Palestinian Refugees in Lebanon:

What Strategies Can Be Employed to Improve Their Rights via the Judiciary?

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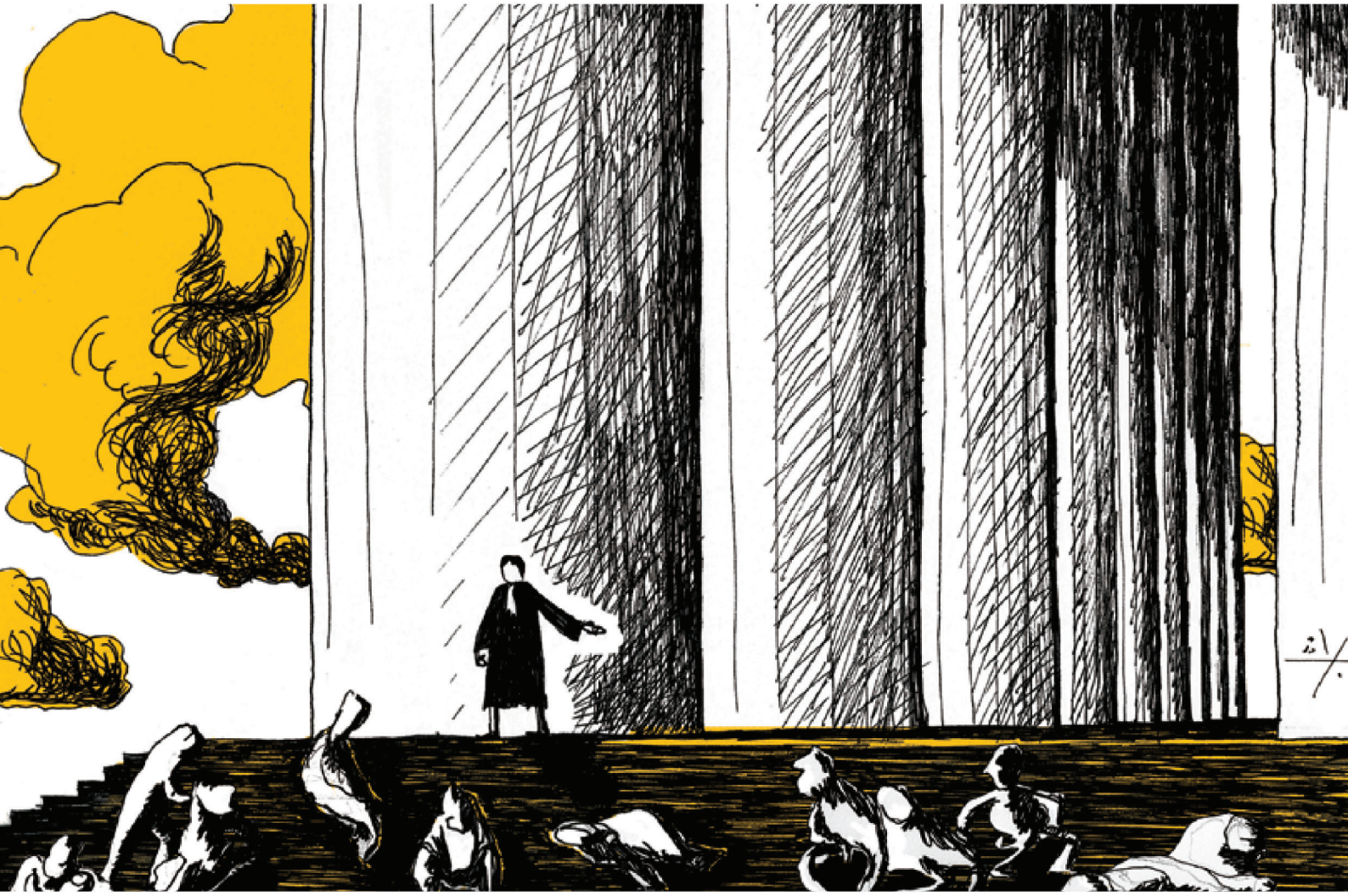

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Introduction

Anyone monitoring the status of Palestinian refugees in Lebanon quickly perceives that political considerations usually eclipse the rights-based considerations involved, regardless of how fundamental the latter are. This trend is based, in particular, on fear of integration and naturalization of Palestinian refugees in Lebanon. Such integration could topple the demographic balance between the sects and, by doing so, disrupt the norms of power sharing between the sects' dignitaries or leaders. Because of these fears, the discourse on Palestinian rights has profound symbolic dimensions: the denial of these rights in some respects constitutes and in other respects is portrayed as one of the exigencies – and defenses – of the current political regime and a reassuring factor for people belonging to sects that stand to lose political weight if naturalization occurs. On the other hand, the recognition of these rights – or the possibility of their recognition – is a scarecrow that kindles hostility among such people. Given the state of affairs, it is predictable that the link between the anti-Palestinian rights discourse and sectarian (i.e. partisan) fears and concerns gives rise to irrational interpretations of the non-naturalization principle that cast the recognition of any right, regardless of how insignificant it may be, as a violation of this principle. It is also probable that no matter how strong the arguments supporting the rights-based discourse are – particularly the strength of Palestinian refugees' ties to Lebanon, where they were born and have lived for generations – they lose all potency in the political arena because they clash with the system of power sharing, which has proved to be most robust in Lebanon.

To demonstrate the prevalence of political considerations over rights-based considerations, we must refer to several manifestations of these fears. One of the most prominent examples is the scarecrow of Palestinian ownership of real estate in Lebanon. It is feared that such ownership would strengthen the refugees' ties to Lebanon. To mitigate this fear, the legislature eventually passed a law banning persons who are not citizens of a recognized country from taking ownership by any means, thus opening the door to discrimination against Palestinian refugees and, more generally, against stateless persons – i.e. the groups that are in the most dire need of solidarity and therefore affirmative discrimination. Sadly, this prohibition subsequently morphed into a typical clause that is incorporated into many proposals to recognize civil, social, and economic rights, in order to prevent the naturalization scarecrow from impeding the proposals.

The strongest evidence of the power of this scarecrow is that former minister of interior Ziyad Baroud – known for his pro-human rights discourse – incorporated such an exception in one of the two versions of a bill to recognize the right of Lebanese women to pass their nationality on to their children. This version stipulated that the right applies to all persons born to a Lebanese mother except for persons born to a father who is not a citizen of a recognized state.

Developments in Lebanese law show that naturalization and its negative effects on the balance in the quota-based power-sharing between the representatives of the various sects is a far more sensitive issue than the religious legislations that these sects produce in the area of personal status issues. For example, as a result of community activism, some progress on the issue of custody has been made in the jurisprudence of juvenile justice judges even though this issue clashes with earlier religious stances. Conversely, the issue of a mother's right to transfer her nationality to her children remains stagnant.[1] The issue of the right of adults younger than 21 to vote also remains stagnant because of fear about the number of Muslim voters exceeding the number of Christian voters.[2]

The regime's sensitivity to and denial of such rights will likely increase with the deterioration of the Syrian refugee phenomenon and the concerns it evokes. Hence, means of overcoming the strong political obstacles facing the Palestinian refugee rights discourse must be found.

One of the most apparent of these means is to search for a new arena for dialogue, an arena that allows the discussion to be shifted from the logic of scaremongering to the logic of rights. In other words, we must find an arena that allows for the discussion to be rationalized and freed from the pitfalls of partisan instincts and fears. The best arena for this purpose may be the judiciary because of the considerations that govern discussions before it, the method through which it issues decisions, and its duty to justify these decisions legally. Additionally, the recognized right of every natural and legal person to litigate ensures that anyone concerned can access it. The judiciary is, from a number of perspectives, preferable to other arenas that could be used or have been established for the purpose of addressing Palestinian rights issues, the most important of which is the Lebanese Palestinian Dialogue Committee.[3]

This committee remains, in its composition, initiatives, agenda, and work method, governed by political considerations – suffice it to say that the committee's president is appointed by and works under the supervision of the Lebanese prime minister. To explore the prospects of resorting to the judicial realm – the most suitable for achieving the aforementioned goal – we must first briefly review the development of the Palestinian refugees' legal status in Lebanon. The second part of this report will then discuss the factors both obstructing and aiding strategic litigation for this purpose. The third part will survey the judicial routes that are the most likely to produce a breakthrough in this issue. Of course, our approach at this level is not limited to examining the chances of achieving legal victories. Rather, it also includes exploring the prospect of public engagement with the cases, as well as the potential positive effects of the cases on the legal authority examining them.

Part One:
A Brief Review of the Status of Palestinians in Lebanon

This section will present the legal status of Palestinian refugees. While the legislature passed laws relating to Palestinian refugees in 2010 (the amendments to the Labor Code and Social Security Code), their status was previously determined, either directly or indirectly, by the statuses of the numerous categories of people to which they belong. These categories are Arabs or Arab citizens, refugees, stateless persons, persons born and residing permanently and continuously in Lebanon, and non-Lebanese persons (i.e. foreigners).

1. Arabs:

Palestinian refugees have benefited from their Arab identity to varying degrees in the countries in which they settled after leaving Palestine or at other stages. They have received grants from some of these states on account of this identity, as well as benefited from laws or legal principles that confer specific rights to Arabs which distinguishes them from other foreigners. Palestinian refugees are not citizens of an existing, recognized country because of the occupation and because a full-fledged Palestinian state has been prevented from emerging; nevertheless, they have to some extent been considered Arab citizens who have all the recognized rights of citizens of existing Arab states.

Of course, the extent to which the refugees benefit from this status has varied between countries and time periods. Their rights reached a peak in countries whose regimes derived their legitimacy in part from Arab nationalism such as Syria and Iraq. Similarly, they enjoyed more rights during the periods in which general Arab nationalist sentiment was strong, namely the 1950s and 1960s. The establishment of the League of Arab States on March 22, 1945, was a manifestation of this general sentiment. This league had a direct impact on Palestinian refugees when it issued the Casablanca Protocol on September 11, 1965, which raised the issue of the temporary protection of Palestinian refugees in the Arab host states.

The protocol stipulated that the Palestinians should, in their host states, receive the same treatment as the subjects of those states in the areas of travel, residence, and the management of employment opportunities, among others (although Lebanon signed the protocol with reservations).

The best Lebanese example of variation in the extent to which Palestinians benefit from their Arab identity is Decree No. 11614 pertaining to non-Lebanese persons' acquisition of in rem rights in Lebanon, issued on January 4, 1969. With this decree, the legislature recognized the right of Arab citizens to own estates of up to 5,000 square meters in Lebanon without needing prior authorization, unlike all non-Arab foreigners;[4] that Palestinians would enjoy this right was a given. In 2001, the decree was amended. The amendment abolished all distinction of Arab citizens, placing them in the same category as other foreigners. It also added discrimination against stateless persons and Palestinians, as explained below. Thus, the amendment moved Palestinians from the category of persons who receive affirmative discrimination by virtue of their Arab identity to the category of persons being discriminated against because they lack recognized citizenship.

On the other hand, some Lebanese laws and regulations still confer rights specific to Arabs, particularly when addressing the prerequisites for practicing certain professions (such as engineering and topography) in Lebanon.

2. Palestinian refugees:

The Palestinians' refugee status was recognized when they entered Lebanon in 1948. They were distributed into temporary camps erected on private and public properties. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNWRA) was established on December 8, 1949, to protect the refugees' fundamental economic and social rights, the foremost of which include education, shelter, and health.

Lebanon dealt with the refugees by guaranteeing to host them and guaranteeing their ability to remain within its borders. To this end, the Lebanese state granted the refugees a laissez-passer. Similarly, on March 31, 1959, it established the Department of Palestinian Refugee Affairs in the Ministry of Interior and Municipalities.[5] The functions of this department include registering marriage contracts between Palestinian refugees, as well as registering their deaths and childbirths.

However, the state has rarely granted the refugees any other civil, economic, or social rights. It considered the related services – particularly health, education, and aid – to be a responsibility that the international community should fulfill via UNWRA. Furthermore, Lebanon restricts its recognition of refugee status to persons, and their descendants, who came from Palestine to Lebanon as refugees in 1948 and were registered with UNWRA.. It has refused to recognize the refugee status of Palestinians who later took refuge in Lebanon after leaving other countries of asylum such as Jordan[6] and Syria.[7]

One of the few examples of Lebanon granting Palestinian refugees special rights is the 2010 amendment to the Labor Code. On August 17, 2010, the Lebanese Parliament issued laws no. 128 and 129, which amended article 9 of the Social Security Code (implemented via Decree No. 13955 on September 26, 1963) and article 59 of the Labor Code (issued on September 23, 1946). These amendments exempted Palestinian refugees living in Lebanon from the reciprocity condition imposed on non-Lebanese persons, which had prevented them from receiving end of service gratuity and National Social Security Fund benefits. It also exempted them from the fees that foreigners must normally pay to obtain work permits.

Hence, while the third paragraph of article 59 of the previous version of the Labor Code stipulated that "upon dismissal, foreign wage earners shall enjoy the same rights that Lebanese workers enjoy, provided that the condition of reciprocity is met and they possess a work permit from the Ministry of Labor", law 129 introduced affirmative discrimination for Palestinians. It added a new clause stating that "Palestinian refugee wage earners duly registered in the records of the Ministry of Interior and Municipalities – Directorate of Political Affairs and Refugees – shall exclusively be exempted from the conditions of reciprocity and the fee for work permits issued by the Ministry of Labor".

Law No. 128 of 2010 made a similar amendment to paragraph 3 of article 9 of the Social Security Code. This amendment affirmed that Palestinian refugees receive end of service benefits from the National Social Security Fund by exempting them from the reciprocity condition.
However, remarkably, Law No. 128 stipulated literally that Palestinian refugees working and residing in Lebanon are subject "to the provisions of the Labor Code alone with regard to end of service gratuity and work accident compensation".

Thus, it left a large question mark over the end of service gratuity that Palestinian refugees actually receive. Do they receive the gratuity stipulated in the Social Security Code on par with that received by Lebanese contributors, namely the equivalent of one month's pay for each year of work? Or do they receive the gratuity stipulated in article 54 of the Labor Code, the value of which must not exceed 10 months' pay? A literal reading of the text of Law 128 of 2010 favors the latter interpretation.

These amendments were intended to address Palestinian refugees' exceptional situation, which differs entirely from the situation of foreign workers. The most important amendment was the abolition of the reciprocity condition – which Palestinian Refugees cannot meet because "Palestine" as a state does not exist in the legal sense – on the basis of the legal principle that "no one is obligated to do the impossible" (nul n'est tenu à l'impossible).[8] However, these amendments remain inadequate as they did not recognize the Palestinian refugees' rights in full. The inadequacies are outlined below:

- The current law did not abolish the obligation for Palestinian refugees to obtain work permits. Rather, it merely exempted them from paying the fees for obtaining such permits. During the parliamentary discussions, some deputies stressed upon the Palestinian refugee identity in order to oblige them to obtain work permits.[9] Suffice to say, this obligation inevitably facilitates the authorities ability to deny Palestinian refugees permits or to constrict their ability to obtain them, thus thwarting the current law's objectives. Making matters worse, article 9 of the Social Security Code imposed another condition for receiving end of service gratuity: the non-Lebanese person concerned must possess "a work permit in accordance with the laws and regulations in force". This provision is taken to mean that Palestinian refugees who do not obtain work permits or whose attempts to renew their work permits are denied lose their right to receive this gratuity. Note that the basic proposal that the Democratic Gathering block had submitted exempted Palestinian refugees from both the reciprocity condition and the condition of obtaining a work permit.

  The mandating reasons stated that "[amending article 59 of the Labor Code] is necessary in the scope of correcting [the imbalance] and doing justice to Palestinian workers by recognizing their right to work freely in all fields and professions and grant them social safeguards and guarantees".

Hence, retaining the obligation to obtain a work permit may in effect impede Palestinian refugees from exercising their right to work, which is enshrined in the Constitution and the international covenants that Lebanon has signed. Furthermore, the Speaker of Parliament charged then-minister of labor, Boutros Harb, with colluding with some deputies to amend the Democratic Gathering block's proposal on the basis of the discussions occurring at the time. They then emerged during the parliamentary debate with a comprehensive bill, the fourth article of which obliged the minister of labor to grant work permits to Palestinian refugees (i.e. giving him no discretionary power in the matter).[10] However, the bill did not pass the subsequent vote.

Lastly, the public discourse that accompanied the debate on the aforementioned amendments focused on the notion that Palestinian refugees are not Lebanese and therefore cannot be put on equal footing with Lebanese workers.[11] Exacerbating concerns about the work permit requirement, the Ministry of Labor has recently grown stricter in granting Palestinian refugees work permits.[12]

- Despite the law's mandating reason - namely liberating Palestinian workers from the reciprocity condition because they cannot possibly meet it - the legislature promptly deprived these workers of benefits that are otherwise contingent on the presence of reciprocity. This is evident in the amendment to article 9: after exempting "the beneficiary who is a working Palestinian refugee from the reciprocity condition stipulated in the Labor Code and Social Security Code", it blatantly stipulated that "persons covered by the provisions of this law shall not receive the benefits of the sickness or paternity funds or family benefits".

  Thus, an odd situation persists for Palestinian workers. While employers pay contributions to all branches of the National Social Security Fund on the workers' behalf, which amount to 23.5% of their wages, these workers only receive end of service gratuity benefits, which account for no more than 8.5% of their wages.

  During the parliamentary debates, it was argued that Palestinian refugees should not benefit from the aforementioned two social security branches as responsibility in for these areas falls on the international community, particularly UNRWA.

Some deputies thought that if Lebanon's social security system was charged with medical care for Palestinian workers, the international community would renounce its responsibility for these workers, which would "harm the Palestinian workers and contribute indirectly to naturalization".[13] Of course, UNRWA's actual work and the benefits it grants Palestinian refugees refutes this argument. In particular, UNRWA's funds are unstable and the aid it provides fluctuates and is often unable to meet needs. Hence, UNRWA cannot provide real and effective security to Palestinian refugees, especially in the areas of sickness, maternity, and family benefits.[14] Furthermore, UNRWA defines refugees as persons who have lost their houses or sources of livelihood. Hence, refugees who find sources of livelihood (i.e. who become wage earners) and obtain work permits become ineligible for UNRWA aid.[15]

Thus, despite all of the arguments invoked during the vote on Law No. 128, which amended article 9 of the Social Security Code, this law did not actually abolish the discrimination practiced against Palestinian refugees. Rather – and according to most positive readings of the law – it only reduced this discrimination.

- The law that amended the Social Security Code remains ambiguous with regard to the amount of end of service gratuity received. It states "the working Palestinian refugee residing in Lebanon and registered with the Directorate of Political Affairs and Refugees – the Ministry of Interior and Municipalities – shall be subject to the provisions of the Labor Code alone with regard to end of service gratuity and work accident compensation". Some people have questioned what applying the Labor Code "alone" in this area means.[16] Does it mean that end of service gratuity is calculated using the rules stipulated in article 54 of the Labor Code, which would in effect reduce the amount?[17] Or are the provisions of the Social Security Code employed? The initial proposal submitted by the Democratic Gathering bloc (i.e. before the amendment by Parliament's Administration and Justice Committee) contained no such ambiguity, for it added to article 9 of the Social Security Code a new paragraph directly equalizing Palestinian refugees and Lebanese workers with regard to end of service gratuity and medical care for injuries caused by workplace incidents and accidents.[18]

- The legislature also insisted on sparing the public treasury from any burden stemming from the acknowledgment of Palestinian refugees' right to obtain end of service gratuity. To this end, the text stipulated that "the National Social Security Fund's administration must allocate a separate account for contributions from workers who are Palestinian refugees, although neither the Treasury nor the National Social Security Fund shall bear any financial liability or obligation towards it".[19]

3. Stateless persons:

Palestinians are rarely identified as stateless. However, the absence of a fully-fledged Palestinian state, the consequence of which is that Palestinians cannot acquire its citizenship, seriously raises the question of their affiliation with a state. While this report will not address this topic in detail, it should be noted that this question became more pressing after the UN General Assembly granted Palestine non-member observer state status on November 29, 2012.[20] There have been many theories about the extent to which the state of Palestine exists in the legal sense. Some legal experts have gone so far as to say that the state of Palestine exists irrespective of its lack of territorial sovereignty and lack of membership in the UN, although the UN's decision to recognize the state of Palestine will strengthen its legal position as a state in the legal sense.[21] However, the majority of juristic views see the aforementioned General Assembly decision as primarily symbolic of Palestine's international standing, for Palestine remains deprived of any real sovereignty or freedom and therefore cannot be considered a state in the complete legal sense of the term.

The Israeli entity is still occupying the territory deemed to be under the control of the Palestinian Authority. This occupation is not restricted to a military presence on the ground, for it also includes operational control over various domains that usually fall within a state's sovereignty. For instance, the Israeli entity is the authority that currently issues identity cards to Palestinians living under the occupation (i.e. in the territory supposedly under Palestinian Authority administration) and that approves the passports that the Palestinian Authority issues to its "subjects".[22]

Hence, the aforementioned development did not cause Palestinians (be they residents of occupied Palestine or refugees in Lebanon) to attain Palestinian citizenship in the legal sense.

Palestinian identity cards and the passports do not impart Palestinian nationality to their holders; rather, these documents merely identify them.[23] Of course, Israel's control over the issuance of such documents makes obtaining one difficult for any Palestinian refugee residing in Lebanon or the diaspora, especially as the Oslo Agreement's provisions only encompassed Palestinians residing in Jerusalem, the West Bank, and the Gaza Strip.

Based on the above, it can be said that the Palestinian refugees living in Lebanon do not possess citizenship of a state recognized in the legal sense. Hence, they are stateless,[24] irrespective of how firm their national identity may be or their connection to Palestine.

We must therefore elucidate what international law doctrine deems in situ stateless populations. This term denotes stateless persons who are long-term, habitual residents of a particular state. Their status as persons who are stateless "in their own country" and their deep connection to the state concerned, particularly in the absence of any link to another country, imposes upon that state a political and moral obligation to facilitate their complete integration into society (particularly by ensuring employment opportunities without discrimination).[25] This approach is inevitable in the case of Palestinian refugees in Lebanon: given their prolonged residence within the country (a large number are born, grow up, and die without ever leaving) and their lack of ties to another state (they are not subjects of the state of Palestine, as explained earlier), the Lebanese state has a moral obligation to recognize distinct rights for them. One of the cornerstones of this obligation is the facilitation of their right to work, which, as explained earlier, is not occurring.

In this regard, we must first note that with the exception of certain clauses in the Law of Nationality (to which we will return later), the Lebanese state has not granted stateless persons any special rights. It has not ratified the two international agreements on stateless persons, namely the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Rather, an analysis of the positive laws and their application shows that Lebanon has discriminated against them in relation to other foreigners, as explained below. This discrimination gained constitutional force when the Constitutional Council, in one of the cases brought before it,[26] linked the discrimination against stateless persons in the matter of foreign ownership of properties to the prohibition on naturalization. Prohibition of naturalization is an integral principle of the Constitution and is found in its preamble.

Perhaps the most visible form of discrimination against stateless persons is found in the 2001 law amending the decree on foreign ownership of properties in Lebanon. The first article states, "No persons not possessing the nationality of a recognized state is permitted to own in rem rights of any kind, and no person may own such in rem rights if said ownership conflicts with the Constitution's provisions on rejecting naturalization."

This text openly prohibited "stateless persons" from owning properties regardless of whether those properties were obtained via purchase, endowment, or inheritance. The law also prevented the transfer of property in sales contracts made before it was issued, such as contracts that had been partially or fully paid but were not yet registered. From this angle, the legal amendment stripped Palestinian refugees, and stateless persons more generally, not only of rights that the Arabs among them had previously enjoyed,[27] but also of rights that they had already acquired or that they at least had legitimate expectations of acquiring either via inheritance or via the registration of contracts implemented fully or partially before the law's issuance. The discrimination against Palestinian refugees with regards to other foreigners thus manifested in its most extreme form, for it was both comprehensive and retroactive in effect. What was previously valid for Palestinians became invalid and unregistrable.[28]

Adding to the gravity of this discrimination, approval for granting foreigners this right appeared to be contingent on depriving Palestinians of it. The goal of introducing this deprivation was to reassure the public that this law could not be used to facilitate naturalization in Lebanon. Facing the desire of former prime minister Rafic Hariri's government to free real estate investments from the existing nationality conditions, certain voices[29] launched a raucous discourse contending that the goal of doing so was to naturalize Palestinians, disregarding the fact that under the law in effect at the time, Palestinians, like all Arab citizens, had the right to own 5,000 square meters without any license. However, the prohibition was promptly accentuated in the first article of the law and in the forefront of the media in order to refute the "rumors" about the government's intentions. Thus, in the public's mindset, the law turned from one that liberalizes real estate investments into one that combats the naturalization of Palestinian refugees. Note that the text of the aforementioned article amended an earlier proposal to ban Palestinian ownership; the legislature, trying to be smart, resorted to generalizing the ban to encompass all "stateless persons" in order to deter accusations of discrimination against Palestinians alone.

The legislature thus broadened the scope of the discrimination on the pretext of avoiding it.

Remarkably, the Constitutional Council,[30] which monitors the constitutionality of laws, followed the same course. A challenge was submitted against the law on the basis of its discrimination. The challenge cited the Constitution and a number of international agreements. The Constitutional Council rejected this challenge, arguing that the constitutional authorities have sovereign rights on Lebanese territory and therefore may prohibit ownership that conflicts with their paramount policy of rejecting naturalization, which is an integral part of the Constitution. The principle of non-naturalization thus appeared to be a tool for justifying several forms of discrimination against Palestinians. The Council based its decision on three postulations:

- Firstly, the Constitutional Council gave the concept of naturalization a flexible dimension without defining or delimiting it. It postulated a link between owning in rem rights (whether they are acquired via inheritance, endowment, or purchase) and rejecting naturalization. This assumption is irrational and, in any case, unsubstantiated. Today, there are successive generations of refugees who have lived in Lebanon since birth. Some of these Palestinians are married to Lebanese women or born to Lebanese mothers who may be the owners and devisors of properties. Most of these Palestinians therefore have strong and intimate ties to Lebanon. Given such ties, does it make sense to say that land ownership (even via inheritance from a Lebanese mother), as opposed to kinship, leads to naturalization? Does this not mean that the legislature considers ties created by land ownership to play a larger role in fostering naturalization than the other human and emotional ties – such as kinship and a sense of belonging to the Lebanese land – that may have developed between Palestinian refugees and Lebanon since 1948?

- Secondly, the Constitutional Council postulated that banning stateless persons from ownership achieves the greater good of rejecting naturalization by preventing the development of ties leading to it. By doing so, the Constitutional Council discarded the already transparent mask that tried to hide the legislature's intention to target Palestinians with the ban. Paradoxically, making this postulation also meant endorsing the generalization of the ban to include all stateless persons (including unregistered persons and persons whose nationality is "under study").

There was no reason to endorse this generalization unless we deduce a new principle, namely that being in want of a state has in itself become a threat to the greater good that, like any threat, requires punishment.

- Finally, the gravest aspect of this discrimination may be that by legitimizing it, the Constitutional Council opened the door for it to become a standard clause added to bills addressing the treatment of foreigners in order to preempt attacks on the basis of naturalization. Such a clause was added to one of the two versions of the bill that former minister of interior, Ziyad Baroud, submitted to recognize the rights of mothers to pass their nationality on to their children, as we mentioned in the introduction. In this instance, the naturalization scarecrow appears to have blinded the minister of two facts. Firstly, the children being barred from naturalization are as Lebanese as they are Palestinian, and giving precedence to their Palestinian identity over their Lebanese identity in order to preclude their naturalization reflects extreme androcentrism. Secondly, children whose fathers are not citizens of recognized states are the children in greatest need of Lebanese nationality and, furthermore, are the children whose right to nationality was recognized by the legislature in the 1925 Law of Nationality. The same clause also appeared in the bill for compulsory social security for Lebanese retirees, which was approved by Parliament's Public Health and Social Affairs Committee on September 24, 2014, and then referred to the Administration and Justice Committee.[31]

Discriminatory conditions: the condition of reciprocity

In addition to this blatant discrimination, more obscure discrimination arises from the application of the reciprocity condition or similar requirements that stateless persons cannot fulfill (such as the requirement to have the right to practice a specific profession in their countries of origin) on a large number of economic and social rights. The most important rights contingent on the fulfillment of this condition include the right to receive free hospital treatment and to receive legal aid in civil cases,[32] as well as the right to practice the liberal professions or join certain professional syndicates. The legislature – or the minister of labor via a decision he or she issues – has restricted the pursuit of some of these professions to Lebanese persons, as we will explore in the section on Palestinian refugees as foreigners. However, it has made foreigners' practice of other professions contingent on several conditions, including reciprocity and that the foreigner concerned has the right to practice the profession in question in his own country.

The liberal professions affected by such conditions are engineering, physiotherapy, topography, the profession of "dental technicians", and accounting. As for the other professions regulated by a law, the only one affected is nutrition and dietetics.

According to these laws, non-Lebanese persons only enjoy these rights if the state that they belong to recognizes the same rights for Lebanese persons. What legal stance is required in the case of Palestinian refugees? The legislature attempted to address this question in 2010 in the context of amending the Labor Code and Social Security Code, as previously discussed. Is applying the reciprocity condition impossible given the absence of a state? If so, then the condition must necessarily be cast aside such that Palestinians receive the benefits. Or is the condition deemed unfulfilled, which would entail depriving Palestinians of these benefits? What can be deduced from the legislative amendments to the aforementioned two laws? Of course, the resolution of this matter relates primarily to the principles of interpreting legislative texts.

The first interpretation in this regard is based on a rational analysis of the justifications for the reciprocity condition. Historically, this condition was established as a means of pressure to ensure balance between countries. Some people strived in their own countries to grant rights to citizens of foreign countries with the aim of benefiting from similar (parallel) rights in those foreigners' countries. Hence, it should not be applied to persons who do not belong to a state, pursuant to a principle that holds that a text should be cast aside if its justifications are absent. This perspective is supported by the international traditions that exempt refugees and stateless persons from reciprocity, or at least by those that guarantee them preferential treatment over other foreigners in certain areas, which would be impossible if they are subject to this condition.

Although this interpretation is sound on the level of legal analysis, it has only appeared in a small number of court rulings that remain isolated and void of any effect on administrative policies.[33] In a decision issued on February 21, 1975,[34] Beirut›s Labor Arbitration Council found that the principle of reciprocity does not apply to non-Lebanese persons whose nationality is "under study".[35]

] It held that such persons therefore have the right to receive social security benefits without fulfilling the reciprocity condition: "It is absolutely impossible to meet this condition given that [he] does not have a specific nationality. Consequently, he cannot be charged with demonstrating reciprocity as he does not belong to a foreign state". Some judges have also held that the reciprocity condition should not be applied to Palestinian refugees specifically as it is impossible for them to meet such a condition. See, for example, the dissenting opinion of Judge Nabil Sari on the decision that the Civil Court of Cassation issued on June 17, 2007.[36] While the court, via the majority of its members, held that the Palestinian refugee must demonstrate reciprocity to benefit from the Labor Code provisions, Judge Sari disagreed: "A Palestinian living in Lebanon does not belong in the legal sense to the current Palestinian statelet as only persons living inside and carrying its passports are subjects of it ... subsequently, for Palestinians living temporarily in Lebanon, there is a force majeure relating to both the absence of a state to which they belong in the legal sense and their ability to secure reciprocal treatment given the force majeure under which they live".

The Legislation and Consultation Committee in the Ministry of Justice has also employed this interpretation in a number of its opinions.[37] It issued these opinions on the basis of requests it received from the various ministries regarding the ability of stateless persons and Palestinian refugees to practice certain professions and join the professional syndicates given the reciprocity condition in the legislation concerned. The opinions indicate that the Committee's "jurisprudence" has settled on exempting stateless persons and Palestinian refugees from the reciprocity condition.

The same trend can also be deduced from the 2010 amendments. Besides the fact that some deputies openly explained this clause in the above manner, the amendment of article 9 of the Social Security Code notably included a frank, universally applicable clause exempting "beneficiaries who are working Palestinian refugees from the reciprocity condition stipulated in the Labor Code and Social Security Code".

The general phrasing of this clause indicates the legislature's conviction that Palestinian refugees cannot possibly meet the reciprocity condition for all of the reasons outlined above. Hence, the amendment was akin to an interpretive or clarifying law.

This reading is corroborated by the fact that the legislature adopted it when it subsequently excluded Palestinians from some of the rights contained in these two laws, namely maternity fund benefits and family benefits. In other words, Palestinians are no longer automatically excluded from these benefits by paragraph 3 of article 9, which subjects foreigners to the reciprocity condition, but by the last paragraph of this article, which frankly articulates the legislature's desire to discriminate against Palestinians in this context. Otherwise, the legislature would have kept them subject to the reciprocity condition and thus deprived them of all benefits except those that it exempted, instead of abolishing the condition and then excluding them from certain benefits. However, a possible objection to this reading of the legal amendment is that the legislature would not have intervened in 2010 in the first place had the reciprocity clause's inapplicability to Palestinian refugees been definitive.

The second interpretation is based on a literal reading of the law: reciprocity must exist in order for a foreigner to enjoy these rights. Hence, it discriminates between stateless persons and other foreigners, for the rights are categorically forbidden to the former and merely conditional for the latter, who must demonstrate reciprocity. In other words, the literal interpretation of the reciprocity condition implies another condition – affiliation with a state – whose nonfulfillment penalty is deprivation from rights. Hence, the condition constitutes a punishment on stateless persons.

Despite its oddity, this interpretation has enjoyed a consensus in the majority of government departments and professional syndicates in Lebanon. The majority of court rulings have also adopted it. Some of these rulings have gone to excessive lengths – to the point of contradiction – in order to prove the pertinence of this stance. They have stated that the workers are "unable" to prove the existence of reciprocity given the absence of a state or to prove that Palestine recognized reciprocity in the area of social security before its occupation in 1948,[38] even though the institution of social security did not even exist in Lebanon until the mid-1960s.

The decision issued by the Civil Court of Cassation on September 20, 2011 followed the same pattern.[39] The court held that the Palestinian refugee must meet the reciprocity condition in order to benefit from Labor Code provisions. The decision stated:

"Whereas the following is established in the case: that the claimant applying for cassation is of Palestinian nationality and therefore subject to the provisions of the aforementioned third paragraph of article 59 of the Labor Code, and that the claimant applying for cassation has not met the reciprocity condition or obtained a work permit as required by the aforementioned article. As for the statements that the claimant applying for cassation provided to justify his inability to meet the reciprocity condition and explain why he as a Palestinian does not need a work permit, they do not invalidate the aforementioned text or render it inapplicable. Reciprocity remains compulsory and must be duly demonstrated. Hence, a reference to a Palestinian constitutional text dating back to 1922 – which remains merely an uncorroborated statement – does not suffice;

And whereas the appealing claimant's failure to duly demonstrate reciprocity between the Lebanese state and the Palestinian state, in addition to his lack of a work permit in accordance with procedure, deprive him of the rights that Lebanese workers enjoy upon dismissal from service;"

Furthermore, some courts have occasionally gone so far as to announce the text's punitive nature in their discourse. When one employer argued that it is unjust for him to have to pay contributions to the family compensation branch of the Social Security Fund on behalf of a Palestinian worker only to later pay family compensation to the same worker because he is excluded from the social security benefits, the court's answer was categorical in both manner and content. It stipulated that "an employer who knows the Social Security Code provisions and nevertheless chooses to contract a foreign worker whose country does not recognize the principle of putting foreigners on an equal footing with its own citizens must bear the consequence of his error, whatever it may be. If he does not want to expose himself to the damages outlined in his claim, he should only contract Lebanese workers or should contract foreigners who meet the reciprocity condition".[40] Hence, the ruling portrayed the reciprocity condition not as a means of pressuring other countries to recognize Lebanese persons' rights, but, first and foremost, as a means of pressuring employers not to employ stateless persons. This further demonstrates the punitive nature of this condition.

Lastly, international law addressed this issue in article 7 of the 1954 UN Convention relating to the Status of Stateless Persons (a.k.a. the New York Convention). It stipulated that "after a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States". The same article obliged the contracting states to "continue to accord to stateless persons the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State".[41] While Lebanon has not signed this convention, it does indicate how international law (i.e. the international community) approaches the issue. Hence, the judicial authorities may seek guidance from it when interpreting the extent of the condition's applicability. Additionally, although Lebanon has not signed the aforementioned convention, it has signed the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; and the International Convention on the Elimination of All Forms of Racial Discrimination, all of which stress the need to avoid discrimination and have constitutional force.

Another condition that in effect discriminates against stateless persons is that reciprocity must be enshrined in a bilateral agreement between Lebanon and the foreign state concerned. This condition appears in the laws governing the pursuit of medicine, dentistry, pharmaceuticals, health inspection, orthotics/prosthetics, and the profession of laboratory technicians. In contrast to the condition of reciprocity itself, neither the Lebanese courts nor the Legislation and Consultation Committee has addressed this issue. However, the French Court of Cassation, in a decision issued in 1967, held that "legislative reciprocity should not be confused with the reciprocal treatment that results from the treaties".[42] The court concluded that the condition of reciprocity enshrined in a bilateral agreement does apply to stateless persons. Note that France is a party to the 1954 New York Convention.

On this basis, it is clear that the treatment of Palestinian refugees is an issue of not only deprivation of civil and economic rights, but also discrimination against them in relation to other foreigners on account of their statelessness. The fourth paragraph of the first article of the International Convention on the Elimination of All Forms of Racial Discrimination stipulates that "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination".

Hence, the convention appears to encourage party states to take affirmative discrimination measures to ensure that certain social groups enjoy and practice human rights and fundamental freedoms. In contrast, the Lebanese legislature has in this area tended to discriminate against them, as described above. This tendency could in some cases constitute racial discrimination because the legislature aims in these instances to not only protect the interests of Lebanese people, but also discriminate between foreigners themselves.

4. Foreigners or non-Lebanese persons

Given the above, what applies to foreigners in general applies to Palestinians. Palestinians are therefore deprived of a large number of rights.

- **Regarding work in general:**

No Palestinian refugee – or non-Lebanese person in general – has the right to work in Lebanon in any field (be it a liberal profession, another profession regulated by a law, or any other profession) without obtaining a work permit from the Ministry of Labor.

Article 9 of Decree No. 17561 which was issued on September 18 1964, and regulates foreign labor in Lebanon, stipulates that each year the minister of labor issues a decision specifying the jobs and professions that his ministry sees a need to limit to Lebanese persons. The most recent decision – Decision No. 218/1 – was taken by current minister of labor Sejaan Azzi on December 19 2015. Its second article restricts a number of jobs to Lebanese nationals, including all kinds of administrative, banking, and educational jobs; engineering in all specializations; nursing; all kinds of jobs in pharmacies, drug stores, and medical laboratories; accounting; the liberal professions (e.g. medicine and law) and other professions regulated by a law. Its third article exempted Palestinian refugees "born on Lebanese territory and officially registered in the Lebanese Ministry of Interior and Municipalities' records" from the second article, except in regard to the liberal professions and other professions that are regulated by a legal text and that non-Lebanese persons are banned from practicing. In other words, the decision allowed Palestinian refugees to pursue these professions except for those already restricted to Lebanese persons by a law (such as law, nursing, and midwifery).

Article 8 of the 1964 decree is a rare case that takes into account a person's specific ties to Lebanon such as a sense of belonging to the land, kinship, and prolonged residence. It is a provision that applies primarily to Palestinian refugees as the overwhelming majority of them were born and have lived in Lebanon since birth, and some have married or were born to a Lebanese woman.

- **Regarding practicing a liberal profession regulated by a law:** [43]

There are 26 professions regulated by a law in Lebanon. These professions are divided into two groups:

1. Professions whose practitioners do not have to join professional syndicates. This group encompasses driving instructors for cars and other automobiles, itinerant photographers, health inspectors, pharmaceutical assistants (medicine preparers), foreign press correspondents in Lebanon, persons who clear transactions in the Car and Automobile Registration Department, accredited nutritionists/dieticians, accredited orthotists/prosthetists, and laboratory technicians.

2. Twelve professions whose practitioners have to join a professional syndicate that is also established by a law.[44] (These professions are traditionally called the "liberal professions" because instead of being subject to the provisions of the Labor Code or Social Security Code, they are subject to their own laws and regulations.) Unlike other professions, membership in the unions established by laws is a condition for practicing these professions. These 12 professions are engineering, the medical professions, dentistry, nursing, midwifery, physiotherapy, pharmaceutics, topography, veterinary medicine, the profession of "dental technicians", accounting, and law (all hereafter referred to as "liberal professions"). The conditions that determine whether a professional can join the relevant syndicate are specified either in the law that established that syndicate itself (such as the law establishing the Order of Midwives[45]) or in another law that regulates the practice of the profession in Lebanon (such as the Law of Pharmaceutical Practice[46]).

It is important to distinguish between the two kinds of laws – those establishing the syndicates and those regulating the professions – as they sometimes conflict.

For example, while the 1948 law regulating the veterinary medicine profession allows non-Lebanese persons to practice the profession, the law establishing the Lebanese Veterinary Association[47] later restricted the profession to Lebanese persons, thus implicitly nullifying certain clauses of the 1948 law.

The Lebanese legislature has restricted some of the aforementioned professions to Lebanese persons. This includes driver education for cars and other automobiles and the professions of pharmaceutical assistants (medicine preparers) and persons who clear transactions in the Car and Automobile Registration Department. Regarding the professions that syndicates have been established to regulate, nursing, midwifery, and veterinary medicine, and law are all restricted to Lebanese persons.

All foreigners, including refugees and stateless persons, are prohibited from practicing these professions.

As for the remaining professions (liberal professions and other professions regulated by a law), non-Lebanese persons may in principle practice them in Lebanon as long as they are not encompassed by the minister of labor's decision that limits professions to Lebanese. However, all the laws pertaining to them stipulate that non-Lebanese persons wanting to practice them must meet the same requirements imposed on Lebanese professionals (such as having specific certifications, being a certain age, or having passed the Colloquium exam). They also stipulate that the foreigner must have a residency card, have permission to practice the profession from the relevant authority, have a work permit from the relevant departments, and actually reside in Lebanon.

All of the legislation pertaining to the professions regulated by a law, including the liberal professions, stipulate that persons wishing to practice them in Lebanon must obtain permission or authorization from the official body supervising the vocational sector concerned. For example, a person wishing to be an engineer must obtain permission from the Ministry of Public Works, a person wishing to be a certified nutritionist/dietician must obtain a permit from the Ministry of Health, and a person wishing to be a foreign press correspondent in Lebanon must obtain approval from the Ministry of Information (which issues a card for this purpose). Even a person wishing to be an itinerant photographer must obtain permission from the governor, as well as permission from the Ministry of Interior and Municipalities in cases involving the Beirut region.

In this regard, the key obstacle facing Palestinian refugees is the reluctance of some of these government departments to issue such permissions. It is well known, for example, that the Ministry of Public Works has refused in recent years to give any Palestinian refugee permission to practice engineering. In effect, this deprives the refugees of their right to work in Lebanon or causes them to work without permission or authorization and hence in inferior work conditions.

- **The establishment of syndicates and associations:**

Lebanese law distinguishes between national associations and foreign associations.

The former is subject to the system of declaration and acknowledgment established by the 1909 Law of Associations. Under this system, people can establish associations at will without needing prior authorization. An association does not acquire complete legal person unless it is declared to the Minister of Interior, which may refuse to give acknowledgment if the association's subject matter contravenes public order.

The latter, on the other hand, is subject to the principle of prior authorization by the Council of Ministers. The Council issues such authorization on the basis of a recommendation submitted by the minister of interior. An association is defined as foreign if more than one-fifth of its members are foreigners or it is a branch of a foreign association. Under such a law, foreign refugees are considered foreigners even if they were born and reside in Lebanon. Hence, the participation of Palestinians in the establishment of associations in excess of the aforementioned ratio is contingent on the will of the executive authority. This greatly limits the freedom of Palestinian refugees to form associations.

Regarding the labor syndicates and employer syndicates, non-Lebanese persons may in principle be members. However, they are prohibited from participating in the establishment of these unions and in the bodies that administer them.

Part Two:
Gauging the Risks and Rewards of Resorting to Strategic Litigation

The question here is whether strategic litigation is a suitable tool for improving the status of Palestinian refugees in Lebanon. Answering this question requires examining the obstacles and risks associated with employing strategic litigation in the Lebanese context, especially with regard to the rights of Palestinian refugees, and comparing them to its potential rewards. As no litigation initiatives addressing these rights have occurred, we will draw upon national strategic litigation experiences in other contexts, particularly in issues marred by specific political or social sensitivities.

1. Obstacles and risks of strategic litigation in Palestinian issues

There a several obstacles and risks associated with strategic litigation, as detailed below:

- **First: the central political authority's hegemony over public decision-making**

A series of compounded factors have ensured the political (executive and legislative) authorities' control over all public affairs. Two of the most prominent aspects of this control in Lebanon are:

- The consensus rule being portrayed as a rule above constitutionality, which means that it has greater force than the constitution's principles and subsequently derives its legitimacy from itself. Hence, the legitimacy of any consensus decision is accepted, even if it appears to contradict the constitution's articles. Any deviation from the consensus rule, on the other hand, may be considered unconstitutional because it conflicts with higher interests [48] or the principle of national coexistence.[49] This rule has manifested in a series of practices that have become akin to norms.

They include the restriction of freedom of conscience and the related personal status legislations to the scope of the recognized faiths (a violation of article 9 of the Constitution, which plainly stipulates that freedom of conscience is absolute[50]) and the consensus on applying the "provisional twelfth" rule despite the passage of more than a decade since the adoption of the last budget law (a blatant violation of the Constitution's provisions[51]). On the other hand, some people have deemed the recognition of the right of Lebanese women to pass their nationality on to their children born to Palestinian fathers a violation of the Constitution, specifically the non-naturalization principle.[52]

- The mechanism for making important decisions is being subject to consociationalism. This mechanism differs radically from the mechanisms of judicial work, in which decisions are made by a specific court on the basis of legal principles and in isolation from any political considerations. This issue is reflected in the political authorities' efforts to restrict the judiciary's function to applying the law and to constrict its margin for forming jurisprudence in thorny social issues. Hence, anyone seeking any reform must convince the political authorities of the need to conduct it and must treat it as a political matter whenever the obstacle it faces is political. To deal with such a reform as a rights issue, on the other hand, borders on naivety. The post-war decades have witnessed many events that indicate the hegemony of the political class. Perhaps the most telling of these events is the absence of three members of the Constitutional Council from the sessions for deliberating the challenge filed against the extension of the term of Parliament's members. This absence deprived the Council of the legal quorum, thus preventing it from rendering a decision. This extremely dangerous precedent marked the emergence of what could be called the "paralyzing quarter" affecting the Constitutional Council's work, for the absent members acted in full coordination with the political powers that had helped appoint them, according to unrefuted press reports.[53] The effort to cement consociationalism in the judiciary's activities is reflected in the political authorities' insistence on appointing the Supreme Judiciary Council's members according to the same equation of sectarian affiliations that governs the Council of Ministers so that the Supreme Judicial Council can, whenever necessary, be subjugated to the consensus trends.

As for the suppression of the margin for forming jurisprudence in sensitive cases, the clearest evidence is the raucous (and somewhat repressive) political reactions against the decision granting Lebanese women the right to pass their nationality on to their children issued by the First Instance Court in Matn in June 2009, as explored below.

While significant, this obstacle is also another reason for strategic litigation: besides the fact that the judiciary may be the only opportunity to consecrate a specific principle when achieving a consensus is at that time very difficult or impossible, resorting to it is also the most effective means of exposing the contradiction between the consensus principle and the legal system. Strategic litigation is also one of the most important forms of resistance to this hegemony, for in essence it uncovers the aforementioned hegemony and acts as a continuous appeal to judges to free themselves from it.

- **Second: the illusion of the judiciary's independence?**

This obstacle is connected to the first obstacle and also nourishes it. The guarantees of the judiciary's independence remain minimal and extremely inadequate by international standards. Although the ruling authorities declare their adherence to judicial independence in principle, their dignitaries generally have no qualms about stating otherwise. They also make no effort to deny allegations of interference in the judiciary's affairs, which usually go unanswered. Similarly, these authorities rarely pay any attention to reform in this area.[54] The objective seems to be to entrench the belief that the judiciary is part and parcel of the regime and no more than a public utility within it: it only issues rulings under the auspices of the regime and in accordance with its needs. It is no exaggeration to say that as a consequence, the dominant culture in this area leans more towards ubiquitous interference – at least by politicians – in the judiciary than respect for the judiciary's independence. The issue is more obvious within the exceptional courts, including the Military Court, which consists for the most part of military officers and issues its decisions in the form of a "yes" or "no" without any explanation.

This obstacle is naturally significant. How can various social groups resort to the judiciary if its stance is predetermined in favor of the dominant powers? In other words, how can the judiciary be a stage for presenting social issues as sensitive as those related to Palestinian refugees when the play has no plot because its conclusion is predetermined?

Does strategic litigation not presuppose a certain partnership between social forces and the judiciary, a partnership that is only possible when the judiciary possesses a minimum level of independence?

While this objection is important, independence remains relative: it is determined by not only the legal guarantees, but also by the social circumstances and social forces supporting or influencing the judiciary and by the judges' conceptions of their social role. Evidently, strategic litigation can strengthen the underpinnings of this independence in two ways. Firstly, it can make judges, as individuals and as a body, conscious of their role. This prompts them to be more tenacious about their independence and to strengthen their personal resistance and their collective solidarity, especially among those working on similar or identical cases. Secondly, if the strategic litigation succeeds, it shows the social forces that the judiciary, having done them justice, deserves more support from them for its independence. The best evidence of this effect is the developments related to the implementation of the State Council decision that declared that the relatives of persons who went missing during Lebanon's Civil War have a right to obtain a copy of the complete dossier of investigations regarding those persons: a campaign was launched under the banner of the relatives' right to know and the independence of the judiciary, which requires that its rulings be implemented.[55]

In conclusion, the goal of strategic litigation is not necessarily to obtain positive rulings in preliminary cases. Sometimes it is to achieve gains of a different kind, some of which can only be achieved through the rupture defense (defense de rupture),[56] which involves challenging or rejecting the court itself and therefore the legitimacy of the trial.

- **Third: the specific manner in which law is conceptually understood**

The law is still primarily understood as rules established by the political authorities. This is due to the scarcity of means to contest these rules. Unlike the situation in many countries, Lebanese litigants can under no circumstances challenge a specific law by contesting its constitutionality, whether that be before the courts or the Constitutional Council. Unfortunately, the Constitutional Council has not succeeded, within the leeway granted to it, in changing this image.

The claim that there can be no jurisprudence where there is a text – a claim that the courts are still making on their own accord – exacerbates the issue. However, this issue has, like others, been undergoing a significant shift as judges' conception of their judicial function changes (discussed below).

- **Fourth: the judges' conception of their judicial function**

Another obstacle, which is no less significant than those mentioned above, is judges' conception of their role irrespective of the extent of their devotion to their independence. They see their role as restricted to serving the law. They are the law's mouthpiece and must stick to applying the law irrespective of how pertinent they consider it to be. Any deviation from this function is a transgression of the judiciary's boundaries and an encroachment on legislative work and therefore the separation of powers. Of course, this understanding stems not only from the judiciary's mindset, but also from the direct and indirect disciplinary mechanisms that ensure adherence to the will of the political authorities. In this regard, the best example is the hostile and repressive stance taken against Judge John Qazzi after the court he headed issued a ruling granting Lebanese women the right to pass their nationality on to their children in June 2009.[57] Eventually, the government not only canceled the ruling, but also transferred the judge from the president of a first instance court to a position in which he was no longer able to have an impact.[58]

This narrow conception of the judicial function has become a subject of critique for a number of reasons. On one hand, the conception turns judges into false witnesses who must apply laws they know are oppressive, especially in the case of Lebanon, where the legislature rarely produces the laws to suit social change or the agreements that it allowed to be ratified. On the other hand, in the reality of the judiciary's work, this conception is now declining because contemporary judges have several legal means of interpreting, casting aside, or supplementing the law. This situation arose via the adoption of several general principles, including the principle of inherent rights overriding positive rules and the principle of the supremacy of international covenants and agreements, particularly the two international covenants on human rights.

Lebanese judges have adopted an expansive reading of these two agreements that gives them direct applicability, meaning that they do not merely compel the legislature to ensure that the laws conform to them; rather, litigants may invoke them before the judiciary against the state[59] or even against individuals.[60] Such a trend has also been recorded by a number of social studies in Europe. These studies observed that the development of general principles in effect steers judges towards different conceptions of their function. Subsequently, the judges strive to interpret the laws in a manner that renders them more harmonious with new social needs and therefore to develop these laws. The judge is not the mouthpiece of the law, but the person who thinks about it and finds solutions to develop it. Some have called this concept the "pioneering judge in society", or the judge who leads society forwards. During the past years The Legal Agenda has followed the activity of a number of judges striving to advance jurisprudence in specific social issues.

Of course, a judge acting in the above manner does not violate the separation of powers because a court decision, although symbolically important, remains restricted in its practical effects and enforceability to the litigating parties. Similarly, the decision can be contested within the same legal system. From this perspective, the judge's work is akin to presenting a proposal that understands and develops the law in a specific way. The legislature can then consecrate or reject the proposal in a law issued later. Hence, the judge acts, from his position close to the litigants, as the receiver of their requests and examiner of their needs and interests. He can survey these requests and accept those that he considers the most concordant with society's interests. In other words, the court acts as a lab setting and the judge as a filter, or as the authority with the competence and legitimacy to derive and propose whatever he or she sees as concordant with society's interests. Such practice invalidates any objection based on a violation of the separation of powers, asit better fits into the scope of cooperation between the powers – a principle stipulated in the Lebanese Constitution.

- **Fifth: lawyers' understanding of their role and the rules of the profession**

The fifth obstacle to strategic litigation is the lawyers' understanding of their role, which is largely tied to the judges' understanding of their role, as well as to the way in which the law is conceptually understood.

Lawyers restrict their work to the outcome that is possible within these notions. Hence, their role of providing legal aid is restricted to convincing the judge of the applicability of a specific law to the circumstances of a specific case in order to demand that it is put into effect in accordance with the text developed by the legislature. At best, the lawyer proposes a new interpretation of the law within the bounds imposed by the existing legal system, without transcending the intention of the legislature or calling for the law to be cast aside altogether. The lawyer's role is mostly to act as a check on his clients, for he separates the legal demands that he deems attainable under the existing legal system from mere wishes that, if raised, could undermine the client's chances of victory. Hence, the lawyer is a check on the client's demands, just as the judge is a check on the lawyer's demands within the checks established by the legislature, which is the principal check on the legal professions and the law alike. From this perspective, the lawyer is merely an expert who provides consultative services using his knowledge of legal techniques and their use, whereas any discussion about developing the law or casting it aside is a deviation from his professional duties in providing this knowledge. More importantly, the lawyer considers his only frame of reference to be the judiciary, which means that his battle to win the case is contained within the court and constricted by trial ethics, the first of which is respecting the judiciary as stipulated by the lawyers' oath. Going to the media, on the other hand, is a deviation from these ethics and akin to circumventing the judge, pressuring him, or interfering with his work. Such an action is even more condemnable because public opinion has no function in this area as the judge issues a ruling in accordance with a predetermined law. Some people even label such behavior as demagogy and describe the lawyers who display it as demagogues infatuated with the media or with showmanship, for they are doing something they should not at the expense of the case and, in the process, jeopardizing their clients' interests and professional ethics. Such lawyers appear to be violating the traditional relationship between lawyers, who request, and judges, who decide, and thus becoming lawyers who force specific decisions via the media.

Similar to the understanding of the judicial function discussed earlier, this understanding stems not only from the mentality of lawyers and their education, but also from repressive means of discipline. The best example of such means is the texts that consider any discussion about a case still at trial to be misconduct and self-promotion.[61] In fact, a number of lawyers have on this basis been summoned for inquiry by the Bar Association.[62]

Of course, the impact of this obstacle diminishes as the understanding of the law and the function of the judiciary changes. When this occurs, lawyers come to present the judge with a kind of partnership for developing the law. Going to the media becomes a way for lawyers to prepare the public for the desired change, so that the judge, when issuing the ruling, finds the climate suitable for a step forward, even if that step involves clashing with specific political and social forces.

- **Sixth: rights organizations**

Examining the role of rights organizations in the section devoted to obstacles may seem odd when these organizations appear to have been the most effective actors in the field of rights for at least two decades, given the political parties' disengagement from it. The reason for doing so is the nature of these organizations' fields of interest and resources, which are largely connected to all of the aforementioned factors and obstacles. The majority of these organizations display extreme interest in the legislative field, namely either in critiquing these laws or developing them, which entails drafting bills and preparing campaigns to market them to decision makers and the public. On the other hand, they see judicial work as confined to the litigating parties, tenuous, and limited by nature. As a result of this conviction, they see investing in the judicial field as a waste of energy.

The most prominent evidence of this perspective is the KAFA ("Enough") campaign to pass the violence against women law and the "My nationality is a right for me and my family" campaign. Both of these campaigns involved great efforts to market their demands to the public and succeeded in forming a public movement. However, their legal activity remained extremely limited. Notably, the "My nationality is a right for me and my family" campaign did not opt to resort to the judiciary despite the momentum that its demands gained following the Matn aforementioned ruling issued in the Soueidan case. The campaign appeared to be more influenced by the final outcome of the case than by the first instance court ruling. The same has occurred regarding a large number of associations defending specific social causes, such as the Lebanese Association for Democratic Elections and the Lebanese Transparency Association. The disengagement of rights organizations from strategic litigation has another, no less important explanation involving the nature of their resources.

These resources are mostly donations from foreign bodies. These bodies usually hold themselves above funding strategic litigation cases for several reasons, which may include a particular understanding of international relations as well as a desire to exercise a degree of control over the products of the resources' use, which is impossible in the case of the courts. Additionally, it is difficult to highlight the role of donor bodies in the area of court cases.

However, this obstacle has been receding significantly for some time, as numerous examples show. The most important example is the change in the movement of the families of missing persons, which, after striving for decades to learn the fates of their loved ones, resorted to strategic litigation for the first time in 2009.[63] The same mechanism has been employed by the Samir Kassir Foundation with regard to freedom of expression issues, the NGO Helem with regard to homosexuals,[64] the NGO Skoun with regard to drug users,[65] and, finally, the Lebanese Physical Handicapped Union with regard to challenging the state's failure to implement the Rights of Disabled Persons Law, issued in 2000. The Frontiers Ruwad Association is also launching strategic cases relating to stateless persons,[66] and the Norwegian Refugee Council has shown special interest in filing strategic cases in issues relating to property ownership by foreigners. The successes achieved in a number of the aforementioned areas are an incentive for more organizations to become interested in the strategic litigation mechanism.

- **Seventh: the feeble state of the specialized media**

Naturally, the media is one of the tools of strategic litigation. Hence, the weakness of the specialized media constitutes a negative factor from two angles:

The first is the deficiency in covering cases. Insufficient resources are being allocated to following new developments before the courts, particularly in pending cases, thus weakening their social presence.

The second is the failure to properly appreciate the dimensions of the court cases and their importance in the political and social system. This failure is reflected in several cases of poor reporting or not properly raising the issues involved. The media rarely succeeds in exploring the dimensions of cases that go beyond the claims of the litigating parties.

Progress is being made against this obstacle with the growth of The Legal Agenda, which was established specifically to address this weakness.[67]

- **Eighth: fear of the repercussions of litigation in a system in which the rule of law is weak**

The greatest obstacle to strategic litigation may be the fear that could deter victims or the potential plaintiffs from resorting to litigation. This fear stems primarily from the possibility of retaliation, even in cases in which a win is assured. The party aggrieved by the litigation and the accusations made against it is usually influential and capable of harming the victims or plaintiffs in one way or another. The chance of their rights being harmed is greater when the aggrieved party has power over their futures. Some stark examples of such a situation are for a prisoner to file a claim of torture against his jailer, for a non-citizen to file a claim against the party granting or renewing his right of residence in the country concerned, for a worker to file a case against the company in which he works, or for a family to file a case against a private school that is educating its children. The level of fear depends on the level of adherence to the rule of law and accountability, for the lower this level is, the greater the chance of retaliation. In some instances, the legal status that is being challenged facilitates certain retaliations. This is the case, for example, when a Palestinian wishes to prosecute a property seller in order to compel him to register the property under the Palestinian's name and thereby overturn the legal prohibition on Palestinian ownership. The fear is that such a case could invalidate the entire sale contract and thereby alert the seller to the possibility of recovering his property by refunding the price paid, which may have become trivial because of the inflation that occurred since the date of sale. In the face of such a situation, it is unsurprising for the Palestinian refugee to prefer to avoid taking any uncompelled action pending, for example, an amendment to the law.

Moreover, public departments' inclination towards retaliation is largely related to their view of the judiciary as a subordinate instead of a monitor of their activities. Instead of treating court cases as an opportunity to examine the legitimacy of the instructions and practices they follow (as any honorable litigant should), the public departments treat the cases as an attack (or campaign) against them or a violation of their authority and jurisdiction.

This sense of violation grows when rulings are issued against them, thus increasing their desire for retaliation. One example is the General Directorate of the General Security's anger towards the consecutive rulings issued by a number of judicial authorities convicting it of arbitrarily detaining Iraqi refugees in 2009 and 2010. This anger resulted in the accusation that the judiciary does not know what it is doing[68] and in punitive measures against lawyers.[69] It also resulted in the adoption of graver practices. For example the General Security endeavored to deport the refugee prosecuting it on account of his arbitrary detention, thus exchanging arbitrary detention for a form of deportation that violates the international custom of not deporting refugees.[70] The General Security also had no qualms about evoking concerns about the increasing number of refugees in order to defend its practices, thereby jeopardizing the public's tolerance and kindling its misgivings about the refugee influx.

Despite its gravity, this obstacle is usually overplayed. The public departments are full of contradictions and the officials in them may change intermittently. Some forms of retaliation may also form a golden opportunity to draw the public's attention to the graveness of the practices employed and the justness of the case filed, thereby strengthening the chances of the litigation's success. Additionally, strategic litigation does not always create a direct confrontation between the victim and the perpetrator. Rather, in many cases the litigation may be more complicated and may even include "collusion" between the plaintiffs and officials in the department itself who want – or at least do not oppose – rectification.

Additionally, there is fear about the financial capabilities of some litigants. In a number of cases, a party has retaliated to a claim with strategic dimensions by filing a large number of arbitrary lawsuits. This occurred, for example, in the case of the Spinneys supermarket workers' union filed against the company. Such actions can of course financially exhaust people active in this field.

Finally, there is also fear about the impact that the case or the authorities' reactions to it might have on public opinion. This fear is especially great in the context of unpopular issues that could kindle misgivings in a manner that totally conflicts with the aim of the cases filed. For example, demanding Palestinians' rights could reinforce the public's inclination towards rejecting any reform in this area.

While this obstacle is no doubt significant, the best means of addressing it is usually the method of selecting cases and the conditions under which they are filed (such as the means, the use of the media, the timing, and identity of the persons filing the cases), as discussed below.

- **Ninth: the possibility of losing the cases and thus bestowing greater legitimacy on the violations that they seek to deter**

The more famous the case is in the media, the greater the impact of losing it. A loss could settle the discussion about the legitimacy of a law or particular practice and hence encourage a particular public department to continue employing it without showing any reservation or defensive posture, i.e. in a cruder manner than before the litigation. The department can also use its legal victory to defame the work of the rights organizations that, in its view, provide false and distorted readings of the law. Such defamation could strengthen the legitimacy of the public departments while also undermining the legitimacy of the rights organizations that monitor their work. This can happen, in particular, when the case ends up providing the department with a legal basis for a practice that was previously occurring without one. This occurred, for example, when director Danielle Arbid and the Orjouane Production Company lost the case on the prior-censorship of her film Beirut Hotel.[71] In this case, the plaintiffs argued, based on an earlier study conducted by a group of cultural institutions, that the General Security may not exercise censorship over the film's script because the 1947 law on screening cinematic films governs censorship over the screening of films, not their scripts, and because of the principle that freedom can only be restricted by law. The outcome greatly disappointed the plaintiffs: the State Council supported the General Security in this practice on a number of bases, including the principle that he who can do more (censor the film's screening) can do less (censor the film's production). Naturally, the General Security dedicated a special article to this decision in the first issue of its journal in order to flaunt the legitimacy of its practices. [72]

Of course, the danger in this regard is greater if there is little confidence in the judiciary's independence and ability to take brave or pioneering stances in interpreting and applying the law. Under such circumstances, the sanctity of judicial rulings – along with the presumption of "legal truth" (vérité judiciaire) – will presumably diminish. The rulings thus become more debatable and vulnerable to criticism, which facilitates their reversal.

Although losses are no doubt significant, in some instances – particularly in cases that are obviously justified – they can act as another indication of the poor state of the political-legal system and thereby make the cases more important to public opinion despite their loss in court. In other words, in certain instances the loss of just cases does more damage to the credibility of the judiciary that issued the ruling, whose independence was already in doubt, than to the cause itself, whose justness remains beyond doubt.

- **Tenth: that the cause is unpopular**

This issue may be the most serious in relation to Palestinian issues. By accepting the demand to recognize Palestinian rights, a judge not only confronts the political authorities, but also public opinion, which fears any liberalization in such issues because of considerations related to demographic balances. In other words, he may find himself standing defeated before the government without any support from public opinion. The issue concerns not only the judges, but also the various other players in strategic litigation (lawyers, rights organizations, and the media). They may all find themselves clashing with public opinion, and such a clash could negatively impact the other cases in which they engage. The fact that the political parties that derive certain legitimacy from denying Palestinian rights could stir up public opinion on the basis of the cases exacerbates these concerns.

This consideration is worthwhile, especially in refugee issues. Dealing with it presupposes much prudence and deliberation in media contact and in formulating media material, as well as in selecting cases and the time at which to file or announce them.

Perhaps the most important action that can be taken at this level is to transform the cause from one about Palestinian refugees into a one about upholding particular legal and constitutional principles. The latter will likely win over anyone who believes in building a state worthy of the label. An example of such action is the manner in which the issue of the arbitrary detention of Iraqi refugees was handled. This detention, which occurred by will of the administration (the General Security) in the absence of any legal decision, is primarily a violation of Lebanon's public order and secondarily a violation of refugee rights. The issue became more blatant and serious when the General Security refused to implement the rulings to release the aforementioned Iraqis. At that point, the cause was no longer just about refugees.

had become an issue primarily about subordinating the General Security to the judiciary's rulings and oversight.

More generally, in unpopular issues a way of presenting unpopular and perhaps unaccepted ideas under the cover of popular and accepted ones – i.e. via a Trojan horse – must be found.

2. Positive and assisting factors

In contrast to the aforementioned obstacles and risks, there are a number of positive factors. Many were referenced in the course of the above discussion. In this section, two additional factors will be discussed on account of their particular importance.

- **First: under present circumstances, the judiciary may be the most appropriate setting for evaluating the public policies adopted on Palestinian refugee issues.**

Whatever the obstacles to and caveats of utilizing the judiciary, it remains the most suitable means – and perhaps the last resort – for ending the official silence on the Palestinian issue, for restoring its rights focus, and, most importantly, for rationalizing the problems raised so that the justest solutions can be explored. Thus, strategic litigation allows the issue to be subjected to the lab setting of the judiciary – and via it to public thinking – on the basis of real cases. In other words, it allows the issue to be subjected to the lab setting that remains the most appropriate and effective given that the state institutions are not prioritizing it or putting it up for serious discussion. From this perspective and in light of the lost time, litigation may appear to be the ideal course of action.

- **Second: there are strategic litigation precedents in sensitive issues**

As previously explained, important progress has recently been made in the area of strategic litigation in Lebanon, especially in cases marred by a political or social sensitivity that in some instances tops the sensitivity surrounding Palestinian refugees' rights. The progress made has not been limited to the utilization of the litigation mechanism, for in several cases it went further and achieved important successes, as explained below:

- Iraqi Refugees:

Following the invasion of Iraq and the fall of the Saddam Hussein regime in 2003, a large number of Iraqi refugees entered Lebanon. Some entered covertly via Syria, while others entered legally and remained in Lebanon after their visas expired, fearful of what they may encounter in Iraq. The majority obtained refugee cards from UNHCR, but those cards did not shield them from legal prosecution, which entailed being detained and tried for entering covertly or overstaying a visa. Court jurisprudence does not consider the state of seeking asylum to be an exigency excusing this offense because the legal text does not distinguish refugees from non-refugees and because there was no need for the refugees who entered Lebanon via Syria, which was considered a safe country at the time, to do so. While the rulings issued against them generally set the legal punishment at one month of imprisonment and many ruled out the punishment of deportation, the General Directorate of the General Security developed an administrative policy of detaining foreigners – including refugees – or keeping them detained without a legal basis even though their prison sentence had ended. Such detention was indefinite and could last years.[73] Rights organizations presented a number of reports to condemn this practice, the most well-known of which was published by Human Rights Watch under the extremely revealing title "Rot Here or Die: Bleak Choices for Iraqi Refugees in Lebanon". Human Rights Watch explained that this practice aimed to pressure the refugees to return to Iraq under pain of remaining detained. It stated that 580 refugees were in detention in November 2007, but the number fluctuated from month to month. Despite the graveness of this practice, the General Security portrayed it as a necessary practice to stem the flow of Iraqi refugees and therefore for preventing a problem that parallels the Palestinian refugee problem from emerging. In other words, its response to the demand for rights always appeared to be political. Hence, there seemed to be a need to change the frame of reference from the political to the judicial, where the response would presumably be binding and legal.

Litigation in this area first became apparent with the ruling issued by the summary affairs judge Cynthia Qasarji, in Zahlé on December 11 2009. The ruling obliged the government to release an Iraqi refugee detained for seven months without basis after her prison sentence had ended.

It held that the detention was arbitrary due to the absence of a legal basis. No sooner had the ruling been issued than the battle to implement it began because the General Security refused to do so. The statement, by the director general of the General Security, that officers had convened and decided that the judge does not know what she is doing was enough to turn this battle from an unpopular one (a battle to release a refugee) to a popular one (a battle to compel the security apparatuses to respect the judiciary). Thus, it seems that transferring an issue to the judicial frame of reference may lead not only to immediate solutions, but also to rulings that form an independent axiom that alters the whole approach to the issue. The ruling in question was followed by a number of similar ones, and a stable jurisprudence was thus established. Two rulings issued by the summary affairs judge in Beirut Zalfa al-Hasan, on June 8 2010coupled the obligation to cease the detention with an obligation to pay compensation and with compulsory fines for each day of delay.

- The relatives of missing persons:

Since the civil war ended, the cause of missing persons' relatives has faced fundamental political obstacles. For two decades, the political class has employed twin discourses aimed at stifling the issue.

One discourse has sought to delegitimize the relatives' demand to know by arguing that the missing persons have, according to all indications, been killed and that further inquiry would threaten civil peace without yielding any results. In this vein, the admissions that some political leaders made about having killed all persons detained by their militias seemed to be aimed more at silencing missing persons' relatives than confessing guilt or apologizing to the victims. Their message seemed to be "We killed them all, so continuing with your demand is senseless". Furthermore, the political authority's position on this matter has been based on unsubstantiated preconceptions about security risks. The most concerning aspect of this discourse may be that, although most of the political class claims to sympathize with the families' demands, these demands are portrayed as a direct threat to civil peace. The other discourse has sought to induce people to have their missing relatives declared dead by easing the process of declaring deaths in absentia. In particular, this discourse is manifested in the mandating reasons of the law issued on May 15, 1995, which reduced the period after which a missing person can be legally declared dead from 10 years to 4 years.

After mentioning the psychological suffering of the missing persons' families, the law adopted a solution in total contrast with the supposed desire to resolve this suffering. The acknowledgment of the families' suffering, instead of acting as a precursor to an acknowledgment of their right to know, acted as a mandating reason to hastily settle the missing persons' fate legally by reducing the time that must lapse before declaring them dead. "The families, presumably, are thereby psychologically relieved, for they no longer think that their absent sons and daughters are still alive, with the psychological pain that accompanies these perverse circumstances."

Even in the few instances in which the authorities formally complied with the demand to know, they then circumvented this right and hollowed out its meaning and effect. One example is the establishment of the Official Committee of Inquiry to Investigate the Fate of Kidnapped and Missing Persons. To demonstrate that all of the missing are probably dead, this committee reported that a number of mass graves exist without taking any measure to open these graves or determine the fate of individual persons. Thus, the committee's purpose was apparently not to determine the unknown fate of missing persons through investigations, but to impose a specific, predetermined fate (death) upon the missing, irrespective of investigations.

The state's discourse became clearer when a second committee, the Commission for Receiving Complaints from Families of the Missing, was appointed in 2001. This Commission's mandate was restricted to cases in which evidence of living missing persons was available. Thus, the state evaded its responsibility for cases where there was little hope of finding living persons. It thereby sent the message that there is no point in expending any effort on such cases because the drawbacks of doing so (the threat to civil peace) greatly outweigh the benefits (the discovery of corpses). The responsibility that the state acknowledged in uncovering the fates of the missing appeared to stem not from their relatives' right to know, but from the right of living citizens to their state's protection. Using this logic, the state can turn a blind eye to the dozens of mass graves, which are within its reach, and limit its role to investigating the fates of persons who are probably outside of the country and therefore beyond its reach. In other words, the state professes its responsibility in cases that it can then disavow on the pretext of force majeure.

While some political forces have at least verbally supported the missing persons' cause, government consociationalism has, on these rare instances, resulted in the abortion of any positive development.

Consequently, the families have found it impossible to obtain political recognition of their right to know or to confront the political considerations that block their demands for this right. On the other hand, in the two decades following the civil war, the rights discourse on missing persons issues witnessed international progress. This progress initially took on the form of the Declaration on the Protection of All Persons from Enforced Disappearance, issued by the United Nations General Assembly in 1992. It continued with the General Assembly's adoption of the draft for the International Convention for the Protection of All Persons from Enforced Disappearance and its call for member states to sign.

Hence, after two decades of failure, the relatives of the missing in Lebanon needed to shift their action away from the political realm – which is governed by political interests and popular concerns – and towards the legal realm – which is governed by the language of rights – and, more specifically, towards the judiciary. By doing so, they could overcome the stagnancy and general assumptions of the former and benefit from the presumed equanimity of the latter. Their cases confronted judges with an obligation to respond to their demands on the basis of legal logic alone. In this sense, the cases differ from political demands, which the authorities can still ignore or respond to on the basis of political arguments that may completely deny basic rights. The best evidence of this difference may be the manner with which the State Council dealt with the argument that handing over the investigations dossier threatens civil peace in its 2014 ruling. The ruling considered the argument precarious and ultimately unproductive as the right to know is a natural, non-derogable right.

The question of which legal pathway is most appropriate for such a shift is pivotal in strategic litigation work. The aim of strategic litigation is not attaining a specific gain, but social impact. To achieve this aim, a legal strategy was developed for the relatives of the missing.[74] In practice, it acted as a roadmap for initiating proceedings. The strategy was based on several considerations, among the most important of which were:

1. The aim of the intervention is to establish the right to know and hence to restore the rights of the victims, not to enact criminal accountability. This consideration stems from the message that the legal cases send to the community: it should ease the concern about disrupting civil peace as well as reduce the already enormous opposition.

2. The intervention should occur via representative groups for relatives of the missing, rather than via individuals. The aim is to use the associational framework to strengthen solidarity between the families in their common claim and to avoid charging individual families with cases that may place greater burdens upon them. Hence, the strategy contained advice for initiating cases to obtain documents that concern all missing persons (such as the investigations dossier) and to define and protect the locations of mass graves.

3. Cases should preferably be brought before various judicial authorities in order to increase the chances of success. In this respect, cases can be filed in the Summary Affairs Court to attain rapid results while other cases are also being brought before principal courts (i.e. high courts such as the State Council) to ensure that the right is consecrated in the long term. Similarly, a plan that will file successive cases may be utilized to help reopen debate on a particular issue and ensure that it remains open irrespective of the case's outcome.

On the basis of all these considerations, cases were filed against the owners of properties on which mass graves exist before summary affairs judges, in order to define the locations of these graves so that they can then be fenced and protected, thus upholding the relatives' right to know. A case was also filed against the Lebanese state to compel it to hand the investigations dossier over to representatives of the missing persons' relatives, thus once again upholding their right to know. Similarly, preparations were made to file successive cases concerning mass graves – there are five thus far – whenever strong evidence of their existence surfaces.

This action resulted in one of the most important achievements in the history of the relatives of the missing persons' cause: the decision that the State Consultative Council issued, after recognizing the relatives' right to know, to compel the Lebanese state to surrender a copy of the complete investigations dossier to the organizations representing them.

Chapter Three: Determining the Most Suitable Litigation Strategies in Lebanese Circumstances

This section will attempt to deduce the ideal means of strategic litigation. Of course, these means are selected on the basis of the refugees' circumstances and in light of the factors aiding and obstructing litigation. We will distinguish between means related to strategic litigation (i.e. choosing the subject matter of the case and its judicial setting) and strategies that are employed in parallel with the case and increase its chances of success.

1. The litigation strategy

The litigation strategy presupposes the adoption of specific criteria that allow us to outline the most suitable cases in the area in which progress is sought. Determining these criteria may be the most delicate matter given the sensitivity of the issue and, in particular, the clash between demands for Palestinian refugee rights and apprehensions harbored by social forces. Of course, to take the aforementioned obstacles, concerns, and positive factors into account, we must adopt criteria for selecting the subject matter of the case. The most important of these criteria include:

- **Criterion one: taking a conciliatory approach and avoiding unnecessary provocation**

We referred to this criterion earlier as the "Trojan horse" mechanism. It entails presenting an unaccepted idea within an accepted one. This criterion is met in three kinds of cases:

The first is cases about discrimination against Palestinian refugees in relation to other foreigners. We already elaborated on the majority of instances of discrimination within the section of this report that discussed the refugees' status as stateless persons. The basis for this selection is that litigation against discrimination is among the least provocative of ideas, for it demands not that Palestinians be granted special civil rights (such as the right to work), but that they be granted the same rights given to other foreigners in Lebanon.

In other words, it demands that the public authorities refrain from discriminating against Palestinians in relation to other foreigners. While Palestinian demands for special civil rights equivalent to those enjoyed by Lebanese persons, albeit in specific areas, may evoke fears of naturalization, demands to equalize Palestinians with foreigners in and of themselves allays all fears of naturalization. Such demands can, on the contrary, evoke understanding and perhaps sympathy within the Lebanese public, or at least within the portion of it that rejects discrimination. In this sense, these cases aimed at abolishing discrimination against Palestinians fall within the accepted ideas of rejecting discrimination on the basis of national origin and the like. While discriminating citizens from foreigners is not racial discrimination, discrimination against some foreigners may constitute racial discrimination according to the understanding articulated by the International Convention on the Elimination of All Forms of Racial Discrimination. Among the most important statuses that could be challenged in this regard are the prohibition of property ownership by Palestinian refugees and the application of the reciprocity clause to them.

The second kind is cases that demand rights that the Lebanese people have a proven interest in recognizing. For example, a Palestinian refugee could demand the right to pursue a profession affected by a statistically proven shortage in the Lebanese labor market, or a profession for which Lebanon is importing and licensing foreign workers to satisfy market demand. In such a case, granting Palestinians the right to practice this profession is in Lebanon's interest, especially as the Palestinian workforce reuses the money that it earns within the Lebanese economy. The migrant workforce, in contrast, usually sends its earnings to families living overseas.

The third kind is cases involving demands that fall within the framework of a particular Lebanese campaign. One example is the demand to grant nationality to the children of a Lebanese woman who are born to a Palestinian refugee father. Although such a case may strike the anti-naturalization nerve, developments occurring on the global, Arab regional, and national level in the direction of mainstreaming equality and rejecting gender discrimination may in future completely change the way the issue is approached;[75] such that a person born to a Lebanese mother and Palestinian father is considered as Lebanese as he is Palestinian, which precludes the application of the non-naturalization principle to him.

However, this anticipated change to the "patriarchal system" – namely the attribution of a child to both its parents – is still out of reach. Additional initiatives and interventions are needed in order to accelerate its accomplishment. In this regard, it may be prudent to begin the litigation with cases aimed at granting nationality to children born to Lebanese women and stateless fathers and to thus obtain rulings that would benefit children born to Lebanese women and Palestinian fathers in subsequent cases. The Frontiers Ruwad Association has already begun working in this area.

- **Criterion two: carefully selecting the lawyer and judge**

To overcome the aforementioned obstacles – particularly the judges' and lawyers' understandings of their jobs – and to increase the chances of the case's success, the lawyer and judge should be selected carefully. Their understandings of their jobs should suit the needs of strategic litigation, as explained earlier. This careful selection is the principal means of guaranteeing that the case will become an opportunity for the various players in the judicial arena to work together to enact a legal change.

- **Criterion three: preventing a potential loss in court from becoming a moral or material loss and avoiding cases in which the chances of such losses are high**

This criterion responds to the concern expressed earlier about losing the case, which could reflect negatively on the status of Palestinian refugees.

Moral defeat occurs when the judiciary confirms the legality of the contested practice or legal principle, thereby undermining the perspective of the defenders of Palestinian refugee rights instead of reinforcing it. The moral defeat is greater when the ruling is issued by the supreme court (the Court of Cassation) as judges in first instance courts can then cite it to easily sidestep questions put to them, thus defeating one of the points of strategic litigation (to confront judges with an obligation to respond).
As explained earlier, such a defeat is mitigated by the fact that the decision can easily be contested and portrayed as an extension of the reign of prejudice over Palestinian issues – prejudice that requires several attempts made over a potentially prolonged period to eliminate. In other words, the decision can be portrayed as new evidence of the prevalence of prejudices over justice.

It does not change the prevailing reality at all even though the hope was – and remains – that the judiciary would successfully rationalize the law's position in this area. One decision portrayed in this manner was the Constitutional Court's ruling on foreign ownership of property: the ruling became a black mark against the legitimacy of this court and its independence from the political authorities. The more scholarly and rational the criticism of the negative rulings is, the more it ripens the issue and stimulates other judges to separate themselves from the criticized ruling.

To reinforce the credibility of the adopted position against the possibility of negative rulings, strategic litigation must be coupled with a strategy of litigation – i.e. of filing cases – that is extensive in terms of time and place. In such a strategy, each new case reopens the debate, confronting the examining judge with the obligation to answer the questions put to him. This dispersion reflects a desire to not accept that the battle is over despite one or more losses in court and to exploit these losses to increase the chances of winning. It is a given that a loss does not change reality at all, whereas a win, by nature, may constitute a dent in the prevailing regime and a turn towards reconstructing the legal system in this area. From this perspective, a win in one case is more significant and remarkable and has a greater presence in public discourse than a thousand losses.

Subsequently, on the basis of this criterion, we should avoid filing risky cases in high courts in order to preserve the power to litigate before lower degree authorities and, in any case, to ensure that a loss in court does not end the battle or become a moral defeat. Such cases can be avoided via the adoption of a litigation strategy that is extensive in terms of time and place.

The fear of material losses poses more delicate questions. How can we prevent losses in court from becoming material losses for the Palestinian refugees themselves? For example, if a Palestinian files a claim to compel a Lebanese citizen from whom he bought property to register the property under his name, the Lebanese citizen could respond by filing a case to annul the sale contract on the basis that it violates public order. That citizen could then force the Palestinian to abandon the sale in exchange for a refund of the amount he originally paid, which may have become trivial.

These concerns must be handled responsibly in order to protect the refugees' interests.

Hence, this criterion may prompt us to select the safest cases, such as one in which a Palestinian files a case against his mother in agreement with her in order to compel her to register on his name a property that she had endowed to him via a written deed. In such a case, the mother's aim is to ensure the transfer of her property to her Palestinian son in her lifetime and to overturn the legal prohibition on the latter from acquiring the property either via endowment or inheritance. If the case succeeds, the litigants succeed in delegitimizing the legal prohibition. If, on the other hand, the case fails, the property retains its previous status and no one sustains any material loss.

- **Criterion four: gradual progression in litigation**

Gradual progression in litigation is essential, for demanding specific rights sometimes requires that potentially time-consuming precursory measures be taken. A demand considered provocative today becomes acceptable if we pave the way for it appropriately.

Examples of this progression include the aforementioned litigation to grant nationality to the children of a Lebanese woman who are born to a Palestinian father. Gradual progression is also possible in cases challenging the application of the reciprocity clause to Palestinians: we may begin with the easiest cases – i.e. those that do not require suing influential bodies such as the professional syndicates or particular ministries. We can, for example, recommend filing cases in the area of legal aid. If the litigation succeeds in abolishing the reciprocity condition in this area, cases to abolish it in more sensitive areas can be filed.

Similar gradual progression occurred, for example, in the cases pertaining to the arbitrary detention of Iraqi refugees. The initial cases were aimed at ending their arbitrary detention. When the litigation in this area succeeded, we progressed to a second stage aimed at compelling the state to pay compensation for arbitrary detention. When this actually occurred, we progressed to a third stage aimed at settling the compulsory fine imposed on the state for refusing to implement the judicial ruling to release one of the refugees.

- **Criterion five: the cases filed must have important dimensions**

This criterion is self-evident and hence requires no further comment. Suffice to say, these important dimensions should primarily relate to law and rights and thus facilitate a vast change in the status of Palestinian refugees.

2. The strategy parallel to the litigation

This strategy is no less important than the legal strategy and is an integral part of strategic litigation. What steps and measures can be taken before, after, or in parallel with the court cases in order to ripen the issue within the judicial cadre and help attain the best outcomes in court and before public opinion? In other words, what steps can be taken to mitigate or overcome the obstacles to successful strategic litigation in this area?

- **Organizing seminars and dialogues aimed at enriching the rights-based approach to Palestinian refugee issues**

In parallel with the court cases, it is beneficial to launch specialized academic discussions and dialogues to debate the approaches taken regarding Palestinian refugees' status in Lebanon and the extent of their conformity to Lebanon's moral and material interests. Such discussions should be held in accordance with a strategy and approach perfectly aligned with the legal strategy and approach. Once again, gradual progression should be employed in expanding the scopes of the discussion. The initial discussions should be constrained to academic or expert settings, but they may later become more open. Similarly, it may sometimes be best to incorporate the discussion about Palestinian refugees within discussions encompassing similar social issues so that the refugees' status is approached under the umbrella of other, more inviting and socially acceptable issues. These discussions could potentially be about non-discrimination, a mother's right to pass on her nationality, stateless persons, and other topics that help normalize discussion of the Palestinian refugee issue and mainstream the inclusion of Palestinian rights within the various human rights programs and plans.[76]

The hope is that these discussions occurring in parallel with the court cases will enhance the debates occurring before the judiciary with media material and intellectual material and international expertise.

The discussions can also sensitize litigants, as well as lawyers and rights organizations, to the importance of resorting to strategic litigation in this area and sensitize judges to the significance of the obligation awaiting them. That said, at times it may appear undesirable, at least during the initial period, to announce in these discussions the cases that have been filed and remain pending or to turn these cases themselves into discussion material.

The precaution expressed here in a number of places – in the selection of the seminars' topics and its breadth and gradual progression – is an attempt to ensure that the young rights-based discourse in Palestinian refugee issues has a chance to develop and richen before it enters an open confrontation with a multitude of political forces and arguments rejecting it and working to undermine it.

- **Sensitizing a large number of lawyers and judges to the importance of their roles in social issues, particularly Palestinian refugees**

The objective in this regard is to target the cadres of lawyers and judges, the two bodies directly concerned with litigation mechanisms. Involving them does not necessarily mean including them in the litigation of this area, for it may also mean comprise of them thinking about the rights-based approach adopted and, in particular, about the possibility of using the judiciary as an arena or lab setting to consolidate this approach. This may then prompt them to ponder their conception of the functions of the legal professions they practice. One of the most important means that can be employed in this area is to produce a model pleading aimed at overturning some of the forms of the discrimination against Palestinian refugees or, more broadly, at improving their legal status. This pleading may be distributed to a large number of lawyers and judges, with an appeal for the lawyers to use it when providing counsel to Palestinian refugees or litigating for them and an appeal for judges to seek guidance from it when examining cases in which problems of this kind are raised. While we expect this model pleading to constitute a fundamental pillar of the desired rights-based approach, it also inevitably invites lawyers and judges, at least implicitly, to form a different understanding of their jobs, as explained earlier.

Another beneficial means that could be employed in this regard is to organize lectures and seminars for people working in this field.

Such events could include, for example, public lectures and seminars about the strategic litigation concept, the challenges of the legal professions, and the importance of the judiciary's independence in strengthening its social role.

- **Developing a media strategy**

Additionally, a media strategy to advance the aforementioned strategies should be developed. The presence of The Legal Agenda as an instrument of specialized and committed media is an assisting factor in this area. Similarly, the friendships woven between media personnel and rights organizations ensures that these cases are handled in a responsible and committed manner that minimizes the risks of the legal action becoming another scarecrow during its initial stages.

We hope that this report injects vitality into Palestinian refugee issues in a manner that serves both Lebanese and Palestinian interests and increases feelings of harmony between people whose circumstances have fated them to live a lifetime together in one country.

Notes

[1] Nizar Saghieh, "Women's Rights, Religion, and Power Sharing", published in The Legal Agenda's supplement dedicated to women, March 2015.

[2] Article 21 of the Lebanese Constitution stipulates that a Lebanese citizen must be at least 21 years old to be an elector and hence to practice his right to elect his representatives in Parliament and in the municipal and mayor councils. An amendment to article 21 was proposed in 2008 and 2009. However, although Parliament convened a number of times for this purpose, this bill was abandoned on the basis of the demographic imbalance that it could create and the harm such an imbalance could cause to the National Pact.

[3] Formerly known as the Lebanese Working Group on Palestinian Refugees, the Lebanese Palestinian Dialogue Committee is a government body that includes representatives from multiple ministries (the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of National Defense, the Ministry of Social Affairs, the Ministry of Labor, the Ministry of Public Health, and the Ministry of Interior and Municipalities). It was formed in November 2005 by the Lebanese Council of Ministers' Decision No. 89 of 2005. Its mission is to apply the Lebanese government's policies pertaining to Palestinian refugees in Lebanon. See its website: lpdc.gov.lb.

[4] See: Nizar Saghieh and Rana Saghieh, "Legal Assessment of Housing, Land and Property Ownership, Rights, Transfers, and Property Law related to Palestinian Refugees in Lebanon", Norwegian Refugee Council, October 2008.

[5] See Legislative Decree No. 42, March 31, 1959.

[7] Sherifa Shafie, "Palestinian Refugees in Lebanon", Forced Migration Online (forcedmigration.org), July 2007.

[8] MP Elie Aoun invoked this principle to abolish the reciprocity condition during Parliament's 22nd legislative cycle (the second extraordinary session), held on August 17, 2010. (See the Lebanese Parliament's website: lp.gov.lb).

[9] See the intervention made by Nohad Machnouk during Parliament's 22nd legislative cycle (the second extraordinary session), held on August 17, 2010. (See the Lebanese Parliament's website: lp.gov.lb).

[10] The fourth article of the aforementioned bill stipulates that "The beneficiaries of this law's provisions shall be granted work permits by the Ministry of Labor for the practice of all jobs in the private sector exclusively, in accordance with the laws and regulations in force, with the exception of the practice of free professions regulated by the provisions of the laws governing them. The beneficiaries of this law's provisions shall be exempt from the work permit fees and the reciprocity condition applied to foreign workers". See Parliament's 22nd legislative cycle (the second extraordinary session), held on August 17, 2010. (See the Lebanese Parliament's website: lp.gov.lb).

[11] See the parliamentary debates in this regard and Ibrahim K. Sharara, "Did You Say 'Social Security for Palestinian Refugees'?", The Legal Agenda, issue 28, May 14, 2015.

[12] See Ibrahim K. Sharara, op cit.

[13] See Parliament's 22nd legislative cycle (the second extraordinary session), held on August 17, 2010 (See the Lebanese Parliament's website: lp.gov.lb), especially the interventions made by Nohad Machnouk, Boutros Harb (then-minister of labor), and Fouad Siniora.

[14] See Suhail al-Natour, "Palestinians and the Amendments to the Labor Code and Social Security Code", the Human Development Center, published on The Legal Agenda's website.

[15] See Ibrahim K. Sharara, op cit.

[16] See Suhail al-Natour, op cit.

[17] I.e. on the basis that the value of the gratuity does not exceed 10 months' pay, as stipulated in article 54 of the Labor Code.

[18] The text proposed by the Democratic Gathering bloc read:
"A Palestinian residing legally in Lebanon shall be treated the same as a Lebanese citizen with regard to end of service gratuity and health care for injuries resulting from incidents and work-place accidents alone, by the Ministry of Health, in government hospitals and other public and private insuring institutions."

[19] See Ibrahim K. Sharara, op. cit.

[20] See UN General Assembly Resolution 67/19, in which an overwhelming majority (138) of member states agreed to accord Palestine non-member observer state status.

[21] For a summary of the legal, political, and academic debate on this issue, See Jaber Suleiman's paper in the conference "The Palestinian Problem: Repercussions of Resorting to the United Nations on the Future of the Rise of a Palestinian State; is it Time to Focus on the Single Democratic Palestinian State Option?", published in the Friends of Kamal Joumblatt Association's yearly publication, 2011-2012, page 211 and onwards.

[22] Lauren Banko, "Citizenship and the New 'State of Palestine'", Jadaliyya, December 2, 2012.

[23] Lauren Banko, op cit., and Muneer I. Ahmad (Yale Law School), "The Citizenship of Others", Fordham Law Review, volume 82, issue 5, 2014.

[24] Abbas Shiblak, "Stateless Palestinians", Forced Migration Review (FMR), issue 26, August 2006, page 8.

[25] See the Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons, UNHCR, Geneva 2014 (accessible at http://www.unhcr.org/53b698ab9.html): §164 "[…] certain stateless persons can be considered to be in their "own country" in the sense envisaged by Article 12(4) of the ICCPR. Such persons include individuals who are long-term, habitual residents of a State which is often their country of birth. Being in their "own country" they have a right to enter and remain there with significant implications for their status under national law. Their profound connection with the State in question, often accompanied by an absence of links with other countries, imposes a political and moral imperative on the State to facilitate their full integration into society".

[26] Decision No. 2 of 2001, issued on May 10, 2001, and published on the Constitutional Council's website: cc.gov.lb.

[27] See the aforementioned Norwegian Refugee Council report's discussion of the rights enjoyed by Arab persons.

[28] See the Norwegian Refugee Council's report, October 2008, op. cit.

[29] Suhail al-Natour, "Palestinians in Lebanon and the Amendment of the Real Estate Ownership Law", Journal of Palestinian Studies, issue 50, Spring 2002.

[30] See Decision No. 2 of 2001, op cit.

[31] See Joseph Khalife, "A Bill for Compulsory Security for Lebanese Retirees", The Legal Agenda, issue 28.

[32] Articles 425 to 441 of the Lebanese Code of Civil Procedure regulate the procedures and conditions for filing requests for legal aid and for the granting of legal aid by the competent judicial authority. Article 426 allows legal aid to be granted to a non-Lebanese natural person only if his country treats Lebanese persons in the same manner (i.e. there is reciprocity).

[33] The Labor Arbitration Council in Beirut, third chamber, Decision No. 1354 issued September 3, 1998, Justice, 1999, page 254.

[34] Decision No. 173, issued February 21, 1975 (President al-Shakhibi), published in the Hatem jurisprudence collection, volume 160, page 158.

[35] Persons "under study" are generally stateless persons who have applied for Lebanese nationality but not acquired it. The Lebanese state is still neglecting to study their statuses to determine whether it can grant them nationality. They (or their relatives) were living in Lebanon but did not register their records because they refused to recognize and cooperate with the French Mandate authorities or because they did not participate, for one reason or another, in the 1932 census (which was organized by the French Mandate authorities and is the only census to have been conducted in Lebanon since the Ottoman period).

[36] Civil Court of Cassation, eighth chamber, Decision No. 111, issued June 17, 2007 (composed of president Arlette Tawil and auxiliary judges Nabil Sari and Raja Khuri).

[37] The Legislation and Consultation Committee is a specialized body within the Ministry of Justice. It consists of judicial and administrative judges appointed by decree, and its functions include interpreting legal texts on the basis of a request from the minister concerned. The opinions this committee issues are not binding on the administration. However, the administration can only contradict such an opinion via an explained decision a copy of which it provides to the Ministry of Justice (see articles 9 and 14 of the decree regulating the Ministry of Justice, Legislative Decree No. 151, issued September 16, 1983).

[38] Labor Arbitration Council in Beirut, Decision No. 358, April 21, 1972, case of Ibrahim / Social Security / Hatem jurisprudence collection, volume 126, pages 54-55; Labor Arbitration Council Decision No. 62, January 21, 1975, published in Adib Zakhour, The Legal Status of Foreign Workers, first edition, 2004, page 121. The same principle was also applied to persons whose nationality is "under study": Labor Arbitration Council in Beirut, Decision No 251, March 14, 1972, in Namir Ghanim and George Abu Nadir, Collection of Jurisprudence of the Labor Arbitration Councils in Lebanon, 1972, page 21 and 22.

[39] Civil Court of Cassation Decision No. 77, issued September 20, 2011 (president Sami Mansour and auxiliary judges Karla Kassis and Nabila Zein), published in Sader. In the same vein, see Civil Court of Cassation Decision 113, issued November 21, 2006 (consisting of president Arlette Tawil – rapporteur – and auxiliary judges Nabil Sari and Raja Khuri), published in Justice; and Labor Arbitration Council in Beirut Decision No 199, May 29, 1996 (president Abi Nadir), case of Farah / Kuhul, unpublished.

[40] Labor Arbitration Council in Beirut, Decision 1141, November 9, 1971. [41] Article 7 of the 1954 United Nations Convention relating to the Status of Stateless Persons (the New York Convention), paragraphs 2 and 3.

[42] Cour de cassation, Deuxième chambre civile, 13 avril 1967, pourvoi n° 64-13.256:
« Après un délai de résidence de trois ans, tous les apatrides bénéficieront, sur le territoire des états contractants, de la dispense de réciprocité législative ;
Attendu que l'arrêt confirmatif attaqué déclare que Tani X... qui possède le statut des apatrides, se trouve, sous réserve d'une justification d'une résidence de trois ans en France, dispense, en application de l'article 7 précité de la convention de New York, de la réciprocité, ce qui lui confère le droit au bénéfice de l'allocation supplémentaire, dans les mêmes conditions que les étrangers qui se prévalent d'une convention internationale de réciprocité, conformément aux dispositions de l'article 707 du code de la sécurité sociale ;
Mais attendu que la réciprocité législative ne se confond pas avec celle résultant des traités ».

[43] See Nizar Saghieh and Karim Nammour, Labor Rights of Palestinian Refugees in Lebanon: Access to Liberal Professions, Policy Dialogues Series – Lebanese-Palestinian Relations / 02, in cooperation with the International Labour Organization and the Common Space Initiative, 2015, published on the Common Space Initiative's website.

[44] A distinction must be made between two kinds of professional syndicates in Lebanon. The first kind – ordre – is a syndicate that professionals must join in order to practice the profession. These syndicates are usually established by a law. The second kind – syndicat – is for professionals (employers or workers) who practice the same profession or similar professions, but membership is not compulsory for practicing the profession in Lebanon. These syndicates are usually established by the Labor Code.

[45] Law No. 249 of 2014.

[46] Law No. 367, issued August 1, 1994.

[47] Law No. 479 of 1995.

[48] See Nizar Saghieh, "Trespassing on the Nationality of Lebanese Women: Renewing the Guise of Male Privilege", published in The Legal Agenda's supplement on the issue of stateless persons in the Arab region, December 2015, and published in English on January 20, 2016.

[49] Ibid.

[50] Article 9 of the Lebanese Constitution stipulates:
"There shall be absolute freedom of conscience. The state in rendering homage to the God Almighty shall respect all religions and creeds and shall guarantees, under its protection the free exercise of all religious rites provided that public order is not disturbed. It shall also guarantee that the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected."

[51] Specifically, article 86 of the Constitution. In this regard, see Charbel Nahas, "Taking A Precautionary Measure to Supervise and Monitor the Disposition of Public Funds: the Mechanisms of Developing, Debating, and Passing the Budget; Between the Constitution and Practice", published on The Legal Agenda's website.

[52] See Nizar Saghieh, "Trespassing on the Nationality of Lebanese Women: Renewing the Guise of Male Privilege", op cit.

[53] See, for example, Abel Rahman Orabi, "The Constitutional Council Sums Up the Crisis of the Regime", published on The New Arab's website, November 13, 2014.

[54] See Nizar Saghieh, "A Critical Reading of the Discourse of Judicial Reform in the Post-Taif State", Lebanese Center for Policy Studies (LCPS), July 2008.

[55] See the Lebanese State Council decision issued on March 4, 2014, and published on The Legal Agenda's website. See also Nizar Saghieh, "Relatives of the Missing Take Their Cause to Court", The Legal Agenda's supplement dedicated to the missing persons issue.

[56] See Lama Karame, "The Rejection Defense as a Legal Strategy: a Gateway to Ending the Trialing of Civilians Before the Military Judiciary", The Legal Agenda, issue 33.

[57] See the decision of the Civil First Instance Court in Matn (presided over by John Qazzi) issued on June 17, 2009. See also Nizar Saghieh, "Beyond Civil Marriage Part II: the Legal Professions: Facing an Obligation to Change", published on The Legal Agenda's website, April 29, 2013.

[58] Ibid.

[59] See, for example, the decision issued by the summary affairs judge in Zahlé (Cynthia Qasarji) on December 11, 2009, in the Yusra al-Amiri case. See also Sarah Wansa, "When Journalists and Judges Unite: The Case of Yusra al-Amiri", published on The Legal Agenda's website in Arabic on April 8, 2014 and in English on April 30, 2014.

[60] See, for example, the decision of the summary affairs judge in Beirut (president Zalfa al-Hasan) issued on April 6, 2006, and the decision of the Appeals Court in Beirut, third chamber (consisting of president Marwan Karkabi and auxiliary judges Nabila Zein and Mary Abu Murad), issued on July 13, 2006. See also Karim Nammour, "The Drittwirkung Theory for Protecting Fundamental Rights and Freedoms in the Private Sector", The Legal Agenda, issue 13.

[61] Specifically, article 39 of the Beirut Bar Association's bylaw.

[62] See "The Prosecution of The Legal Agenda before the Beirut Bar Association: What are its Social Dimensions?", published on The Legal Agenda's website.

[63] See Nizar Saghieh, "Relatives of the Missing Take Their Cause to Court", op cit.

[64] See the model pleading for excluding article 534 of the Criminal Code, "Rainbows Before the Court Benches", prepared by Nizar Saghieh and Ghida Frangieh in cooperation with Helem.

[65] See Karim Nammour, "Five Stages of Judicial Work in Addiction Cases: A Model Case of Overcoming Prejudices", The Legal Agenda, issue 12.

[66] See Berna Habib and Samira Trad, "The Stateless in Lebanon: Between Shame and Shadows", published in The Legal Agenda's supplement dedicated to stateless persons in the Arab region, December 2015.

[67] The Legal Agenda was established in 2009. It aims to break down the barriers between law and society in Lebanon in particular and in the Arab world more generally so that government dignitaries no longer monopolize the formulation of law and average citizens, rather than legal experts alone, may understand and critique the law. On this basis, The Legal Agenda follows legal developments in Lebanon and, increasingly, in the Arab world and analyzes these developments from a critical, multidisciplinary perspective. To this end, The Legal Agenda publishes articles and news briefs and conducts academic research projects addressing socio-legal issues and their developments. It addresses, in particular, the issues, fundamental rights, and freedoms of marginalized groups such as refugees, detainees, workers, handicapped persons, women, and homosexuals.

Through this work, The Legal Agenda strives to help turn the law from a tool used by the various authorities to consolidate their hegemony over society and its members into a weapon to strengthen emancipatory movements, especially the most marginalized among them, in the face these authorities, with the aim of achieving greater social justice.

[68] See Sarah Wansa, "The General Security Imposes the 'Repression' Punishment, or this 'Democracy' that Works to Repress Whoever Rebels", The Legal Agenda, issue 16.

[69] See ibid.

[70] See "Resorting to Arbitrary Detention: a Policy Above the Constitution – Prolonged Arbitrary Detention Despite the Judiciary's Condemnation – a Tax Paid by Refugees for Seeking Asylum", Frontiers Ruwad Association, 2010, published on the association's blog: frontiersruwad.wordpress.com.

[71] See Ghida Frangieh, "The State Council Continues to Sacrifice Constitutional Freedoms: The 'Beirut Hotel' Case as an Example", The Legal Agenda, issue 10.

[72] See issue 1, year 1, of General Security, October 2013, page 38 onwards.

[73] See "Resorting to Arbitrary Detention: a Policy Above the Constitution – Prolonged Arbitrary Detention Despite the Judiciary's Condemnation – a Tax Paid by Refugees for Seeking Asylum", Frontiers Ruwad Association, op. cit.

[74] Nizar Saghieh, The Relatives of the Disappeared and the Policies of Silence and Denial: What Openings for Conveying Their Demands to the Judiciary?, financially supported by the International Center for Transitional Justice.

[75] "The few Arab states that have granted women this right include Tunisia (1993), Algeria (2005), Morocco (2007), Iraq, and Mauritania. In Egypt, women acquired this right in 2004, but a decision issued by the Minister of Interior placed a restriction on the granting of nationality to children of Egyptian women married to Palestinian husbands. This restriction continued until the January Revolution, when approximately 50,000 Palestinians acquired Egyptian nationality." Muhammad Ghazi, "The Lebanese Legislator: Women Have Incomplete and Doubted Citizenship [Wataniyya]", Raseef22, November 12, 2015.

[76] See Saada Allaw, "The National Human Rights Plan: Improvisation at Times and Utopianism at Other Times", The Legal Agenda, issue 7.