expression (Article 19).

5- Although Lebanon accepted the recommendation to ratify the UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions in the periodic review of 2010, the parliament did not approve the bill referred to it by the government<sup>6</sup>.

Restrictions in the Lebanese Penal Code:

6- The Lebanese Penal Code limits through the provisions of defamation, slander and libel, under articles 383 to 389, the freedom to criticize civil servants and public bodies. The law does not allow any criticism to be directed to any civil servant or person charged with a public service unless all such criticism is proven with documents and peremptory evidence or a penalty of up to two years of imprisonment will take place. In addition, the law criminalizes the journalist, activist, or citizen who raises publicly any general matter related to the activity and performance of public officials and civil servants without being able to prove its authenticity, or who expresses a hurtful, embarrassing, or harsh personal opinion about the performance of a civil servant or public body, or one that includes profanity, insults and slurs. Bad intention is assumed by everyone expressing an opinion or directing criticism without in good faith, without any regard for the freedom to express an opinion and the legal principle that obliges public officials and civil servants to accept criticism with open arms more than ordinary people, according to the public responsibilities that they have and the powers that they exercise in the name of the people and on their behalf<sup>7</sup>.

7- Under the title “Attack against a religious feeling” The Lebanese Penal Code prohibits freedom of criticism and expression in religious matters and criminalizes in both articles 473 and 474 whoever blasphemes the name of God, or who contrives religious rituals or disdains them, with a sentence amounting to up to three years of imprisonment. The same previous penalty shall be applied to every written statement and every discourse intended to incite sectarian strife or resulting thereof under article 317 of the Penal Code. The public prosecutors have decided to intervene in several cases or based on referrals by ordinary citizens, prosecuting people on charges of blasphemy, contempt to religious rituals, violation of religious sanctities, stirring up strife, and referring them to investigation by the criminal police and arresting them without any justification.<sup>8</sup>

8- Band members of “Mashrou’ Leila” were exposed in July 2019 to a wave of hate speech on social media, in addition to accusations and threats including physical harm on the basis of their beliefs, principles and ideas that they promote through their music and songs that express a lot of social and political issues, including the issues of the Arab LGBT community. On July 24, State Security summoned the band members for interrogation upon order of the General Prosecutor’s Office at the Court of Appeal on charges related to insulting Christianity, and they were released on the condition that the publications and the song deemed offensive be deleted from their social media accounts.<sup>9</sup>

Misuse of the Code of Criminal Procedure to target expression:

9- The Penal Code and the Code of Criminal Procedure have been misused to target expression<sup>10</sup>, particularly in relation to online speech. As such, “the Cybercrime and Intellectual Property Bureau” of the Judicial Police unit of the Internal Security Forces specializing in cybercrime, which was established in 2006 has acted in violation of the provisions of the law, between January 2015 And May 2019, by investigating in a total of 3,599 cases related to insult, slander and libel<sup>11</sup>. Criminal defamation texts that do not conform to international standards have been used to restrict freedom of opinion and expression to criminalize the expression of opinion and criticism directed at people who assume public functions, and to prohibit criticism, opinion and expression in matters of religious nature through a number of loose texts and penalties of imprisonment of up to three years,

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<sup>6</sup> in accordance with Decree No. 621 dated 8/14/2007 and that aims to authorize the government to proceed with Lebanon’s adherence to the convention for the Protection and Promotion of the Diversity and Cultural expression on 20/10/2005.

<sup>7</sup> - Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Ambeyi Ligabo - 28 February 2008 A/HRC/7/14 and Freedom of expression in Europe Case-law concerning Article 10 of the European Convention on Human Rights, page 12, [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18\(2007\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-18(2007).pdf)

<sup>8</sup> - The Special Rapporteur on freedom of religion has urged in his Lebanon mission report in March 2016, the Lebanese government to make the provisions of the Penal Code fully consistent with the freedom of expression. Report of the Special Rapporteur on freedom of religion or belief on his mission to Lebanon from 23 March until 2 April 2015 document A/HRC/31/18/Add.1

<sup>9</sup> Maharat Foundation’s statement entitled: Mashrou’ Leila band. Coercion in the name of religion, <http://www.maharatfoundation.org/mashrou3leila2>

<sup>10</sup> In attempts to control the legitimate critical discourse, that is necessary in a vibrant society ruled by law.

<sup>11</sup> - Report published by Human Rights Watch: “There Is a Price to Pay” The Criminalization of Peaceful Speech in Lebanon, November 15 2019, <https://www.hrw.org/report/2019/11/15/there-price-pay/criminalization-peaceful-speech-lebanon>

contrary to the rule of proportionality and necessity and the principles that govern democratic societies.

#### Media freedom:

10- On December 10, 2012 the draft of the National Action Plan for Human Rights was launched in the Lebanese Parliament<sup>12</sup>

11- The draft National Action Plan for Human Rights included recommendations to amend the publications law, the radio and television broadcasting law, the electoral law and other texts related to freedom of expression, opinion and the media to repeal the provisions that prejudiced this freedom. The Action Plan made reference to the new Media law proposal previously submitted by Maharat Foundation in cooperation with MP Ghassan Mukhaybar as an entry point for reforming information and expression laws in Lebanon.

#### Organizational framework reforms and media independence:

12-At a time when the Administration and Justice Committee is discussing the new Media law proposal after 10 Years since its registration in the Parliament in 2010, and after that discussions were concluded within the Committee on Information and Communications in 2017<sup>13</sup> The legal text presently under consideration by the Administration and Justice Committee still needs to be modified and formulated in harmony with the basic principles of freedom of expression. Maharat Foundation presented its observations to the committee pushing for several reforms so as to completely abolish the penalty of imprisonment from the new law, to expand the right to criticize public officials, to refer all issues of opinion and expression directly to the jurisdiction of ordinary courts, to restrict the interference in such cases by the security investigation substations, including the Cybercrime Bureau, Army Intelligence, the Information Branch and General Security or any other security apparatus.

#### Arrests, trials, and harassment of journalists, civil society actors, and academics:

13- The number of cases brought by the Military Prosecution against journalists, activists and individuals on charges of defamation, slander and libel between 2016 and 2019, was 18. Several sentences of imprisonment were issued against two journalists in absentia for defamation, slander and libel<sup>14</sup>

14- The criminal court in Baabda also sentenced journalist Fidaa Itani to imprisonment and a fine in nine other cases brought against him by a minister for defamation and insult.<sup>15</sup>

15- During the demonstrations that started on October 17, 2019 several Lebanese media reporters have been subjected to verbal or physical attacks as they were covering field developments. The assaults were documented in a detailed report prepared by Maharat “Violations of freedom of expression from October 17 to the end of 2019”. The Lebanese media played a pivotal role in raising the ceiling of freedom of expression, which caused violent reactions at times against journalists during field coverages. The report devoted a portion to the violations against female demonstrators and journalists. The violations continued after October 17 till date and were documented in another report<sup>17</sup> by Maharat. The past four months were featured by prohibition of insults and criticism of state institutions including presidency, judiciary, security forces practices, and religious figures. The summonses of journalists and activists increased with no disclosure of the reason. Violence is used

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<sup>12</sup> - The National Action Plan for Human Rights was launched under the auspices of the Lebanese Parliament, represented by the Parliamentary Human Rights Committee, the United Nations Development Program, the Office of the High Commissioner for Human Rights, rights-based organizations and legal experts. It is noteworthy that the executive points of the National Action Plan, which total 357 points, include all the recommendations that Lebanon had approved in the UPR at the United Nations Human Rights Council on November 12. National news agency, <http://nna-leb.gov.lb/ar/show-news/8893/nna-leb.gov.lb/ar>

<sup>13</sup> Report “Memory of the Information Law proposal “It was also documented by Maharat under the follow-up of the Information law proposal since its registration in 2010. <http://maharatfoundation.org/medialawpath>

<sup>14</sup> - Two in absentia imprisonment sentences were subsequently revoked, the first in the case of Hanin Ghaddar, the Lebanese journalist and researcher who was sentenced by the Military Court on January 10, 2018 to six months in prison, in absentia, for defaming the Lebanese army under article 157. The second is the ruling of the military judge in Mount Lebanon on March 7, 2019 in the case of TV reporter, Adam Shams AL-Din sentenced to three months in prison for his public post on Facebook criticizing the State Security apparatus. Maharat Foundation Report on the Occasion of World Press Freedom Day About Freedom of Opinion and Expression in Lebanon Between May 2018 and April 2019, <http://maharatfoundation.org/media/1584/maharat-report-world-press-freedom-day-english.pdf>

<sup>15</sup> Accumulated detention time amounted to 22 months and 75 LBP million (50 thousand dollars).

<sup>16</sup> Report on monitoring media freedom and expression during the revolution, <http://maharatfoundation.org/protestfoe> And in English: <http://maharatfoundation.org/en/foe1revolution>

<sup>17</sup> Report on the Violations of Freedom of Expression- February-June 2020 <http://www.maharatfoundation.org/protestfoe3>

in almost all demonstrations and gatherings. Attacks on journalists and media workers on duty are frequently registered. The Publications Court is still applying penal provisions restricting the freedom to criticize public figures. The judiciary continues to deal with information provided by journalists and activists about corruption, abuse of power and enrichment, as defamation cases against people in power and officials. Inconsistency between legislative and executive powers are reflected through the attempts to amend the media laws through a law proposal prepared by the ministry of information and the attempt of the national audiovisual media council to legalize the electronic media. In addition, to the attempt of the information and communication committee chair MP Hussein Haj Hassan to present a law proposal different from the law proposal that is being discussed in the Administration and Justice Committee aiming at legalizing and regulating the work of electronic news websites.

Access to information:

16- The adoption of the Access to Information Law No. 28 on 10/2/2017 constituted a major step in the development of Lebanese laws in line with international agreements, especially the United Nations Convention against Corruption.<sup>18</sup> However, it is noteworthy that the Lebanese authorities did not follow up diligently about implementing the provisions of the law in the relevant administrations. The Director General of the Presidency of the former Council of Ministers also announced explicitly in late June of 2019 according to a written statement, a justification to his refusal of an information request, saying that the law is not in force as it is pending the issuance of the implementation decrees and the formation of the National Anti-Corruption Commission. On 22/05/2020 the parliament passed the law on fighting corruption in public sector as well as establishing the National Anti-Corruption Commission. The State Ministry for Administrative Development Affairs is working on a set of projects and programs to help implement the law in cooperation with the United Nations Development Program and the OECD.

Freedom of expression online:

17- The Human Rights Council's decision dated July 5, 2012 stresses that the same rights individuals enjoy offline must be also protected online, especially the freedom of expression<sup>19</sup> as well as to the General Assembly at its sixty-sixth session<sup>20</sup> on the freedom of expression online.

Criminalizing peaceful expression online:

18-The former Minister of Justice issued on February 20, 2017 Memo number 960/3 addressed to the General Prosecutor's Office at the Court of Appeal, demanding that no person be held under provisional detention due to their opinion or position expressed on social media, calling on the Public Prosecutions not to resort to discretion, discrimination, and to ensure consistency between the requirements of public and personal freedoms and binding legal provisions. Public prosecutions did not abide by this circular and violations of the right of persons to freedom of expression continued!

Applying different and more rigorous legal provisions online regarding freedom of expression:

19- Without any legal justification, and contrary to the provisions of the constitution<sup>22</sup>, and contrary to the decisions of the Human Rights Council<sup>23</sup> concerning the promotion, protection and enjoyment of human rights online, Lebanese courts apply to freedom of expression cases on social media and non-news websites the provisions of the General Penal Code considered as more restrictive than the law on publications that applies only to printed and audiovisual media.<sup>24</sup> The law also permits pre-trial detention. The Code of Military Justice allows the prosecution of these activists before military courts without any guarantees for a fair and transparent trial, as these courts are special and their rulings are final, unappealable and unjustified.

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<sup>18</sup> The access to information law would enhance transparency and ensure the right to access information and the effective participation of citizens. In fact, the enactment of this law would strengthen the oversight role of the media by providing journalists access to original sources of information and fighting fake news

<sup>19</sup> According to Article 19 of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the reports of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression presented to the Human Rights Council at its seventeenth session

<sup>20</sup> Documents A/HRC/17/27 and A/66/290.

<sup>21</sup> - Violations continued with various security institutions covered by the judicial public prosecutions summoning dozens of human rights defenders and activists for interrogation, detaining them, and violating their privacy due to posting comments on social media criticizing political, security, religious, and economic authorities. General statement - Amnesty International, on February 11, 2019. Document no. MDE 18/9821/2019 : <https://www.amnesty.org/download/Documents/MDE1898212019ARABIC.pdf>

<sup>22</sup> Article 7 of the constitution stipulates that all Lebanese are equal before the law and enjoy the same civil rights without any distinction

<sup>23</sup> Decisions 8/20 on July 5, 2012 (A/HRC/RES/20/8) and 26/13 on June 26, 2014 (A/HRC/RES/26/13)

<sup>24</sup> The Penal Code permits the prosecution of activists without any complaint from the aggrieved party, based on public prosecutors notice, in the event of criticism targeting the performance of public officials, civil servants, public authorities and bodies such as the judiciary, the army, and the security apparatuses.

## **20- Recommendations:**

- To abolish any penalty of imprisonment in cases related to defamation, slander, libel, blasphemy, and contempt of religions from the Lebanese Penal Code and the Publications Law.
- To abolish the pretrial detention pending investigation regarding all means of publication and expression.
- To cancel the missions of the security services, the Judicial Police, and the Cybercrime Bureau to investigate publishing offences related to opinion, expression, criticism, and publishing of press and media materials, and referring them directly to the competent court upon the personal complaint of the affected party.
- To abolish the offences of slander, libel and contempt related to public institutions and undermining their image, and to enshrine the right to criticize all state institutions without exception, provided that the public official or the representative of the foreign state who was personally offended preserve the right of personal prosecution without the Public Prosecution having the right to take action willingly.
- To enshrine the freedom of expression in religious matters and repeal criminal texts on the pretext of insulting religions and religious rituals.
- To repeal the legislative texts that give the military court any authority to prosecute offences that fall under the statement of opinion, expression and dissemination of information related to the army and security institutions or that compromise or undermine the prestige of these institutions.
- To expand the concept of a public figure who can be criticized and confronted with evidence and not limiting such concept to civil servants, in accordance with the definition of the Penal Code, that deems such concept to include people who deal in public affairs such as party leaders who are not covered by the current text of the definition.
- To Prevent the criminalization of opinion in absolute terms and not subjecting it to the condition of proof and adopting the criterion of good faith and how much effort does the journalist put in seeking information according to sound professional principles without prejudice to the essence of journalistic work based on fact-finding and communication of information.
- Providing evidence on charges of corruption, abuse of authority, and management of public finances against public figures, provides the publisher with acquittance, whether a journalist, citizen, or any social media user; so does providing serious information in good faith about violations of the law and squandering public funds in one of the public facilities without being able to provide conclusive evidence. However, the court must ask the relevant administration to provide clarifications or papers and documents related to the issue raised so that it can be discussed openly and criminalization is decided in light of the administration's response and proof negating the emerging information.
- To enshrine the independence of the National Media Council from the government, granting it executive powers, and restricting the licensing obligation to television and radio institutions that broadcast through the use of limited ground waves and frequencies set by the state, provided that newspapers, prints and websites of all kinds are not subject to any type of prior licensing.
- To enforce and implement the access to information law (Law No. 28/2017) and to establish the independent administrative body called the "National Anti-Corruption Commission" that deals with complaints arising from the rejection of requests for information and oversees the administration in view of the proper implementation of the law.
- To approve the national human rights plan that had been launched by the Parliament and renew its commitment to protect freedom of opinion and expression and to reduce misapplication of all laws related to this right.