



### **Annex 3 - ALEF's Commentary on the ISF Code of Conduct**

1. The conflict with the actual law
2. The mechanisms of implementation/respect of the Code of Conduct (CoC)
3. The terminology, spirit and essence of the document

#### 1. The Conflict with the Law

Important discrepancies with the existing national law constitute the foremost observation while reading through the document.

The Code of Conduct for the ISF is legally binding; it serves as an ethical and deontological tool for police members to follow in the exercise of their functions. However, the document does not include any clarified legal measures (notably in the case of a breach). Some articles from the Code of Criminal Procedure are cited, but are, regarding the respect of human rights, problematic.

##### a) Arbitrary Detention

For example, the Code stipulates that: *“Police members will inform suspects or defendants of their rights upon arrest as set out in Article 47 of the Criminal Procedures Code, and mention this procedure in the investigation report. They will respect the duration of detention set forth by law”* (p.13). The duration of detention set forth by law (art. 108 of the Code of Criminal Procedure) is not specified in some cases of criminal charges (homicide, felonies involving drugs and endangerment of state security, felonies entailing extreme danger and crimes of terrorism). Human rights defenders and many experts in public law consider this article as an open door to arbitrary detention.

Additionally, in the explanatory notes, it states the following: *“Every employee who deprives any person of their freedom shall be punished under the provisions of Article 367 of the Lebanese Penal Code”* (p.28). The punishment in article 367 is forced labor; however according to many human rights documentation, this not being enforced as an article. The obsolete punishment consequently leaves us with no punishment in practice for the deprivation of freedom.

##### b) Torture

In the case of torture, the present Code strictly prohibits its use as mentioned: *“Police members will not practice incite or disregard any act of torture or any cruel, inhumane or degrading treatment during investigations and during the execution of their mission”* (p.11). The explanatory note related to this is more detailed and says: *“In the exercise of their powers, police members shall avoid all violence that is not deemed necessary”*. They shall also refrain from practicing, inciting, or disregarding any act of torture, or any cruel, inhumane or degrading treatment, especially when it is

*aimed to intimidate a person, force them to confess to a crime or disclose information about it [...]*" (p.23). Then there is a reference to article 401 of the Criminal Code.

Article 401 of the Criminal Code does not criminalize torture, among many other issues. Referring to the article in the Criminal Code is insufficient. The referral to article 401 in the Code is insufficient, superficial and confusing as it refers only to "violence", which makes it incoherent with the CoC . Additionally, national legislation did not move forward with the prohibition of torture; a requirement by the Convention against Torture (Signed and ratified by Lebanon in 2000).

### c) Discrimination

A third conflict with the law emerges while highlighting the prohibition of discrimination practices: *"Police members will not practice any form of discrimination based on race, ethnicity, confession, region, national origin, gender, age, social status of any other basis"* (p.11) . Discrimination is implicit in the current laws and practices through several measures developed in the 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon. In addition, LGBTIQ persons are discriminated against in national law that criminalizes relations *"contradicting the laws of nature"* (article 534 of the Criminal Code). The Code of Conduct's prohibition of discrimination practices towards LGBTIQ (which would fall under "any others basis") conflicts with the criminalization of the abovementioned relations enshrined in the Criminal Code. Also, prohibiting discrimination in the Code against members of this community is insufficient in changing attitudes and perceptions towards them because of the supremacy of the Criminal Code in legal practice.

Although the present Code's objectives do not include measures for any law reform, it has become clear that in order to rightfully respect the spirit of the document, law reforms must be developed.

## 2. The Mechanisms of Implementation/Respect of the CoC

The Code and explanatory notes are clear regarding the respect and allegiance of all ISF members to the Code. However, the mechanisms of implementation remain unclear and even inexistent. "Measures" and "actions" are only mentioned in cases where an ISF member breaches the Code.

For example, *"Superiors will monitor the performance of their subordinates, make sure they conform to the Code of Conduct and take adequate and fair measures against offenders"* (p. 10). There is no mention as to how the performance of ISF members will be monitored nor the types of measures taken to answer any breach to the Code. Apart from the absence of a mechanism of accountability (internal, administrative judge or even a new accountability process), the Code does not include a mechanism that makes superiors accountable for their omissions or orders that might be breaching the Code. The functional and hierarchy links between members as developed today would not allow members to report a breach of their own superiors. Since non-conformity is equivalent to a breach of the rules in the Code, one might say that a superior who does not monitor the performance of his or her subordinates is essentially not conforming to the Code, and in breach of the rules.

Furthermore, in order to improve the law enforcement practices of the ISF, oversight and implementation mechanisms are needed. While it is understood that the ISF are not the only body responsible for preserving security and stability in the country, some discrepancies in the *modus operandi* can also be identified with the work of an internal body to the ISF, the “information bureau”. Other discrepancies, not related to the subject of the present memo but remain important to underline, appear in relation to the other bodies operating on the ground such as the General Security and the Lebanese Armed Forces (and more specifically the intelligence).

### 3. Terminology, Spirit and Essence of the Document

#### a) The Use of the Word “Citizenship”

The vision of the document: “*To meet the expectations of citizens and have their complete trust*” (p.7) and the foreword of the Minister of Interior: “*This will reassure the people that they live in an environment where their citizenship is respected, their rights are safeguarded and their dignity is preserved*” (p.3) both stress the primary focus of the ISF: citizens.

However the responsibilities of the ISF need to meet the expectations of all individuals, groups and authorities and the ISF needs to gain their complete trust as well. This is important because the ISF has the authority to deal with the abovementioned people and not just citizens, therefore there must be a sense of reciprocity instilled in the relationship between law enforcement agents and the law abiders (which are not only citizens but anyone who is present on Lebanese soil).

Using the word *citizenship* versus any other word to collectively identify people has certain connotations associated with it. Besides from being inhabitants of the same nation, citizenship connotes an entitlement to certain rights and privileges. The allegiance to Lebanon in retrospect also entails a string of protections that are owed to the citizens. However, this protection should also be given to all people present on Lebanese soil. The protection is more glaring in the Lebanese context with more than 400 000 recognized Palestinian refugees, refugees and asylum seekers from other nations and dozens of thousands of migrant workers.

The presence of the word *citizenship* is very precise and strict in interpretation. A binary thought process points to the presence of the *non-citizen*, hence, the presence of *the Other*. *The Other* as not deserving the same enforcement of the law, the maintenance of public order, the reinforcement of security, and the preservation of rights and the protection of freedoms. *The Other* might also be the perpetrator that is cause for the abovementioned concerns.

In opposition, the Directorate General of the ISF does not specify the target group when pointing at: its “*determination to maintain a law enforcement approach (...) thereby gaining the complete trust of everyone (...)*” (p.5).

Upon analyzing the abovementioned information, ALEF's question is thus the following: Could there be different internal approaches to this Code of Conduct that have not been resolved before its publication?

#### b) The Use of Negative Sentences (in English) and Strict Verbs (in Arabic)

Most of the articles are developed in negative sentences, reflecting a timid progress in our culture and some concerns and apprehensions vis-à-vis the evolution of practices.

Verbs: "will", "not abuse", "not disclose", "refrain", "not accept", "not practice, incite or disregard", "show no arrogance", "not behave", "not interfere", "not publish", "not engage", "not go on", "not organize", "not attend", "not resort", "not deprive", "respect and obey", "abide" etc...

These words leave no room for interpretation and no other option other than engaging, or not, in the act if refers to. The same analysis can be juxtaposed to the Arabic version, as the use of strict verbs are foretelling of the culture embedded within the Lebanese society and institutions. The severity of the tone reinforces the culture of punishment which is general deterrence (please refer to point e) below for further explanations). The explanatory notes are quite reflective of this approach and hint at the difficulty to push forward constructively in improving law enforcement practices.

#### c) The Use of Generic Terms

Different interpretations can be made as to the actual meaning of some words already reflected in the document: "*adequate and fair measures*" (p.10), "*appropriate disciplinary and legal actions*" (p.14) and "*severe sanctions to serve as an example to others*" (the latter in the explanatory note, p.30). Breaches in the Code of Conduct are thus reprehensible but the modalities responding to those breaches remain unclear (as already mentioned through the prism of the conflict with the law and the mechanism of implementation).

Moreover, a reference back to the article regarding torture reveals another issue (the following example may be found in other articles as well): "*Police members will not practice incite or disregard any act of torture or any cruel, inhumane or degrading treatment during investigations and during the execution of their mission*" (p.11). Upon reading this article, one may ask what the term "disregard" means. Is there an obligation to report the practice of torture? Does not disregarding mean telling the perpetrator to stop? Help the victim seek medical help? A simple acknowledgment that the practice is occurring can be equivalent to not disregarding. Likewise, incite can mean giving orders to commit the act, or take the form of the passive bystander who watches or is aware that the practice is occurring and does not take action to put an end to it. Inciting can take the form of action or omission, in the same capacity as disregarding.

#### d) The Use of the Word “Violence”

To reiterate: *“Police members will not practice incite or disregard any act of torture or any cruel, inhumane or degrading treatment during investigations and during the execution of their mission”* (p.11). There are some additional issues in the explanatory notes related to the abovementioned section: *“In the exercise of their powers, police members shall avoid all violence that is not deemed necessary”*. They shall also refrain from practicing, inciting, or disregarding any act of torture, or any cruel, inhumane or degrading treatment, especially when it is aimed to intimidate a person, force them to confess to a crime or disclose information about it [...]” (p.23).

First, resorting to violence should not be an optional form of conduct that police can resort to, especially in a Code of Conduct. Using the word “avoid” still means the power is in the hands of the person who is capable of committing acts of violence. Moreover, what does violence mean? <sup>1</sup> Is it physical, mental, negligent treatment etc...? In ALEF’s May 2011 *Report on the Socio-Political & Cultural Contexts of Violence* it was determined that “violence is an enshrined value in the Lebanese political, social, economic and cultural spectrums” (p.9). Even more troubling is the fact that key informants in the study experienced difficulty in explaining the distinction between violence and torture (p.11). Replacing the term *violence* with terms such as: *physical force* or *restrain* to name a few is a better choice of terminology given that the lines between violence and torture are blurred amongst the general public. Removing the word *violence* from regulative texts as an acceptable form of conduct is critical in the Lebanese context since it is embedded politically, socially and culturally and the word is subject to various interpretations. Consequently, the following problematic becomes: who decides what form of violence is required and when?

#### e) Reinforcing the Theory of Punishment in Lebanon

In the explanatory notes for the compliance with the Code of Conduct, it reads the following: *“Police members who abide by the Code of Conduct deserve the full respect and support of the society and their superiors, and shall be commended and rewarded. As for the members who breach the Code, they shall be subjected to severe sanctions to serve as an example to others”* (p. 30).

The words *“serve as an example to others”* reinforce the theory of punishment in Lebanon which is general deterrence (by using people’s punishment as an example to others not to follow in the same footsteps) rather than breaking this cycle and focusing on rehabilitation. Various criminology studies over time have concluded that deterrence is not an effective measure to reduce breaches of the law. In this case, it would be more fitting to focus on rehabilitation and the need for training and educating police officers.

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<sup>1</sup> Please refer to: ALEF’s October 2010 *Situational Update on the Occurrences and Trend of Torture in Lebanon (2008-2010)* for an in-depth analysis on the forms of violence (p.14).

