مجلة
AL-Raida magazine
ISSN # 0259 - 9953

Forthcoming

Female Criminality in the Arab Women

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AL-Raida magazine الرائدة
Institute for Women's Studies in the Arab World, Lebanese American University
Volume XXIII, Nos. 111-112, Fall/Winter 2005-2006

The Status of Women in Lebanese Legislation

ABOUT IWSAW

The Institute for Women's Studies in the Arab World (IWSAW) was established in 1973 at the Lebanese American University (formerly Beirut University College). Initial funding for the Institute was provided by the Ford Foundation.

OBJECTIVES: The Institute strives to serve as a data bank and resource center to advance a better understanding of issues pertaining to Arab women and children; to promote communication among individuals, groups and institutions throughout the world concerned with Arab women; to improve the quality of life of Arab women and children through educational and development projects; and to enhance the educational and outreach efforts of the Lebanese American University.

PROJECTS: IWSAW activities include academic research on women, local, regional and international conferences; seminars, lectures and films; and educational projects which improve the lives of women and children from all sectors of Lebanese society. The Institute houses the Women's Documentation Center in the Stoltzfus Library at LAU. The Center holds books and periodicals. The Institute also publishes a variety of books and pamphlets on the status, development and conditions of Arab women, in addition to *Al-Raida*. Eight children's books with illustrations, and two guides, one of which specifies how to set up children's libraries, and the other which contains information about producing children's books, have also been published by IWSAW. In addition, the Institute has also created income generating projects which provide employment training and assistance to women from war-stricken families in Lebanon. The Institute has also devised a "Basic Living Skills Project" which provides a non-formal, integrated educational program for semi-literate women involved in development projects. Additional IWSAW projects include The Rehabilitation Program for Children's Mental Health; Teaching for Peace; and the Portable Library Project. The latter project was awarded the Asahi Reading Promotion Award in 1994. For more information about these or any other projects, write to the Institute at the address provided.

ABOUT AL-RAIDA

Al-Raida is published quarterly by the Institute for Women's Studies in the Arab World (IWSAW) of the Lebanese American University (LAU), formerly Beirut University College, P.O. Box 13-5053, Chouran Beirut, 1102 2801 Lebanon; Telephone: 961 1 867618, ext. 1288; Fax: 961 1 791645. The American address of LAU is 475 Riverside Drive, Room 1846, New York, NY 10115, U.S.A.; Telephone: (212) 870-2592; Fax: (212) 870-2762.

PURPOSE AND CONTENT: *Al-Raida's* mission is to enhance networking between Arab women and women all over the world; to promote objective research of the conditions of women in the Arab world, especially conditions related to social change and development; and to report on the activities of the IWSAW and the Lebanese American University. Each issue of *Al-Raida* features a File which focuses on a particular theme, in addition to articles, conference reports, interviews, book reviews and art news.

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SUBMISSION OF ARTICLES: We seek contributions from those engaged in research, analysis and study of women in the Arab world. Contributions should not exceed ten double-spaced typed pages. Please send a hard copy and a diskette. We reserve the right to edit in accordance with our space limitations and editorial guidelines. Submissions will not be published if they have been previously published elsewhere.

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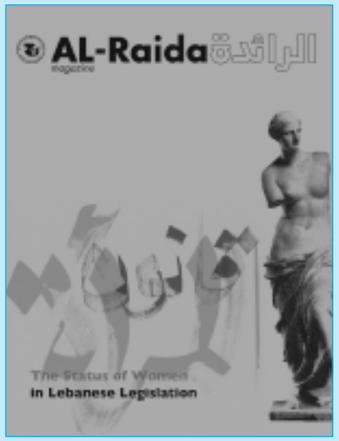
AL-Raida magazine مجلة الرائدة

Institute for Women's Studies in the Arab World, LAU

Volume XXIII, Nos. 111-112, Fall/Winter 2005-2006



Al-Raida
The quarterly journal
of the Institute for Women's Studies
in the Arab World
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Cover Design: Greta Khoury

One Way or the Other

Najla Hamadeh

Secretary General, Lebanese Association of Women Researchers (Bahithat)
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Usually, each issue of *Al-Raida* tackles a topic whose scope is the Arab world. In this issue, we are making an exception by focusing unilaterally on Lebanon. This is primarily because discrimination against women in different Arab countries with their different legal systems would be too vast a topic. An attempt to cover several countries in one issue would not allow the depth of analysis and detail necessary to do the topic justice. On the other hand, the criticism of discrimination, discussion of the structural causes behind it, as well as some solutions to alleviate it, found in this issue on Lebanon, may be relevant to other Arab countries. We hope to be able to dedicate future issues to discrimination against women in the legislation of other countries of the Arab world.

An important observation about legal systems is that the more carefully thought out and convincingly presented they are, the more they are likely to change. This is because the coherence of codes of law may signify the legislators' anticipation of discussion and criticism; and discussion and criticism are more likely to take place when change is an envisaged possibility. It is, of course, possible that some legislators, despite their pre-knowledge that they are not going to be challenged, may still carefully examine the rationality of the laws they stipulate and of the justifications and theories they formulate to back up the laws. They may do so if they happen to be perfectionists in their work, trained in the proper use of arguments or simply because they are respectful of themselves and others. It is also certainly possible that some individuals may criticize the lack of coherence or consistency of laws, even if the criticism is too obvious and even if change is a far away possibility. Yet, existentially speaking, these two types of occurrences are rare.

Unconvincing laws and irrational justifications of laws often indicate that the legislator realizes that he/she is not going to be challenged, perhaps because he/she represents an authority 'higher' than that of common people and common sense. When laws are supported and perpetrated by religious or political powers that cannot be questioned or cannot be held accountable or by the claim that the legislator is speaking in the name of such authority, the need to be convincing becomes trivial. Indeed, in such cases the general public may sense the futility of subjecting the laws to the scrutiny of reason and may learn to either accept the authoritarian legal system without discussion or to ignore its shortcomings, focusing on ways to get around it. Such a public may even lose the habit of rational scrutiny altogether.

Lebanon is a democracy and as such its laws are expected to be more likely to be amenable to criticism and discussion and hence to be more rationally convincing. However, a high proportion of Lebanese laws that tackle issues related to women suffer from contradiction and weak argumentation. The Lebanese public, albeit democratic, is expected to accept irrationality and injustice in its legal system not only because some rulings purport to be backed up by the high authority of religion, but also because of certain 'special' conditions that have nothing to do with the law or justice but with factors like tradition, precarious multi-confessional coexistence or the necessity to give Palestinians no option other than 'the right of return.'

Examples of Irrationality in Lebanese Laws that Pertain to Women

I. In Civil Law:

1. In a country that gives the leeway of extenuating circumstances to those who commit 'honor crimes,' it is strange that:

   a. Prostitution was legal[1] under certain specified conditions.
   b. Punishment for pimps is so lenient: For professional pimps incarceration six months to two years and indemnity between LL20,000 and 200,000 (Article 527 of the Lebanese Penal Code LPC); and for luring to and facilitating prostitution for individuals less than 21 years of age, incarceration one month to one year and indemnity between LL50,000 and LL500,000 (Article 523 of LPC).
   c. The penalty for deflowering a girl after giving her false promises of marriage is so manageable: incarceration up to six months and indemnity up to LL200,000 (Article 518 of LPC).

If we live in a society that considers illicit sexual activity to be an offense that may warrant killing the offender (usually a woman) without severely penalizing the killer (usually a man), shouldn't we assign harsh penalties either to the woman who practices prostitution and to those who lure her into prostitution or cause her to lose her virginity and possibly, therefore, her life? Shouldn't the law attempt to protect human life? Is the law interested only in accommodating men, giving them avenues to express their sexual urges, pursue easy gain and pose as 'honorable' without having to restrain either their illicit sexuality or their vengefulness towards kinswomen who get involved with other men? Does the law consider the life of women less important than the convenience and indulgence of men? Or do legislators consider the honor of men, dependent on the virtue of their women, so precious that safeguarding it is worthy of shedding blood, while women have no honor and hence may prostitute themselves, if it does not hurt or otherwise affect their male relatives?

Whatever the aims of the legislator, he/she cannot forgo the requirements of consistency, without losing trustworthiness and credibility. Consistency requires that either illicit sex is a major crime, the legal punishment for which for both offender and facilitator is proportionally colossal while the law remains lenient towards family members who punish their transgressing kinswomen with the most severe 'sentence;' or illicit sexual behavior is a minor offence and those who kill sex offenders get to face very severe punishment. As it is, Lebanese legislation seems to simultaneously consider sex offences no crime at all, (when prostitution was legal), a minor offence (as in the above mentioned penalties for pimps) and a very grave one (as in excusing or being lenient with, those who kill women guilty of illicit sexual activity).

2. Another example of the lack of rationality and of the objectivity necessary for justice lies in the definition and punishment of the crime of rape.

To allow rape within marriage (the crime of rape excludes perpetration towards the wife: See Article 503 of LPC) is to consider the wife an object owned by the husband. If women are objects, their consent should not be a condition of the legality of the marriage; and if marriage transforms them into objects owned by their husbands then killing the wife or otherwise hurting her should not be considered a punishable crime.

When English law considered women to be less than persons (they had no property rights, and their marriage contracts were drawn according to the will of their fathers or guardians, sometimes when the girls were still infants) they were considered to be the property of their respective men folk and the husband could kill his wife without incurring any punishment. But if Lebanese law considers women to be persons with contractual wills, if it considers marriage to be legal only after the consent of both parties is unequivocally given, if it considers women equal to men in the rights and obligations of citizenship (Article 7 of the Lebanese Constitution), and if it considers other crimes committed against them by the husband punishable by law, how can it allow that they be subjected to an act that totally objectifies and victimizes them as the act of rape, even if the perpetrators are the legally wedded husbands?

It may be said that the old English laws were harsh and inhuman, but at least they were consistent, unlike our current laws. In order for our legal system to pass the test of rationality, in this context, it should either consider women as objects with no wills and rights of their own and hence allow their rape by their rightful owners, and permit marrying them without their consent, or if women are considered by the law to be persons with rights and dignity it should never legalize their subjugation to the psychologically degrading and physically hurtful act of rape. In this last case, rape, including within marriage, should be considered a punishable crime.

3. A third instance of flagrant lack of rationality in Lebanese law, where women are concerned, is that of laws that govern nationality. For when legislators give blood connection as the condition for passing the nationality of the parent to offspring, how can they justify that blood connection is only between father and child and not between mother and child? From the common sense as well as the scientific points of view, there is no blood relation closer and more certain than that between mother and child. By giving sanguine connection as the basis of passing on nationality to offspring, then denying children the right to obtain their mothers' nationality, the legislator is adding insult to injury by implying an unheard of and totally senseless claim, namely the claim that there is no blood relation between mothers and their children!

Lebanese nationality laws derive from the French law of 1925. But Western traditions of old were in harmony with such a law, whereas there is no justification for it in Arab traditions. Western thinkers, as far back as Aristotle, believed that children inherited characteristics from their fathers only. This belief was never part of Arab heritage, since the earliest available Arabic poetry shows that Arabs knew that good lineage requires descent from two parents that come from well-recognized tribes/families. Early nar-

ratives, like the story of the poet-fighter-lover Antarah Bin Shaddad, tell of his being denied the hand of his cousin in marriage because his mother was a slave and hers was a free woman, though the fathers were brothers.

Nowadays, since scientific discoveries established the role of the mother as well as the father in genetic inheritance, Western laws have changed to become in harmony with scientific discoveries. Lebanese nationality laws, however, are at variance with both scientific information and our own indigenous heritage.

The above three examples indicate that Lebanese civil legislation is capable of ignoring logical consistency, as well as medical or publicly known facts, in its discriminatory legislation against women.

II. In Family Status Laws

Family status laws, which in Lebanon are relegated by the state to the various religious authorities, are not more adherent to the requirements of consistency. Indeed, under religious rather than secular authority, laws are expected to be harder to change, especially if they derive, or purport to derive, from holy texts.

Flagrant inconsistencies, backed up by authoritarian unconvincing arguments are common occurrences within family status laws, in Lebanon, as the following few examples indicate:

1. If women and men enter marriage by their declared free consent, it should follow that they are able to get out of it when they are no longer consenting to the union. If the legislator aims to protect the family by restricting the freedom of married individuals who seek divorce, this may make sense from paternalistic, pragmatic and utilitarian points of view. But how can the legislator justify giving husbands the right to break up families, even for a passing whim, and make it almost impossible for a wife to get a divorce, even for very serious reasons, as is the case with most Muslim sects? If this discrepancy in the right to divorce is based on considering a man's free will to be more important than the interests and the continuation of the family while a woman's free will is inferior to these, then it would be based on discrimination between the sexes to the extent of dehumanizing women. For consistency's sake, such a woman need not be asked to consent to her marriage for it to become legal.

The irrationality of this form of discrimination is most apparent in the literature that tries to justify it by totally unrealistic claims, capricious judgment, and weird advice. Thus Murtada Mutahhari (1991: 182-4) claims that Muslim husbands love their wives dearly and sacrifice money and comfort to gain their favor; and Muhammad Al-Salih Bin-Murad (1931: 186-7) bears witness to the harmony that pervades Muslim family life, unlike what is to be found in families in the West. Al-Asfi (1968: 218-20) concludes, on the basis of the irrationality and emotionality of women, that if women are given the right to divorce they would divorce their husbands for the most trivial reasons, like disagreement over the color of a dress; and Mutahhari (ibid. 273) gets more explicit about the 'trivial reasons' adding that "the husband's refusing to kiss the dog or his choosing to watch a different movie than the one of her choice is capable of causing the wife to file for divorce, just as in America and Europe!" In his letters to his daughter, Al-Ibsheehi (1981:112-13) advises her to bear her burden and accept her lot, even if her husband were to turn out to be as cruel and ruthless as the Pharaohs of Egypt!

This type of 'reasoning' is clearly not based either on objective empirical evidence or on acceptable rational arguments. It is the type of argumentation that has no merit except the absolute and unchallenged power that requires the public to praise the elegance of the outfit of the naked emperor.

2. Perhaps the most glaring inconsistency and injustice in Lebanese family status laws, pertaining to women, is where the designation of the rights, or lack thereof, of mothers is concerned. For, although this is a terrain left to religious ruling, and although our monotheistic religions, from the ten commandments to prayers to 'the mother of God' to the Prophet Muhammad's recommendation to honor the mother thrice (Muslim, v.8, 102) before attending to the father, custody and guardianship of children is the legal right of fathers. And in many cases even the fathers' kinsmen have precedence over mothers.

One claimed ground for such ruling, by legislators, is the religious texts and recommendations that give husbands precedence or dominance over wives. This deduction from lesser rights of wives to lesser rights of mothers might have made sense if the various religions recognized in Lebanese legislation kept silent about motherhood and spoke of women only as wives. But since the ten commandments equate between mothers and fathers ("Honor thy father and thy mother"), and since the Holy Qur'an gives both parents the same rights over their children (see Qur'an IV, 35 and XVII, 23-4 and XXXI, 14) and indeed singles mothers out for additional recognition for their pains in carrying to term and nursing their children (see Qur'an LVI, 15 and XXXI, 14), it makes little sense to downgrade the rights of mothers simply because in the married couples' relation, husbands are given precedence over wives.

In denying mothers the custody of their children, after the first few years of life, the religious judge (*qadi)* follows the jurisprudence of eighth and ninth century Islamic jurists (*fukaha'*), of whom it is said: "They are the peak of judgment for all time." However, even those early jurists recognized "variation in judgment with the variation of the times."

At the time of the early jurists, girls were married at a very young age. Mothers were often illiterate and housebound. Hence it was not strange of the *fukaha'* to judge that it is better for the girl to join her father at age nine, since he would be better suited to negotiate her marriage settlement. Boys often had to accompany their fathers in their trade or at their artisan shops to learn from them. Hence, being with the father from age seven was rightly judged to be appropriate. But nowadays, when the time of nurturing and schooling has been extended to the early twenties, when mothers are educated in the same proportion as fathers and are usually more available to take care of the home and the needs of children, what fair judgment can rule that children be taken away from their mothers, despite all the glorification of motherhood in the sources that jurists, of old and of now, claim to use as their main inspiration and reference? If the eighth and ninth century *fukaha'* judged that for the sake of what suited their time and the welfare of offspring of divorced parents it was alright to go against the literal meaning as well as the 'spirit' of holy texts, what pretext do the qadis of today have?

Until recently, both Christian and Muslim qadis in Lebanon followed the rulings of the early Islamic jurists. It is only in the past few years that some Christian sects started to rule differently in matters of custody and guardianship. But the long tradition of applying this type of judgment to Christian families and the on-going following of such stipulation for Muslim families are clearly, nowadays, contrary to the requirements of practicality, and usually contrary to the well-being of the children. Over and above all this, such rulings are not in harmony with the religious precepts that they purport to use as the main guidelines in religious courts.

The above are examples of the lack of rational coherence and/or the lack of agreement with the requirements of common sense and practical convenience in a great deal of Lebanese legislation regarding women. Legislation in many other countries of the Arab world, regarding women, suffers from similar shortcomings. Indeed, in the Arab world, changing such laws has rarely taken place on the basis of discussion and/or pressure applied by public opinion. Most reforms of discriminatory laws against women were prompted by the will or caprice of the totalitarian ruler or his wife, as was the case with the reforms introduced by Burghibah in Tunisia and Jihan Sadat in Egypt. Although such reforms are welcome as means to alleviate discrimination against women, experience has shown that such reforms may be short-lived or may not effect a change in the mentality and attitudes prevalent in society. Thus, Jihan's Law was revoked soon after the assassination of her husband; and Burghibah's prohibition of polygyny does not seem to have affected people's preference, except negatively: Statistics published by the UNDP Report on Women (2006) show that polygyny is presently more favored by the people of Tunisia than by any other people of an Arab country.[2]

The above indicates that there is no alternative to discussion and public involvement for true and lasting reform in legal matters. Only education and discussion, in a democratic context, can lead to a modification of laws that is accompanied by, and integrated with, the beliefs and aims of the public. Laws imposed from above may remain alien to, indeed may alienate, the people and may be liable to be changed whenever the occasion arises.

From another side, if we are to dream of better laws, or even of holistically better times, what is needed is to work on making our legislation more convincing, from a rational point of view, and more commensurable with lived experience and common sense. When this is accomplished, not only will the cause of justice be served, but also discussion and, therefore, change and progress will be stimulated and a higher level of self respect and self worth will very likely be attained.

Endnotes

1. Before the civil war (1975-91) prostitution used to be legal, within a framework (area, license, medical check-ups.) At that time 'honor crimes' were totally pardonable.
2. In the manuscript of the *Fourth Human Development Report*, to be published by United Nations Development Program, 2006, the highest statistical proportion of men and women who accept polygyny amongst Sudanese, Tunisians, Moroccans, Egyptians, Lebanese, and Jordanians is that of Tunisians.

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Basketball Players Get It and We Don't! Denying Lebanese Women the Right of Nationality

Razan Al-Salah

Communication Arts: Journalism
Lebanese American University

Lebanese women, including my mother, suffer from inequality in citizenship rights based on a sexist, racist, and sectarian 'rule of double standards.' Being born into a mixed-cultural family, my father Palestinian and my mother Lebanese, they have persistently explained to me how women are considered a lower class of citizenry in Lebanon, particularly under the law.

According to Lebanese law, my mother is unable to transfer her nationality to her nuclear family members. Consequently, the family has been facing, for years, many problems with racist Lebanese laws that restrict 'foreigners' in work opportunities, ownership rights, and social and economic entitlements.

In 1945, my father was born in Haifa shortly before his family was expelled from their home and forcefully fled to Lebanon. Since then he has spent 57 years of his life on Lebanese soil and has grown to call this country his home. My father graduated from the University of Cairo with a BE in Aeromechanical Engineering. He was one of the first graduates in this specialized discipline, which is in high demand in the Arab employment market. When he came back home, my father certified his degree in the Ministry of Education and obtained a permit for practicing his profession from the Ministry of Labor. The General Directorate of Civil Aviation was quick to call him in for an interview and immediately offer him a job. When he was about to sign the contract the government discovered he was a Palestinian and withdrew the offer. My father was also restricted from working in the private sector. As an engineer, he has to fulfill two conditions before legally practicing his profession; he has to obtain a work permit and join the syndicate. While getting a work permit might be feasible, it is ineffective because no Palestinian can join a Lebanese syndicate. Consequently, my father had to travel away from his family, away from his home to get a decent job in the Gulf.

My older brother also faced similar problems. Lebanese work law effectively rules out Palestinians' prospects for employment except within a limited number of permissible jobs that do not require the hardship of getting a work permit. My brother, a graduate of the American University of Beirut (AUB), started working for a Palestinian NGO at a relatively low salary. Other jobs he applied for were legally permissible, yet Lebanese companies refused to get into the labyrinths of government bureaucracy to obtain a work permit for him (that is, if we exclude the high probability of the decision being racist or sectarian). In contrast, when my brother applied to a multinational corporation, he was accepted and appointed to a comparatively high position, tripling his previous income. Obviously, the reasons behind these variations in treatment are vague, and cannot be ascertained empirically. Yet based on logical speculation, one of two things can be concluded: A multinational corporation is disinterested in the applicant's nationality and sect, and thus is far from taking a racist or sectarian decision. It is also possible that a company with a considerable international reputation and power in the market has enough corporate power to efficiently obtain a work permit, even for a Palestinian. Yet even as an employee in a multinational corporation, my brother is not entitled to full social security coverage, although he pays for it!

In 2001, things got even more complicated. The government enacted a law that deprived nationals whose countries denied Lebanese property ownership rights from owning real estate in Lebanon. Translation: First, you have to have an internationally recognized country in order to own real estate in Lebanon. Second, someone born in Palestine is either an Israeli or a Palestinian. The former, unlike the latter, may obtain other nationalities through which one can easily own real estate in Lebanon. However, an Israeli national, to begin with, is prevented from setting foot on Lebanese territory. Conclusion: This law is worded in such a manner that it intrinsically prevents Palestinians from owning property in Lebanon. Consequently, my father now refuses to move out of and sell our grandfather's house in Beirut since it is the only property he owns. He worries about the fact that his 'half-Lebanese' children are not permitted to inherit any real estate. Thus, the house should be liquefied and inherited only in monetary value.

I was denied this scholarship, which I academically earned, on a purely racist basis.

The final blow was two years ago, in 12th grade. I got the highest score nationwide in the official exams, specifically in the Sociology and Economics sections. The first three students in ranking received a 30 million Lebanese Lira scholarship from the Educational Center for Research and Development. I was denied this scholarship, which I academically earned, on a purely racist basis. The president then had the courtesy to invite us to his palace yet didn't have enough courage to speak to my mother, a Lebanese citizen, when she required justification for this racist decision. Like all our official bureaucrats, he denied responsibility and 'transferred" her to 'those in charge' who only had one thing to say : "You know how it is for Palestinians in this country." Two things they failed to see and admit: they are 'those in charge' of this inhumane treatment, and the person they were talking to is Lebanese!

Another intriguing conversation around this same event went on in the Ministry of Education, which made sure to pay its share to its excelling students. I was invited to receive a check from the Minister of Education at that time. I went. "Hmmm, you're Palestinian…one second." five minutes later: "But you're mother's Lebanese…one second." Another five minutes passed.

A check for voting status…

Not only is my mother a Lebanese citizen; she is also above the age of 21 with full mental capacity to vote for our generous official.

Unlike her fellow male citizens, my mother had to seek her right to get us the Lebanese nationality, but she was rejected since we didn't fit the right demographic quota. We had to convert to Christian Maronites to obtain the nationality. My mother enthusiastically upholds 'The Right to Return,' and she fights for her family's basic human rights in their 'motherland.' How ironic is this terminology's structural analysis:

Mother: Lebanese
Land: Lebanon
Motherland: confiscated by sexism, racism, and sectarianism.

Citizenship is a constitutionally acquired right for foreign women marrying Lebanese men and a matter of convenience with foreign basketball players that are needed on the 'national' team. Ownership rights consolidate the economy with greater investments. Employing rare human resources increases the country's self sufficiency, and investing in potential brains reverses its brain drain. Nevertheless, I guess when it comes to the Rule of Law, to secure basic human rights for all citizens, it seems that foreign basketball players are more entitled than native Lebanese women.

New Publication

Knowing Our Rights: Women, Family, Laws and Customs in the Muslim World **(3rd Edition)**
WLUML (September 2006)

The latest edition of this handbook has been updated to include all recent changes to relevant laws in several countries. The handbook covers 26 topics relevant to marriage and divorce, including the status of children (paternity and adoption) and child custody and guardianship.

Not only is it unique in providing a user-friendly, cross-comparative analysis of the diversities and commonalities of laws and customs across the Muslim world, it is also the first handbook to attempt to rank laws in Muslim communities in terms of whether they are more or less option-giving for women, analyzed from a rights perspective and the realities of women's lives.

Please contact pubs@wluml.org to order a copy http://www.wluml.org/english/newsfulltxt.shtml?cmd[157]=x-157-542774

Visiting Fellowship Collaboration

The Economic and Social Research Council (ESRC) and the British Academy have announced a new joint scheme to fund Visiting Fellowships from South Asia and the Middle East. The fellowships, which will be a minimum of two months in duration, aim to attract early-career researchers particularly from South Asia and the Middle East to collaborate on research. It is also hoped that through these Visiting Fellowships longer term plans for collaborative research could be developed.

Chief Executive of the ESRC, Professor Ian Diamond commented, "I am delighted that by working together with the British Academy we can facilitate the sharing of skills and knowledge between talented researchers from an increasingly influential area of the world and the UK, helping to invigorate, and further strengthen, British social science and the research methods behind it." Dr Robin Jackson, Chief Executive and Secretary of the British Academy, said, "the British Academy is very pleased to be working in partnership with ESRC to support these fellowships, which will offer invaluable opportunities to strengthen research links between this country and areas of rapidly growing interest and importance to the UK."
Further information about the scheme can be found at www.britac.ac.uk/funding/guide/intl/vfsame.html <http://response.pure360.com/_act/link.php?mId=A8178192455989741686&tld=748356>

Films

In My Father's House
Directed by Fatima Jebli Ouazzani

In this beautiful, poetic and deeply personal film, Moroccan filmmaker Fatima Jebli Ouazzani investigates the status accorded women in Islamic marriage customs and the continuing importance of virginity. Ouazzani left her father's house in Morocco 16 years ago to escape the constraints her culture and its traditions have put on women. She returns now to confront those traditions, her own family and herself. Following three generations of women — her grandmother's and mother's arranged marriages, her grandmother's subsequent attempts to divorce, and Naima, a young woman who has returned home for a traditional wedding ceremony — she questions whether her choice for a life of her own was worth the loss of her father. Jebli Ouazzani offers us a rare glimpse of the shifts and changes in Moroccan and Islamic culture in this powerful, moving film.

Maid in Lebanon
Directed by Carole Mansour

Thousands of Asian women leave their homes each year to work as maids in the Arab world with the hope of securing a better economic future. Yet since their experiences are hidden behind closed doors, little is known of the fears and struggles they face while abroad.

This film exposes the little known world of the domestic migrant worker, tracing women's journeys from Sri Lanka to Lebanon. This documentary provides an insightful and sensitive look into the lives of these migrant workers with interviews from family members, employers, hiring agents and specialists in the field. In their own voices, the women reveal cases of torture and rape, physical and mental abuse, as well as positive employment experiences.

"The legal pluralism in family law has led to an absence of an 'equality before the law' standard in Lebanon. Women and children of different religious sects face very different legal choices and possibilities in terms of marriage, divorce, child custody, and inheritance… Women and children have been disproportionally disadvantaged by the delegation of family law to religious sects. Women are more likely than men to forfeit their religious heritages when they marry out. Women, although not legally required to do so, have been expected to follow the religion of their husbands. Women who marry out of their religious community may not pass on to their children their own religious heritages – a right reserved for men." (Suad Joseph, *Gender and Citizenship in the Middle East*, 130-131)

"… she and her husband were at lunch. They were having an argument. She had said again that she wanted a divorce and he had refused. That is all I know. She ran from the table and locked herself in the bathroom. He had had no idea, he said later, weeping out loud, that what she was doing was climbing out the window. I remember going to their apartment the day after her death for *'aza* (condolence). She had survived for only a few moments on the pavement, a crowd forming round her as she moaned in great pain, and then had died, no one she knew at her side. She was buried the same day. She was 42. I almost could not bear to offer my sympathies to her husband, as I was required to do, going into the room where he sat with the men, receiving condolences, his face looking stricken and shriveled. And I found myself angry also at her sisters, my mother and aunts, their eyes swollen and red, receiving condolences in the rooms for women. Why are you crying now? I thought. What's the point of that? Why did you do nothing to help her all this time, why didn't you get her out of that marriage? I thought it was their fault, that they could have done something. If they had cared enough they could have done something. That is what I thought then. Now I am less categorical." (Leila Ahmad, *A Border Passage*, 120)

"There was apparently an increase in violence against women. At least six women were killed during the year, mostly by male relatives, as a result of family crimes or other forms of violence against women. Such crimes continued to be committed by men with near impunity facilitated by lenient sentences for killings carried out in a 'fit of fury.' Information was received on alleged torture, including rape, of Filipina maids working in Lebanon. ... A 27-year-old Palestinian man killed his sister by cutting her throat for allegedly having pre-marital sexual relations with her fiancé. The attack reportedly took place in October in a Beirut hospital where the woman worked. The man handed himself to the authorities. ... Seventeen-year-old Fadela Farouk Al-Sha'ar died on February 5 in Tripoli apparently after being strangled, allegedly by her brother. He was said to have confessed to the murder before disappearing. She was apparently killed for allegedly eloping with a man she wanted to marry without the consent of her family. … A Filipina woman, Catherine Bautista, one of thousands of maids reportedly working in difficult conditions in Lebanon, died on May 4. Her body was found almost naked in the garden of the building in Beirut where she worked. An investigation ordered by the authorities closed the case in July apparently after concluding that she had died after jumping out of her employers' apartment." (Amnesty International, Report 2005, *The State of the World's Human Rights*, 160)

"In Saudi Arabia strict customary rules discourage contact between members of the opposite sex. As a result, many young couples do not have the opportunity to get to know each other well before marriage. Yet with both secular and Islamic education for women being provided on a large scale by the government, Saudi women are well aware of their rights in Islam, one of which is the right to meet their potential husband before marriage and to give or withhold their consent to the union. Increasingly, Saudi women demand to not only meet but also to know their husbands before marriage… One method by which couples get to know each other without breaching Saudi standards of propriety is by talking over the phone. 'Dating by phone' is a new phenomenon which is growing rapidly in Saudi Arabia. I know many young Saudi women who have met young men (through friends at the mall, at private mixed parties and so forth) and exchanged phone numbers. They talk frequently on the phone and in several cases these conversations have led to marriage proposals." (Lisa Wynn, Special Dossier: *Shifting Boundaries in Marriage and Divorce in Muslim Communities, Women and Law in the Muslim World Programme*, 112-113)

"It had never occurred to me that I was not a real citizen! My daughter is Egyptian, same as her father. She is considered to be an alien. Aside from the excruciating process of securing her annual residency permit, we have to put up with prejudice. I do not understand! When they said that nationality can be passed on through blood, did they mean only men's blood! In this day and age in Lebanon, only men are considered to be full citizens." (Zahra, Lebanese, married to an Egyptian)

Claiming Equal Citizenship: The Campaign for Arab Women's Right to Nationality

Women's right to equal citizenship is guaranteed by the majority of Arab constitutions, as well as by international law. Yet across the Middle East and North Africa (MENA) region and the Gulf, women are denied the right to pass on their nationality to their husbands and children – a crucial component of citizenship.

In almost every country in the MENA and Gulf regions, women who marry men of other nationalities cannot confer their original nationality to their husbands or children. Only fathers, not mothers, can confer their nationality to their children.

Discriminatory laws denying women equal nationality rights undermine women's status as equal citizens in their home countries. Such laws send the message that women do not enjoy a direct relationship with the state, but must access their citizenship rights through the mediation of a male family member, such as a father or a husband. Until women in the MENA and Gulf regions are recognized as full nationals and citizens, they cannot participate fully in public life, nor claim the other rights to which they are entitled as equal members of their societies.

The denial of women's nationality rights also creates real suffering for dual nationality families living in the woman's home country. Children and spouses are treated as foreigners and must obtain costly residency permits. Children are often excluded from social services such as social security, healthcare and subsidized or free access to education. In many countries, spouses and children have limited employment opportunities and are unable to own property. In terms of psychological impact, many women feel isolated and guilty because they feel responsible for the difficulties faced by their families, while children suffer from low self-esteem because of their second-class status.

The Women's Learning Partnership (WLP) joins with partners in the Middle East, North Africa and the Gulf to call for:
- Legal reform enabling women to confer their nationality to their husbands and children without condition
- Full implementation of reformed nationality laws and equal access to these laws for all women
- Recognition of women as equal citizens in all areas of life

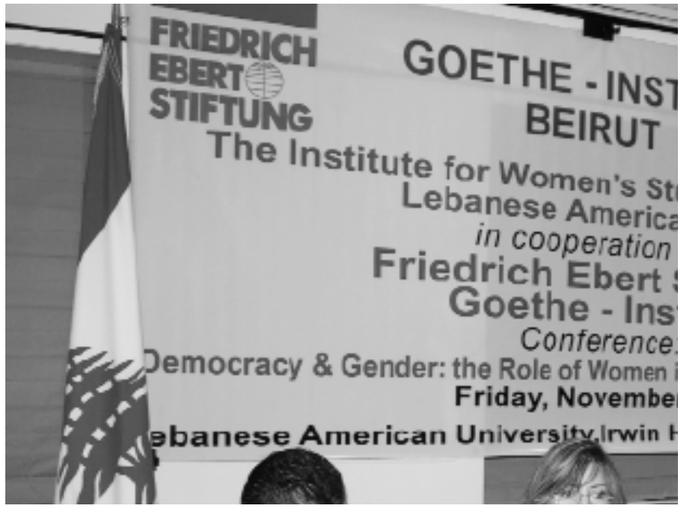
Focus Countries
- Algeria: Centre d'Informatique et de Documentation sur les Droits de l'Enfant et de la Femme (CIDDEF) is coordinating the campaign. The nationality law was reformed in March 2005, allowing Algerian women married to non-nationals to confer nationality to both spouses and children. CIDDEF and regional partners are monitoring the implementation of the reform.
- Bahrain: Bahrain Women's Society (BWS) is coordinating the campaign. Limited changes to the nationality law are under discussion in the Parliament for women married to Gulf citizens only. BWS and regional partners are calling for the recognition of nationality rights for all women.
- Egypt: Forum for Women in Development (FWID) is coordinating the campaign. The nationality law was reformed in July 2004 allowing Egyptian women married to non-nationals to grant nationality to their children only. FWID and regional partners are monitoring the implementation of the reform.
- Jordan: Sisterhood is Global Institute Jordan (SIGI-J) is coordinating the campaign. Current nationality law does not allow Jordanian women to confer nationality to either spouses or children. JCNW and regional partners continue to advocate for reform.
- Lebanon: Collective for Research and Training on Development-Action is coordinating the campaign. Current nationality law does not allow Lebanese women to confer nationality to either spouses or children. CRTD-A and regional partners continue to advocate for reform.
- Morocco: Association Démocratique des Femmes du Maroc (ADFM) is coordinating the campaign. The King proposed a new nationality law in a speech given in the summer of 2005 and a Ministry of Justice commission has been established to submit proposals to parliament. ADFM and regional partners are advocating vigorously for a 'no conditions' law, which will apply retroactively to pending citizenship applications by children of Moroccan women married to non-nationals.
- Syria: Syrian Women's League (SWL) is coordinating the campaign. Nationality law does not allow Syrian women to confer nationality to either spouses or children. SWL and regional partners continue to advocate for reform.

Take Action
Help support the campaign for women's equal citizenship rights.
- VISIT our Claiming Equal Citizenship Campaign WEBLOG for personal stories, country updates, and recent campaign news.
- SIGN our petition calling for legal recognition of women's right to confer their nationality to their husbands and children and full implementation of this right in the Middle East, North Africa and the Gulf.
- RAISE AWARENESS in the media. Write a letter to the editor, or an op-ed to your newspaper to express your concern.
- CONNECT US with women living in the focus countries married to non-national men. Encourage them to share their experiences on the Campaign WEBLOG.

For more details visit the WLP website on
http://www.learningpartnership.org/advocacy/campaign

Democracy and Gender: The Role of Women in Politics, the Media and Education

In cooperation with Friedrich Ebert Stiftung and Goethe Institut, the Institute for Women's Studies in the Arab World (IWSAW) at the Lebanese American University held a seminar on Friday, November 18, 2005 on Democracy and Gender. Mr. Samir Farah, representative of Friedrich Ebert Stiftung started by welcoming the audience and introducing the event. Following that, Dr. Dima Dabbous-Sensenig, Acting Director of IWSAW, chaired the session. She introduced each of the three German speakers: Dr. Anke Martiny, former MP and Senator for Culture, Berlin, presented a paper on the role of women in politics. Mrs. Gisela Brackert, journalist and former president of the Journalists' Association, spoke about the role of women in the media. Dr. Hadumod Bussman, former responsible for Women's Affairs at the Ludwig Maximillians University in Munich, talked about the role of women in education. Dr. Dabbous-Sensenig concluded the session by highlighting key points raised by the presenters and then opened the floor for questions and discussion.



From left to right: Mr. Samir Farah, Dr. Dima Dabbous-Sensenig, Dr. Anke Martiny, Dr. Hadumod Bussman and Mrs. Gisela Brackert

Nationality Campaign: My Nationality a Right for Me and My Family March 29-30, 2006

In collaboration with the Collective for Research and Training on Development and Action (CRTD-A), the Institute for Women's Studies in the Arab World (IWSAW) and the Human Rights Club at Lebanese American University (LAU) sponsored a nationality campaign on: My Nationality a Right for me and my Family. The campaign addressed the lack of rights of Lebanese women that marry non-Lebanese to transfer their nationality to their husbands or children.
The campaign was extremely positive and within four hours 216 students' signatures were secured for a petition demanding to change the Lebanese law on nationality and grant full citizenship rights to Lebanese women.
Following the campaign, a panel discussion was held with a Lebanese lawyer and representatives from the Rassemblement Democratique des Femmes Libanaise who discussed the subject with LAU students.

Priorities in Follow-Up to the Ten-Year Review and Appraisal of Implementation of the Beijing Declaration and Platform for Action, New York City October 31 - November 3, 2005

Dr. Dima Dabbous-Sensenig, Acting Director of the Institute for Women's Studies in the Arab World was appointed by the UN Secretary General, along with eight other international gender experts, to participate in the Expert Consultation on "Priorities in Follow-Up to the Ten-Year Review and Appraisal of Implementation of the Beijing Declaration and Platform for Action." Dr. Dabbous-Sensenig was the only expert from the Arab world.

Dr. Dima Dabbous-Sensenig with the eight other gender experts at the UN headquarters where the report was presented on November 3, 2005

During the Expert Consultation, organized by the Division for the Advancement of Women (DAW), which lasted for four days, each expert submitted a country/regional report on the status of women and recommended ways of accelerating the implementation process of the Beijing Platform for Action.

Dr. Dabbous-Sensenig presented a paper entitled "Incorporating an Arab-Muslim perspective in the re-assessment of the implementation of the Beijing Platform for Action." In her paper, she tried to identify the reasons preventing major articles of the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW) from being implemented in most Arab countries, namely those articles related to citizenship and family status laws. Moreover, she offered recommendations to accelerate the implementation of CEDAW and the Beijing Platform for Action, based on her own assessment of the specificities of the Arab world. The paper can be accessed at http://www.un.org/womenwatch/daw/ meetings/consult/10-review/EP9.pdf

The four day meeting resulted in a unified expert report that assessed the implementation of the Beijing Platform for Action and identified priority issues and recommendations to accelerate the implementation of the Platform and to advance women's rights worldwide. The report was then presented at the United Nations headquarters in New York City to representatives from Member States and civil society. The report contains the following sections/priorities and related recommendations: Women and Economic Justice, Women and Armed Conflict, Human Rights of Women, and Women and Access to Information. The report can be accessed at http://www.un.org/womenwatch/daw/meetings/cosult/10 review/Expert Consultation Report Feb27.pdf

The Role of Higher Education in the Empowerment of Arab Women December 3, 2005

Dr. Dima Dabbous-Sensenig, BUC alumna and Acting Director of the Institute for Women's Studies in the Arab World (IWSAW), participated in the forum organized by the Dubai LAU Alumni chapter on "The Role of Higher Education in the Empowerment of Arab Women." She presented a paper entitled "The Role of Higher Education in the Empowerment of Women in Politics in the Arab World." President Dr. Joseph Jabbra and Vice President for Academic Affairs Dr. Abdallah Sfeir attended the event. Several BCW and BUC (now LAU) alumnae from different nationalities spoke on the pioneering role in higher education played by LAU in shaping their successful careers after graduation. All the speeches presented will be included in a forthcoming issue of Al-Raida on the Empowerment of Women in Higher Education.

From left to right: Dr. Dima Dabbous-Sensenig, Mrs. Magda Abu-Fadil and Mrs. Jeannette Mufti

The Status of Women in Lebanese Legislation

'Law' is an awe-inspiring word. It makes the innocent feel secure and strikes the guilty with panic. Law is supposed to protect the weak and restrain the powerful. But can we say this about Lebanese laws and the position of Lebanese women within their country's legal system(s)?

The following file about women in Lebanese legislation basically tells the Lebanese version of the story of discrimination against women in civil and religious laws. It depicts the flippancy of legislators who feel no qualms about granting women rights and responsibilities equal to those of men in the opening articles of the law of the land, then withdrawing a lot of these rights in discriminatory civil laws and in religion-based family laws that discriminate not only between men and women but also between members of the same sex who belong to different confessions. The Lebanese legislator also seems to find no problem in ratifying international agreements, with or without reservations, while allowing laws that contradict the terms of these agreements to rule people's lives. On a more positive note, the file includes some amendments of laws in the direction of equity and some work done towards more amendments.

The file includes three articles that refer to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). Nada Khalifeh explains the grounds and some terms of the Convention, arguing against Lebanese reservations to some of its terms. Alia Berti Zein reviews discriminations against women in the Lebanese penal code, in the light of CEDAW; and Azzah Shararah Beydoun recounts the reactions and recommendations of the CEDAW Committee when it met with a delegation representing the Republic of Lebanon in July 2005 at the UN headquarters in New York.

The inequality between the rights of Lebanese men and women within the family are discussed in three other articles. Thus, Sonia Ibrahim Atiyah, after giving a historical background and before suggesting needed improvements, describes discrimination in inheritance laws, at the gender and confessional levels. Lina Osseiran Beydoun discusses discrimination between men and women in the right to pass their Lebanese nationality to their spouses and offspring; and Marie-Rose Zalzal gives a thorough account of the legal complications that face individuals within mixed marriages, as well as the advantages they reap.

Some situations that may arise within the family are discussed by Mirella Abdel Sater McCracken, who tackles violence against wives as well as against foreign domestic workers, and by Arlete Juraysati who gives a detailed legal account of what social benefits the families of working women are entitled to and what procedures are to be followed in order to gain access to these rights. Within the same framework of Juraysati's article, Iqbal Doughan lists the pending amendments required in order for working women to acquire their full rights, equal to those of their male colleagues.

The article of Arda Ekmekji deals with legislation related to politics. It discusses the option of establishing a quota system to insure women's participation at the levels of representation and political decision-making.

Of a more general nature is Najla Hamadeh's article on the philosophy of change in codes of law and factors that impede change or enhance it. Also, the file includes a round-table discussion on the advantages and/or disadvantages of having religious laws and courts for family status instead of civil laws and courts. For this last rich discussion that includes very revolutionary and very traditional (positivist) positions, we thank Dr. Bechir Bilani, Mohammad Matar (Attorney at law), Mr. Ahmad El-Zein (Attorney at law), Judge Arlete Juraysati and Dr. Ibrahim Najjar.

Najla Hamadeh

Lebanon's Reservations to the Convention on the Elimination of all Forms of Discrimination Against Women

■ Nada Khalifeh
Attorney at Law

By adopting the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) on January 18, 1979, the United Nations General Assembly made a vital contribution to the promotion of women's rights and their equality with men.

This Convention occupies an important position among other international conventions which aim at safeguarding human rights, particularly women's rights, because it covers all rights and establishes equality of the sexes in the family as well as in the social sphere.

Moreover, and in comparison with other documents, CEDAW accomplished important progress through the inclusion of special unusual articles. It stipulates for the responsibilities of member states to eliminate discrimination against women by measures such as calling on national constitutions and other legislations to embody the principle of equality between men and women through appropriate measures, exceptional measures as well as temporary ones, in order to expedite the process of achieving equality. Foremost among these measures are those that effectuate real changes in social and cultural norms that discriminate against women and prevent them from exercising their rights.

The Convention also stipulates equal rights between men and women in public and political life, namely in education, work, health services, financing, social security, the right to conclude contracts, as well as the equality of men and women before the law and within the family.

Indeed, CEDAW does not merely recognize women's rights and their equality with men. It demands that member states commit to the implementation of all articles, taking necessary steps to eliminate discrimination in all its shapes and forms.

In order to follow up on the commitment of member states, the Convention stipulates in Article 17 the establishment of a Committee for the Elimination of Discrimination against Women. Every four years member states must report to the Committee what legal, legislative, and administrative steps they took towards achieving equality. They must also state the difficulties and obstacles they faced in the process.

In spite of the obvious increase in the number of states which have ratified the Convention, CEDAW remains the Convention with the highest number of reservations, presented particularly by Arab states. Although in Article 28(a) it allows states, upon ratification or accession, to voice reservations – namely to not abide by one or more of the articles – it nevertheless does not accept any reservations that are incompatible with the object and purpose of the Convention.

Lebanon ratified CEDAW on July 26, 1996. The Lebanese Constitution guarantees equality of the sexes. Paragraph (b) of the introduction added on September 21, 1990 states that, being a founding member of the United Nations, Lebanon is committed to abiding by all its charters, particularly the International Declaration of Human Rights, and that the state must embody the principles of these charters in all fields and domains.

Paragraph (c) of the introduction also stipulates equality among all citizens without discrimination or favoritism.

Nevertheless, Lebanon voiced reservations about some fundamental articles of the Convention: Paragraph 2 of Article 9 dealing with equality in matters of citizenship laws, Paragraphs (c), (d), (f), and (g) of Article 16 dealing with equality in family laws, and the first paragraph of Article 29 dealing with settling disputes between member states.

What follows is an investigation of the reasons that lie behind the reservations Lebanon introduced concerning the Convention, with special emphasis on those related to Articles 9 and 16.

Concerning Nationality

The first paragraph of Article 9 of CEDAW requires all member states to grant women rights equal to those granted to men in matters of citizenship acquisition. Accordingly, women must have the right to change their nationality and preserve, rather than automatically relinquish it, when they marry a foreigner or when their husband changes his nationality.

Also, the second paragraph of Article 9 stipulates securing women equal rights in transferring their nationality to their children.

Citizenship laws in Lebanon follow Decree 15 of January 19, 1925, which was amended by a decree on January 11, 1960. In accordance with Article 6 of this decree, a woman remains Lebanese when she marries a non-Lebanese unless she requests her removal from the census registry in order to acquire the citizenship of her husband.

Meanwhile, Article 7 stipulates that: "having renounced her nationality upon marrying a non-Lebanese, a woman may upon her request regain the Lebanese nationality once her marriage is terminated."

Therefore, Lebanon does not comply with the content of Paragraph 1 of Article 9 of the Convention and has entered a reservation to Paragraph 2 of that article since Lebanese law does not allow a Lebanese woman who is married to a non-Lebanese to transfer her nationality to her children.

In accordance with Article 1 of Decree 15 a Lebanese is:

1. Someone born of a Lebanese father.
2. Someone born on the territory of Greater Lebanon and who does not by birth have the right to the citizenship of another country.
3. Someone born of unknown parents on the territory of Greater Lebanon, or whose parents do not possess a known nationality.

Hence, and following this first article, Lebanese law defines kinship exclusively through patrilineage, ignoring the right of the Lebanese woman to grant citizenship to her children, even if their birth occurs on Lebanese soil.

There are two exceptions to this:

In the case of an illegitimate child of Lebanese mother and unknown father (as per Article 2 of Decree 15); and in keeping with Article 4 of Decree 15, a non-Lebanese mother who was naturalized through marriage is allowed to grant her non-Lebanese under-age children from a previous marriage citizenship upon the death of their father. It is important to note here that this article grants this right to Lebanese mothers of non-Lebanese origin only.

In spite of exceptional court rulings, which interpreted Article 4 to include under-age children of mothers of Lebanese origin too, most other rulings persistently prevent mothers of Lebanese origin, under similar circumstances, from granting their children citizenship.

This makes Lebanese law extremely strict in matters of citizenship. Not only does it grant only naturalized Lebanese mothers the right to transfer their citizenship to their children, depriving mothers who are originally Lebanese from having this right, but it also ties the rights of children to laws that discriminate between men and women, impacting them positively if their father is Lebanese, and negatively if their Lebanese parent is the mother. Such discrimination that impacts rights derives from trends of social inequality between men and women.

Moreover, upon marrying a Lebanese, a non-Lebanese woman becomes Lebanese herself one year after the official registering of the marriage, according to Article 5 of Law 15. Her children are granted full civil and political rights whether they reside inside or outside Lebanon, even if they have never visited the country. In comparison, the child of a Lebanese woman married to a non-Lebanese is denied his/her natural rights. He/she is considered a foreigner, without access either to free schooling, free higher education, or free health care, is denied access to employment in high-ranking public positions, and is prevented from running for public office, voting, as well as being able to own property except under strict conditions.

Additionally, a Lebanese mother is not allowed to include her under-age children in her passport even if they reside with her in Lebanon, and has to go through endless bureaucratic procedures that compel non-Lebanese husbands and children to renew their residence card annually.

It is noteworthy that, as of 2003, the directorate-general of General Security has granted long-term residence permits or 'courtesy residencies' to Lebanese women's non-Lebanese husbands and children, regardless of their nationality. However, this was a mere logistical improvement considering the exorbitant fees required for such permits, making most people unable to benefit from them.

Women's disadvantage when it comes to granting their children the nationality can be traced back to inherited traditions and customs which consider the father to be the head of the family. This primacy of the patrilineage prevalent in all regions must be altered now that Lebanon has ratified the Universal Declaration of Human Rights.

Since the certain and unquestionable truth is that maternal blood ties and other ties with the mother are much stronger than those with the father, it is unacceptable to sever the citizenship ties between mother and child.

Lebanese society has witnessed a humanistic and particularly feminist movement to eliminate all forms of discrimination against women that impinge on all social and political strata. However, one issue repeatedly raised in the face of those demanding a change in citizenship laws is that of the Palestinian refugees. The argument goes as follows: if the laws are changed, Palestinian men might seek marriage with Lebanese women with the intention of securing for their offspring the Lebanese citizenship, thereby helping their permanent settlement in Lebanon. This, of course, is a specious argument whose outcome is the withholding of women's rights granted in the Universal Declaration of Human Rights. For, if it were true, then it should cause legislators to be equally wary of the outcome of Lebanese men marrying Palestinian women, whose children would thus acquire the Lebanese citizenship.

No matter what the pretexts are, the inequality in citizenship between men and women is a breach of the Lebanese Constitution, which otherwise guarantees equality among all citizens. The inequality is also a breach of international charters that stipulate the full equality of the sexes.

Therefore, and in accordance with the Constitution and international charters, citizenship laws must be changed to render Lebanese women and men equal in granting their citizenship to their children and non-Lebanese spouses.

Concerning Family Relations

Article 16 of the Convention, concerning equality in the family, is of pivotal importance. It states:

1. All member states shall take all appropriate measures to eliminate discrimination against women in all matters of marriage and family relations so that equality of the sexes is ensured:

a. The same right to enter into marriage

b. The same right to choose freely a spouse and to enter into marriage only with their free and full consent

c. The same rights and responsibilities during marriage and at its dissolution

d. The same rights and responsibilities as parents, regardless of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount

e. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights

f. The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation. In all cases the interests of the children shall be paramount

g. The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation. Same rights in owning, care-taking, running and disposing of property

Lebanon has reservations over Paragraphs (c), (d), (f), and (g) of this article.

Lebanon is a country that entrusts its personal status laws to religious legislation. According to the Constitution, which was passed down from the French Mandate and was introduced on May 23, 1926, the Lebanese are divided into religious sects, each with its separate legislature, administrative autonomy, and the right to legislate and deliberate in matters concerning personal status laws. Article 9 of the Constitution states:

> Freedom of worship is absolute. The state in its duty towards God almighty respects all religions and sects and safeguards the freedom of religious rituals in as far as they do not disturb public order. The state also safeguards to all people their various sectarian identities and respects personal status laws and religious interests.

The Lebanese are divided into 18 religious sects each having its own set of laws and regulations. This situation contradicts the principle of equality among all Lebanese that figures in other articles of the Constitution, and goes against the general principles stipulated in international charters, especially the Universal Declaration of Human Rights observed in the introduction of the Lebanese Constitution.

While all personal status laws differentiate between the Lebanese based on religion and sex, women remain the weakest and most disenfranchised within each sect. This inequality in personal status between men and women begins with marriage, persists throughout it, and continues even after its dissolution.

What follows is an exposé of the major violations of women's rights found in personal status laws and which are in breach of the principles of equality and of international charters:
- Defining marital age goes against international charters. In the cases of Sunnis and Shiites, this age is set as low as nine years.
- Marriage between persons of different religions is one of the many prohibitions for the Christian Orthodox church, while Muslim sects prohibit the marriage of Muslim women to non-Muslims.
- In matters of marriage contracts, Muslim sects equate one male witness with two female witnesses, while the Druze and Armenian Orthodox sects require that both witnesses be male.
- Most sects base marriage on obedience rather than on mutual respect. The man is considered to be the head of the family with a given right to take all decisions, while wives are required to obey, submit, and care for the household. Some sects even grant the man the right to control his wife's mobility, keeping her at home and returning her by force if she escapes.
- It is not a woman's right to be custodian of her children. Rather, this is a role delegated to her by her husband who has the right to claim the children when they reach a certain age. Moreover, a woman might lose the right of child custody based on reasons that demean her and greatly restrict her freedom (e.g. a second marriage contract, unfit to raise children, bad behavior).
- Child custody is basically the father's prerogative. In the event of the father's death, custody is relinquished to the mother in only very few sects; in the majority of sects it is passed to the paternal grandfather, uncle or other male patrilineal kin.
- Polygyny is authorized in both Sunni and Shiite sects.
- Sunni and Shiite men are allowed to divorce their wives without recourse to the court. For many sects, men and women are not equal when it comes to reasons for divorce.
- Marriage between persons of different religions is an obstacle to inheritance. Moreover, a woman has an unequal and unfair share of the inheritance in both Sunni and Shiite sects.

It is important to add that discrimination against women inside the family goes as far as legitimizing domestic violence. Not only are perpetrators of the violence spared blame, but usually women themselves are held responsible for the violence they incur.

Lebanese sectarian laws have remained intact for more than 50 years. This is unlike the case in other Arab nations, such as Egypt, Tunisia, and Morocco, which have recently amended their personal status laws in keeping with international charters and by way of remaining in step with modernity.

It must be noted that the belated amendment made by the Greek Orthodox Church in Lebanon remains insufficient. Admittedly, this move included a few principles which uphold equality of men and women, such as the striking off of matrimonial liturgy that was demeaning to women, privileging children's interests in custody matters, granting mothers primary guardianship and raising the custody age of boys to 14 years and that of girls to 15. However, these adjustments remain short of achieving equality of the sexes.

What marks CEDAW is that it requires member states to eliminate discrimination in the private sphere, namely in the family, as a means of achieving total equality of men and women in all other domains.

Lebanon's reservations over Article 16 of CEDAW, concerning equality within the family, constitute a veritable

obstacle to the amendment of personal status laws and go against any attempt at legislating a new personal status law. Further, these reservations reflect the discrepancy between the Convention and local national laws, and hence they point to an absence of political will to eliminate discrimination against women and ensure equality of the sexes.

In any case, reservations ought to be voiced at the time of signing the Convention and not afterwards: Lebanon's reservations about the Convention on the Elimination of all Forms of Discrimination Against Women were made later and are, therefore, considered null and void. Moreover, Lebanon did not voice any reservations about the International Convention on Civil and Political Rights (CCPR). This is particularly significant because CCPR is considered a reiteration and elaboration of the rights stipulated in CEDAW.

Additionally, the Convention states in Paragraph 2 of Article 28 that no reservations that go against its main object and purpose can be voiced. The aim and purpose are to eliminate all forms of discrimination against women in political, social, economical, and cultural domains.

It is, therefore, clear that reservations voiced about Article 16 preempt the Convention of its content and undermine its texts, especially that of Article 5 on the necessity for taking "all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudice and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

Lebanon's reservations to Article 16 keep women imprisoned in prevalent social, cultural and traditional norms, and hinder any attempt at renewal or reform within the family. Attempts to justify such reservations that lead to undermining the effects of ratifying the International Bill of Human Rights which Lebanon did, by the restrictions of Islamic law or Christian traditions, are not convincing, since in many Christian as well as Islamic states men and women enjoy total equality in rights.

There are major discrepancies in personal status laws between Arab nations.

For example, the many amendments made by the Tunisian state on July 13, 1956, prohibited polygyny and granted both sexes equal rights to file for divorce before a court of law, bearing in mind that Tunisia is an Islamic state that follows Islamic teachings, as the introduction to its Constitution clearly states.

In this regard, it is important to mention the work of reformer Taher Al-Haddad who reinterpreted the Qur'an according to contemporary needs. He claimed that the Qur'an restricted polygyny to four wives as a first step towards curbing pre-Islamic customs that allowed marriage to an unlimited number of women. According to Haddad, that was a first step towards monogamy. The second step, he said, was taken in favor of women's rights, with the Qur'an's demand that all four wives be treated equally. Since such equality was unlikely to be achieved, it was advisable not to marry more than one woman.

The main cause for Lebanon's reservations lies in its social and cultural norms and behavioral patterns. These are deeply rooted in Lebanon and will remain so unless the state, obviously reluctant, takes serious measures in order to eliminate discrimination against women in legislative texts and daily practice.

Social development and prosperity are intimately linked to the respect of women's rights and to empowering them in their capacities to act and produce in all fields and domains. The Beijing Convention has clearly emphasized that women's rights are human rights, integral and indivisible.

On these grounds, it is incumbent on all states to implement CEDAW without any reservations, especially those concerning Articles 9 and 16, in order to establish a true equality of men and women within the family and in all domains. This alone will compel religious sects to amend and develop their laws to the extent that will make inevitable our establishment of a modern state with a true conception of citizenry.

Moreover, and in order to avoid unnecessary social tragedies, there must be an optional civil personal status law founded on the principles of equality, freedom of belief, and unity of legislation, which is based on the Bill of Human Rights that does not distinguish between religions, sexes or ethnicities.

On all these grounds, as well as on that of the uncontested fact and belief that the decline of women's status leads to the deterioration and backwardness of society, whereas their advancement leads to the progress and development of the nation, it is important that women achieve their full rights.

Translated by Samar Kanafani

Women's Civil Rights in Lebanon

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Legislation for Equality

Article 2 of the 1948 Universal Declaration of Human Rights affirms the right of each human being to enjoy all rights and liberties set forth in the Declaration without distinction of any kind as to race, color, sex, language, or religion, while Article 16 confers on men and women equal rights regarding marriage and its dissolution.

The principle of equality was written into the Lebanese Constitution of 1926, Article 9 of which declares: "All Lebanese are equal before the law. They equally enjoy civil and political rights without any distinction as to sex or religion…"

In its preamble, amended in 1990, the Constitution adds: "Lebanon is committed to applying the Universal Declaration of Human Rights in all domains without exception."

In addition, Lebanon has ratified several international conventions relating to human rights including, most importantly:

- The International Covenant on Economic, Social, and Cultural Rights in 1976
- The International Covenant on Civil and Political Rights in 1976
- The International Labor Office Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value in 1953
- The International Labor Office Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation in 1960
- The Convention Against Discrimination in Education in 1962

And finally, the most important convention ratified by Lebanon, in the context of this paper, is the Convention on the Elimination of all Forms of Discrimination Against Women ratified by 180 countries, including 17 Arab countries.

This last Convention was ratified under the decree of July 24, 1996, with reservation to three Articles (9, 16, and 29). The reservations constitute a contradiction to international law. It should be noted, in this context, that in case of conflict, the provisions of international conventions prevail over national law.

The first reservation relates to Article 9 regarding nationality, which contradicts Lebanese law in that the Convention grants women equal rights with men to pass

on their nationality to their children, while Lebanese law does not. In Lebanon only the man gives his nationality to his children. Women do not have this right except in rare circumstances. Furthermore, only the husband gives his nationality to his wife. The opposite is not legally permissible.

The second reservation is to Article 16 of the Convention regarding equality of rights and duties in marriage and in family relationships. Complying with this Article would infringe on the provisions of personal status law, still recognized in Lebanon as the sole legislative and juridical law.

Lebanese legislation is greatly influenced by the fact that it needs to govern communities with different religious beliefs, whose coexistence forms the Lebanese nation. This multiplicity is the main reason behind the existence of disparities in rulings that govern the various groups of Lebanese citizens. Some laws apply to all citizens while others apply only to members of a given community. This clearly violates the general principle of equality of all citizens before the law. Thus, laws of inheritance, for example, differ between Muslims and Christians, and even between Sunni and Shiite sects of the Muslim religion. For whereas Christian offspring of both sexes inherit similar proportions of their deceased parents' property, each Muslim daughter is entitled to only half of what her brother gets. In the case of families that have only daughters, if they are Shiite Muslims the daughters inherit all of the parents' property, but if they are Sunni Muslims, male cousins inherit a proportion of what the girls' parents leave behind. Within the Druze sect, inheritance is according to the will of the deceased.

Laws of inheritance ... differ between Muslims and Christians, and even between Sunni and Shiite sects of the Muslim religion

Thus, inequality in some matters exists, not only between men and women, but also between members of the same sex, who happen to belong to different religious sects.

Such deviation from the equality that the Lebanese Constitution embraces, however, concerns mainly family law, which applies to marriage, paternity, filiation, adoption, and succession. This is because the only authorized marriages on Lebanese territory are religious ones, contracted respectively according to the codes of the various religious sects. Moreover, the Lebanese legislative system recognizes (tolerates, or permits alongside the local trend of exclusively religious marriage) civil marriages that are contracted abroad. Such marriages remain subject to the civil law of the country where the marriage was contracted, with Lebanese civil jurisdiction being responsible for the application of those foreign laws, provided that they conform to the public order. Between the different laws and courts that pertain to the various religious sects and the civil laws of the various countries, under whose authority the Lebanese may choose to get married, implemented by the Lebanese civil courts, marriage in Lebanon is subjected to very different conditions. This is a very strong and influential source of inequality.

Women in Lebanese Legislation: Inequalities in the Penal Code

Because of the diversity of denominations, citizens of Lebanon are subjected to different laws and diversified fates, even where situations and motives are the same. And despite Lebanon's ratification of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), there are many laws which discriminate against women, especially in penal law.

For example, Articles 487 and 488 of the Lebanese Penal Code condemn women who have committed adultery much more severely than men, and make proving their guilt much easier than that of men. The penalty for the same crime of adultery is three months to two years for the wife, and one month to one year for the husband. Also, the definition of adultery for husband and wife vary. For him to be accused of adultery he has to commit the act in the marital home or install a declared mistress in a house for which he pays. But the wife may be accused of committing the act anywhere and under any circumstances.

Moreover, the initial version of Article 562 of the Penal Code granted pardon for non-premeditated homicide or attack by a person on his spouse, relative, offspring, or sister surprised in the act of adultery or other illegitimate sexual relation with a third person. This article was amended on February 20, 1999. At present, the perpetrator of the homicide or injury would receive only the benefit of the extenuating excuse. Both the old article and the new one recognize the right of the males of the family to carry out private justice regarding the women of their kin whenever they are guilty of a breach in the sexual rules.

Article 522 on the other hand, regarding the marrying of women who have been raped, abused, abducted, or seduced, states: "If a legitimate marriage contract is established between the perpetrator of one of the crimes mentioned above and the victim, the pursuit of the perpetrator is halted, and if a sentence has already been issued, its execution is halted." This Article encourages forcing girls into sex for the purpose of marrying them against their volition, and thus violates a most basic human right: the right to safeguard a person's physical and emotional well-being. It also gives the rapist or sex-offender the possibility of evading punishment, by giving him the option of marrying the victim. It is noteworthy that Article 503, which relates to rape and forcing someone into sex, sentences anyone who forces any other person (except for the spouse) into sex through violence and intimidation to at least five years in prison with hard labor. The prison term is no less than seven years if the victim is younger than 15. Therefore, the offender can seek to marry the victim through physical and emotional coercion and thus escape the punishment of the law, despite the ruling, by the same Lebanese legislation, that a marriage is considered null when it lacks the element of 'free consent.' Such rulings of the Lebanese Penal Code, in addition to Article 504 which allows the abuse (rape) of a wife by her husband without legal consequences, need to be amended out of respect for women and in order to observe their human right to dignity.

Lebanon was the first Arab country to recognize women's political rights in 1953

In ratifying the Convention on the Elimination of all Forms of Discrimination Against Women, Lebanon agreed to its provisions except for the above-mentioned reservation. Article 2 in paragraphs (f) and (g) (not included in the reservations) calls on the states which ratified the convention to undertake all of the appropriate measures, including legislation, to modify or abrogate all laws, customs, practices, or penal codes which discriminate against women. As a consequence, Lebanon must work to apply these provisions and abrogate the inequalities contained in Articles 487, 503, 504, 522 and 562 of the Penal Code. A draft law in this regard has been submitted to the parliamentary Commission for Administration and Justice within the scope of the revision of the Lebanese Penal Code, which has not been reviewed since it was promulgated in 1943.

Some Amendments towards Equality

On the positive side, some legislative measures, in the direction of equality, have already been taken. Thus, Lebanon was the first Arab country to recognize women's political rights in 1953 and to ratify the International Convention on the Political Rights of Women in 1955 without any reservation.

Lebanon also recognized equality between the sexes regarding inheritance in the non-Muslim communities in 1959. Moreover, in 1960 Lebanon authorized married women to keep their nationality while at the same time adopting that of their husbands.

Furthermore, in 1987 social security made the retirement age 64 for both men and women. Before that date the retirement age was 55 for women, and 60 for men.

Married women recovered their full capacity to testify before all authorities in 1993. The law imposing male testimony in property contracts was amended and the specific mention of 'male' was eliminated.

Where commercial law is concerned, married women have since 1994 been entitled to engage in commerce without their husband's authorization. They have been enjoying full rights to draw up all deeds in the interest of their commercial enterprises. Moreover, it should be noted that, in Lebanon, couples have the option to include in their marriage contracts the precondition of the separation of assets.

These are good steps on the long road towards the achievement of equality. Much more needs to be done to fully attain it.

Arguments Valid for Once Only

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More than a year has passed since Lebanon submitted its second periodic report to the CEDAW Committee (Convention on the Elimination of all Forms of Discrimination Against Women)[1] at the United Nations in New York. The National Commission for Lebanese Women (NCLW)[2] was assigned the task of preparing that report, and NCLW in turn appointed a committee of its members to monitor the process of this preparation. The report is essentially an overview of the conditions of Lebanese women within the legislative, political, economic, educational, health, social, and cultural sectors. Moreover, it briefly highlights the geographical, political, administrative, institutional, social, and cultural environments of the country.[3]

In July 2005, an NCLW delegation[4] represented the Republic of Lebanon in order to carry out a constructive dialogue with the CEDAW Committee[5] in a plenary session at the United Nations headquarters in New York. The delegation outlined Lebanon's achievements in improving women's conditions, as per the said report, and highlighted the efforts exerted to adequately implement the Convention during the years that followed its ratification, emphasizing the obstacles that faced the implementation process. The 23 members of the CEDAW Committee congratulated Lebanon on the progress achieved in the advancement in women's conditions in some areas, yet they also questioned why some articles of the Convention were still not implemented. The Committee held the Lebanese government accountable for this delay.

Discussion/Questions

First and foremost, it must be said that the official Lebanese report was candid and straightforward in outlining women's conditions in our country. Neither the authors[6] of the report nor the committee responsible for its preparation[7] made use of self censorship when giving their presentations. These presentations were based on statistics and field studies that were exhaustive in some instances and only partial in others. While the Committee welcomed such candidness, it noted with concern the state's failure to work actively to change the discriminatory situation against Lebanese women, described by the report.

The interventions of members of the international Committee, during the four-hour discussion period with the official Lebanese delegation, revolved around two main aspects:

First: They expressed their concern regarding the inadequacy of the government in implementing the Convention's provisions.

Second: They urged the Lebanese government to devise strategies, policies and plans and to take appropriate measures, including the setting of time-bound targets for monitoring and assessment, to counter discrimination against women in areas where prejudice is still widespread.

As far as the legal framework is concerned, the Lebanese state was urged to make every effort to effectively cancel or amend discriminatory legislation. Moreover, it was encouraged to draft new legislations that incriminate discrimination and violence against women, and to withdraw reservations to some articles of the Convention, calling on it "to adopt a unified personal status code which would be applicable to all women in Lebanon, irrespective of their religious affiliation."

The members of the CEDAW Committee also discussed the situation of women at the political level. They were not content with the leap in the percentage of women representatives that has doubled (from 2.3 percent to 4.6 percent) and did not find it praiseworthy. According to them such a percentage is still very low and is an indicator that the Lebanese state did not take sustained measures to make a real difference. Some members noted that the state failed to take concrete and effective measures to confront sexist attitudes and the stereotyping of women, clearly the product of socialization within the family, i.e. in the private domain.

At the institutional level, some members noted that in order to investigate the seriousness of the Lebanese state in implementing the Convention, one must examine the progressive advancement of the governmental organization created to administer women's affairs and mandated to officially monitor the follow-up of the implementation of CEDAW and the level of support given to this organization. According to the CEDAW Committee, providing the above-mentioned organization with the financial resources and developing its human resources will allow it to carry out its mission more effectively. Some members of the Committee urged the Lebanese state to cooperate and coordinate "more efficiently" with NGOs in the implementation of the Convention "while assuming full responsibility for fulfilling its obligations under the Convention."

Discussion/Defence

The all-women Lebanese delegation chosen to discuss the report with the Committee resorted to the following justifications in order to cover up Lebanon's failure to eliminate discrimination against women:

1. They mentioned, in detail, some positive privileges Lebanese women enjoyed prior to signing the Convention – such as some non-discriminatory laws on property rights and legal proceedings. They elaborated on the progress achieved after ratifying CEDAW by providing some statistical figures in the fields of education, work, and health.

2. They highlighted the articles in the Lebanese Constitution and in Lebanese legislation that implicitly and indirectly address gender equality in rights and obligations – such as the provisions of the preamble of the Constitution, an integral part of the Constitution, that gives dominance to international treaties and their provisions over national laws and legislations – all in an attempt to address the issue as to why the Lebanese Constitution does not explicitly outlaw gender discrimination.

3. They mentioned the Committee's intimate collaboration with civil society and recommended possible partnership between the governmental institutions and civil society organizations in order to improve women's conditions. It is important to note that this collaboration was repeatedly highlighted during the discussion session while the delegation was trying to answer questions regarding policies and measures taken to combat gender-based violence.

The delegation emphasized the impact of religious sectarianism on dividing the Lebanese people, where personal, familial and sometimes even civic issues are concerned. The most conspicuous example of this impact is manifested mostly in family laws. These laws were declared to constitute the basis of Lebanon's reservations to some items of Article 16 of CEDAW.

Defence and Declaration of Constants

In the discussion session that took place with the CEDAW Committee over the issues raised in the first and second official CEDAW reports,[8] the Lebanese delegation was very well prepared. Its members, especially its president, were very articulate and well endowed with argumentation skills. Armed with ample information on the conditions of Lebanese women, they were able to link the current state of affairs of Lebanese women to the general social context on the one hand, and to the requirements of the Convention on the other. Indeed, the delegation refrained from discussing certain issues that were considered 'Lebanese constants' which, if tackled, would stimulate conflicts among factions of the Lebanese public.

If the issue of nationality is taken as an example, we realize that Lebanese law expressly distinguishes between women and men. If a Lebanese man marries a non-Lebanese woman, the latter will obtain Lebanese nation-

ality. She will enjoy all the rights of a female Lebanese citizen one year after registering the marriage and attending to the required administrative formalities. However, the same does not apply to the non-Lebanese husband and the children of a Lebanese woman. They do not have legal rights to Lebanese nationality. The argument used in this context is that the Lebanese state applies the principle of 'jus sanguinis' or blood relations of the father rather than 'jus soli' (when children are born in Lebanon) as a necessary condition for gaining Lebanese nationality. This, despite common-sense knowledge that paternity can be insured only by the mother's testimony "if the mother speaks the truth" as the Lebanese saying goes or by means of DNA tests. Nevertheless, members of the Committee did not go into such details and were not interested in debating the presented arguments or discussing the various possibilities. Instead, they focused on the repercussions of the existence of such a law. According to the CEDAW Committee, the withholding of citizenship from the woman's husband and children leads to flagrant unfairness. The existence of such injustice was a sufficient argument to call on the Lebanese state to stretch the meaning of 'jus sanguinis' to encompass the mother, as well as the father, in order to eliminate blatant discrimination.

Introducing administrative measures such as granting the non-Lebanese husband and children free residence permits, consolation prizes, are far from making up for such harmful discrimination. Other such measures include the employed wife/mother's right to include her non-Lebanese family in her Social Security registry and her right to benefit from the allowances of the state cooperative if she is a civil servant. According to the CEDAW Committee such 'charitable' measures or any similar ones are pathetic and fall short of making a positive impression. More effort should be exerted by the Lebanese state in order to withdraw its reservations to Paragraph 2 of Article 9 of the Convention. Other measures are meaningless as they fail to alleviate the discrimination Lebanese women married to non-Lebanese men suffer from. Moreover, they lead to acceptance of such discriminatory practices, as they make the discrimination appear as a lesser 'evil' than it actually is.

The Lesser of Two Evils?

Needless to say, insisting on depriving the children of a Lebanese woman married to a non-Lebanese of Lebanese nationality is a policy aiming at reducing intermarriages and preserving the delicate and 'treasured balance' between religious communities. Intermarriages – or, as the French used to call them, 'white weddings' between Lebanese women and non-Lebanese men belonging to a certain religious majority, namely Muslim Sunnis – is bound to disrupt the 'treasured' sectarian (religious) balance. The ordeal of Lebanese women married to men of other nationalities, especially Palestinian nationals, is an example that constitutes an almost final dissuasion to all Lebanese women. Indeed, out of 840 women residing in Lebanon who got married to non-Lebanese men between 1995-2000, those married to Palestinians did not exceed 16 (see *As-Safir* newspaper, June 22, 2005). In this context, it is worth noting that a non-Lebanese wife, even if she happens to be Palestinian, can be naturalized; which means that the latter – as well as her children – become Lebanese citizens with full rights and obligations. Thus, the Nationality Act in our country does not only differentiate between men and women but also between categories of women, where a woman who is not Lebanese by birth receives better treatment than a Lebanese woman married to a non-Lebanese. It is worth noting that CEDAW calls for the elimination of discrimination against all categories of women on Lebanese territories, this was also mentioned by one of the CEDAW Committee members in the context of talking about foreign domestic workers in Lebanon.

> *An ongoing concern of the Lebanese is the preservation of the sectarian balance*

An ongoing concern of the Lebanese is the preservation of the sectarian balance, given that many strive to maintain stability through safeguarding the 'Lebanese formula.' This concern merges with another one enshrined in the Lebanese Constitution, namely the rejection of naturalization of Palestinians in Lebanon in order to safeguard the right of return (of the Palestinians to Palestine). Any debate over those two issues (naturalization and return) is almost a taboo. Even though these side issues were not especially tackled during the plenary session, discussion of the major issue of women's right to pass on their nationality to their husbands and children, highlighted the implicit role the sectarian system plays in generating discrimination against women in our country and which constitutes the main obstacle facing the withdrawal of reservations to Paragraph 2 of Article 9 of the Convention.

Discrimination and Religious Pluralism

The sectarian system discriminates against women and does not recognize the total equality between women and men stipulated by the Convention. This is apparent in the Nationality Act. Besides, it is also evident in the Personal Status Codes. The Lebanese delegation tried to explain the prevalent gender inequality as based largely on the multiple forms of religious legislations that form the basis of the social and political system in Lebanon. Members of the delegation also mentioned that the Lebanese Constitution protects the rights of religious communities and delegates to them the management of personal status. The CEDAW Committee expressed its concern about the absence of a unified personal status code that guarantees equality between different categories of women on the one hand, and between men and women on the other. It also questioned the shortcomings of delegating personal status matters to religious communities, an act which is damaging to women. Given that the confessional system delays the achievement of gender equality guaranteed by the Convention, the CEDAW Committee urged the Lebanese state to "adopt a unified personal status code that would be applicable to all women in Lebanon, irrespective of their religious affiliation."

We, members of the delegation, restricted ourselves to the two examples above though they are by no means the only ones that highlight religious pluralism as a Lebanese 'attribute' capable of impeding strategies adopted by the state to bring about equality between men and women in our country.

Though it might seem that the comments and recommendations[9] of the CEDAW Committee indicate that it is not taking into serious consideration the so-called cultural specificities of Lebanese society, its position seems to be more complex than this. The Committee requested that the Lebanese delegation provide it with a detailed description of the personal status codes that govern the country's 18 different sects. However, even though the CEDAW Committee was aware of the cultural specificities of Lebanese society, this is not necessarily a prelude to the recognition of the necessity for a plurality of codes, nor a reason to acquiesce to their discriminatory provisions.

On the contrary, such knowledge will most probably constitute a solid reference in determining the discriminatory areas and details in those codes and will serve to enrich the Committee's argumentation supporting its recommendation – the necessity to adopt a unified non-discriminatory personal status code that will enable the state to withdraw its reservations to certain items of Article 16 of the Convention.

It is worth noting that the CEDAW Committee takes into consideration the cultural specificities of the different countries. However, exposing the cultural specificities within a general multicultural meeting under the auspices of the United Nations, and within the framework of a constructive dialogue, is bound to shed light on the arbitrary and indirect role the cultural variables play in sanctioning discrimination against women. This is one of the main purposes of the public dialogue. Moreover, the most tangible objective of that meeting was to urge state parties signatory to CEDAW to overcome all the obstacles – the cultural ones included – in order to abide by the obligations required once the Convention is ratified.

The pressure imposed by the international community lends support to the state and assists it in facing the sectarian authorities and their supporters, that impede implementation of CEDAW and often use the pretext of 'cultural specificities' to cover their discriminatory positions. Hence, given that the Lebanese Constitution embodies the principles of precedence of treaties and international conventions over local laws and legislations, the state may accordingly rely on the international community's recommendations and requirements to draft policies promoting gender equality.

The Positive Shock

It is evident that the official Lebanese delegation received a positive shock in July 2005 during the general 'constructive dialogue' session that took place at the United Nations. Based on the deliberations that took place with the CEDAW Committee, it was concluded that the Lebanese state can no longer monitor and report the expected progress achieved by Lebanese women, nor may it identify with the achievements of civil society. It is inadmissible to use the excuse of cultural specificities to condone discrimination against women, nor is it acceptable to use economic crises or development priorities as pretexts for not combating such discrimination. Such pretexts and rationalizations constituted the substance of the first and second reports and the core of arguments submitted to this year's session.

The questions that might arise are: Can the state submit the same excuses in the next CEDAW report? Can it make use of the same arguments repeatedly? What justification will the state give to explain the religious communities' monopoly over the personal status of its citizens? Why do some reservations to the Convention remain unchanged?

Means of its Investment

The after-effects of the meeting went beyond the issue of drafting and discussing the official report with the CEDAW Committee. The NCLW is the official Lebanese

state institution for women and finds itself facing the difficult and challenging task of implementing the Convention. In its comments and recommendations, the CEDAW Committee detailed what is expected of the Lebanese government so that no one can claim ignorance any more. Given that the NCLW lacks the institutional infrastructure (material and human resources, clear prerogatives, professionalism, and full-time employment, etc.) needed to start publicizing and promoting the Convention within Lebanese society (as dictated in its preamble), how could it move forward with its implementation? It is important to note that for five decades women's NGOs in Lebanon have been striving progressively and diligently in their struggle for gender equity and the advancement of women. Moreover, they have been actively involved in overseeing CEDAW's implementation. But, will the state form a partnership with those NGOs in their struggle to counter discrimination against women?

In this respect, it is important to shed light on the joint effort that was established during the preparation for the Beijing Conference[10] between the Lebanese state, women's NGOs, and women's rights activists. However, the partnership between the state – represented by the NCLW – and the women's NGOs is required to be the result of initiatives and activities referred to in the second official CEDAW report in the form of common programs between both groups – as is the case in some programs of the Ministry of Social Affairs and the Ministry of Health. A comprehensive alliance between all governmental and non-governmental forces constitutes a necessary condition to move forward towards new levels and fields of action along the path already designated, under a unifying umbrella with new impetus and a clearer horizon.

Nevertheless, such an alliance, in one of its aspects, will have to deal with the sectarian issue, one of the 'constants' within Lebanese society. Is the NCLW, whose structure is essentially based on religious pluralism and sectarianism, ready to take part in the struggle against confessionalism that was adopted by NGOs in their attempt to "eliminate all forms of discrimination against women" by way of implementation of the Convention?

The head of the Lebanese delegation noted, at the end of her speech in the discussion session at the United Nations, that "peace is fundamental to give women's issues the attention they deserve." However, the excuse of the absence of the peace (longed for in our tumultuous region) and lack of 'social peace' (what if such peace is based on the sectarianism, the basis for maintaining discrimination against women in our country?) as a cause for the regression in women's conditions and a necessary condition for achieving equality. It appeared to us, in that meeting, that probably the value of such international conventions lies in their expectation of, and insistence upon, continuous progress towards the generally envisaged aims. In this case, the aim was the total implementation of CEDAW, despite any particular circumstances or pending problems.

Translated by Nadine El-Khoury

Endnotes

1 Lebanon ratified CEDAW in 1996 and made reservations to items of Article 16 that contradict civil status codes of religious communities and to a paragraph of Article 9 related to the Nationality Act, in addition to reservations to an article on international arbitration not specifically related to women's issues.
2. The National Commission for Lebanese Women (NCLW) is an official Commission whose members are appointed by the Council of Ministers. They are women "whose activism for women's issues is recognized." It has a consultative mission to the state administrations and institutions, and a coordination mission between those administrations and institutions and civil society, as well as between Arab and international commissions dealing with women's issues.
3. The report is available to the public at the NCLW office in Hazmieh, and on the NCLW website: www.nclw.org.lb
4. The delegation was formed by Layla Azuri Jumhuri, head, Azzah Shararah Beydoun, Ghada Hamdan and Jumanah Mufarraj, members.
5. The Committee on the Elimination of all Forms of Discrimination Against Women (the CEDAW Committee) is formed of 23 members of the United Nations, delegated by the General Assembly to supervize and monitor the implementation of the Convention in state parties, where each state party appears before it once every four years.
6. The following researchers drafted and supervised the publication of the report: Maha Al-Muqaddam, Azzah Shararah Beydoun, Layla Azuri Jumhuri, Jumanah Mufarraj, Marguerite Helou, Fadya Hoteit, Rana Khoury, Becharah Hanna, Hiam Kaai.
7. The authors of the report and the committee supervising its preparation are male and female researchers specialized in the areas of concern covered by the Convention.
8. The first and second periodic reports were discussed together.
9. Available on the NCLW website: www.nclw.org.lb
10. The Fourth International Conference for Women held in Beijing issued recommendations to the member states, including Lebanon, on main areas of women's issues.

Proposed Procedures to Fight Discrimination Against Women in Marriage and Inheritance

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Lebanese society is multi-religious. The state legally recognizes 19 sects, leaving to each matters of personal status pertaining to its own community. Thus, each sect is governed by different laws and has its own courts to implement them. The different codes discriminate between men and women of the same sect, as well as between men and men and women and women, of different sects. This is in addition to the discrepancies in customs and traditions between the various communities.

The discrimination against women appears at the social and legal levels. The elimination of legal discrimination is perhaps easier than that of social discrimination, since the former ends with the amendment of legal texts and the enacting of new laws, but the latter requires long-range and persistent efforts to effect change in education and culture. Religion as well as deep-rooted traditions and ideologies may constitute significant obstacles in the way of such an endeavor. Thus, in this paper, after presenting two problems of such discrimination, I shall propose some legal amendments, that may also be effective at the social level.

The Problems
Historical Background
Legislation that discriminates against women is mostly found in personal status laws. But other forms of legislation also harbor considerable discrimination that stems from far-reaching historical origins. Such discrimination goes back to old legislation which did not recognize women as citizens, on the pretext of their lack of intelligence. Claims like the famous Roman jurist Gaius' that: "woman is weak of mind"[1] seem to have dominated long stretches of history before and after his time, with a far reaching impact on legislation, in general. And although lately the amendment of some discriminatory legal texts is gradually taking place, it seems that women will continue to suffer from the implementation of discriminatory provisions, especially in matters of personal status that the different religious sects consider to be based on divine inspiration. This, despite the fact that some of these provisions, such as giving fathers more rights than mothers over their children, have no basis in any revealed religion.[2]

As it is beyond the scope of this paper to go into great detail regarding the status of women in all the existing codes of personal status laws in Lebanon, I will restrict myself to some instances of the discrimination against women by various officially recognized sects in the marital situation and in inheritance.

Discrimination in Marital Relations:
- Both Christianity and Islam seem to consider the husband as the head of the family. From this, there ensue some biased moral precepts, like the wife's obedience to the husband, as well as biased legislation. In rare cases, as in stipulating that the husband must provide for his wife and family, discrimination favors the wife. But the general trend is towards legislation that favors husbands, as in the following examples:
- Both of Muslim husbands and husbands of the Israeli sect have the right to chastise their wives.
- A Muslim husband has the right to marry up to four wives.
- A Muslim man may marry a non-Muslim woman provided the chosen wife's religion is one of the revealed religions (Christianity or Judaism) but a Muslim woman cannot marry a non-Muslim.
- A Sunni Muslim husband may divorce his wife in her absence and without her knowledge, without cause, and without due legal process. A Sunni or a Shi'a husband is entitled to revoke the divorce, within the period of the 100 days (*'iddah*) required before the divorce becomes final. Either of the two husbands has the right to demand his wife's return to him, without her consent. Moreover, in both Islamic sects divorce is very easy when wanted by the husband and very difficult when wanted by the wife. Indeed, for a Shi'a woman, to divorce her husband without his consent is very close to impossible.
- Where child custody is concerned, most sects give the preferential right to the father, and sometimes even to other male members of the father's family.

Proposed Solution
In dealing with discriminatory legal texts in matters of personal status we could, in an initial phase, amend laws that do not contradict the established religious doctrines, such as laws that allow or prohibit divorce, equally for the two partners, and laws that determine the period of custody of children and laws having to do with mothers' rights over their children, which no religion explicitly relegates to a status less than that of fathers' rights.

In a second phase, it is advisable to transfer the role of ruling and implementation of judgments, in matters of personal status, from religious to civil courts. This will unify the courts and increase their efficacy as well as their professionalism. It is also an appropriate preparation for phase three.

In a third phase we can introduce a civil law that governs all citizens, regardless of their religious affiliations, except for those who choose to remain under the jurisdiction of the laws of their religious sect. Phase two, which has already taken everyday legal matters from the hands of the religious authorities, would have hopefully prepared them to accept phase three.

Poverty: Discrimination in Inheritance
It is a fact that poverty is more prominent among women. Indeed, United Nations' commissions have recently given a lot of attention to what they have come to call "the feminization of poverty." Women's economic weakness stems largely from lack of education. One other factor that contributes to the relative impoverishment of women is the discrimination against them in laws that deal with inheritance.

The reason for speaking of inheritance laws in Lebanon in the plural form is the absence of a unified code applicable to all Lebanese citizens.

In Roman times, different religious communities applied their own traditional and private laws, yet did not stop short of applying Roman Law where it did not contradict their religious beliefs. Later on, the spread of Islam did not change the situation, where non-Muslim communities continued to apply their own rules and those inspired by Roman legislation, until the end of the eighteenth century.

With the beginning of the nineteenth century, and as the dominance of the Ottoman Empire and its central authority grew stronger, Islam, according to the Hanafi School of jurisprudence, was the official religion of the Empire and became the only source of legislation. All subjects of the Empire, whether Muslims or not, applied the Islamic laws in matters of inheritance and succession by will and testament. Thus, Muslim religious courts had jurisdiction in these matters for Muslims and non-Muslims.

The fall of the Ottoman Empire after World War I ended the dominance of the Hanafi School of Islam as one law for all citizens.

On January 27, 1926, the Mandatory French Governor of Lebanon issued legislative decree No. 2503 recognizing the Ja'afari (Shiite) school and instituting Ja'afari religious courts with jurisdiction in matters of personal and family status for the Shiite Muslims.

A law promulgated on December 9, 1930 gave the Druze sect rights of jurisdiction similar to those of the Sunni and Shiite courts. Accordingly, a law for personal and family status for the Druze sect was promulgated on February 23, 1948.

In the post independence era, June 23, 1959 a civil law was issued regulating matters of inheritance for all non-Muslims. This law set up and defined new rules for inheritance, the most important of which is equality between men and women in matters of inheritance.

Here, it is worth mentioning that the Arabs before Islam denied women all inheritance rights: These were a privilege of men, as they were the only ones capable of carrying arms to defend the tribe. Islam granted women the right of inheritance on the basis of a twofold share for men according to the Qur'anic verse saying: "a male shall have the share of two females." (Qur'an IV, 11)

In short, I would say that the inheritance laws in vigor and applicable in Lebanon, are:
1. Islam according to the Hanafi School for Sunni Muslims
2. Islam according to the Ja'afari School for Shiite Muslims
3. The Law of February 23, 1948 as amended by the law of July 2, 1959 for the Druze community
4. The inheritance law of June 23, 1959 for all non-Muslims (i.e. Christians, Jews and all other religions)

In view of the above mentioned laws, the status of women in matters of inheritance is as follows:

Ja'afari School
All Islamic sects including Ja'afari apply the rule of a twofold share for males, while the Ja'afari School differs in that a daughter together with her descendents, exactly as a son, are 'exclusive' heirs, in the meaning that a brother of the deceased does not share in the estate with the brotherless daughter(s) of the latter, who is (are) entitled to the whole estate.

Hanafi School
The daughter in this School cannot be an exclusive heir. In certain cases a male inherits while his sister is deprived of the inheritance, for example: The niece is deprived of the estate of her paternal uncle who dies without an issue, while her brother inherits his uncle.

Druze Sect
The Druze community is subject to the rules of the Hanafi School when a member of the sect dies intestate. Yet, their law of 1948 has freed their will from all and any bonds. A Druze is free to give whatever part of his estate to whomever he chooses, thus permitting him, if he chooses to do so, to be fair in giving equal shares to his sons and daughters. On the other hand, this can become a ground for discrimination in view of the prevailing mentality in certain social settings, where the father can deprive his daughter(s) and/or his wife and any of his 'legal' heirs completely of any share in his estate by virtue of his testament.

The 1959 Inheritance Law for Non-Muslims
Although this law has decreed equality between men and women in matters of inheritance we still frequently see cases where parents try to bypass it through legal procedures such as contracting a sale of real or fixed property between father and son, or funneling monies through a joint bank account covered by the law of bank secrecy. Therefore, and for the purpose of eliminating this discrimination, we should follow either one or both of the following ways: On the one hand, we should work on social enlightenment to change the traditional and inherited ideas of discrimination against women, in order to make parents abstain from using illegal ways to deprive their daughters of inheritance in favor of their sons, and in order to make the females abstain from relinquishing their rights in the inheritance in favor of the males in their families. On the other hand, amendment of existing laws should take place as well as the enacting of new laws equitable to women.

Proposed Solutions
In this respect, I have prepared some projects for enacting new laws in parliament, of which I shall mention two projects: one related indirectly to the issue of inheritance and the other constitutes one method to ward off poverty from women.

I. On December 17, 1982, I presented a law project to the president of the Republic through the appropriate minister under the following title: The necessity for women to keep their maiden family names and for children to carry both family names of their father and their mother as is the case in many countries such as Switzerland, Venezuela, and others.

The Text of Law Project 1
Raison d'être:
The woman adopting her husband's family name and neglecting her maiden name, even at the social level, has the following risks:
1. The vast majority of society considers the female offspring alien to her family since birth, on the basis that she will one day carry her future husband's family name and belong to his family. Hence, fathers, and even mothers, try to deprive their daughters of some of their wealth, especially real estate, for the purpose of protecting the family wealth from outsiders (the daughter's children and husband).
2. In the case of fathers having children by different wives, it will be unknown which is the mother of each of the children. In addition to the social importance of the child belonging to his mother as well as to his father, carrying both parents' family names has a positive financial effect on the child, as he/she will no longer be considered an alien to the mother's family and consequently will not be deprived of some of the wealth of that family.
Based on the above, and in spite of the fact that official

transactions are carried out in a woman's maiden name, I have suggested that legislative measures be taken in order to oblige women to keep their maiden family names in all aspects of life, and to make children, as well, carry the family names of both their parents.

This law project, if implemented, will have a psychological effect that encourages families to treat daughters and sons in an equal manner, especially in matters of inheritance.

II. On the same date I presented a second law project to the president of the Republic through the same minister, to help in solving the problem of women's poverty. The title was: Enacting a new law that imposes upon a couple to be married the choice between the system of community-property or that of separate-property by pre-nuptial agreement and mutual consensus.

The Text of Law Project 2
Raison d'être:
A husband and wife form the nucleus of a family. Together they raise their children and tend to their upbringing, education and needs. In most cases the wife dedicates herself and her time to her basic role of motherhood and house affairs, abandoning any other job or profession or role she can play in society, while the husband works for securing the financial income to the family. Lebanese law adopts the system of separate property, considering all property or riches acquired by the husband during marriage to be owned individually by him. Such a system is frequently unfair to the woman who dedicates herself solely to the role of motherhood. In case of separation, such a wife has no share in the property acquired through the work of the husband and is left penniless and without income. She is often unqualified for work outside her house, for her lack of training at a young age and her inability to be trained after a certain age.

The outcome of the above is that Lebanese law allows the husband to benefit from his wife's work and efforts in house-keeping and bringing up the children, while she is not allowed to share the fruits of his work with him.

It appears that the French legislator has taken all this into consideration. French civil law has thus given the couple the right to choose the system that suits them best, for the management of their financial affairs, during marriage, and has left to them the possibility for change in the future. According to the system of 'Separation de Biens' each spouse keeps her or his estate without sharing it with the other spouse. While under the regime of communal-property, and from the moment the marriage takes place, all wealth acquired during the marriage becomes the property of both partners. This same rule applies to income from property as well as any other income.

The categories of wealth that remain solely for each spouse according to the regime of community-property are the real estate belonging to either spouse prior to marriage, the movables related to his/her work, personal clothes, art works, and family souvenirs. Moreover, inherited estates or gifts during marriage remain the property of the beneficiary.

Based on the above, I have suggested the enactment of a new law giving the couple the right to choose by prenuptial agreement the regime that suits their situation, and leaving for them the possibility to change in the future.

This law project, I sincerely believe, shall have a positive effect in curbing the bad effects of discrimination against women, especially in solving the problem of women's poverty. Therefore, the status of the female in the matter of poverty can be improved by means of efforts undertaken on the legal level and such efforts are ultimately bound to impact the social level, as shown by the above proposed solutions.

Endnotes

1. It is noteworthy in this context that Fatima Mernissi in *Beyond the Veil* argues that whereas in the West women were discriminated against on the basis of their inferior intelligence, in the old traditions of the Arab world society worked to curb the power of women because it was believed that they were of superior intelligence (cunning kid).
2. In the holy books, from the commandment "honor thy father and thy mother" to Prophet Mohammad's conjorning that one attends to one's mother thrice before attending to one's father, it is clear that no preferential treatment to fathers compared to mothers is done. The only exception is Prophet Mohammad's command to call people by their fathers' names.

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Lebanese Women and Discriminatory Legislation: The Case of Nationality Law

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Background: Nationality Law from an International Perspective

Nationality is a legal relationship between the individual and the state, but goes beyond that to provide individuals with a sense of belonging, security, and protection, and determines the individual's ability to fully exercise all his/her citizenship rights. Nationality and citizenship are, therefore, interrelated and intertwined.

The right and need of every individual to acquire a nationality has been recognized and emphasized in international law. The Nationality Treaty (The Hague, Holland, 1930) tackled the issue of nationality and urged all states to regulate it. While recognizing the right of countries to determine the criteria for granting nationality, each according to its own laws, this treaty urged all countries to do so within the recognized principles of the nationality law and in accordance with international treaties. The Universal Declaration of Human Rights (UDHR, 1948) in its preamble affirms "faith in the fundamental human rights, in the dignity and worth of the human person and the equal rights of men and women…" Article 2 reaffirms equality of all rights and freedoms set forth in the Declaration without distinction of any kind. Furthermore, the International treaties of 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) assert the equality of human beings, and their civil, political, social, economic and cultural rights.

Lebanon ratified all the above treaties along with the Treaty on the Rights of the Child of 1989, which states in Article 6 that "the child shall be registered immediately after birth and shall have the right from birth to a name and a nationality. Countries who signed the treaty are to ensure the implementation of granting these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

Women had to wait for a few decades before their full equal rights were embodied in the jewel of the international treaties on women, namely the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979). The issue of nationality right is specified in Article 9 (1) which declares that states parties shall grant women equal rights with men in acquiring, changing or retaining their nationalities. They are to ensure in particular that neither marriage to an alien nor change of

nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of her husband. Article 9(2) states that: "States parties shall grant women equal rights with men with respect to the nationality of their children."

Nationality law in Lebanon

Background

Much of the Lebanese discriminatory legislation against women, including the nationality law (1925),[1] preceded the above cited recent developments. The Lebanese Constitution (1926) stipulates equality between all Lebanese citizens. However, it did not devise a body of laws that reinforces equality between the sexes and prohibits discrimination against women.

Discrimination in favor of men has historically been widespread, sparing few systems. It reflects the 'wealth' of inherited social and cultural biases, that have contributed to the perpetuation of discrimination against women. In Lebanon, discriminatory laws against women fall mainly within the following main categories: (a) family laws (marriage, divorce, custody, inheritance, guardianship, trusteeship over children); (b) legal provisions of the penal laws concerning crimes of honor and adultery; (c) discriminatory labor laws; and (d) nationality laws, the subject of this paper.

Lebanon ratified CEDAW[2] with reservation to Article 9(2) concerning nationality. As a consequence, Lebanese law deprives Lebanese women of their basic right to pass Lebanese nationality to their children. This contradicts the principle of equality between citizens, enshrined in the Lebanese Constitution and emphasized in the international treaties to which Lebanon has acceded.

By and large, all nationality laws fall into two categories:
1. Jus Sanguinis (law based on blood);
2. Jus Soli (law based on land).

The first category, Jus Sanguinis, is favored by overpopulated crowded countries where population increase is not compensated for by the growth in national income. On the other hand, countries that possess vast areas of land and a tiny population tend to favor the Jus Solis law which gives nationality on the basis of birth and on residence within the country, owing to the requirements dictated by the economy and by defense considerations.

Undoubtedly, Lebanon falls within the first category, not only because it is densely populated, but more importantly because it wishes to maintain its delicate confessional balance. Moreover, we should not underestimate the role of the overwhelming patriarchal values that shape a score of behavioral patterns that cast their shadows on nationality law.

Lebanese nationality law stipulates that nationality can be passed to children through the father only, in his capacity as head of the family. Alternately, children of Lebanese women and non-Lebanese fathers cannot acquire Lebanese nationality, even if they are born on Lebanese soil. There are, however, two exceptions to this law: (a) if the child's father is unknown or stateless; and (b) if the father was deceased when the child was underage, in which case he/she may acquire Lebanese nationality through his/her naturalized mother. Ironically, the right to pass citizenship is denied to indigenous Lebanese widows while it is granted to naturalized Lebanese widows!

Lebanese nationality law also permits a Lebanese man married to an alien to pass his nationality to his wife one year after she submits an application to get Lebanese citizenship, granting her full citizenship rights. The Lebanese woman, however, is denied the right to pass her nationality to her husband or her legitimate children, unless through a presidential decree.[3]

Although the laws of most modern states are such that nationality is granted through place of birth or by virtue of descent, or through both, tribal forces, lineages and patrilineal family-based structures have remained prominent, a fact which negatively affects the rights of women as individual citizens.[4] This applies to Lebanon and to most countries of the Arab world. Thus, the laws and codes of the state continue to work in favor of reinforcing gender inequality and the exclusion of some people from nationality, by maintaining the view that the family (headed by the man) and not the individual is the basic unit of society. It is within this context that the role and impact of women as mothers and wives is relegated to the private sphere and confined within its scope.

According to the principles of the unity of the spouses and the affiliation of the wife to the husband adopted by Lebanon, a woman married to an alien acquires the nationality of her husband, and not the other way round. The rationale behind this principle of dependent nationality considers the family as one unit where the important decisions affecting the family reside with the husband only.

As states have the right to draw their own nationality laws in line with their own national interests, as stipulated by international law, the argument forwarded by the Lebanese government to justify its reservations with respect to Article 9 of CEDAW is that Lebanon is protecting the Palestinian refugees from any form of settlement in Lebanon that would jeopardize their right to return to Palestine. If this is the case, why does the Lebanese government refrain from promulgating a new law that grants Lebanese women the right to pass their nationality to their children, with the exception of those married to Palestinians? Is it fear of being accused of passing a racist law? If this is the case, then the racist property law of 2002, which deprives the Palestinians living in Lebanon of ownership rights, has already set a precedent. Another possible unvoiced rationale for this law lies in the desire to maintain the delicate demographic balance between the various sects in Lebanon.

Ramifications of the Lebanese Nationality Law

The ramifications and problems of withholding nationality from the husband and children of Lebanese women are varied. Luckily, we have before us a serious recent study (2004) undertaken by the Gender, Citizenship and Nationality Program in the Center for Research and Training on Development (CRTD) and the United Nations Development Program. The study had its limitations and challenges, but by focusing on the collection of qualitative data and carrying out interviews with married women, it reflected certain general patterns:
1. There is a general lack of awareness among women, cutting across class lines and educational levels, of the problems entailed by their marriage to non-nationals.
2. The shock the women received and the intense feeling of humiliation precipitated by curtailing their rights as citizens was also underlined in this study.

One woman said that it had not occurred to her that her children's right to nationality was a questionable issue until she had her first child. Her first painful contact with reality occurred when she and her husband were unable to register their children in the national civil registration records. Registering their children at the embassies of their father also entailed problems. In some cases, this was due to the absence of the father or to severed diplomatic ties between the governments involved. The study also revealed that uneducated and lower-income women fared the worst and those married to Europeans were the best off.

In Lebanon, as elsewhere, the concept of nationality is viewed from within the political framework. However, in the case of Lebanon, it has wider implications due to the question of the Palestinian refugees and the political concern to preserve the demographic imbalance. Though recorded data in Lebanon between 1995-2002 indicated that the majority of mixed marriages in which the women are Lebanese and the men are not, involve Arab husbands (61 per cent), marriages to Palestinian men registered the lowest rate (1.9 per cent), thus showing the weakness of the argument in support of the existing nationality law and of the reservations concerning Article 9(2) of CEDAW.

Citizenship and nationality rights are associated with a host of other basic rights embodied in the UDHR. For example, having freedom of movement conditional on the father's approval entails the family members' living like outlaws, at times, or traveling without identity cards or passports, in cases where the father is absent, deceased, or the couple is divorced.

This problem is exacerbated by the need of families to regularly renew their residency permits or to acquire return visas, which entails a great deal of red tape and humiliation. The problem is further aggravated when the countries involved have strained relationships. Economic, social, as well as property and inheritance rights of children and husbands are among the leading problems. Moreover, non-national children and husbands are prohibited from working in either the public or private sectors. This is coupled with other constraints, such as prohibiting foreigners from holding jobs that the Lebanese are qualified to perform. Consequently, some resort to illegal jobs or to low-income jobs to cope with this situation. Owing to their status as foreigners, the children and husbands are restricted from owning property. Thus, they and their families have to resort to roundabout and costly measures. Over and above all these limitations, marriages to Palestinians involve further difficulties such as restrictions on education, employment and the acquiring of property, thus making the lives of such families doubly arduous.

The psychological impact of such discrimination on the children and families victimized by it are devastating. The family is subjected to constant tension in its attempt to make ends meet and to overcome the legal constraints. Tension leads to discord at home and often the (Lebanese) wife has to bear the brunt of it. She is often seized by feelings of regret and, at times, fears that the frustrated husband may take the children away to his country of origin.

Naturally, many families adopt a number of different measures to cope with such problems, such as bypassing laws or using personal connections (clientalism), which are behavioral patterns that already prevail in Lebanon. To obtain basic human rights for their families some desperate mothers are prepared to forgo their sense of dignity by claiming that their children are illegitimate, in order to be able to give them Lebanese nationality.

When women were interviewed, statements emerged that reflected their tragic situation. One said: "I am the reason why my daughters have no future." Another said: "I wish I were dead to put an end to regretting what I did to my children." Still another said: "I always

feel that I am being punished by my country for marrying the man I loved and this makes me angry."[5]

In conclusion, it would be useful to screen and compare the nationality laws in the surrounding Arab countries. Recent attempts at democratization in some Arab countries, coupled with active women's NGO work, have resulted in some progress in nationality laws in these countries. In Algeria, the nationality law that was passed in 2005 granted women equality with men in terms of passing their nationality to their family. In Morocco the law was passed on to parliament for study, while in Egypt the government granted this right to women under certain conditions. In Tunisia, the Tunisian nationality law of 1993 was modified to allow children of Tunisian mothers and non-Tunisian fathers the right to citizenship provided that they are born on Tunisian soil and that they have their father's consent. The Jordanian government is studying the nationality law seriously in the Council of Ministers, subject to approval by the Lower House of Parliament. The UAE nationality law of 2002 granted women the right to pass their nationality only to their underage children, provided they are widowed or divorced.[6]

Sadly, Lebanon still lags behind in terms of introducing any effective changes to the nationality law. In the meantime Lebanese women are suffering and impatiently waiting for lifting the injustice inflicted upon them and their families. Will the positive force of change in the Arab world and the dynamic work of women's NGOs impact our nationality law soon?

Endnotes

1. The Lebanese nationality law of 1926 was based on French law which was later modified. The nationality law in France today (1973) grants full equality between the sexes.
2. For details on the Lebanese nationality law see: Laure Moghaizel, ed., 1985. *Women in Lebanese Legislations - in view of International Treaties and compared to Arab legislations* (Book in Arabic)
3. CRTD and UNDP POGAR, 2004, "Gender, Citizenship and Nationality Program - Denial of Nationality: The Case of Arab Women," Beirut, CRTD, p 9. http://www.crtd.org
4. Ibid. pp. 9-10
5. Interviews held at the Foundation for Human and Humanitarian Rights, Starco bldg, Beirut, Lebanon. March 22, 2006.
6. Unpublished information collected by the United Nations Economic and Social Commission for Western Asia.

Campaign for Women's Right to Nationality in the Machreq-Maghreb Region

The Collective for Research and Training on Development-Action CRTD-A believes women's nationality rights are a prerequisite to gaining other basic universal human rights.

For this reason CRTD-A, together with its regional partners in the field of gender and development, has identified nationality as a critical issue for women in the Machreq-Maghreb region. In response to the need and interest expressed throughout the region to advocate for equal access to nationality and citizenship rights, on March 8, 2002, CRTD-A launched a new initiative entitled: Women's Right to Nationality within the scope of its regional 'Gender, Citizenship and Nationality Programme.'

In Lebanon alone, around 1375 women are married to non-nationals. Of these, 57% are married to Iraqi nationals, 14.3% to Egyptian nationals, 11% to Jordanian nationals, 5.1% to French nationals, 2.1% to British nationals, 2.1% to Syrian nationals, 1.8% to Iranian nationals, 1.6% to US nationals, 1.3% to Turkish nationals, 1.2% to Canadian nationals, 1.2% to German nationals, and only 1.1% to Palestinians.

Research conducted with women in this situation has unveiled tremendous suffering at the level of access to social and economic rights and political participation, as well as mobility and discrimination. It also indicated that women bear the brunt of the consequences at the individual, family and social level and suffer from exclusion as well as stigmatization.

For the full report, please consult the following link:
htt://www.iris-lebanon.org/inner/Gender%20and%20nationality%2Oregional%2O report%20-%20final.Ar.pdf
This research was supported by UNDP-POGAR.

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Mixed Marriage in the Lebanese Law

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According to Lebanese law, a marriage is characterized as mixed when it is contracted between two Lebanese of different confessions or between a Lebanese and a foreigner: The legal system regulating marriage is determined by confessional affiliation for the Lebanese and by national affiliation for the foreigners.

The marriage system in Lebanon is confessional and closed: In the absence of a civil law for marriage each confession has its own laws applied by its special courts on its subjects. Since the beginning of the past century, especially with the growing phenomenon of emigration, the Lebanese opened up to each other and to the world, which multiplied the chances of meeting, loving and marrying individuals from other confessions and other countries. The legal structure, however, could not open up at the same pace. Confessions were adamant about establishing equal legal status, where each confession insisted on having at least equal legal rights with all the other confessions, since all of them were considered minorities.[1] Citizens basic rights – especially equality inside and before the law – did not get the same attention.

The legal autonomy enjoyed by each and every confession created tension between the various confessions as well as between the confessions and civil authority because every religious or civil authority sought to expand the scope of its competence. This tension is apparent in conflicts that arise in mixed marriages. Such conflicts require interference by the general committee of the Court of Cassation (Supreme Court), competent to resolve such arising conflicts. In this context, matters of justice between citizens take a back seat with respect to procedural considerations and public space becomes narrowed, resulting in tension between national and confessional affiliations. This tension has historical roots and has been enhanced by lost opportunities to build a state that guarantees the rights of its citizens.

Duality of Affiliation to State and Confession

Equality between Sects:
The Ottoman Sultanate ruled Lebanon and the Arab region for a period of 400 years during which it implemented Shari'a law based on the Hanafi School of Jurisprudence in handling issues of personal status.[2] In dealing with non-Muslims, Islam[3] distinguishes between the House of War, which is the land of the enemy, and the House of Peace, which is the land of Islam. Non-Muslims

welcomed in the latter must be peaceful. This welcoming was legally recognized by the Muslim promise of protection (*dhimmi*). This obligation of protection is an individual or group contract signed between the Islamic state and the followers of recognized confessions, particularly various sects of the Christian and Jewish religions. This contract grants the sects in question protection for their lives, property and freedom in exchange for a specified tax paid to the state. The tax was the price of protection and for exemption from military service. The protection contract was a progressive concept at the time, respecting the freedoms of belief and difference. Today, however, it evokes among minorities the memory of humiliation and insecurity concerning one's destiny, because this destiny depends on the ruler and because it recalls discrimination against them in the periods of persecution. Relations with the Ottoman Sultanate remained based on religion until November 3, 1839, the date of issuance of the first edict stipulating 'equality between subjects of the state before the law. This edict was considered the introduction to citizenship in its modern sense, i.e. the adoption of the national identity instead of the religious one.

This edict was later (February 18, 1856) consolidated by another edict known as the 'Hamayouni Line,' which defined the nature of protection granted by the Sultanate and determined the beneficiaries of this protection. Article 1 of the edict recognized the basic rights of citizens, including freedom of belief. Article 2 recognized and guaranteed the rights of non-Muslim confessions.[4] This edict as well as the previous one constitute the foundation of the Lebanese system.

Equality between Citizens and the Rights of Groups:
With the establishment of the national state in Lebanon, a system based on equality between citizens as well as between sects as groups was established. The purpose of the latter was to guarantee freedom of belief. But the general climate and political balances promoted the rights of the confessions at the expense of those of individual citizens and impeded the conceptual and practical aspects of citizenship.

The principle of the equality of the sects constituted a problem, since nation states, generally, were established, whether in the East or the West, based on the rule of individualism. According to the ideology that laid the foundations of modern nation states, individuals are the owners of rights.[5] The principle of equality between individual citizens, whose joint will is the source of sovereignty is one of the pillars of the democratic modern nation state.

The issue of minorities was also raised in the West but from a different angle that does not affect the rights of citizenship: A citizen can be a member of the ethnic minority if he/she so wishes, and this is one of his/her rights as a citizen. This is why groups try to be more appealing to individuals where each group wants people to join it. However, in Lebanon, affiliation to a confession is a compulsory natural identity required for acceding to the right of citizenship, regardless of the citizen's will. Consequently, there is clear rivalry between confessional and national affiliations, a competition that is generally won, especially in times of crisis, by confessional affiliation, even in issues that require that national loyalty be placed above all.

What is the destiny of the individual citizen's rights? In Lebanon, balance was theoretically established between the rights granted to individuals and those guaranteed to confessions. This solution, however, was not enforced, due to the lack of the appropriate legal mechanisms. This failure contributes to the strengthening of the confessions' powers and causes a rift between citizens and state. The frailty of the system is particularly apparent in the failure to issue a personal civil status law. The bad management of the multiplicity and diversity that characterize the Lebanese reality preempts interaction and hampers equality between citizens, a situation from which women particularly suffer.

In parallel, citizens developed a series of legal tricks that are highly efficient when carried out, in silent complicity with officials and fellow citizens. Such tactics facilitate matters of practical life and enable them to break some of the rules of the hampering 'religious' system. As a result of the deviation of the law from its goal and function as an organizer of people's relations according to the requirements of justice, it was turned into an enemy driving people away from it and encouraging them to circumvent it.

The Lebanese experience is a special model, a globalization on a limited scale, where multiculturalism coexists by reason of diversity, within a structure that produces laws that in the name of particularity reduce interaction (mixing) to the minimum. This model resembles the world today where the boundaries between the people wane within the structure of an official system seeking to preserve its component cultures.

I will demonstrate in this study the conflict that emerges in connection with mixed marriages and the principles of legal solutions, in the most widespread cases, in two sections: mixed marriage contracted in Lebanon and mixed marriage contracted abroad, and the laws of competence and solutions in case of litigation, for each of them.

First: Mixed Marriage in Lebanon
1. The Confessional Structure
Mixed marriages in Lebanon have to be officiated by a confessional authority.[6] Any marriage contracted in Lebanon before a civil authority is considered void.[7]

Lebanese society is constituted of various confessions: Many of these confessions are acknowledged and today they have reached 18, each of which has been granted the right to set and implement a special personal status law independently of civil authority. There are unacknowledged confessions in Lebanon too, for which the authority promised by virtue of Decree No. 60, Regulatory Law, (R.L.) endorsed on March 13, 1936 to support a public civil status law by which these confessions would abide and by virtue of which civil courts would be entrusted with settling litigation. This group was called the 'confession' of public right, i.e. confession No. 19. The public right confession was supposed to gather whoever is not affiliated to an acknowledged traditional confession and whoever wishes that the civil authority be the sole source of legislation, whether one is a believer or a non-believer, in a way that this confession would be an entry to full citizenship. It is worth noting that a Lebanese is compelled to be affiliated to a confession and at birth acquires the confession and nationality of his/her father.

Every traditional confession drafts its laws and implements them in its own courts. The state respects the principle of neutrality regarding the various confessions and does not interfere with their internal affairs, neither at the level of legislation nor at the level of confessional judiciary, except in cases of contradiction with the public order. The state, however, does not endorse any civil law regarding the personal status of the public right confession. This strands the Lebanese on their confessional isles, and leaves a category of the Lebanese, like members of the Baha'i confession, in a legal vacuum, i.e. without a personal status law. It also leaves the public arena, the place of interaction and free mixing, closed. This is a major shortcoming of our legal system.

Furthermore, the absence of a personal status civil law circumvents, in particular, the application of the general principles of handling conflicts between laws, in time and place, not only at the national level but also at the international levels. Thus, it limits the chances of interaction and, therefore, of the progress of the Lebanese legal system.

The absence of a general civil personal status law leaves the people's options in Lebanon limited to the confessional marriage contract. Marriage can also be considered mixed after its contracting if one of the two spouses changes his/her confession or acquires a new nationality. The possibility of changing the confession or nationality grants a limited margin of freedom to the spouses, to 'place' their marriage within the legal system that suits them the most.

2. The Marriage Law
Marriages in Lebanon are contracted before the authority of the confession to which the groom is affiliated, unless the couple agree to choose the authority of the confession to which the bride is affiliated.[8] Consequently, marriage abides by the marriage law of the authority before which it is contracted.

The confessions' stance on mixed marriages vary. Some of them oppose it while others set conditions for it, even within confessions of the same religion. For instance: The marriage of a Catholic man to an Orthodox woman is barred by the law of the Catholic Church, if not authorized beforehand by the competent authority according to Articles 813 and 814 of the laws of the new oriental churches. This legal stand is against the policy of openness promoted by the Christian churches within the framework of the ecumenical dialogue, in which people massively participated. This prodded the Catholic and Orthodox Bishops' Council to issue a joint document facilitating the procedures regarding mixed marriages.[9]

It is worth noting that the Catholic Church is the only Christian church that allows its subjects to marry unbaptized individuals after the authorization mentioned in Article 804 is granted. The Antioch Orthodox Church authorizes the marriage of two persons of different confessions within the same religion, but prevents marriage between two persons of different religions.[10] The Evangelical Church also stipulates that the two marriage partners should be Christian, one of whom being Evangelical.

As to the Islamic religion, it does not set conditions for the marriage of two persons of different confessions within the same religion, and authorizes the marriage of a Muslim man to a woman adherent of another revealed religion, and allows her to keep her religion and exercise her religious rites. However, the marriage of a non-Muslim man to a Muslim woman is considered illegitimate.

This legal environment penalizes free mixing, while social reality, the actual interaction between the Lebanese and the nature of human relations, encourage it.

3. Judicial Competence
In principle, the civil court enjoys competence to examine lawsuits when the confessions of spouses are different because it represents the public courts. However, this rule has many important exceptions in the articles pertaining to marriage and its outcome, since the court enjoying competence to settle litigation resulting from marriage, including mixed ones, is the court of the authority before which the marriage was contracted, according to Article 14 of a law endorsed on April 2, 1951,[11] despite the fact that the confessional courts are

specialized in examining the personal status cases of their members only.[12]

Civil courts exclusively have competence to settle litigation resulting from a marriage contracted between two foreigners or a foreigner and a Lebanese, provided that the foreigner abides by the civil law in his country Decree No. 109, R.L. endorsed on May 14, 1935.[13] Jurisprudence of the Court of Cassation (Supreme Court) decided a long time ago to grant competence to the civil court that applies on the foreigner his/her national law. If a Lebanese man marries a French woman abiding by the civil law of her country, then the civil courts are competent to settle litigations resulting from their marriage and to enforce the marriage law. However, there is a trend in the courts' jurisprudence that aims at expanding the scope of competence of confessional courts.[14] For example, such courts may regain competence from civil courts upon a foreigner's acquirement of the Lebanese nationality at a date previous to filing the lawsuit in a bid to subject him/her to the applicable confessional court.

4. The Conflict of Laws

Every confessional court seeks to expand the scope of its competence: In the context of mixed marriages, there arises conflict when two or more courts assume competence. I will explain one of these cases which is an outcome of positive conflict between two courts, where every party was seeking to settle the lawsuit in the court of the authority that serves his/her interests or rights. This is another example of confessional courts taking advantage to expand their scope of competence.

Positive Conflict:

A Maronite man and an Orthodox woman married according to the law of the bride's confession. They had two children. Then discord broke out between them. The mother consulted the Orthodox Court where the marriage was contracted in order to request the custody of the children,[15] whereas the father consulted the Maronite Court to make a similar request. Every court was considered to have the authority to settle the litigation: The first because the marriage was contracted according to the law of the Orthodox confession and the second because it represents the confession of the father. The conflict was settled by the general committee of the Civil Court of Cassation (Supreme Court). In principle, jurisprudence agrees that the court before which marriage was contracted is the authority to examine the problems resulting from this marriage, including custody. Thus, it is natural that the Orthodox Court, in this case, be considered as having the authority to settle the litigation. However, the court of the husband's confession was considered to have the authority because both parties had not signed a commitment in writing to abide by the laws of the Orthodox Church when they contracted their marriage (Article 15 of a law endorsed on April 2, 1951). The court refused to consider that their agreement on the marriage contract before the court of the wife's confession also expresses their agreement to abide by the laws of this confession.

a. Changing Confessions and its Effect on the Legal System Governing Marriage

Article 9[16] of the Lebanese Constitution and Lebanese law in general guarantee freedom of belief and describe it as absolute. This guarantees freedom of belief and the freedom to change one's belief as well. This is why a citizen has the right to change his/her belief and, therefore, his/her confession under the protection of the law and without embarrassment. It is a personal matter. However, in order for that change to be valid, it should be registered in the personal status register,[17] which entails a full changing of the personal legal system. An Orthodox who embraces Islam, particularly the Sunni confession, must have his/her personal status system changed starting from the date of transfer from the register of the Orthodox system to the register of the Sunni system.

However, confession is often changed outside the framework of the freedom of belief, to undermine the rules of jurisdiction, or simply with the aim of changing the legal system by which one must abide. It can be an attempt to trick the system and elude the obligations one must assume by choosing to be affiliated to the confession whose law best serves one's interests. If a confession is changed with the agreement of all the concerned parties in a way that preserves their rights, this change entails legal results that undermine the rules of jurisdiction, though such rules are considered an integral part of the public order. But, if a confession is changed by one party and this change affects the rights of others, the law interferes and insists that rulings remain in accordance with the previously contracted marriage.

When both Spouses Change their Confession

Article 23 of the Decree No. 60, R.L. endorsed on March 13, 1936 stipulates in its second paragraph:

> If both spouses change their confession, their marriage as well as the documents or obligations pertaining to personal status become subject to the law of their new system, starting on the date their relinquishment of their confession is registered in the personal status registers. However, the legitimate children cannot be stripped of their legitimacy in this case by the simple fact that their parents relinquished their confession.

It is known that Catholic confessions do not recognize divorce and do not void or cancel marriages except exclusively in cases specified by the law. If a Maronite man, for instance, married an Orthodox woman before the Court of the Maronite Church, and discord broke out between them, the Maronite Court has the authority to examine the litigation according to its law which is very strict. If both parties agree to end this marriage, they may succeed if both convert to another confession, that both decide to embrace. They can choose to adhere to the Greek Orthodox or the Syriac Orthodox confessions, both of which authorize divorce. The two of them can file for divorce before the court of the new confession and obtain a divorce. Thus, they find a leeway to change the rule of legal and judicial jurisdiction that applies to them simply by amending one personal element. Their maneuvering is protected by the rights of freedom of belief and freedom of the will. Even if one of the two changes his/her mind later on and confesses that their maneuver was only meant to trick the law, the courts do not take such a confession into consideration.

When One of the Spouses Changes his/her Confession

If one spouse changes his/her confession after the marriage, (and usually it is the husband who does so) this change does not affect the marriage system or the rules of jurisdiction, since the authority before which the marriage was contracted remains competent to deal with conflicts resulting in its course.[18]

If a couple belongs to a confession that does not condone divorce, such as the Catholic sect, and the husband wants to divorce his wife, and she does not agree to the divorce, the husband may change his religion and become a Muslim (Sunni or Shiite) and get the divorce. Thus, the husband becomes capable of contracting a new marriage, with the former one still standing. In this case, changing confessions does not legally affect the system of the first marriage. That marriage remains subject to the marriage law before which it took place. Article 30 of a law endorsed on April 2, 1951 stipulates that "if one spouse changes his/her confession, the marriage and documents pertaining to the personal status system remain subject to the law before which the marriage was contracted and by which the marriage documents were drafted." Jurisprudence is clear on this issue.[19]

Thus, changing confessions for the husband has its outcome in the future and the husband becomes subject to the laws of his new confession: A husband who once was Christian and therefore faces prison if charged with polygamy, becomes legally capable of marrying another under the cover of his new personal law. As for his first marriage, it remains standing since changing religions is not a reason for divorcing or canceling the first marriage. The first wife remains 'tied' and incapable of seeking a new personal or family life. The court of the husband's new confession becomes the authority having jurisdiction to settle litigation resulting from his new[20] marriage.

This shifting by the husband from one confession to another, however, creates legal problems for his family (ies) and a problematic issue for jurists, where the matter of inheritance is concerned. After lengthy examination, the general committee of the Civil Court of Cassation (Supreme Court) finally settled for considering that a second marriage does not grant the second wife and her children any right to inheritance, and the first family remains the sole rightful heir.[21] The court of the authority before which the first marriage was contracted remains the one authorized to examine the matter of inheritance. The court justifies its stance by virtue of Article 23 of the Decree No. 60, R.L.; also by the recognition that the first marriage was based on mutual consent of the two parties to abide by the laws under which the marriage was contracted.

b. When a Foreigner Residing in Lebanon Changes Religions

Foreigners residing in Lebanon abide by Article 9 of the Decree No. 8837 endorsed on January 15, 1932, stipulating that the department for the personal status of foreigners must set up a special register for them in which it should register all facts unforeseen and pertaining to personal status, including the changing of confession, by virtue of Article 41 of the law endorsed on December 7, 1951. In a decision taken by the second Civil Court of Cassation (Supreme Court) No. 4 dated March 9, 1981, Article 41 includes compulsory substantial rules that must be respected for legal effects to be applicable.[22]

c. The Effect of the Acquisition of a New Nationality on the Marriage System

Article 19 of a law endorsed on April 2, 1951 stipulates that "changing nationality on a date subsequent to the date of marriage does not introduce any amendment to the rules of the law according to which the marriage was contracted."

The rule set by this article, originally mentioned in a law applied to Christians, constitutes a general rule to be respected with regard to the Islamic religious courts too because there are no contradicting texts regulating this legal principle in Islamic law.[23]

It is worth noting that this rule has not been applied to foreign women who acquire the Lebanese nationality on a date subsequent to the date of their religious marriage, as mentioned before. However, it has been applied to Lebanese couples who marry in Lebanon before confessional or religious authorities, register their marriage in the department for the personal status of foreigners and travel, for instance, to Canada where they live, get divorced before the Canadian civil authority and then one or both partners of the marriage return to legalize the divorce. Such a divorce is considered worthless by the

Lebanese courts. A couple is legally required to get its divorce from the authority before which the marriage was contracted. Otherwise, if one of them remarries, he/she is liable to prosecution on charge of polygamy unless the one remarrying is a Muslim man.

5. Issues of Inheritance
According to religious rule and civil law, Muslims and Christians cannot inherit from each other.[24] This rule causes great concern and instability in the case of mixed marriages: In case the Muslim husband dies, his Christian wife does not inherit him, and if the Christian wife dies, neither the husband nor the children inherit her, at least not the minors because they follow the confession of their father.

This is why couples of mixed marriages try to go around the restrictions of religion by resorting to alternative legal methods: They sign contracts of sale or contracts of gift to each other or to their children.[25] Sometimes for the same end, the owner of an asset gives power of attorney, valid for postmortem implementation, to the pertinent member of his/her family. As to the inheritance of movable property, couples tend to solve it through joint bank accounts. This last procedure, in addition to allowing the inheritance of money deposited, contrary to the rules of inheritance law and the restraints of religion it further exempts the 'heirs' from paying inheritance tax.

It goes without saying that these methods adopted to evade the unfair inheritance law are nevertheless dangerous in case one of the beneficiaries is not trustworthy. It is worth noting in this context that the legal systems of all confessions is based on the separation of assets (of the spouses).

Second: Marriage Contracted Abroad
Marriage contracted abroad is effective in Lebanon if it is valid according to the country where it was contracted. This rule is effective even if the marriage is civil, since article 25 of the Decree No. 146, R.L., endorsed on November 18, 1938 allows the Lebanese to contract civil marriage outside Lebanon. In case of litigation about the marriage and its outcome, the civil court is the authority that settles this litigation according to the foreign civil law.[26]

Article 79 of the Lebanese law sets as conditions for falling under the jurisdiction of the Lebanese civil courts that the marriage should be contracted by civil courts abroad, between two Lebanese or one Lebanese and one foreigner.[27]

According to Article 18 of the Procedures Regulating Muslim Courts, such courts are competent only when the two partners in the marriage are affiliated to the confession the court rules, and at least one of them is Lebanese. So, if two Sunni Muslims married before a civil court abroad and one of the two is Lebanese, the religious court announces its competence to settle litigation. Article 18 is not applied if the two Muslims were of a different confession or if one was Muslim and the other non-Muslim.

Marriage Contracted Abroad Causes Several Conflicts:
1. Multiple Marriage Contracts:
Let us examine a marriage that was contracted between two Lebanese in France, registered in the personal status registers and was then followed by a religious marriage to please the family and friends. When the wife filed a lawsuit against her husband before the civil court, the Court of Cassation (Supreme Court) decided according to Decision No. 13/1991 dated March 14, 1991 that civil judiciary was incompetent to examine the litigation and that the priority remains to the religious marriage. The courts considered that the family public order in Lebanon is based on the religious marriage, whereas civil marriage is an exception to the rule. The aim of such exception is to safeguard the freedom of belief of those who do not believe in any religion recognized in Lebanon. By choosing later to have a religious marriage, the couple indicated that they accept the religious rulings.

In principle, if the civil marriage is registered in the personal status registers, it is supposed that both parties wish their marriage to abide by the civil law. However, the jurisprudence of the courts is not unified about this issue and the trend currently is to authorize confessional courts to settle litigations.

Thus, this unexpected verdict is in line with the new trend that promotes the competence of the religious authorities. The paradox in this ruling is that it reverses roles, so that the confessional law appears to promote freedom of belief and civil law becomes a particularity closed on itself. Indeed, it is known that the majority of those who contract a civil marriage in Lebanon do it out of conviction and not out of objection to religious belief. Also, many of those who contract a marriage in church are not concerned about the sacrament of marriage as a religious belief. They choose it because it is the only form of marriage allowed in Lebanon.

2. The Custody of Children:
The Lebanese law stipulates that the authority before which a marriage was contracted is the proper one to settle litigation resulting from this marriage, including the custody of the children.[28] However, this rule does not prevail over the rules of international jurisdiction,[29] since competence is disputed between the civil and the confessional authorities as previously mentioned.

By virtue of the Decree No. 109, R.L., the confessional courts are authorized to settle litigation when the national law of the couple is the confessional law. Consequently, the rules of this competence and the rules applied in the litigation become coherent between the Lebanese and the foreign authorities. The civil courts are authorized to settle litigation when one of the two parties is a foreigner. Therefore, the civil court decides to apply either the foreign civil law or the confessional law, according to the case under investigation, on all the outcomes of the marriage, including custody.

As to giving foreign verdicts issued in matters of custody the power of implementation on Lebanese soil, these verdicts also abide by the same rules that are applied to all verdicts related to personal status as we will demonstrate.

Child Kidnapping:[30]
The issue of custody of children born outside Lebanon whether their parents have a civil marriage or were not legally married constitutes a vital as well as a legal problem. Bringing such problems before the courts is becoming a more and more frequent occurrence. Often, the parent with a Lebanese nationality returns to Lebanon with the minor children and is granted custody by the confessional court. This prohibits the foreign parent from exercising his/her right granted by the conjugal law or by the foreign habitation law. This is further against the wellbeing of the child failing to grant him/her the priority that he/she deserves. This is a real problem that is being discussed in all countries. It is especially problematic for countries not parties to regional or international agreements, particularly to the 1980 treaty on children's rights at The Hague.

Some unofficial international mechanisms have been established to observe the rights of children and safeguard their wellbeing. But in the absence of a legal backdrop their effectiveness is questionable. In Lebanon, official efforts are underway to encourage negotiations about this issue, especially through the International Bureau for Social Care, but their effectiveness is limited where legal disputes are concerned.

In 2004, the Malta Judicial Conference was held to find remedies for familial across-border conflicts, and Lebanon was a participant in this conference. It is expected that the decisions that transpired from this conference will lead to the signing of binary treaties between countries. Such treaties have proven to be the most successful when dealing with such conflicts.

3. Acquiring Nationality:
A foreign woman married to a Lebanese man has the right to acquire the Lebanese nationality upon her request one year after the date of registration of the marriage in the census office. However, a Lebanese woman married to a foreigner cannot pass her nationality to her husband or children, even if they permanently reside in Lebanon.

4. Implementing Foreign Verdicts:
Article 1009 of Civil Procedure Code defines the foreign verdicts as follows: "Verdicts are considered foreign, in the proper sense, when issued in the name of a sovereign authority that is not the Lebanese sovereign authority." In case foreign verdicts require implementation in Lebanon, they need to be given the power of implementation on Lebanese soil, according to Article 1010 of Civil Procedure Code.[31]

Jurisprudence agreed to refuse to give the power of implementation on Lebanese soil to foreign verdicts issued in personal status matters when they are contradictory to the exclusive jurisdiction of confessional courts.[32]

The Lebanese court, in the course of verifying that the conditions required to grant the request for implementation of the verdict are met, does not consider whether the basis of the foreign verdict is sound except in exclusive cases listed by Article 1015 (Civil Procedure Code). However, the court makes sure that some conditions are met according to Article 1014 (Civil Procedure Code), the most important of which is "that the foreign verdict does not contradict the Lebanese public order."

Such foreign verdicts seeking implementation are numerous. It is known that war in Lebanon caused the emigration of many Lebanese – estimated according to some statistics at over one million, i.e. not less than 20 per cent of the Lebanese population – who scattered across the earth. The majority of the people settled in their countries of emigration and married according to the laws of those countries and started families. Some of them returned to Lebanon and brought with them verdicts to be implemented. This is why the issue of foreign verdicts breaching the Lebanese public order was raised in many cases.

The concept 'public order' is evoked to dismiss a legitimate foreign rule that is not consistent with the national law or contradicts it. However, due to the absence of a unified system for personal status and to the multiplicity of the confessional laws, the concept of 'public order' is fluid and vague.[33] Thus, in application, the only conditions that are examined to decide whether a verdict meets the requirements of the 'public order' or not are the conditions of 'competence' and 'the right of defense.' These two conditions are speci-

fied in the civil laws, especially in the civil procedure law.

The legal marriage system, in Lebanon, is closed and not prepared to accept mixing. This is why its continuation is at the expense of people's basic rights which are unalienable and universal: The rights to freedom, to justice and to equality are the core of human dignity, and any violation of such rights constitutes detracting of this dignity regardless of the motives. The existing Lebanese marriage system, in addition to being incapable of guaranteeing the freedom of belief, leads to discrimination between citizens and to discrimination against women.

Confessional laws, whether Islamic or Christian, preserve the domineering structure of the family, where women are not treated on an equal footing with men. This limits women's participation in making major family decisions. Confessional laws with special authority are not interactive with the public legal system, open to human rights, as mentioned in the text of the Lebanese Constitution. The integration and consistency of Lebanese law with the international legal system depends on the openness of Lebanese law as privacy is no longer a sufficient justification for isolation, especially when this privacy is promoted at the expense of human dignity, which all religions concur in upholding.

Translated by Nadine El-Khoury

Endnotes

1. The definition provided by the United Nations Declaration on the Rights of Persons Belonging to National or Ethical, Religious and Linguistic Minorities is the following: "A non-dominant group of individuals who share certain national, ethnic, religious or linguistic characteristics which are different from those of the majority population."
2. Issues pertaining to personal status are varied and target the nationality, census, inheritance, and family rights, but what we mean in this study by personal status is exclusively the issues that are examined by confessional courts and that abide by the laws applied on the members of the confession only. As to recognizing the 'Lebanese confessions,' it was made by virtue of Article 2 of Decree No. 60, R.L. endorsed on March 3, 1936 which stipulates: "Recognizing a specific confession has the effect of giving the text defining its system the power of law and putting this system and its implementation under the protection of the law and the supervision of the public authorities."
3. *The Legislative Situation in Arab Countries, Their Past and Present*, attorney-at-law Sobhi Al-Mahmasani, Beirut: Dar al-Elm Lel-Malayin, 1965, p.174.
4. Antoine Kheir 'Les Communautes religieuses au Liban personnes morales de droit public.' *Droit et Religion*. Bruxelles : 2003, Brurflant (œuvres du colloque organise par CEDROMA, Universite Saint Joseph, Beyrouth, 2000) p. 457.
5. See 'Minorités et organisation de l'état,' textes présentés au 4e colloque international (CICLEF), Bruylant, 1998 Universite Libre de Bruxelles.
6. As an expression of their refusal of the system of closed boundaries for each religious sect, some Lebanese individuals, of different religious sects, attempted to enter into civil marriage contracts, in Lebanon, before a public notary. Their attempts were thwarted because of the ruling of article 16 of the law endorsed on April 2, 1951.
7. Article 16 of the law endorsed on April 2, 1951, stipulates: "Every marriage contracted in Lebanon by a Lebanese affiliated to a Christian or an Israeli confession before a civil authority is considered void."
8. Article 15: In mixed marriages, in principle, the contract must be signed before the religious authority to which the groom is affiliated unless both parties agree to marry before the authority to which the bride is affiliated by virtue of an agreement in writing signed by both parties and in which they pledge to abide by the laws of the mentioned confession. To the same effect, we have Articles 61 and 62 of a law that was endorsed on July 16, 1962 regarding Muslim confessions.
9. Attorney-at-law Ibrahim Traboulsi, *Marriage and its Effects According to the Confessions Included in the Law endorsed on April 2, 1951*, 2nd edition 2000, pp. 249-250.
"Catholic and Orthodox patriarchs held a meeting at the Syriac Catholic Patriarchate's headquarters at Saydet al-Najat-Ashurfa Convent, on Monday, October 14, 1996. Discussions focused on mixed marriages… they stressed the importance of a law regulating this new reality and highlighting the ecumenical understanding in all our churches.
Catholic and Orthodox patriarchs promised to circulate the following: 1. The bride has the freedom to remain affiliated to her church, 2. The marriage ceremony is to be held at the church of the husband, and the priest presiding over the ceremony invites the priest of the bride's confession, if present, to hold prayers together, 3. The children are to be baptized in the church to which their father is affiliated, 4. The decisions regarding this stand are to be taken into consideration in the various holy councils."
10. Article 17, paragraph K of the new law of the Orthodox Church.
11. Article 14 defining the competence of the Christian and Israeli authorities: "The confessional authority that has the jurisdiction to examine a contract of marriage and its outcome is the authority before which marriage was contracted according to the rules and by virtue of the jurisdiction rules specified in Article 15 on mixed marriages. In case there are two or more valid contracts, the concerned authority is the one before which marriage was contracted first. In case there are two or more contracts, one of which fulfills the mentioned rules, then the concerned authority is the one before which the correct contract was signed."
12. Article 6 of a law endorsed July 16, 1962 regarding religious courts and Article 31 of a law endorsed on April 2, 1951 regarding the non-Muslim courts.
Article 31 of a law endorsed on April 2, 1951 stipulates: "The confessional authorities, according to their competence recognized by this law, implement their confessional laws on their members only, taking into consideration the special cases mentioned in this law."
13. Article 1 of Decree No. 109, R.L. stipulates the following: "Civil courts only have the competence necessary to examine personal status issues concerning one or several foreigners if one of them at least is a citizen of a country where civil right prevails according to their laws in effect."
14. The Court of Cassation (Supreme Court) Decision No. 19/74 which considered that the acquisition of Lebanese nationality by a foreign woman married to a Lebanese religiously, before the lawsuit was filed, is enough to grant authority to the confessional court.
15. Article 4 of a law endorsed on April 2, 1951: Confessional authorities have jurisdiction over: first, filiation and the legitimacy of children and its effects; second, adoption; third, parental authority over the children; fourth: custody of the children and their upbringing until the age of maturity, i.e. 18 years, inclusive.
16. Article 9 of the Lebanese Constitution stipulates: "Freedom of belief is absolute and the state, by assuming its obligations to God, respects all religions and confessions, guarantees the freedom of celebrating rituals under its protection provided they do not breach public order. The state guarantees to its citizens, regardless of their confessions the respect of the system of personal status and religious interests to which they happen to choose to belong."
17. Article 41 of a law endorsed on December 7, 1951 stipulates: "He who changes religion or confession must file a request for the purpose to the personal status office enclosed with a certificate by the leader of the religion or the confession which he wants to embrace."
18. See the general committee of the Court of Cassation (Supreme Court) Decision No. 47 dated May 26, 1961. Also the Justice Minister's circular No. 11 endorsed on February 24, 1953, and the Justice Minister's report No. 222 dated February 15, 1954.
Abdo Younes, *Personal Status in Legislation and Implementation*, Beirut 1996, p.74.
19. The general committee of the Court of Civil Cassation (Supreme Court) Decision No. 24/96 dated October 17, 1996 Judicial Review, Issue 11, No. 22/96 dated October 3, 1996, p.1146; and Justice, issue 1, 1997, p.9; and others.
20. Dr. Afif Shamseddine, *Jurisprudences of the Cassation Court's General Committee from 1961-1999*, p.300 onwards.
Decision endorsed by the general committee of the Court of Cassation (Supreme Court) on August 3, 1995;
21. Judge Sami Mansour, *The Protective Role of the Civil Judiciary in Personal Status Issues, the Lebanese judiciary building the authority and developing institutions*, Center for Lebanese Studies 1999, pp. 309-10.
"Only two decisions made an exception to this rule: the first issued by the Beirut Appellate Court, chamber six, No. 104, dated June 10, 1974, to deprive the first family. The second issued by the second civil chamber at the Court of Cassation (Supreme Court) Decision No. 30 dated November 8, 1989 and authorized the inheritance of both families. The first decision was challenged by the Cassation Court, the second decision remained intact."
22. Abdo Younes, *Personal Status in Legislation and Implementation*, Beirut 1996.
23. A decision by the general committee of the Court of Cassation (Supreme Court) Decision No. 13 dated May 9, 1996 from a study by Dr. Sami Mansour about religion and the conflict of laws in the personal status course, *Droit et Religion*, oeuvres du colloque CEDROMA Mai 2000 Bruylant, 2003.
24. Muslims in Lebanon abide by the religious inheritance law of every confession, whereas the Christians abide by the inheritance law of non-Muslims which is a civil law endorsed in 1959. This law was expected to become a public civil law applicable to all Lebanese, but its implementation created a problem to the Muslims, which killed the attempt. According to religion, a Muslim does not inherit a non-Muslim. The rule of treating the other equally was adopted in the inheritance law for non-Muslims, which meant there is no inheritance in the case of a mixed marriage.
25. Ibrahim Najjar, *Droit patrimonial de la famille Droit matrimonial-successions*, 2e édition 1997, p. 35
26. Jurisprudence is unified about giving authority to the civil courts that implement the foreign civil law according to which marriage was contracted.
27. Article 79 of the law of civil procedure stipulates: "Civil Lebanese courts have the jurisdiction to examine litigation resulting from the contract of the marriage that took place in a foreign country between two Lebanese or between a Lebanese and a foreigner civilly according to the law of that country."
28. The issue of custody in the internal law still raises more than one problem, especially regarding women's right for the custody and guardianship of their children, and at the level of the implementation of verdicts granting custody to women. It is worth noting that confessional laws are unjust to women and their children and do not take into consideration the children's interest when deciding who should be granted custody, contrary to what was mentioned in the Declaration of Children's Rights which Lebanon signed.
29. Pierre Gannage, *Problemes soulevés au Liban par la garde des enfants nés d'époux de communautés ou de nationalités différentes. Le pluralisme des Status personnels dans les états multicommunautaires,* Bruylant 2001, p. 131 onwards.
The issue of the children's custody created a dilemma at the international level, which resulted in the signature of a number of documents aiming at protecting the children's stability and the rights of their mothers in particular, since courts in every country usually tend to grant the children's custody to their citizens. Among the treaties that came as a solution to the exacerbating problem was the one related to the civil aspects of kidnapping on the international level, The Hague, 1980.
30. The use of the expression child kidnapping has created problems in international conventions since some countries consider it an infringement on the rights of parents to exercise their legal rights.
31. According to Article 1010 of the Civil Procedure Code 'Foreign verdicts that affect assets or intimidation of the persons involved cannot be implemented except after being granted the power of implementation on Lebanese soil according to the terms of this law.
32. The Lebanese courts refuse to allow implementation, on Lebanese soil, of any foreign civil verdict that rules to divorce two Lebanese who have been married in Lebanon before a religious authority. They consider that the jurisdiction of settling such litigation belongs exclusively to the authority before which marriage was contracted.
33. In a decision issued by the Civil Court of Cassation Chamber 1 No. 39/99 dated March 16, 1999, the Cassation Court said that the decision, which grants the power of implementation on Lebanese soil to a French verdict authorizing divorce between a Lebanese man and French woman who married in Kuwait before the Greek Catholic religious authority, is legal and constitutes no breach to the Lebanese public order. Al-Adl, *Bar Association Review*, 1999, issue 2, p.178.

Seeking Justice for Physical and Sexual Violence against Women in Lebanese Society

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Violence against women has no definition in Lebanese law. Domestic violence, defined as violence happening within a household and between members of a family, is ruled by the general articles of the Lebanese Penal Code. The Lebanese Penal Code has only a very few articles punishing acts of violence that cause bodily harm or injury (Articles 554-559 - Legislative Decree 340/NI dated March 1, 1943). These articles address physical violence that can occur between any individuals, strangers or relatives, at any place, whether in the street, in a bar or anywhere else. Penalty categories for injuries range from six months to ten years in jail if the injury leads to disfigurement or mutilation. In the first category, the penalties are not applicable if the charges are dropped by the victim. Indeed, the absence of a special law prohibiting domestic violence in Lebanon makes this crime almost beyond punishment.

Domestic violence is a crime with its own specific characteristics. This crime happens in special situations that make seeking justice very difficult for the female victim.

Some lawyers consider that the articles present in the Penal Code (Articles 554-559) are sufficient to punish domestic violence. In fact, not only are the articles not enough, but the entire Lebanese judicial system is not prepared – and is even hostile at times – to deliver sentences in cases of domestic abuse.

While causing injury or physical abuse against strangers or non-members of the family can be easily proven, especially if it happens in public, crimes perpetuated at home are more difficult to deal with. They require special investigations to be conducted by very well trained police officers with the help of specialists (social workers) who will take the necessary steps to protect the victim and her children from further abuse, including the provision of temporary shelter when needed. Also, the presence of medical personnel and psychologists is essential for the support and the evaluation of the impact of moral abuse. Unfortunately, none of this exists in Lebanese society when dealing with domestic violence.

Lebanese society is a very conservative society that still condones honor crimes and shows a very tolerant attitude towards the killing of female relatives. Thirty-six honor crimes were reported in Lebanon between 1995 and 1998.[1] As this number includes only crimes reported to the police, researchers believe that the actual number of incidents is much higher. This kind of crime is not usually reported, or is often documented as accidental death or suicide.

While Article 549 of the Lebanese penal code establishes the death penalty as the punishment for intentional homicide against the ascendants and descendants of the offender, the same law recognizes mitigating circumstances for a male member of a family 'who catches his wife or one of his [female] ascendants or descendants or sister with another in an unlawful bed and he who kills or wounds one or both of them.' (Article 562)

Rape and the Discriminatory Legislation
Rapists are not liable for their act if they are already married to the victim or if they get married to her after the rape takes place. Thus, the legislation which aims to protect family values actually defends sexual violence and legitimizes it.

Article 522 of the Lebanese Penal Code gives the rapist impunity if a legal marriage takes place after the crime is committed. If divorce occurs within three to five years (depending on the act committed against the victim), the prosecution will be resumed against the offender.

A very tragic story happened in Tripoli, Lebanon, a few years ago, when a girl was kidnapped and raped. The prosecutor refused to order the arrest of the criminal because he heard that the rapist got married to the girl.

Some people from the region believed that if the girl did not marry her rapist she should not go back home because having lost her virginity and staying a single woman in her city would put her in great danger of being killed for dishonoring the community.[2]

In fact, the girl remained unmarried and was being held hostage. Her mother, a very courageous lady, asked for help from women lawyers and a women's rights NGO. The lawyers and the mother used to gather at the door of the prosecutor and stay all day trying to convince him to act in order to bring the kidnapped girl back home and to bring the rapist to justice. The mother stood up for her rights despite the pressure of a prominent MP who was defending the rapist.

All those demonstrations attracted the media who came to cover not only the kidnapping but this new phenomenon in the most conservative region of Lebanon, of women asking for their rights with a spectacular movement of solidarity.[3]

The outcome of this case was the arrest of the rapist on charges of kidnap, rape, and forced marriage.

Lebanon has many discriminatory laws that should be addressed, not to mention the absence of many other important laws that should be established to ensure better protection for women at home and in the work place. During my work as a lawyer I was asked to handle many cases of sexual harassment, but I could not file a complaint under criminal law. The cases were qualified as subject to labor law, and the victim was to seek compensation for being dismissed from her job because she resisted sexual advances, but the offender was never punished for his criminal act.

The Situation of Foreign Domestic Workers
In this context, it is very relevant to mention the abuse of foreign domestic workers in Lebanese society.

A housemaid is expected to work more than 12 hours a day. She should start working when the first member of the family wakes up and she should be the last one to go to bed. Many maids start their day at 6 a.m. to prepare the children for and take them to school, spend the day cooking and cleaning, and then stay up late to serve the husband when he comes back from work. She has no days off, and she cannot leave the house unless accompanied by a member of the family. According to societal standards, this would be an 'acceptable' situation for a housemaid if she were not subject to physical forms of abuse.

Many forms of physical abuse against housemaids have been reported to activists and human rights NGOs. Also many mysterious deaths of domestic migrant workers have occurred, and the Lebanese judiciary police conducted no serious investigations.

According to statistics provided by Katunayake International Airport, Sri Lanka's main international airport and the Foreign Employment Bureau in Sri Lanka, 215 migrant workers' dead bodies, among them 107 women, were returned in 2002 from different Middle Eastern countries including Lebanon. From January to mid-October 2003, 203 bodies arrived, 131 of them female. Most of the cases were reported by the authorities of these Middle Eastern countries as death by natural causes.

Kandiah Nandanee, 24, from Wattala, who worked in Lebanon for ten months in 2002 as a housemaid, died in unknown circumstances. When her body was returned to Sri Lanka, her family was told she had committed suicide by jumping from the fifth floor of an apartment block.[4]

The report of the Committee on the Elimination of Racial Discrimination 2004 [5] expressed concern regarding the situation of migrant workers. The recommendations issued were as follows:

> 83. While welcoming the measures taken to improve the protection of migrant workers, the Committee remains concerned at the situation of migrant workers in practice,

> in particular domestic workers, who do not benefit fully from the protection of the labor code. Furthermore, the Committee regrets that insufficient information was provided as to how the bill for the establishment of a new labor code would affect migrant workers and whether it would provide any specific protection against discrimination on the grounds specified in the Convention. The Committee urges the State party to take all necessary measures to extend full protection to all migrant workers, in particular domestic workers. In addition, the State party should provide information in its next periodic report on any bilateral agreements with the countries of origin of a large number of migrant workers. In addition, the Committee recommends that the State party ratify the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families of 1990.

The second most serious practice against a domestic worker's rights is depriving her of her passport. The passport should only be held by its owner. A passport is also considered the property of the government that issued it. So in the Sri Lankan case it is the property of the Sri Lankan government and no one else except the Sri Lankan worker is allowed to keep it. Upon her arrival at the airport, the migrant domestic worker is forced to hand over her passport to the authorities; the General Security takes the passport and gives it either to the employer or to the recruiting agency who should be present at the airport to pick up the worker. The employer will keep the passport with him/her until the end of the contract or until the domestic migrant worker needs to travel back to her country. Of course, the consent of the employer is necessary for such travel. Holding the passport is a very common practice and the public is unaware of the ramifications of this action for the migrant worker.

In the concluding observation of the Human Rights Committee of the International Covenant on Civil and Political Rights in 1997[6] about Lebanon, the United Nations condemned this practice:

> 22. The Committee has noted with concern the difficulties faced by many foreign workers in Lebanon whose passports were confiscated by their employers. This practice, which the Government has conceded must be addressed more satisfactorily, is not compatible with Article 12 (freedom of movement) of the Covenant. The Committee recommends that the State party take effective measures to protect the rights of these foreign workers by preventing such confiscation and by providing accessible and effective means for the recovery of passports. [7]

Two Malgashi workers decided to sue their employer for holding their passports. The confiscation of their passports made them unable to leave the country without being caught and held in prison. Unfortunately they lost the case. The investigating judge in Lebanon said in her judgment: "It is natural that the employer confiscates the maid's passport and keeps it with him in the event that she runs away to work in another place without compensating him."[8]

The confiscation of a passport results in the domestic worker who no longer works for her sponsor, being trapped in Lebanon for an indefinite period with an illegal status. Recently Lebanese civil courts began issuing judgments declaring the confiscation of passports by employers illegal, but there is no law yet that forbids this practice and the confiscation of the worker's passport is still practiced very widely.

Conclusion

Even though Lebanon has ratified the Convention on the Elimination of all Forms of Discrimination Against Women (known as CEDAW), it still has more than 30 provisions in its legislation that are discriminatory against women.[9]

CEDAW's texts are explicit: They ask the States parties to condemn discrimination against women in all its forms and to adopt a policy to eliminate discrimination against women through appropriate legislation and sanctions that prohibit all discrimination against women (Article 2, CEDAW).

By not explicitly prohibiting violence against women, Lebanese legislation is facilitating the perpetuation of crimes against women. By keeping laws such as those dealing with 'honor crimes,' the state and the judicial system become accomplices in the murder of women.

Endnotes

1. Moghaizel, Fady and Abdel Sater, Mirella '*Honor crimes, jurisprudential study*' Moghaizel Foundation, Beirut, 1999.
2. Suline is a Lebanese University medical student who was abducted on 9 May 1998 on her way to class at the Islamic Hospital in Tripoli, in northern Lebanon.
3. Suline was forced to accept marriage. Ziad Zuhurman, the rapist, asked the local MP of northern Lebanon to oversee the marriage. However, Suline's mother reported her daughter's abduction and rape to the Lebanese Council to Resist Violence Against Women. The actions of the Council reverted Suline's situation to her favor. Besides providing her with free legal representation, the Council acted in the following ways to secure the result achieved:
- It widely publicized the issue.
- It appealed to the President of Lebanon, the House Speaker, the Prime Minister and also the Justice Minister for urgent action to be taken.
- It appealed to human rights associations and held meetings on the issue.
- It held a public debate at the Lebanese Law faculty in Beirut, calling for a cancellation of Article 522 of the penal code that legalizes a marriage between a victim and a man who has committed crimes of seduction, rape, forced prostitution and/or kidnapping if both parties consent to the marriage. By marrying a victim, a perpetrator is not punishable for his acts.
- It publicly protested against, and condemned, the involvement and support given by Akkar MP Wajih Baarini and his brother.
- It publicly demonstrated, outside the Tripoli Serail, where Ziad Zuhurman was being questioned and temporarily detained.
4. WorldSocialistWebsite http://www.wsws.org/articles/ 2004/jan 2004/srme-j13.shtml
5. Sixty-fourth session, 23 February-12 March 2004, CERD/C/64/CO/3.
6. CCPR/C/79/Add.78. Concluding Observations/Comments.
7. Article 12 of the International Covenant on Civil and Political Rights:
   1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
   2. Everyone shall be free to leave any country, including his own.
   3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
   4. No one shall be arbitrarily deprived of the right to enter his own country.
8. Judgment Number 228 date 2 September 2001 - Beirut investigating judge.
9. National law reform report of The National Committee to Eliminate all Forms of Discrimination Against Women, Beirut, Lebanon.

Brief Summary on the Situation of Migrant Women Workers in Lebanon

This section will rely primarily on the study by Michael Young published by the Lebanese NGO Forum entitled "Migrant Workers in Lebanon."

I. Background

The arrival of migrant laborers in Lebanon reflects not only domestic needs in the countries of origin but also regional labor mobility. Specific regional events — the drop of oil prices, the Gulf war and the collapse of the Soviet Union — have led to changes in migration trends and resulted in the 'expansion of replacement migration' and the 'feminization' of migration.

Both trends have been evident in Lebanon. For several years women from Eastern Europe and the former Soviet Union have been working in bars, as dancers, waitresses, and prostitutes. However, it is the presence of a growing number of Asian women, mostly from non-Arab Asian countries, that has been particularly evident. A majority of non-Arab migrant laborers are women, a trend that is bound to increase as the Lebanese authority imposes further restrictions on the arrival of non-Arab Afro-Asian males. 'Replacement migration' is a relatively recent phenomenon but it has reached large proportions, given — in the case of women migrants — the increasing hiring of Afro-Asian women workers as low-priced domestics, roles previously played by Syrian and Egyptian women.

Who are they?

Prior to 1973, most female workers were Egyptians and Syrians, and worked in households. As of 1973, Filipinos started to arrive to Lebanon, followed by Sri Lankans in 1975. In 1990 women from African countries, mainly Ethiopia and Madagascar, arrived. Today, the largest contingents of non-Arab Afro-Asian women migrants in Lebanon are mainly from Sri Lanka, the Philippines, India, Madagascar, Ethiopia and west African countries. They provide domestic services, usually in households, but also in restaurants and other businesses. Ther majority of domestic workers are women.

How many are they?

The actual number of women migrants is difficult to determine for several reasons, ranging from a lack of reliable figures, to the contradiction in numbers that differ from one source to another, to the illegal presence of foreign female workers. It is roughly estimated that 85 percent of the total number of non-Arab African Asian migrant workers in Lebanon – out of an estimated 200,000-230,000 workers – are female.

II. Working Conditions

Conditions of workers vary depending on category of employment. Migrant workers are not governed by Lebanese labor law. Their status is governed by a contract between the worker and the employer. The fact that migrant workers are not governed by labor law means that they are denied a right to earn Lebanon's minimal salary, they do not have a maximal number of working hours, they have no guaranteed time off or vacation, they are denied accident and end-of-work compensation, and they are barred from joining labor unions.

Women migrants often face difficult conditions, including:
* Long hours, for low salaries, in inferior conditions to most Lebanese
* No social coverage, though some measures have been taken to provide insurance to some categories of migrants
* Being locked indoors by their employers;
* Difficulty in complaining to Lebanese authorities
* Illicit measures affecting salaries such as non-payment
* Confiscation of passports or other identity documents (prohibited by Lebanese law and by the International Convention of the Protection of the Rights of All Migrant Workers and their Families) that leads to limitations on their freedom of movement
* Physical and sexual abuse, which may lead to suicide. Rape is frequent in households. Some lawyers have attempted to take those responsible to court. While there have been rare successes, most of the time the guilty go unpunished. Abused women migrants are too often reluctant to testify against their tormentors. Their primary motivation appears to be fear, whether of retribution or eventual loss of employment and eventually, expulsion.

<http://www.lnf.org.lb/windex/violation.html>

Eligibility of Working Married Lebanese Women for Social Benefits

■ Arlete Juraysati
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Article 7 of the Lebanese Constitution, which was drafted in 1926, calls for equality between men and women in rights and duties without any discrimination. Article 12 also asserts the right of every Lebanese person, man or woman, to employment in the public sector.

In spite of this reality and the series of improvements and ammendments aimed at giving Lebanese women their rights, some laws still discriminate between genders.

From a historical perspective, the progress of women's rights in Lebanon is marked by the following legal events:
- 1953: Women attained suffrage rights and the right to run for elections.
- 1959: The inheritance law for non-Muhammadis was passed, giving equal rights to males and females.

In addition, Legislative Decree 112, the 'employee guidebook,' which was issued on June 11, 1959 and was based on the principle of equality in rights and duties, as stated in the Constitution, opened the way for women to work in any public administrative office.

The Lebanese Labor Law, ratified in 1946, did not discriminate between the female and the male employee except when it tried to protect the female employee. For example, Chapter 8 of the Law entitled "Employing Women and Children" and Article 52 forbid the employer from threatening to dismiss a female employee who is on maternity leave.

- 1960: Lebanese women were given the option to keep their Lebanese nationality, in case of marriage to a foreigner.
- 1974: Lebanese women were given the right to freedom of movement after the annulment of the statute that required husbands' permission prior to issuing passports to their wives.
- 1983: Punishments for the use of contraceptives were annulled.
- 1987: The age for being subjected to end of service indemnities, as per the Social Security Law, was changed to 64 years for men and women, both having the option to collect indemnities at age 60.[1]
- 1993: Articles 11, 12 and 13 of the Trade Law were repealed and women were given the full competence to venture into commercial businesses, enter a joint liability company, and become authorizers in commandites.[2]
- 1995: Article 97, which used to forbid a third party from entering into a life insurance contract for a married woman without her husband's permission was amended and restricted to the supervision of the judiciary, thus restoring legal competence, in this respect, to married women.[3]

Income Tax:
Article 34 of the Budget Law for the year 1999 covers this issue on the following basis:
- If the wife of a taxpayer is employed in a taxable employment the wife is subject to tax reduction similar to that of an unmarried woman. If the married couple has children in their custody, the father is given an additional reduction for the children, which conforms to the general principle that a couple only benefit from one tax reduction.
- In case the father dies, or if he develops a debilitating or chronically paralyzing sickness and is no longer capable of securing an income, the mother benefits from the extra tax reduction for their children.
- If the husband reaches retirement age and his wife proves that he has no source of income, the situation of the husband is considered by the income tax department as similar to that mentioned in the preceding clause and so the wife also benefits from tax reduction, even though it is not expressly mentioned in the law.

Thus, there is no discrimination against the married woman in income tax policy, except in cases where the husband, who has not yet reached retirement age, does not have any income and is not debilitated.

This essay examines an extremely important matter, one that most people are not aware of, causing a lot of women to bypass a right that the law concedes to them. But, this law is often not applied. It explains conditions for the married working woman to receive social benefits (family indemnities, sickness and maternity benefits). It also surveys the stages that led to the amendment of the provisions that deal with this issue. In the first part, the situation of the married female public servant is presented, and in the second part the situation of the female employee is presented.

Part One: The Situation of the Married Female Public Servant
In the wake of the increase in the number of female employees in the public sector in the past ten years, especially in realms that were traditionally considered to be male dominated, such as the judiciary and general security, women have begun to demand their fair share of social benefits. These benefits that include family indemnities, sickness benefits for family members of the employee and education allowances are stated in the employment guidebook[4] and the Government Employee's Coop law, of which only the male employee used to be the beneficiary for his family, despite the female employee paying the subscriptions required of all employees by the social security fund.

Based on these revisions, in 1992 the collaborative fund for judges (*sandooq el-ta'adud*) repealed all gender discrimination for benefiting from contributions in the judiciary.

Next, and after consultations with the legislations and consultations panel, the legislature amended Article 149 of the law issued on October 30, 1999 which relates to benefits allocated to female employees who are members of the Government Employees Coop.[5] The amended article states the following:

> Unlike any other provision, the female employee, just as the male employee and without any discrimination, benefits from the contributions of the Government Employees' Coop as per the benefits and services program as well as the education allowances program, for herself and the members of her family (her husband and children) whether she benefits from family indemnities or not. She also receives benefits for anyone in her custody including her parents and siblings according to the percentages used by the Coop as dictated by the following conditions:
> 1. In case both spouses are members of the Coop, benefits for the spouse and children are given to the one with the higher rank or grade and with the same hospitalization classes whether he/she is the recipient of the family indemnities or not.
> 2. In case only one of the two spouses is a member of the Coop and the other receives benefits from another official source, the benefits of the Coop are only given to complement the benefits of the other official source.
> 3. An employee receives all the benefits offered by the Coop for his spouse and children (only the first five children are eligible) in case his/her spouse is not a member of the Coop and does not receive benefits from another source.
> 4. In case an education scholarship of a value lower than that offered by the Coop was issued, the employee must present a signed statement from the employee showing the exact amount of the scholarship paid. Only then would the Coop pay the difference.
> 5. In case of the divorce or separation of the couple, and also in case of dispute or desertion, benefits are given to the spouse who has the custody of the children, in accordance with the amounts stated in the bylaws of the Coop regardless of the alimony paid.

This proves the absence of any gender discrimination in public employment concerning the social benefits offered to employees.

Part Two: The Situation of the Married Female Employee or Wage Earner
The Social Security Law, specifically Articles 14 and 46 specify the individuals who have the right to receive health and maternity benefits and family indemnities. The health and maternity benefits cover the insured workers and members of their families who live under their roofs and are/or are in their custody.[6]

Family indemnities are offered to the workers and the insured members mentioned in the first provision of the first paragraph of Article 9 of the Social Security Law.

The conditions for the benefiting of the workers' children from these indemnities are specified in provisions A and B of the second paragraph of Article 46 of the afore-mentioned law.

A dispute usually arises over alimony and child support based on who the specified benefactors from the above-mentioned benefits are.

The general principle mentioned in the first paragraph of Article 47 of the Social Security Law states that a child has the right to only one family indemnity, if more than one parent receives it. And according to the provisions of Article 46 of the same law, the father receives the familial and educational benefits if the father and the mother satisfy the afore-mentioned conditions, except if the children are in the custody of the mother alone.

In implementation of this principle, and according to memorandum 112 dated January 18, 1972, the female employee is not legally or practically considered the head of the family and therefore is not eligible to benefit from family indemnities for her children except in the following cases:
1. If she is widowed, divorced, or is legally considered to have deserted her husband.
2. If her husband ceases to work for one of the following reasons:

a. He has reached the age of 60 and in this case it should be proven that the children are living with their mother and in her custody.
b. He is afflicted with a physical or mental disability.
c. He is serving a jail sentence.

Starting in 1996, after the revision of several decrees or rulings presented by female workers to the arbitrational labor councils, many court decisions that recognize the right of the mother to family indemnities for her children were issued. I have chosen only two such pieces of legislation numbered 210 and 202/96, which were issued by the Arbitrational Labor Council in Beirut, Chairperson Choukhaiby, and which became a permanent interpretation after Decision 200/6, dated February 21, 2006, of the General Jury of the Supreme Court. I shall mention below the most important points of these two decisions.

First: The Two Decisions of the Arbitrational Labor Council in Beirut

In general, the two decisions describe a situation in which the female worker's husband does not work in either the private or the public sectors. Therefore, he has no right to any of the social security benefits. So, the children of the female, and according to the previous procedures of the Social Security Fund, are not eligible to benefit in any way from social security, even though her employer is paying all the subscriptions to the various branches of the social security, and she is paying subscriptions for health and maternity benefits, as per the laws and procedures of the institution. This clearly shows an injustice against the female worker's rights. So the Arbitrational Labor Council based its decision on the following principles:
- The fundamental purpose on which the Social Security Law and its institutions and benefits are based is undeniably the guaranteeing that the insured has a minimum sense of assurance through the offerings that it provides, most importantly healthcare and the meager familial aid.
- Adopting any interpretation or jurisprudence that conflicts with this rule of procedure will undermine the provisions of the international treaties to which Lebanon is a signatory, especially the International Labor Office Convention No. 111 Concerning Discrimination in Respect of Employment and Occupation which warns against discrimination based on gender, religion or race.
- The social security Fund's claim that the defendant's (female worker) request cannot be answered on the basis of the laws and habits of our society – specifically, the general belief that the father is the head of the family and the one responsible for its sustenance – must be dismissed. This is because such beliefs lack seriousness and veracity and because of their clash with modern social fundamentals which consider the wife to be her husband's equal in rights and duties, and which consider her to be equally responsible for the upbringing and protection of the interests of the family. Hence, the aforementioned two decisions (201+202/96) require the social security fund to:
1. Pay her family indemnities
2. Allow her to receive health benefits for her children

Second: The Decision of the General Committee of the Supreme Court

The afore-mentioned decision of the general jury of the Supreme Court reiterated the provisions of the international treaties which discuss this subject, and the provisions include:
- Articles 2 and 26 of the Convention on the Rights of the Child (CRC).[7]
- Article 1 of the International Labor Office Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.[8]
- Article 3 of the International Covenant on Social, Economic and Cultural Rights (CSECR).

Then general principles for the resolution of the issue were drafted:
- The rulings on alimony and child support are usually the responsibility of the relevant sects. Thus, the social security fund's decisions in these matters do not reflect the will of the Lebanese legislation to relegate such matters to the appropriate religious authorities. For instance, in Article 14 the word 'alimony' is mentioned and in Article 46 the phrase 'the supported child,' and in Article 47 the phrase 'child custody.' Those expressions simply mean that one of the parents handles the expenses of the children. However, the level, conditions and legal framework of this expenditure are not specified.
- When the mother and father of a child are employed, it is not possible to objectively determine beforehand what ought to be the contribution of each to child support. This, because of the variety of social, economic, and living conditions that prevail in each family.
- In light of what has been presented thus far, and in line with the principle of equality in rights and duties, the logical interpretation of the Social Security Law should be that the mother, who is a member of the Social Security Fund, should receive benefits for her children as long as they are proven to be in her legal custody (according to the afore-mentioned conditions) and as long as her husband does not receive such benefits.

The importance of continuous jurisprudence on the discrimination between the male and the female insured workers regarding legal child benefits (health and maternity benefits and family indemnities) is apparent from the issuance of memorandum number 283, dated January 19, 2004. The memorandum was issued by the general director of the Social Security Fund, repealing all previously issued memorandums that contradict it. The memorandum included the following provisions:

1. The intendment of alimony or child support mentioned in Articles 14 and 46 of the Social Security Law exceeds the juristic meaning of these two expressions, i.e. the intendment of personal affairs, to include all effective alimony even if he/she who undertakes this alimony or child support is not legally bound to do so.
2. Requesting all concerned units in the Fund to adhere to the following procedures: For the insured female to receive health and maternity benefits and indemnities for her children she must satisfy the following conditions, as per the Articles 14/2 and 46/2 of the Social Security Law:
a. The father must not be a recipient of any Social Security Fund benefits or any other similar sources for the same children.
b. A social inquiry is to be made to ensure that the children of the insured female are living under her roof and that she is the prime provider for their expenditures.

It has, however, been made apparent to me through inquiries I have made in some public administrations, that some of these administrations still do not abide by the provisions of this memorandum. They rather require the female worker to resort to the Arbitrational Labor Council for a decision to guarantee her right to these social benefits, even in cases where some other women within the same department previously obtained similar decisions.

Conclusion:

Based on what has been examined above, the following could be deduced:
1. When the social fundamentals change as a result of alterations in social, economic and living conditions, the laws guiding these fundamentals need to be modified.
2. Amendments are usually undertaken by judges and are considered a natural process, since those judges are part and parcel of this society and are affected by its changes and developments.
3. It is the undertaking of court jurisprudence to modify, interpret, and sometimes disrupt, under the justification of interpretations, any laws that become antiquated and discriminatory. In all countries, the legislator has undertaken the responsibility of amending laws that do not keep up with societal developments.

The above-mentioned scenario is currently repeating itself with what is known in Criminal Law as 'honor crimes,' and for the same reasons. In recent years, jurisprudence in the courts has been moving towards implementing the rulings on such crimes in a way which in effect undermines its effectiveness because the judges are convinced that these rulings are not in line with the development in the collective mentality of Lebanese society.

And finally, it should be mentioned that even though the situation of Lebanese women has changed in the past decade in all respects, the legislature should be pressured into amending or repealing discriminatory rulings against women especially with respect to:
1. What is known as honor crimes and adultery in Criminal Law;
2. Lebanese nationality: the right of the Lebanese woman to give her nationality to her foreign husband, as happens in developed countries;
3. Personal affairs: instating civil marriage and enforcing a unified civil law on all Lebanese citizens, based on the principle of gender equality in rights and duties.

Day after day, Lebanese women are playing an effective role in the educational, economic, social, and political fields. This entitles them to being dealt with fairly and to their being given their basic constitutional rights.

Endnotes

1. Law 82/7, January 6, 1987.
2. Law 380, November 14, 1994
3. The Law of December 8, 1995.
4. Decree 112/1959
5. According to Article 47 of Law 179/2000, amended by Law 324 dated April 21, 2001 and Article 2 of Law 343 dated August 6, 2001, amended in the single article of Law 387 dated December 14, 2001.
6. As per the provisions of Paragraph II of Article 14 of the above-mentioned law
7. Lebanon adopted CRC through Law 20/1991
8. Lebanon ratified this convention through Legislative Decree 70 dated June 25, 1977.

Appendix

Bill for the Amendment of Articles 11, 12 and 13 of the Legislative Decree 304, Dated December 24,1942 (The Land Trade Law) and its Amendments

Article 1:
The provision of Article 11 of the Land Trade Law were repealed and replaced with the following provision: 'The married woman has the full merit to practice land trade.'
Article 2:
The provision of Article 12 of the Land Trade Law was repealed and replaced with the following provision: 'When in a trading business, the married woman has the right to undertake any job required by her commercial enterprise.'
Article 3:
The provision of Article 13 of the Land Trade Law was repealed and replaced with the following provision: 'The married woman has the right to enter a joint liability company or become a commissioner at a commandite.'
Article 4:
The law shall be operative as soon as it is published in the official gazette.

The Law of Obligations and Contracts
Decree 383- August 15, 1995 repealed Article 997 of the Law of Obligations and Contracts and replaced it with the following provision:
Article 997- 'No third party is allowed to enter a warrant depending on the death of a person who has been put under judicial supervision without the permission of the supervisor. This permission does not supersede the consent of the incapacitated person when required. In case neither the permission nor the consent is at hand, the contract could be repealed under the request of the supervisor, or the signatory to the conditions list or the insurer, as the circumstance requires.'

Law 87/2
Article 1
1. The insured's submission to the end of service indemnity division ends and the indemnity is liquidated when the age of 64 is completed. He has the right for his indemnity to be liquidated when he completes the age of 60 and when the stated maximum level for submission is reached.

Social Security
Family Indemnities
Article 46
A fund for family indemnities is to be established the organization of which is specified in this section and its resources are specified in Chapter 3, Section 1, Volume III, of this law.
1. Family indemnities are issued to the workers mentioned in Paragraph 1 of Article 9 and Article 10 of this law and to the recipients of health, maternity and work emergencies insurance if the incapacitation level exceeds 50 percent.
2. The claimants for family indemnities include the following:
a. Every supported child, as per Clause J of Paragraph 2 of Article 14.
b. Every supported child with a physical disability, irrespective of the age, and every single and unwaged girl who has not yet reached the age of 15.
c. The legal wife living in the house if she does not have a paying job.

Social Security
Article 14
1. Social security covers both the insured and their family members. The following is added to Paragraph 1 of Article 14, as per Law 283 - December 12, 2002:
The word 'insured' as mentioned in this article is understood as both the male or female applicant without any discrimination.
2. The family members of the insured individual are those living under the same roof of this individual and under his expense.
a. The father and mother who have at least completed the age of 60 or who are incapable of providing for oneself because of a physical or mental disabilities.
b. The legal wife of the insured (in case of multiple wives only the first one receives benefits).
c. The husband of the insured individual who has at least completed 60 or who is incapable of providing for himself because of a physical or mental disability.

Paragraph D of Article 14 of the Social Security Law is annulled and replaced with the following provision (as per Article 80 of Law 220- May 29, 2000):
d. The legal natural and adopted children of the insured individual and until they complete the age of 18. If the children are incapable of providing for themselves owing to educational commitments, they receive benefits until they complete the age of 25.
- If the children are handicapped and are holders of a personal disability card, and if they are incapable of providing for themselves because of their disability, they receive benefits irrespective of an age limit.
- The aforementioned benefits stop being issued in case the handicapped individual receives unemployment indemnities, as specified in the law.

The provisions of Paragraph E Article 14 are annulled as per Law 483 - December 12, 2002, and as annexed by Article 81 of Law 220- May 29, 2000.
3. The benefits which the female insured applicant receives for her children are considered - as per the interpretation provided by the National Fund for Social Security for the aforementioned provisions of Paragraph D - an recognized right of the woman and her children, and therefore it cannot be retracted.

Article 47
1. A child is not given the right to more than one family indemnity, as per the previous article. If the conditions mentioned in the previous article are satisfied in more than one person then the family and educational benefits are issued to:
a. the father, if the aforementioned conditions are satisfied by the father and mother, unless the mother is the sole provider for the children.
b. to the adoptive parents, or guardians when those, as the parents, satisfy the mentioned conditions.

Convention on the Rights of the Child
Article 2
1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 26
1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.
2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

International Labor Convention
Article 1
The phrase "equal pay for men and women for work of equal value" refers to the specified average wages which are specified without discrimination based on sex.

International Covenant on Economic, Social and Cultural Rights
Article 3
The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Press Memorandum 283
January 19, 2001

Topic: The extent of benefits from the social security for children on their mother's name

In line with the Social Security Law, especially Articles 14 and 46 which relate to the right of children to receive health and maternity benefits and family indemnities.

And since health and maternity benefits include the insured individuals and the members of their families, as specified in Paragraph 2 of Article 14 of the abovementioned law, i.e., those living under the roof of the insured individual and under his maintenance,

And since family indemnities are offered for workers and the rest of the insured individuals as per the first provision of the first paragraph of Article 9 of the Social Security Law,

And since the alimony or maintenance mentioned in Articles 14 and 46 of the Social Security Law exceeds the juristic meaning of these two expressions, i.e. the intendment of personal affairs, to include all effective alimony even if he/she who undertakes this alimony or child support is not legally bound to do so,

And since the mentioned law does not discriminate between the reception of benefits between the male and the female individual with regards to the children registered under the name of one of them for benefits,

And since jurisprudence has recently not discriminated between the male and the female insured individuals with regards to the children who have the right to receive from the maternity and health benefits of social security, as well as family indemnities, in case the conditions for the entitlement for these benefits are satisfied (Resolution 6/2000 issued on February 21, 2000 by the Supreme Court),

And since in case both parents are eligible for receiving health and maternity benefits for their children, the benefits receive those benefits from their father, (Article 72 of the sixth manual – the medical manual),

And since in case both parents satisfy the legal conditions to the entitlement for family indemnities for their children, the indemnities are paid for the father, unless their legal custody is in the hands of their mother alone (Article 47-1-a of the Social Security Law),

The following has been decided:
All concerned units of the social security fund must abide by the following:
Firstly, for the insured female employee to receive health and maternity benefits and family indemnities for her children, as per the Articles 14/2 and 46/2 of the Social Security Law, she must satisfy the following:

1. The father must not be eligible for receiving any of the benefits of the Social Security Fund or from any other similar sources for the same children.
2. A social inquiry is to be made to ensure that the children of the insured female are living under her roof and that she is the prime provider for their expenditures.[1]

Secondly, all provisions issued by the general director of the fund which contradict the content of this memorandum are to be repealed, especially article 2 of resolution 77 dated March 19, 1970 (the internal plan to execute social security family indemnities), and press memorandum 112 dated January 18, 1972 which relates to the right of the female worker to family indemnities. In addition to the third paragraph of the labor conduct number 1 (which was annexed to memorandum 30 dated November 23, 1981) which relates to the right of the married female worker to family indemnities.

General Director,
Khalil Majid

Endnotes

1. Added to Paragraph 2 of Article 14 of the Social Security Law, as per Law 220 dated May 29, 2000, is provision E which states the following: E- The legal natural and adopted children of the insured worker if she has the responsibility of maintaining them due to the incapacity of the husband and according to the conditions stated in Article D of the Social Security Law. This provision expressly distinguishes between the male and female insured worker with respect to the receiving healthcare benefits for children, whereby they could receive benefits from their mother when she maintains them i.e. provides for them because of the incapacity of their father. Therefore, if the father is below 60 years of age, they do not receive the mentioned benefits whether or not he has a job.
If he completes the aforementioned age limit and the mother provides for them, they receive benefits so long as the father receives the same benefits on the name of the mother (Article 14/2/D of the Social Security Law).
Unlike the clear statutory provisions, the fund's administration considers that the children have the right to receive benefits on the name of their mother if their father does not receive similar benefits through another mandatory system.
It must be mentioned that the addition of provision D presented above, to Paragraph 2 of Article 14 of the Social Security Law does not modify the conditions for the entitlement of family indemnities, and therefore, there is no discrimination in area between the male and the female insured individual as reached by canonical and juridical jurisprudence.

Translated by Ahmad Ghaddar

Working Women in Lebanon

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Social legislation in Lebanon does not date back a long time. It is contemporaneous with the industrial development just prior to and after World War II.

Clauses 624-656 of the Law of Obligations and Contracts are the only ones that deal with workers and labor, since economic activity used to be restricted to agriculture. But due to economic prosperity, economic openness, commercial exchange, and the mainstream economic ideas that advocate economic justice and industrial advancement, the need to adopt new laws to organize the conditions of workers and labor emerged.

Thus, labor legislation and the legislations supplementing it have come into existence: These are:
- The Lebanese Labor Law issued on September 23, 1946 with its seven chapters, two supplements, and preliminary provisions which designate the employer, the hired individual (employee or worker), the intern, the syndicate, and the institution.
- The Law of the Organization of Syndicates under Decree 7993 issued on April 3, 1952.
- The Law of Social Security issued on September 26, 1963 under Decree 13955 and its attempt to provide communal and social security.

It should be pointed out that labor, social security, and syndicate organization laws are restricted to work within the private sector and some public institutions, and do not include government employees and the public sector. If we were to discuss the status of women under the 1946 Lebanese Labor Law — whose provisions do not clearly distinguish between men and women as the presence of women in the labor force back then was meager – we find that its provisions adopted the principle of gender equality in case of equivalence of employment. And when the minimum wage was adopted in the years 1941, 1942, and 1943, the law made equal the remunerations of women and men whenever they were undertaking the same employment.

The decree issued in this respect in 1965 clearly calls for the application of the law to all employees (male and female) when women undertake the same job as men.

The Labor Law has put into action specific measures that legally protect workers of both genders and specific measures that protect female workers only (Articles 21-30).

We have the following remarks about this:
Protective measures for female workers were taken, alongside protective measures for juveniles. This is an indication that the law views females, even when of adult age, as minors:
- The law prohibited employing women at night.
- The law allows a woman to leave her job due to marriage without specifying her period of absence. This confirms the legislator's view that her job is unnecessary and that her household duties take precedence over her work outside the home.
- The law prohibits employing women in certain industries (first supplement to Article 43).
- The employer must provide a minimum one-hour break at noon whenever the work hours exceed five hours a day for women and six hours a day for men. We contend that this provision should include all workers and not just women.
- The requirement to sit down during breaks for female employees whose work requires their being in a standing position.
- Fully paid maternity leave — regardless of the worker's contract type — that lasts for at least 40 days, 30 of which must be postnatal. This leave is independent of the annual and other vacations.

It must be mentioned that the Labor Law excludes domestic and agricultural workers.

The Lebanese government has ratified the Convention on the Elimination of all Forms of Discrimination Against Women which states in Article 11, about which there are no reservations whatsoever, that:

> States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
> 1. The right to work, the right to the same employment opportunities, to equal remuneration including benefits, the right to social security, and to protection of health...
> 2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
> - To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status
> - To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances
> - To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities
> - To provide special protection to women during pregnancy in types of work proved to be harmful to them.
> 3. Protective legislation relating to matters covered in this article are to be reviewed periodically.

In 2005, as part of the implementation of this treaty in Lebanon, and as a result of the request of civil society to amend the Labor Law to correspond with the provisions of this convention and other international labor treaties that Lebanon has ratified, a number of amendments were made through Law 207. Although these amendments are not sufficient, they constitute commendable progress. The amendments include the following:
- The provision of Article 26, which forbade women from working at night in the industrial sector, was annulled. It was replaced by a provision that clearly prohibits any gender discrimination between workers concerning employment type, remuneration, employment, promotions and advancements, vocational training and attire.
- Article 29 was amended to extend the maternity leave from 40 days to seven fully paid weeks. This includes the pre- and post-natal periods, but still falls short of the maternity leave of the female employee that reaches two months in countries like Yemen. It also falls short of the period specified by the Fifth Arab Labor Treaty which is at least ten weeks. The period is also shorter than the period specified by the 103rd International Labor Treaty, which Lebanon has not ratified to date, and which specifies a period of at least 12 weeks, no less than six weeks of which is after birth.
- Article 52 of the Labor Law, used to prohibit the issuance of a dismissal warning to a pregnant working female until she is five months into her pregnancy. This prohibition now covers the period falling between the beginning of the pregnancy and the worker's return from her maternity leave.

Although we welcome these amendments, we insist that they be coupled with certain follow-up procedures and amendments including:
- Ratifying all Arab and international labor treaties pertaining to the rights of female workers (for example: The Fifth Arab Labor Treaty and the International Labor Organization 103rd Convention.)
- Raising the work age of male and female juveniles so that it is forbidden to employ them before they are of age
- Separating between the rulings for women and for juveniles, due to the difference between the needs for protection for each
- Reducing the protective measures not relating to maternity, because exaggerated protection may become counter-productive to women's interests, especially when employers stop making use of their services
- Unifying protective measures to include both males and females
- Allowing part-time shifts for both genders
- Taking punitive action against sexual harassment by superiors and co-workers
- Considering maternity a social duty whereby renewal of generations is necessary for the existence of a society and its continuation. The government and the social security fund should bear the cost of women's wages during their maternity leaves. This would encourage employers to hire them.
- Encouraging women to take part in syndicates through enacting a quota system in the executive councils of those syndicates.

We are aware that gender discrimination used to take place during the implementation of laws and that it still does. Even if no anti-discrimination provisions exists, what is required is changing the mentality of society on one hand, and women's efforts exerted in proving their capabilities and qualifications in the work field, on the other hand.

Translated by Ahmad Ghaddar

The Implementation of a Women's Quota System in Lebanese Legislation

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Lebanon was among the first Arab countries to grant women suffrage rights in 1953. Its Constitution clearly stipulates that all its citizens have equal rights (Article 7)[1] and enjoy equal opportunities in all spheres of life (Article 12).[2] Yet after half a century of alleged political rights, it is surprising to find that female representation in the Lebanese parliament is still at a minimum. In the 2005 legislative elections, only six women out of the 128 members made it to parliament (4.7 percent), thus ranking Lebanon 125th (out of 138) on the IPU list.[3] For a country that prides itself on being among the pioneer Middle Eastern countries in the high proportion of women college graduates the above grading is quite 'degrading.' The late women's rights activist, Laure Moghaizel,[4] once exclaimed that all Lebanese women who enter parliament do so wearing black since they always run for a seat vacated by a deceased father or spouse.

Why has women's participation in Lebanese politics been so slow? Although analysis of its causes is beyond the scope of this article, suffice it to mention here that some attribute this lack of participation to the country's confessional system of representation, while others believe that in spite of its avant-garde profile, Lebanon is still cocooned in an extremely parochial and patriarchal system. Furthermore, a recent study on post-conflict societies has noted that since men are usually the warmongers, peace negotiations consequently further exclude women in post-war parliaments.[5] However, poor female representation in decision-making positions is not restricted to the Lebanese scene and is quite an international phenomenon since the actual global rate of female representation in national parliaments stands at an average of nearly 17.7 percent to date.[6]

Given this 'under-representation' of women in legislative circles, various international positive action measures have been proposed or implemented to address the present gender issue. To cite a few: The International Bill of Human Rights (1948) followed by the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979), culminating with Beijing 1995, all advocate equal political rights for women and the development of a mechanism that will ensure that women's voices are heard on decision-making platforms. One of the most powerful vehicles to ensure this is the 'quota system.'[7]

This article analyzes whether a quota system should be implemented in the Lebanese electoral law and whether such a step would be viewed as unconstitutional and undemocratic or as enforced 'positive discrimination.'[8]

What is the Quota System?
The core idea behind quota systems is to recruit women into political positions and to ensure that women are not isolated from political life. They usually set a target or minimum threshold for women and aim at ensuring that women constitute at least a 'critical minority' of 30 or 40 per cent in decision-making positions.

There are several types of quota systems[9] that may be enforced either through a constitutional quota for national parliaments, as election law quotas, or in the internal structures of political parties. To date 92 countries have implemented the quota system constitutionally, in legislative mandates or through voluntary political party quotas.[10]

When the Lebanese cabinet created a commission to propose a new electoral law in August 2005,[11] one of the commission's primary tasks included the study of the possibility of introducing the women's quota system. To get an objective viewpoint about all aspects of the electoral system, political parties, organizations, NGOs, and individuals were invited to present their proposals and to fill in a questionnaire with 18 points. Point 6 specifically asked: 'Are you in favor of introducing a women's quota system: a) as reserved seats in parliament (10-30 percent), b) on electoral lists c) against d) no opinion?' Of the 121 proposals presented, only 6 were by female organizations[12] or individual females. The results were as follows:

- 16.3 percent were in favor of implementing a 30 percent quota system in parliament as stipulated by Beijing and signed by Lebanon.
- 5.4 percent were in favor of a quota of 10-20 percent of seats in parliament.
- 23.9 percent were in favor of introducing a quota system on the electoral lists.
- 35.9 percent were categorically against any form of quota.
- 5.8 percent had no opinion on the matter.

In short, 46.5 percent were in favor of insuring some form of female representation either at the candidacy level or at the parliament level, for a temporary transitional period.

To further clarify the proposal with the questionnaire's multiple questions, the commission was invited to an open two-day discussion to debate all the proposals. One of the items on the agenda was specifically the issue of a women's quota. After a general introduction on the history, pros and cons of the quota system,[13] the discussion that ensued raised some of the following concerns:

The majority of those opposing any system of a women's quota argued that the Lebanese Constitution very clearly grants equal rights to all its citizens and hence the introduction of 'special favors' is highly unconstitutional and undemocratic.

Others argued that while the law grants women political rights, any substantial progress is hampered by the patriarchal confessional system, in addition to the financial constraints that make it impossible for women to pay the registration, campaigning and advertisement costs. In short, unless a quota system was imposed, women would never have a say in decision-making and Lebanon would never be able to honor its being a signatory of Beijing and CEDAW.

Would Introduction of a Quota System be Viewed as Unconstitutional and Undemocratic?
At the outset, it is important to revisit the concept of democracy and its modes of application in the twenty-first century. Although the ancient traditional Greek word defines democracy as the rule of the demos or the people, i.e. the majority, women in Athens were excluded from the right to vote. To Athenians, the principle of equality was only applicable in the public sphere of the polis and women formed part of the private sector (oikos).[14] During its work on a new electoral law for France, the Vedel Commission[15] stated that it is imperative to find a system that ensures parliamentary seats to groups that normally would not be capable of securing a majority. In systems like Lebanon where democracy is consensual, the rights and aspirations of permanent structural minorities,[16] including 'women,' have to be insured. It may, however, be argued that the female population of Lebanon constitutes 52 per cent of Lebanese population, and hence cannot be classified as a minority. Moreover, the Constitution does not bar women from their civil rights. While the Constitution in theory clearly grants women 'civil rights' and the right to political representation, in practice their civic status remains far from what is desired. Furthermore, it is simply not enough to have the right to vote. A mechanism should also be defined to designate the potential candidates and to facilitate the procedure by which they may be elected. [17] Why is it important that women participate in politics? Why should nations artificially accelerate the process and not wait for the natural course of time?

In the course of half a century of Lebanese parliamentary history, the number of women deputies has not exceeded six, with one exception at the ministerial level[18] and an almost total absence in the polit bureaux of political parties. This implies that the wait for a natural process and selection may be quite a long and frustrating experience. Thus there is a dire need for artificial intervention and acceleration, a step that will simply launch the process for a limited period, namely the enforcement of a quota sys-

tem, "for gender quotas are not the end, but the beginning of a process."[19]

Quota systems, a priori presume the existence of an imbalance in the legislative political structure. They are, therefore, an 'expression of impatience' for gender equity in the political sphere and a tool that provides a jump-start to begin correcting these imbalances. Furthermore, no country can claim to be truly democratic when 52 per cent of its population is marginalized. The UN report, *Women and Elections*,[20] clearly states: "Only when institutions are democratic and representative of all groups in society – women as well as men, minorities as well as majorities, the dispossessed as well as the affluent – are stable peace and national prosperity likely to be achieved."[21]

Furthermore, as previously mentioned, electoral rights mean much more than simply the right to vote. They also include freedom of expression, of assembly and association, freedom to take part in the conduct of public affairs, to hold office at all levels of government, etc… 'United Nations international human rights instruments affirm that women are entitled to enjoy all these rights and freedoms on the same level as men. Women's equal participation is therefore essential to the conduct of democratic elections.[22]

Because of all the above and because: "One of the most effective ways to ensure that women are elected to office is to require that party candidate lists be gender balanced or include a certain proportion of women,"[23] the Lebanese Commission proposed imposing a 30 per cent quota on all electoral lists for a temporary period of three electoral rounds (12 years). In other words, no electoral list will be registered unless it includes a minimum of one woman's name out of each three candidates. Furthermore, being aware that "more women tend to be elected under the proportional representation system,"[24] the Commission introduced a partial proportional system of voting alongside the conventional majority system that has so far been proven to be unfair to women's representation.

Women in National Parliaments

World Classification

			Lower or single House		
Rank	**Country**	**Elections**	**Seats***	**Women**	**% W**
1	Rwanda	09 2003	80	39	48.8
2	Sweden	09 2002	349	158	45.3
3	Norway	09 2005	169	64	37.9
4	Finland	03 2003	200	75	37.5
5	Denmark	02 2005	179	66	36.9
10	Belgium	05 2003	150	52	34.7
16	Iraq	01 2005	273	86	31.5
34	Tunisia	10 2004	189	43	22.8
63	Cyprus	05 2001	56	9	16.1
66	USA	11 2004	435	66	15.2
67	Israel	01 2003	120	18	15
81	France	06 2002	574	70	12.2
83	Syria	03 2003	250	30	12
90	Morocco	09 2002	325	35	10.8
98	Sudan	12 2000	360	35	9.7
118	Algeria	05 2002	389	24	6.2
121	Jordan	06 2003	110	6	5.5
125	Lebanon	05 2005	128	6	4.7
"	Libya	03 1997	760	36	4.7
126	Turkey	11 2002	550	24	4.4
127	Iran	02 2004	290	12	4.1
133	Egypt	11 2000	454	13	2.9
134	Oman	10 2003	83	2	2.4
135	Kuwait	07 2003	65	1	1.5
137	Yemen	04 2003	301	1	0.3
138	Bahrain	10 2002	40	0	0
"	Saudi Arabia	04 2005	150	0	0
"	UAE	02 2003	40	0	0

* Figures correspond to the number of seats currently filled in Parliament
Source: http://www.ipu.org/wmn-e/classif.htm

Could the Adoption of a Quota System be Dismissed by Parliament as Unconstitutional?

It is true that the Lebanese law stipulates in theory that all its citizens are equal, but in practice this equality has never been implemented. It may be argued, therefore, that any election that does not provide the opportunity for full and equal participation by women fails to comply with international obligations and standards[25] and any step that artificially and temporarily accelerates this process and realizes the Constitution should, therefore, be viewed as right and democratic.

Furthermore, Lebanon has ratified the CEDAW and Beijing conventions and these clearly state:[26]

> Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

The question to be asked here is: "If parliament ratifies the quota system, will this ratification and its implementation lead to the desired goals?" And is the Lebanese public ready for the change that insues? A recent study conducted by the Lebanese Women's Association[27] on the role of women in Lebanese elections clearly showed that 81 percent of respondents encouraged a women's quota system in parliament and 76 percent favored the nomination of women deputies to office.

Finally, although the quota system provides an official tool to facilitate women's participation in politics, the main responsibility for making use of it and using it efficiently remains the responsibility of women themselves. Unless full advantage is taken of these 'temporary measures,' and unless Lebanese women assume their active role in the political arena, Lebanon may soon lose its 125th position to get pushed further towards the bottom of the list alongside nations with the smallest number of women parliamentarians in the world.

Endnotes

* Arda A. Ekmekji is the only female member of the recently appointed Commission for a New Lebanese Electoral Law.
1. Article 7: All the Lebanese are equal before the law. They enjoy equal civil and political rights and are equally subjected to public charges and duties, without any distinction whatever.
2. Article 12: All Lebanese citizens are equally admitted to all public functions without any other cause for preference except their merit and competence and according to the conditions set by law. A special statute shall govern civil servants according to the administrations to which they belong.
3. International List of Women in Parliament (IPU, November 2005).
4. Laure Moghaizel, 1929-1997, lawyer and activist, author of *Women in the Lebanese Legislative System*, [Arabic], IWSAW, LAU, Beirut, 1985.
5. United Nations. March 2005. *Women & Elections. Guide to Promoting the Participation of Women in Elections*. p.8.
6. Inter-Parliamentary Union (www.ipu.org).
7. IDEA - International Institute for Democracy and Electoral Assistance (www.idea.int/).
8. See also Bunagan, Melanie Reyes, Ma. Dashell Yancha, "The Quota System: Women's Boon or Bane ?", in *Women Around the World*, (Editor: Sheila Espine-Villaluz)) A quarterly Publication of the Center for Legislative Development , April 2000, Vol. 1, No. 3.
9. Dahlerup, D. 1988. "From a small to a large minority: Women in Scandinavian politics," *Scandinavian Political Studies*, 11, pp. 275-98.
10. Global Database of Quotas for Women, A joint project of International IDEA and Stockholm University (www.idea.int/)
11.Cabinet Decision No 58 dated August 8, 2005.
12. It is important to note that two of these proposals were made by women's organizations that include at least 166 other organizations.
13. Session chaired by author of this article.
14. Marques-Pereira, B. 2003. *La Citoyenneté Politique des Femmes*. Armand Colin : Paris, p.15.
15. Extract from *Rapport sur le Problème de la réforme du mode de scrutin pour l'élection des députes*. (Report of the George Vedel Commission) February 1993.
16. Gérard, P. 1995. *Droit et Démocratie*, Publications des facultés universitaires Saint-Louis, Bruxelles, p. 212.
17. Martin, P. 1994. *Les Systèmes électoraux et les modes de Scrutin*. Montchrestien, Paris, p. 9.
18. The cabinet of Omar Karame in September 2004 included for the first time two women ministers.
19. See Women's Quotas in IDEA - International Institute for Democracy and Electoral Assistance (www.idea.int/)
20. Op. cit. United Nations.
21. ibid. p. 5.
22. ibid. p.10.
23. ibid. p. 36.
24. ibid. p. 24.
25. ibid. p. 10.
26. http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article4 clause 1
27. Maa Data (www.maadata.org) Report, January 2006.

Family Laws: The Changing and the Pseudo-Eternal

■ Najla Hamadeh

Dictates of Practical Efficiency and its Justification

Laws are a basic necessity of civilized living. They organize the various functions in society, ensure property rights, and aim to restrain transgression by stipulating to punish or rehabilitate transgressors. Laws also define the rights and responsibilities of each person vis-à-vis the state and with respect to other people. This is why they are an integral part, indeed a justification, of any theory of social contract.

But despite the crucial importance of regulating families, which constitute the basic building blocks of society, the law faces more difficulties in gaining access to the family than it does in acceding to other bigger more conspicuous social units. This is because the family's vigil to guard its privacy and its comparative smallness of size make it much more elusive and harder to control. Hence, ideologies that are very much into control, such as those of Plato's *Republic* and George Orwell's *1984* see the family as undesirable or 'ungood.'

Historically, the mode that societies chose for regulating or controlling the family took the form of giving dominance within it to the father/husband, so that he is held responsible for it in the eyes of society, while urging the family to regard him as its leader and primary decision maker. This form of organization or delegation of control by society was often enforced by family legislation.

But as law includes aspects other than the organizational that seek to control, family status laws are enmeshed in several practical and ethical problems that are ignored by the above one-sided consideration.

In the first place, as with all laws, family law is supposed to have a judicial or quasi-judicial function in accordance with the traditional role of courts as guardians of the weak and unprotected. By giving additional status to the physically stronger member of the family (father/husband), family status law further weakens the position of the weaker members of the family and exposes them to possible tyranny or cruelty.

In the second place, the justification of a law is frequently based on ethics (Tullock, p.4). Thus, critics and discussants of the law, as opposed to legal positivists who argue that the law is simply what is decreed by legislators, argue for, or critique, a law on the basis of how far it conforms to, or deviates from, ethical standards. If the moral stance is the one that leads to treating all human beings as equally entitled to happiness, dignity and freedom, then it would be difficult to justify the discrepancy in status between family members, especially between adults. Such discrepancy is opposed by believers in human rights, feminists and others who adopt trends of post-modernity. Others try to justify the traditional unegalitarian laws by supplying theories of philosophical anthropology that justify male superiority. Such theories overlook the practical aim behind giving precedence to men, essentializing male superiority and overlooking individual variation and any evidence of lived experience contrary to such theories. The history of civilization abounds with such theories from the time of Aristotle, whose enthusiasm for proving male superiority led him to blunders such as the claim that men have more teeth than women, to the modern times with Rousseau, Kant, Hegel, Freud, and many others.

For example, Freud considers women to be lacking in conscience (weaker super-ego) and in the power to sublimate. He also finds a difference in men's and women's emotional involvement with others, claiming that men are capable of loving the other as an other and women's love remains fixated in the narcissistic; i.e. that it is usually an extension of their self-love. Both of these Freudian differentiations between men and women are capable of justifying that men and not women should be in command of the family, as their superior conscience makes them better guardians of justice (rationality, fairness), and as their comparatively selfless love makes them more fit to be entrusted with the well-being of others.

Indeed the justification of existing forms of organization and of power have swayed common-sense beliefs about the difference between men and women so far, that even recent researchers could not evade its impact. For example, Garai and Scheinfeld (1968) describe a collection of measures on which women performed better than men as 'clerical abilities' rather than, say, 'superior ability at organization;' and Gray (1971) describes another category of activities on which women got higher scores than men as 'fearfulness' rather than, say, 'higher alertness' or 'quicker reflex.' Male superiority is taken so much for granted that the evidence of any female superiority is seen as a propensity towards excelling in subordination or towards the need to be protected.

It is to be remarked, however, that while some philosophical and other high-handed theories divest women of mental, moral and emotional equality with men, literature, even from ancient times, recognized women's full human stature, creating characters such as Antigone, Lady MacBeth, and Shehrazade.

The Law: Eternal or Modifiable

In the philosophy of law, we find two large groupings of positions concerning the actual and desired origin of, and rationale for, the law:

Some hold that law is, and ought to be, rationally or authoritatively construed and/or divinely revealed so that it may mould, or create or recreate society in a certain desired fashion. Others maintain that it is social norms and opinions that do, and should, create laws; and that laws must, and will, get changed and revised when society outgrows them.

1. Authoritarian views sometimes spring from ideologies and sometimes from religious beliefs. The champions of authoritarianism include Plato, St. Augustine, Peter the Great, Mustafa Kemal (Atatürk), as well as regimes like those of Saudi Arabia and of the recently dismantled Taliban of Afghanistan. These individuals and schools of thought and regimes believe that a system ought to be imposed on society in order to steer it towards an envisaged end. This end could be the 'eternal good,' an idealized 'Europeanization,' the kingdom of heaven on earth or the Garden of Eden in the afterlife as the one goal of this life.

The English philosopher and legislator Jeremy Bentham, and his disciples, have a philosophy of law that believes that reason, guided by the principle of universal and impartial utility, is the best legislator. Their philosophy was highly influential for some time, although the codes of law that Bentham drafted, whether for Tsarist Russia or for emerging Latin American republics, did not prove, upon application, to be very successful. The recently deceased American philosopher John Rawls proposes another rationalistic (Kantian) philosophy of law, setting a standard of Justice as Fairness based on two principles of justice, governing rights and opportunities as well as the distribution of wealth. His theory is claimed to constitute a standard that measures fairness analogous to the standard that measures ethics described in Kant's *Foundation (or Grounding) of the Metaphysics of Morals*.

Parallel to this trust in reason, there is the belief of many Islamic jurists that shari'a is the proper and the best ground of legislation. They consider shari'a as law par excellence and as an authoritative blueprint based on revelation (Anderson, p.3). Indeed religious bases of legislation tend, in general, to resist change. Thus, even Christianity, which has comparatively left 'what's Caesar's to Caesar' is still resisting changing the vow of obedience by the wife to her husband, despite the prevalence of an ideology of equality in Christendom.

2. Believers in Change: In criticizing the blind belief of some jurists in reason, Oliphant draws attention to the inevitable need to consider legal questions from the prag-

matic point of view, whenever "general principles lead to shockingly unfair results" (Oliphant, pp. 20-1). Justice Holmes attributes such a belief to an innate desire for a deceptive sense of mathematical exactitude that flatters the mind's longing for certainty and repose; and Dewy refers the rational or idealistic position to an aesthetic quality of the mind which responds to the form of symmetry of the syllogism and is cold to the apparent disorder of experimental thinking. He adds that the symmetrical is also favored because it involves less work.

Several critics of basing legislation on the authority of the absolute fixed dictates of reason insist that words, including concepts that are crucial to legislation, should always be understood in their context, since in different contexts they may have different meanings. Thus, terms like 'law,' 'right' and 'status' are ambiguous, having a commonsense meaning that is known but not understood, and a practical significance that derives from how much power the one whose 'right' or 'status' is being mentioned has, and from whether or not the one in charge of a law has the intention of, and the means to, implement it.

In criticizing those who profess commitment to an immutable *shari'a*, Anderson mentions that jurists of early Islam were perfectly free to go back to the basic sources and make their own deductions. He also points out that *shari'a* was never fully enforced, that a great deal of it is moral rather than legal and that a great deal of it has, from the beginning, been intermingled with local customs and modified by them (Anderson, pp. 2-5). Hassan Al-Turabi claims that while pretending to guard things as 'God's Word' intends them, men in charge of Islamic schools of jurisprudence (*madhaheb*) have been gradually taking away from women the rights that Islam gave to them (Al-Turabi, pp. 182-3). Hocking points out the interesting fact that although most codes were originally propounded by mystics and prophets, and although the mystic vision is an essential component of a life within the natural world, pure mystic vision vanishes out into meaninglessness and total impracticality (Hocking, pp. 270-1). This is perhaps why Christ instructed to separate what is Caesar's from what is God's. This also could be why Islam gave such weight to *shura* (discussion) and *ijma'* (consensus), as leeway to introducing the worldly dimension into divinely revealed law.

Nowadays, those who uphold the empirical and essentially democratic position include Sanigny, Ehrlich, Oliphant, Hart, and others, including some earlier and present-day Islamists. The Tunisian regime of Burghibah implicitly holds such a view regarding *shari'a* as is evidenced by its considering laws that permit polygyny to be no longer suitable for Muslim communities. Similarly, Inamullah Khan advises Muslims to follow the prophet's instruction when he says: "Knowledge is the property of the Muslim; seek for it wherever you find it" (Malik, p.3). Khan believes that the nineteenth and twentieth centuries witnessed the rediscovery of *ijtihad*, *ijma'* and *shura*, and that all those who obey the prophet should pursue these trends in legislating for their respective societies.

Freud considers women to be lacking in conscience (weaker super-ego) & in the power to sublimate

Those who believe that law ought to be the offspring of evolving social reality form the prominent and the largest trend among legislators in the industrial world. But in the so-called developing world, sometimes the opposite trend, which upholds the immutability of the law, still predominates, especially where family law is concerned. Friedmann observes that although some countries in the Islamic world have introduced changes in family law, changes in commercial and civil laws have evolved at a much faster pace (Friedmann, p.12). Indeed, even the clear dictates of the Qur'anic text, such as the prohibition of taking interest on money lent, have generally been ignored in most Islamic countries, where corporate law has long been secularized. Moreover, family jurisdiction is the only legal function still left to religious judges (*qadis*) and the only domain in which the older words and procedures in legislation and ruling are still preserved (Anderson, pp. 3-5).

Is this surprising in a world in which men and their interests rule? Isn't it a natural ruling of the interests and desires of patriarchy that allows men to have access to interest on their money and stay sole rulers of their families? Clearly, it is not because religion is more keen on restricting women than bankers and businessmen, but because bankers are powerful in policy making and women lack power and access to decision making that the desires and sometimes whims of the former are accommodated, while the latter are denied equity (see works of Aziza Al-Hibri, Mona Zulfikar, Mona Haddad-Yakan, and many other Islamist feminists).

Family Law and Change

Those who study the course of history recognize change as the norm in human development across time. Indeed the very notion of 'history' presupposes change in time and recognizes that it is only in the human context that events can happen not according to cyclic or accidental factors, but either according to purposeful planning or in the course of ongoing social or economic or other forms of change or development that leave earlier stages behind.

Since the family is the material of which society is made, no social change can happen without touching the family or being touched by it. Among those in charge of family laws, some want to guide change towards certain values and/or religious ideals and others want change either to keep up with scientific and other forms of progress, which is bound to create new situations and conditions, or for reasons having to do with ethics and equity. Often, those who oppose change do so for selfish ends having to do with their holding on to power. But, sometimes, when the pace of change is too fast, people fear it lest it obliterates their specific characteristics or causes them to lose their identity. Perhaps some like to leave decision making to some authority, whether political, religious or posing as the embodiment of reason. Why they opt to do so is another intricate question that may lead to probing psychological propensities, such as the desire to stay in the role of the cared-for child or the obedient soldier. But this discussion is not within the present scope.

It has often been the case, of old and currently, that rulers, especially totalitarian ones, tend to oppose change, for fear that it will lead to their loss of power or their being replaced. Friedmann observes, in this context, that modern dictatorships resemble older absolutism in their hostility to the separation of powers and in the concentration of as many functions of government in as few hands as possible (Friedmann, p.7). He goes on to say that authoritarian rule not only keeps the same faces [and pictures?] in power, but it also seeks to control education so as to inculcate in the rising generations the attitudes and beliefs of the older ones. Thus, the people may continue to, meekly or even enthusiastically, accept what the rulers, whose continuation in their positions rests on their posing as guardians of tradition or revelation, want them to accept.

Each Lebanese citizen finds himself/herself forced to be born, to get married & to die within a religious sect.

Women and Change (for better or worse)

It is important to note, however, that it is not just any change that is desirable, nor is change always one towards justice and equity. Recently some changes in family law were in the direction of giving women rights equal to those of men, but others were in the opposite direction. For example, what happened in Afghanistan during the rule of the Taliban was change in the direction of preventing girls from attending schools and forbidding women from working outside the house. In the Arab world, women yearn for equitable changes in family laws, but sometimes we fear changes that may set us further back. Thus, when in a lecture delivered in the context of seminars held in celebration of the centennial of The American University of Beirut (AUB), Ahmad Zaki Yamani claimed that *shari'a* = the Qur'an + what is true and valid of the sunna + "consensus of the community represented by its scholars and learned men," some women present, including myself, feared that the last item of the equation (in Yamani's Saudi society context) may become the source of more injustice to women. Other jurists' recommendations to instigate change, in that same conference, were conducive to more hopeful projections towards the future. Among these last were the above-mentioned contribution of Inamullah Khan and most markedly the progressive and perspicuous recommendation of Musa Al-Sadr. For, Al-Sadr said, in the context of expounding God's elevation of human beings: "Islam sanctifies all the human needs. It considers fulfilling such needs a form of worship and is displeased by neglecting or ignoring them" (Malik, p.161). The implication of this saying that everyone (including women) is required by God to attend to their needs and desires and to work for self-fulfillment and not just to serve family members, which is the traditional view, especially of religious authorities, fell on us women as a breath of fresh air and as an exhilarating promise of religious reform.

At the level of actual changes in family legislation, change towards more equity in family laws is taking place in many countries of the Arab and Islamic worlds, albeit at a far slower pace than it should. In Pakistan, a wife can now obtain a judicial divorce on the grounds of incompatibility. In Tunisia, the proclamation of Burghibah that polygyny, as well as slavery, were suited to the past times, but have grown to be obsolete, useless and unacceptable, inspired his party of Neo-Dastur to introduce various progressive modifications of family law. Law 44, known in Egypt as Jihan's law, was a step forward, which gave a booster and a horizon of hope to women's activism in seeking reform in family legislation.

A positive sign in the direction of procedural efficiency and higher professionalism is the unification of civil and religious courts, which took place in Egypt and Tunisia; for a qadi trained in modern law schools is more likely to have responsive and progressive ideas and is more capable of applying codified law than one researching some medieval texts could ever be (see some opinions in Round Table in this issue of *Al-Raida*; also Anderson, p.28).

In Lebanon

In Lebanon, changes in the laws of inheritance (1959) for non-Mohammedan sects and in custody 1991 (for Catholics) and 2003 (for Orthodox) in some Christian sects have taken place. Yet, other civil (e.g. nationality) and family laws (polygyny, custody and divorce, for Muslim sects) are lagging behind some other Arab and Islamic countries.

Resistance to change in family laws, in Lebanon, seems to derive from two basic reasons:
- On the side of those in power: Self interest prevailing over public interest and even over the cause of the very survival of society and of the country.
- On the side of the public: The lack of strong allegiance to, and belief in, Lebanon as a unified and integrated country, like any other.

Those Vested with Power

Entrusting the religious authorities of the various sects with family legislation is a practice that Lebanon inherited from the Ottoman Empire. But whereas the Ottomans, at the time, applied the millet system only to minority groups, and kept legislation for the mainstream Sunni Islam in the hands of the state, in Lebanon all are minorities falling under an outdated millet system. The millet system of the Ottomans was a major reason behind the crumbling of the empire, as it led to outside interference and to rifts between the interests of the minorities and those of the mainstream Sunni civil society. Similarly, the sectarian system in Lebanon has hitherto led to several civil wars and continued interference from outside, and, more dangerously, to the interests and allegiances of the Lebanese people going in various, often conflicting, directions.

Turkey learnt from its mistakes and installed civil family laws as far back as 1926, but Lebanon does not seem to want to learn this obvious lesson, either from others' experience or from its own!

Since the family is the material of which society is made, no social change can happen without touching the family or being touched by it

It is impossible to claim that politicians and religious authorities in Lebanon fail to be cognizant of the great risk to the country inherent in such a division-engendering and progress-preventing practice as that of subjecting the numerous sects to varied laws, kept under the jurisdiction of sheikhs and priests. But it seems that often those in charge are more concerned about their selfish aims of reaching power, or keeping it by the most immediately accessible means (emotional appeal to the masses and to self-serving religious authority) than about their responsibility for the viability, peace and unification of the country.

Moreover, the sectarian politics, that cause politicians to vie for the favor of constituencies divided along sectarian lines, cause them to uphold the existing laws of the sect, no matter what their beliefs are or what common sense clearly dictates. This is why almost everyone holding religious or political power posts opposed the optional civil law marriage proposed by President Hrawi in 1996. Even leading women's NGOs, whose very raison d'être is fighting for women's rights, did not dare to openly support Hrawi's proposed law for fear of loss of popularity with powerful leaders of the sects, religious as well as political.

It is well known that the masses are more easily swayed by emotional reasons having to do with their sense of identity and with their inherited beliefs and traditions than by ideas that seek progress and preempt civil wars and fragmentation. This is probably why, till now, the predominant trend among politicians seems to have been the choice of the easier access to popularity and votes by each embracing his/her respective sect rather than working to educate, and truly lead, constituencies towards what gives the country stability and allows it to move on, on the road of progress.

More understandably, the predominant trend among religious authorities has been to encourage adherence to the small religious and sectarian differences, thus to enhancing their own power and to making themselves indispensable. There are, of course, exceptions. Those exceptions make one wonder why Abdallah Al-Alayli was prevented from acceding to the position of mufti, and his books disappeared from the bookstores. Why was Gregoire Haddad bypassed by church promotions; and why did Musa Al-Sadr disappear? Was it simply coincidence that removed from the arena of religious power these three figures distinguished by rationality, tolerance and openness to change and to other religions and sects?

The General Public

Each Lebanese citizen finds himself/herself forced to be born, to get married and to die within a religious sect. Moreover, most Lebanese citizens need the support of the leader (*za'im*) of their respective sects in order to get a job in the government or in most other sectors. During the recent civil war many used such clientalism to free their imprisoned husbands or children or to liberate their occupied homes or to get their fair share of indemnity to restore their war-damaged property. Maybe some citizens do not know better than to adhere to their sect and nothing beyond it, but even those who know better are forced to pretend to have a narrow-minded view of their religious belief and to adhere to every command of the religious authority or party or *za'im* in order to get by in this highly sectarian set up.

This situation, between political leaders who espouse the stance of religious prejudice and pose as defenders and champions of their own religious sects, and citizens who need religious leaders or political representatives of their sects in order to get by, is a chicken-egg situation. It is hard to tell how things will be made to change (since change they must, unless we are living outside history).

Will the leaders start to do their ethico-political duty? Or will the people, or some from among them, start working to raise the level of popular consciousness in order to liberate the country from sectarian division and liberate the family from archaic judgments that create a lot of senseless suffering and humiliation?

If family laws derive originally from a practical aim towards efficiency, the Lebanese situation of having 18 different forms of family laws that often clash with civil laws and international ratified agreements is the acme of impracticality and inefficiency. And if laws in general need to be changed in order to accommodate changing circumstances and to get cleansed from injustice and other breeches of the currently recognized moral standards, the ones to change them are rarely other than those who suffer the injustice. This is because power strategy often interferes with legislation and with the theoretical justification of legislation. Thus, family law cannot be expected to become fair to women until women take part in law-making and in the coining of anthropological theories that support legislation, including religious jurisprudence and the interpretation or reinterpretation of religious texts.

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Reforming Family Laws to Promote Progress in the Middle East and North Africa

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The issue of women's rights is gaining prominence in policy debates, as pressure for democracy in the Middle East and North Africa region (MENA) continues to grow. Area experts contend that a larger role for women in the economy and society is vital to the region's progress. But women in MENA still face gender discrimination that prevents them from reaching their potential, despite their impressive gains in education and health.

To varying degrees across MENA countries, discrimination against women is built into the culture, government policies, and legal frameworks. In particular, the region's family laws codify discrimination against women and girls, placing them in a subordinate position to men within the family – a position then replicated in the economy and society.

This brief highlights recent trends in women's activism and family law reform in the MENA region, with a spotlight on Morocco, which recently adopted an entirely new family law. The new Moroccan law is consistent with the spirit of Islam, yet based on equal rights for both men and women. That a feminist campaign succeeded in altering family law in a MENA country where laws are based on the *shari'a*, or Islamic law, shows how effective coalitions can be built in MENA countries by linking social and economic development to women's rights.

The Costs of Discrimination

Academic and policy-oriented studies have identified chronic gender inequalities in the MENA region as major obstacles to progress in economic and human development. A decade ago, researchers argued that the low participation of women in the labor force hindered both economic development and women's participation in society. A more recent study found that women's underrepresentation in the workforce explains why MENA countries lack the capacity to meet the challenges of globalization.[1]

The *2002 Arab Human Development Report*, the first in a landmark series prepared entirely by Arab scholars, concluded that the region suffered from fundamental deficits in three areas: knowledge, political rights, and women's rights. The *2004 Arab Human Development Report* warns that laws and practices doubly exclude women. While governments have made some efforts to raise women's status, success remains limited, according to the report.[2]

A recent report by the World Economic Forum argued that countries that do not fully take advantage of one-half the talent in their populations are misallocating human resources. The report ranked Egypt at the bottom (58th) and Jordan 55th, based on an analysis of gender gaps in economic and political participation, educational attainment, and health and well-being in 58 countries around the world. Egypt and Jordan were the only MENA countries included in the study.[3]

A World Bank report on gender and development in the Middle East points out that not only are young women in MENA healthier and more educated than their mothers, but the generational improvement has been greater than that in any other major world region. Still, women in MENA face greater obstacles finding jobs and playing active public roles in their society than women elsewhere.[4]

Some scholars link women's relatively low levels of employment to the oil economy and relatively high wages, while others have emphasized state policies, culture, and social institutions such as the region's family laws. As noted in the UN report on the progress of Arab women 2004, many women have no option but to accept patriarchal family structures that limit their ability to participate in both the economic and political realms.[5]

The Global Agenda for Empowering Women

Gender discrimination in the MENA region also prevents women from attaining the standards set by the global women's rights agenda (see Box 1). The 'empowerment of women' and the realization of women's human rights were centerpieces of the Beijing Platform for Action, the official document adopted at the United Nations Fourth World Conference on Women in 1995.

The 1995 conference spawned much research and debate on women's empowerment: According to one perspective, women's empowerment is a process that challenges and transforms the patriarchal beliefs and institutions that reinforce and perpetuate women's inequality.[6] Another study sees empowerment as a broader process aimed at achieving legal rights and participation in key social, economic, political, and cultural domains.[7] Thus, women's empowerment is not confined to gains in access to education and employment. It may also encompass progress in political participation, cultural expression, and equitable legal rights.

In 2000, gender equality and women's empowerment were adopted by the United Nations as the third of eight Millennium Development Goals (MDGs) aimed at combating poverty and enhancing human development. One measure of progress for this goal is the proportion of seats in national parliaments held by women. The MENA region lags well behind other regions by this measure, despite some progress.[8]

Gender discrimination is hardly specific to the Middle East; it can be found across the globe. But the gap between men's and women's rights is most visible in MENA countries, where there is greater resistance to closing that gap. The resistance stems in large part from the distinctive way that MENA countries have institutionalized gender discrimination, subjecting women to legal forms of discrimination in addition to patriarchal attitudes and practices.

Family Laws in Need of Reform

Discrimination against women is built into the region's family laws, also known as personal status laws, and in the penal codes of some of the region's countries. Family laws govern marriage, divorce, maintenance, paternity, custody of children, and inheritance. With the exception of Turkey and Tunisia, where family laws are drawn from mostly secular sources, family laws in MENA countries are mainly or solely based on the *shari'a*. The traditional interpretations of the *sharia* differentiate between men and women in the allocation of rights and responsibilities and typically place women in the position of minor and dependent.[9]

Besides patriarchal attitudes, codified restrictions limit women's mobility and privileges granted to male kin, notably 'guardianship' over women. Men's guardianship over women in the family is then replicated in male authority over women in all areas of decision making in the public sphere. Women's interactions with the state and society are thus often determined and mediated through their husbands, fathers, brothers, or other male relatives.

A woman's position as a dependent of her male guardian is used to justify her second-class citizenship. Traditional interpretations of Muslim family law require a woman to obtain the permission from her father, husband, or other male guardian not only to marry, but also to seek employment, a business, travel, or open a bank account for a child. In Iran and Jordan, for example, a husband has the legal right to forbid his wife or unmarried daughter to seek employment or stay in a job. While wives who are educated and politically aware may stipulate in their marriage contracts that they be allowed to work, many wives make no such stipulations. And if the issue is contested, courts often side with the husband.[10]

Traditional Muslim family law seeks to treat husbands and wives equitably. For example, because the law gives men the right to unilateral divorce, the groom must pay the bride a sum of money, or *mahr*, that both families agree to. While part or all of it can be paid at the time of the marriage, the *mahr* is generally deferred and paid only in the event of divorce. A husband is also legally and culturally obligated to provide for his wife and children. Indeed, a husband's failure to support his wife is grounds for divorce. In return for *nafaqa*, or the husband's economic support, the wife has to obey her husband (*tamkin*). A wife is under no obligation to share any wealth or earnings with her husband or contribute to the family economy. She is not even required to perform household labor or childcare. In principle, she must be paid for what are considered services rendered to her husband.

Such practices and norms may have been progressive in the medieval era, but today they symbolize women's economic dependence on their male relatives and inequality in economic and legal affairs. In making women dependents of men and minors within the family, the traditional interpretations of the *shari'a* that form the basis of family laws have strengthened the male breadwinner/female homemaker ideal.

For example, the Jordanian Civil Status Law requires that all official transactions be recorded in a *daftar*, or 'family book.' Nearly all contact with the government must be recorded in the *daftar*, including voting, registering children for school or university, acquiring civil service jobs, or receiving social services such as food assistance. A woman remains in her father's family book until she is married. Then she is transferred into her husband's family book. Recent legislation has modified the law in Jordan to allow women to start their own *daftar* if they are divorced or widowed.

Guardianship, a man's exclusive right to polygamy, unilateral divorce, and a woman's smaller share of inheritance are all inscribed in the family laws. For many in the region, these practices do not conform to twenty-first century sensibilities and realities. But others consider the family laws divinely inspired and therefore fiercely contest any changes.

Reform Efforts

Inspired by international human rights conventions, MENA women activists and their supporters are now also looking to the Qur'an and the Sunnah, the sayings and deeds of the Prophet Mohammad and his Companions, in order to develop new interpretations of the family law. These activists believe that Islam is at heart egalitarian, and that parts of the *shari'a* codified in family laws were interpretations by men whose views were rooted in the patriarchal traditions of the time.

Throughout the region, women's organizations have placed priority on changing personal status laws to grant women more rights and equality within the family. They also have campaigned for the criminalization of domestic violence (including 'honor crimes'), equality of nationality rights, and greater opportunities for political and economic participation. Their research, advocacy, and lobbying efforts are directed at their governments, clergy, the media, and international organizations. And their arguments are based on principles related to human rights, international conventions, the global women's rights agenda, and a kind of 'Islamic feminist' rereading of the religious sources. They also have appealed to governments to make their domestic policies conform to international conventions, such as the United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW - see Box 2) and the Beijing Platform for Action.

The reform of family law is therefore important for several reasons:

- It is a central element in the modernization of religious institutions and norms in Muslim societies.
- It establishes women's human rights and their equality within the family and vis-à-vis male kin.
- It has implications for women's wider citizenship rights and their social participation, including economic rights.

Box 1 Where MENA Countries Stand on Women's Rights

In a recent review of women's rights in Arab countries of the MENA region, TunIsia ranked at the top, followed by Morocco. The findings are the result of an intensive 20-month-long research process by a team of 40 leading scholars, analysts, and women's rights experts, including those from the region. After a committee of specialists on the Middle East, human rights, and Islamic laws and norms developed the methods for the study, Freedom House, a non-profit organization that promotes democracy and freedom, commissioned the country studies in 2003.

The researchers assessed how women fared in each country in terms of nondiscrimination and access to justice; autonomy, security and freedom of the person; economic rights and equal opportunity; political rights and civic voice; and social and cultural rights. These indicators of women's citizenship and rights are consistent with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Beijing Platform for Action, as well as with the Universal Declaration of Human Rights and other international human rights conventions.

The study produced individual country reports and a summary report providing a comparative review of women's rights across the region (see table). The countries were rated on a scale of 1 to 5, with 1 signifying the weakest performance and 5 the strongest. The study does not provide a comparison with countries outside the region.

Country	Nondiscrimination and access to Justice	Autonomy security, and freedom of the person	Economic rights and equal opportunity	Political rights and civic voice	Social and cultural rights
Algeria	3.0	2.4	2.8	3.0	2.9
Bahrain	2.2	2.3	2.9	2.1	2.8
Egypt	3.0	2.8	2.8	2.7	2.4
Iraq	2.7	2.6	2.8	2.2	2.1
Jordan	2.4	2.4	2.8	2.8	2.5
Kuwait	1.9	2.2	2.9	1.4	2.8
Lebanon	2.8	2.9	2.8	2.9	2.9
Libya	2.3	2.1	2.3	1.2	1.8
Morocco*	3.2	3.2	3.1	3.0	3.0
Oman	2.0	2.1	2.7	1.2	2.1
Palestine**	2.6	2.7	2.8	2.6	2.9
Qatar	2.0	2.1	2.8	1.7	2.5
Saudi Arabia	1.2	1.1	1.4	1.0	1.6
Syria	2.7	2.2	2.8	2.2	2.3
Tunisia	3.6	3.4	3.1	2.8	3.3
UAE	1.7	2.1	2.8	1.2	2.3
Yemen	2.4	2.3	2.3	2.6	2.1

* The study covers development up through the end of 2003. It does not take into account the new developments in Moroccan family law reforms.
** Refers to the Palestinian population living in Gaza and the West Bank (including East Jerusalem).
Source: Freedom House, "Women's Rights in the Middle East and North Africa: Citizenship and Justice" (www.freedomhouse.org, accessed September 23, 2005).

Box 2 An International Bill of Rights for Women

The United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), known as the international bill of rights for women, is the cornerstone of international efforts to advance the status of women. CEDAW establishes a framework for national actions that promote equal rights for men and women. The convention is based on international human rights agreements.

CEDAW was adopted by the UN General Assembly in 1979 and became a binding treaty in 1981. Countries that have signed it commit to undertake a series of measures to end all forms of discrimination against women, including:

- Incorporating the principle of equality of men and women in their legal system, abolishing all discriminatory laws, and adopting laws prohibiting discrimination against women;
- Establishing tribunals and other public institutions to ensure women are effectively protected against discrimination; and
- Ensuring the elimination of all acts of discrimination against women by persons, organizations, or enterprises.

Aside from civil rights issues, the convention also devotes major attention to women's reproductive rights. The preamble sets the tone by stating that 'the role of women in procreation should not be a basis for discrimination.'

As of March 2005, about 90 percent of the UN member states had joined the treaty. In 1981, Egypt was the first MENA country to do so and the United Arab Emirates became the last to join in 2004 (see table). All MENA countries joining the treaty, however, had reservations to some important articles. As a result, they refused to recognize their duty to implement them, thereby undermining the power and universal validity of the Convention. Most of the reservations pertain to articles that deal with family laws, particularly those related to women's rights within the family and women's nationality rights. Saudi Arabia signed with a blanket statement that it would not observe any article that in their view contradicted the *shari'a*.

REFERENCE: United Nations High Commissioner on Human Rights, Declaration on the Elimination of Discrimination Against Women, accessed online at www.unhchr.ch, on July 15, 2004.

	Year Joined CEDAW
Algeria	1996
Bahrain	2002
Egypt	1981
Iraq	1986
Jordan	1992
Lebanon	1997
Libya	1989
Morocco	1993
Saudi Arabia	2000
Syria	2003
Tunisia	1985
United Arab Emirates	2004
Yemen	1984

• It brings the MENA region in line with international norms and codes enshrined in such conventions as the Universal Declaration on Human Rights, the CEDAW, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the Beijing Declaration and Platform for Action.

The numbers and types of women's organizations that support these changes are increasing. At least seven types of women's groups have emerged in MENA countries. They include service or charitable organizations, official or state-affiliated women's organizations, professional associations, women's studies centers, women's rights or feminist organizations, nongovernmental organizations working on women's and development issues, and worker-based or grassroots women's groups.[11]

A Major Step Forward in Morocco

The Moroccan *mudawana*, or family code, was drafted in 1957, based mainly on the Maliki School of Islamic jurisprudence. Despite major resistance, a few amendments were enacted in 1993 – demonstrating that the *mudawana* was not fixed and could be changed. The amendments limited the guardian's control and emphasized that a woman should give her consent and sign her marriage contract; allowed women over age 21 who did not have a father to contract their own marriage without a guardian; and stipulated that before taking a second wife, a husband needs to inform his first wife. The mother was given the right to legally represent her children if their father died, but she still could not dispose of the children's property.

However, the *mudawana* continued to treat women as subordinate to men: There were double standards in child custody and divorce, for example. And with social change in Morocco, including women's rising employment, the *mudawana* increasingly became outdated. What is more, violence and harassment against women seemed to be increasing and needed to be addressed.

As Moroccan civil society became increasingly organized and more women's associations were formed, a movement began to raise awareness about women's rights. The appointment in 1998 of a progressive prime minister and a minister of women and family affairs who was committed to women's rights led to the formulation of the National Action Plan for the Integration of Women in Development, which called for reforming the *mudawana*. Sustained hostility from religious fundamentalist groups put the plan on the back burner, but the women's organizations and their allies in government pressed ahead. In the 2002 elections, 35 women entered the Moroccan parliament, assisted by a new quota system adopted by the political parties.

Meanwhile, King Mohammad VI, who was personally committed to women's rights, appointed a royal commission to advise him on the family law. Women's rights organizations organized a series of workshops, roundtables, and discussion groups to analyze the details of the draft legislation, renew their efforts to educate the public, and lobby the Parliament for what they argued would be reforms to promote the well-being of women, children, and the family.

Box 3 **Features of the New Family Law in Morocco**

The campaign to reform the Moroccan family code, or *mudawana*, has been the work of more than a decade. The reforms reflect a new path between traditionalists and women's rights activists. The main features of the new Moroccan family law are:

- Husband and wife share joint responsibility for the family.
- The wife is no longer legally obliged to obey her husband.
- The adult woman is entitled to self-guardianship and may exercise it freely and independently.
- The right to divorce is a prerogative of both men and women, exercised under judicial supervision.
- The principle of divorce by mutual consent is established.
- The woman has the right to impose a condition in the marriage contract requiring that her husband refrain from taking other wives.
- If there is no pre-established condition in their marriage contract, the first wife must be informed of her husband's intention to remarry, the second wife must be informed that her husband-to-be is already married, and the first wife can ask for divorce due to harm suffered.
- Polygamy is subject to the judge's authorization and to stringent legal conditions (no objection by the first wife) that make the practice nearly impossible.
- In the case of divorce, the woman is given the possibility of retaining custody of her child even upon remarrying or moving out of the area where her ex-husband lives.
- The child's right to acknowledgment of paternity is protected in cases where the marriage has not been officially registered.
- For both men and women, the minimum legal age of marriage is 18 years.

REFERENCE: Women's Learning Partnership, "Morocco Adopts Landmark Family Law Supporting Women's Equality," accessed online at www.learningpartnership.org, on July 13, 2004.

In October 2003, in his capacity as Commander of the Faithful, the King announced a new family code, which he asserted was consistent with the spirit of the *shari'a*, and then sent it to the parliament. This code, which parliament passed in January 2004, has been heralded as not only a giant leap in women's rights, but also a huge advance in children's rights (see Box 3).[12]

The Moroccan case is a striking example of how women's rights advocates can build coalitions to generate social dialogue, affect key policy debates, help reform laws, and change public policy. Morocco now joins Tunisia and Turkey as the only countries in the MENA region where the husband and wife share responsibility for the family.[13]

Whether this new law makes a real difference depends on how far and how well it can be translated into practice. Will average women become aware of their new rights? And will they be sufficiently empowered to take action if the need arises? Is the country's judiciary system ready for the change? Many challenges remain, not least of which is religious fundamentalists' resistance to implementing the new family code.

Both the state and civil society must now actively raise awareness about the new law and women's new rights through education, media campaigns, and other activities, which could take years. Efforts are already beginning to address some of these challenges and support the reformed family code in Morocco: New family courts have been established, training for the judiciary has been improved, and women can be appointed as family judges.

Morocco's case is remarkable, because a feminist campaign succeeded in breaking the long taboo against touching the *mudawana* – and this in a very conservative culture. The success of women's rights organizations derived partly from their strategic use of Islamic sources to defend their case for a more contemporary interpretation of *shari'a* to frame the new family law. Arguments about the need to fully involve women in all aspects of public life in order to further socioeconomic development also helped advance their cause.

The Moroccan experience shows that change is possible. Through collective action involving civil society and progressive government, even the most entrenched laws can be revised to improve the lives of women and to advance society as a whole.

In Morocco, the long campaign to improve women's status has been an entirely domestic matter. While Moroccan women's rights groups clearly benefited from a global environment conducive to women's rights, their decade-long struggle was carried out and won through their own efforts. The Moroccan success story certainly can be replicated in other countries, though not in exactly the same way. Moroccan women had the advantage of a sympathetic and supportive political leadership, a factor not present in all the countries in the region.

Other Countries Take Smaller Steps

While the pressure to reform family law has been felt across the region, other countries' efforts to remove discriminatory laws against women have been largely piecemeal. In 2000, after much national debate, the Egyptian parliament passed a new law that changed procedures associated with the personal status law. The law – known as *khul'* – gives a woman the equal right to seek a divorce without the consent of her spouse, but only if she gives up some of her financial rights. Opposition groups contested the legality of the *khul'* claiming that it violated the *shari'a*, but in 2002 the Supreme Constitutional Court issued an important judgment confirming that *khul'* is constitutional.[14]

Forfeiting financial rights in exchange for the right to seek divorce can be especially hard on low-income women or those without any employment experience. For that reason, some women's rights advocates remain critical of the new law. However, supporters of *khul'* see the new procedure as a rational interpretation of Islam. They argue that it provides an opening for those women whose divorce cases have dragged on for years in the court system or whose suits could be denied.

Because they are less sensitive than issues of divorce, child custody, or inheritance, laws related to a child's right to inherit his or her mothers' nationality are generally among the first family laws that women and child advocates seek to reform. In 2004, Egypt and Algeria gave women the right to pass on their citizenship to their children regardless of the father's nationality. These changes related to nationality rights are part of a regional campaign to allow mothers to pass on their citizenship to their children. With the backing of not only local advocacy groups, but also non-governmental organizations and government officials, other countries, such as Bahrain, Jordan, Lebanon, Palestine, and Yemen, are participating in the campaign, making reforms more likely in the near future.[15]

Conclusion

Societies pay a price for discriminating against women, and social and economic development is best served by the

active participation of both sexes. To reach that goal in MENA, governments need to reform a number of policies and laws, including the family laws. Women's rights advocates are calling for the reform of family laws because the laws give men privileges, while discriminating against women. The laws are anachronistic at a time when women's roles are expanding in the family and in society. Because Muslim family law is said to derive from the *sharia*, any reform process requires strong political support, sensitivity to religious sentiments, and assurances to the public that the changes are in accord with family values and Islamic norms of justice. This is the strategy that was adopted in Morocco's successful reform of its *mudawana* – a pioneering move for an Islamic country that could spark change throughout the region and beyond.

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Acknowledgments

This report was prepared by Valentine Moghadam, chief of the gender section at the Social and Human Sciences sector of the UNESCO office in Paris, and Farzaneh Roudi-Fahimi, senior policy analyst at the Population Reference Bureau (PRB), with assistance from PRB staff. Thanks are due to the following people who reviewed drafts of this report: Carla Maklouf-Obermeyer of the World Health Organization in Geneva, Simel Esim of the International Labor Organization's regional office in Beirut, Nadereh Chamlou of the World Bank in Washington, D.C., Fatima Sadiqi of the University of Fez in Morocco, and Lori Ashford and Nancy Yinger of PRB.

This work has been funded by the Ford Foundation office in Cairo.

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Forthcoming:
Female Criminality in the Arab World

Round Table
Personal Status Laws

■ Myriam Sfeir
Assistant Editor, Al-Raida

Personal Status Laws were the subject of a round table discussion held at the Institute for Women's Studies in the Arab World in January 2005. The participants were Dr. Bechir Bilani, Attorney at law, Mohammad Matar, Attorney at law, Ahmad El-Zein, Attorney at law, Judge Arlette Juraysati, and Dr. Ibrahim Najjar. The moderator was Dr. Najla Hamadeh. Also present were Dr. Dima Dabbous-Sensenig, Acting Director of the Institute for Women's Studies in the Arab World, and Myriam Sfeir, Assistant Editor of *Al-Raida*.

Questions:

1. Bearing in mind the rigidity of religious laws and the domination of government or official authority over civil legislation, which of the two types of law would yield fairer family laws? Which of the two types is in the interest of the general public?
2. In a society where the authority of the state and its institutions is weak in comparison with that of religious figures, is it better to keep the implementation of laws in the hands of religious courts rather than in those of civil courts?
3. Which courts are more susceptible to corruption and more compliant with the dominant forces, the religious or the civil?
4. What are the implications of the existence of different personal status codes on citizenship and national unity?
5. How does the discrimination between men and women in legislation affect each of men, women and children?

Answers:

Arlete Juraysati: The answer to your questions is evident: We need to impose a civil law in Lebanon. I believe it is the only solution. Family laws are very biased. I have come across very many cases of abuse and discrimination against women during the past 30 years. Being a judge, people trusted and confided in me, and with time I realized that discrimination against women is not a class issue, it is as widespread among the rich as among the poor. Based on my experience, I can assure you that all discriminatory laws against women will disappear upon imposing a civil law. Civil laws are egalitarian in nature. They equate between men and women. Let's face it, Muslim as well as Christian religious personal status codes regard women as the property of the husband and treat them as minors. For instance, if a woman's husband passes away, her in-laws and brother-in-law are considered legal guardians over her children. Not only are personal status codes very unfair, but also religious courts are very corrupt. I am not saying that civil courts are perfect or ideal, but they are comparatively more knowledgeable in justice procedures and less biased.

Mohammad Matar: In answer to the first question, I believe civil courts rather than religious courts ought to oversee family matters for several reasons. First of all, if we are eager to bring about a legitimate and correct civil society in Lebanon, and if we are to abide by the Lebanese Constitution which categorizes Lebanon as a civil rather than a religious country, then we must relegate all matters related to family law to civil courts. In this context, it is important to observe that the revised Constitution of 1990 declares Lebanon a republic with a multiparty system based on multiple religious groups. Moreover, the Taif Accord stipulates that all sects in Lebanon ought to respect each other. However, the taif and other Lebanese legislation failed to prioritize personal and individual freedom over religious laws. I am a firm believer in personal freedom and choice. Hence, given that Lebanon is a civil country, it must adopt a positive law rather than a religious one. There is no harm in having religious laws and consulting Muslim and Christian sources of legislation. However, laws ought to be civil and lawyers should be trained in civil matters, though I believe they have to be knowledgeable in religious laws as well. The advantage of having positive laws is that civil laws can be amended, whereas religious laws are immutable and unchangeable. The inheritance laws for Muslims are a good example of the impracticality of applying fixed laws to changing social dynamics. In general, codes of personal status rarely change despite changes in circumstances and conditions. Yet, here I would like to give an example that proves otherwise. During the Ottoman Empire reforms were suggested and there were amendments in the law that governs Amiri lands (crown lands). The law was modified so that women could inherit equally to men.

If there is one society in Lebanon then there should be one unified law that governs family matters. For example, custody issues are general societal concerns that should be unified and not associated with religion. As it is, the laws that govern custody matters differ among the various religious sects in Lebanon.

AJ: This limits individual liberty which is recognized and sanctioned by the Lebanese Constitution. Why am I obliged to abide by religious laws? Why should the personal status laws formulated by my sect govern me? Where is my freedom of thought? Why are my human rights curtailed? Why should I be stigmatized or labeled since birth as belonging to a specific sect? Why am I obliged to lead my life in accordance with the rulings of my sect? Let us face it, religion-based personal status laws are the laws that mostly emphasize inequalities between men and women. Hence, alternative laws should be drafted.

Ibrahim Najjar: It is important to define what we mean by family laws. They are laws that govern marriage, alimony, divorce, custody, filiation (*bounoue)* and, inheritance, for Muslims. Religious laws differ between Christians and Muslims. It is very difficult to change or modernize (*noutawir*) Islamic *shari'a* and jurisprudence because the laws that govern the family are mostly related to faith. Islamic shari'a originates from a sacred text that is supposed to govern all time. *Shari'a* law aims at regulating religion as well as all aspects of social and political life.

Because of their 'sacred' origins very many family laws are immutable and no matter how hard legislators try to reform them, they can't change them much. The Jaafari school of law, however, is more liberal than the Hanafi one because the former didn't "close the door of exegesis (*ijtihad*) or interpretation."[1] Jaafari jurisprudence is subject to reform where new *fatwas*[2] or religious edicts are constantly introduced. If it is possible to amend *shari'a* law, the problem remains "who has the right to reform these laws?" Unfortunately, there is no uniform method to determine who can issue a valid *fatwa* and who cannot, and upon whom such *fatwas* are binding. Is a *fatwa* from Al-Azhar binding?

Among Christians one can modernize theology and religious ordinance. Yet, who is allowed to do that? The Vatican can do it only for Catholics. However, this proved very tricky in Lebanon. When the Vatican, in 1991, issued the rules and regulations that apply to Catholics, the Catholics in Lebanon started applying these laws. Yet, the government had no notion that the laws were amended and they were being applied!

In 1951 the Lebanese government asked the different sects to submit a draft law regarding personal status laws. All the sects complied and submitted drafts. But, the proposals contained very many inconsistencies and gaps. This impelled the Lebanese government to disregard them. Also, in 1993, the Orthodox Church presented a new personal status law. This, also was so full of errors and discrepancies that the courts were – and still are – unable to apply it. For instance, they amended the custody law by raising the custody age to 14 years for both sexes. However, applying the newly amended law was problematic because of certain ambiguities: Is the law relevant to the present only or does it have a retroactive effect? Does it apply to divorce cases settled prior to the amendment of the law? Unfortunately, there are very many problems that were not addressed when the laws were amended.

NH: From the general trend of things, one suspects that what impeded implementation of this modernized law

was more its being favorable to women than its being 'ambiguous.'

IN: I believe that Islamic *shari'a* is immaculate in its drafting. There is excellence in drafting laws within Islam to an extent that Christians, for the past four decades, adopted and applied Islamic *shari'a* in matters related to inheritance.

NH: They did because it favored men.

IN: We need to recognize that laws are not promulgated from nil. They are the result of historical development. Prior to the advent of Islam, female infanticide was the norm. Hence, the teachings of Islam were very revolutionary. Islam introduced guidelines that regulated one's whole life. Yet, with the passage of time these rules and regulations were no longer capable of accommodating new contexts and changing needs and conditions.

Ahmad El-Zein: One should keep in mind and adopt the 'general principle rule' or *al-qa'ida el kulliya*.[3]

IN: I would propose creating a new sect, i.e. 'the non-religious sect' that is governed by civil laws. It is a secular sect that is governed by implications of previous solutions to the conflicts arising from ambiguous laws. Hence, the same rules that apply to the different sects in Lebanon apply to it.

We live this schizophrenia in laws daily in Lebanon and that is why I am raising this issue. Before we say let's see if civil laws are better than religious laws, we have to see where we can modernize gradually in order to cope with changing trends and new situations.

Let me give you an example: I recently handled a divorce case where a husband divorced his wife without her knowledge. The wife had no notion of the divorce and was not informed of the ruling (*hikm*) in order to be able to appeal. This divorce case was considered as a regular divorce although she was divorced in absentia. The divorce was finalized in a single session, and within one hour the registry bureau (*qalam*) gave the husband a copy of the ruling permitting enforcement (*sourat salihat lil tanfeez*). The husband took the paper to the personal status registries and registered the divorce. He then took the kids and refused to let the mother see them. Even though she appealed, my client – who is an American citizen married to a Lebanese Muslim – was not allowed to see her children. The Muslim religious courts claimed that they have no authority to allow her to see her children and the civil courts stated that they are unfit to supervise the case. Between the two, my client is still suffering. Such problems can be avoided when a civil law is adopted.

AZ: The issues being discussed are very delicate given that they are related to personal beliefs and religious creeds. Article 9 of the Lebanese Constitution stipulates the respect of religion and honoring family laws that correspond to the different sects in Lebanon.[4] I agree with what has been said – especially in a religiously pluralistic society like Lebanon. An optional unified civil law could be the solution. It is a law that might appeal to many Lebanese citizens. This law is worth fighting for because it embodies a very important and very useful development. As it is, Muslims are faced with two obstacles: The unyielding, obstinate and narrow-minded stance of religious men, and the difficulty of Islamic reform (*al-ijtihad*). It is true that there is a rule that says that "it cannot be denied that texts may change with the shifting of times and places," yet no one dares change laws pertaining to personal status. The existing religious codes are considered divine, and their source is God, not society. Hence, laws and rules regulating personal status and inheritance (specifically for Muslims) are seen as absolute and eternal.

IN: This is true, though there are exceptions to the rule. For instance, there is a law in Lebanon that was issued in 1974 and re-issued in 1983 that is related to inheritance of the end of service indemnity. Legislators found a ruse (*hilat shar'iyya*) to include indemnity as inheritance by saying that when the Qur'an came about there was no end of service indemnity and so we can apply new laws regarding this matter. The laws that were accordingly implemented had nothing to do with Islamic *shari'a*, yet the justification given was that necessities permit the forbidden (*al darourat toubeeh al mahzourat*). Another similar example relates to civil marriages contracted abroad and then registered in Lebanon.

Bechir Bilani: Problems stem not only from religious laws but also from the way/s we interpret and apply these laws. In Egypt the rank of sheikh was refused to any religious man without civil law education alongside his qualification in religious legislation. Often, problems stem from incorrect rulings by religious men and not from the religious texts themselves. Errors often are the result of misapplication of religious texts. During the times of the Prophet when people used to ask him for advice he sometimes refused to give them an answer, stating: "You are more knowledgeable about your affairs." The Prophet wanted to avoid answering so as not to make a rule of things. Problems are often in the understanding or the application of laws rather than in the text itself.

NH: Our aim is not to import laws but to come up with fairer ways of dealing with issues of divorce, for example.

BB: Civil marriage is not the solution. I believe that religious marriages are the best form of union. I agree, however, that non-religious people should have their separate laws. Concerning inheritance for instance, according to Islamic *shari'a*, men incur all expenses. I believe that civil marriages lead to bad results. Evil is innate and you need an innate thing like faith to stop evil. I refuse to fight faith, religion is very important. Without faith we will act like savages.

MM: In answer to the second question, until we acquire an optional civil law that deals with personal status issues, I would rather see laws implemented by civil judges just like in Egypt, Tunisia, and Syria. Corruption prevails in Lebanon and religious courts are not immune. Court rulings are biased and unfair unless one is well connected. Groups belonging to the same sect side with each other and religious figures support members of their sect. The advantage of adopting a positive (civil) law is that under it one is no longer subject to the whims of religious judges and how fair or unfair they happen to be. There is a due process that has to take place.

AJ: With all due respect to the various religions, we are incapable of building a country when citizens pledge allegiance to a sect rather than a country. We should adopt one law and one court system that oversees all matters related to personal status issues. As judges we are taught that laws are mirrors of society and they progress or stagnate with it. Judges in Lebanon have managed to modernize laws extensively, thus improving the situation of women. Faith is a personal matter that cannot be imposed. With regard to corruption, I agree that there is corruption, but I believe that the situation can be salvaged.

BB: What you are calling for is the creation of a civil law for all, or an optional one. Yet, in doing so you didn't solve the problem of confessionalism and the ills that result from it.

IN: I disagree with Dr. Bachir. If we don't leave any leeway for the formulation of a secular sect that is governed by secular laws this would imply that once a person is born he/she is trapped and becomes the victim of the laws that govern his/her sect. It is true that one can change his/her religion but one has to still choose from within the different sects and religions recognized in Lebanon. Buddhism is not a recognized religion in Lebanon. We are in a very closed society.

NH: We live in a caste system, as Safiyah Saadeh claims.

MM: I have two brief comments to make. When I was still a university student in London I was amazed at how well behaved the English were in terms of queuing. One would be waiting at a bus stop and everyone would queue. So I thought it stemmed from their sense of social courteousness. Yet, after several years, and to be specific, in 1998 I found out that there was a queuing law that was imposed in 1905 and was cancelled several decades later. The justification for changing the law was that it became redundant. People got used to queuing. As a result of the 1905 law, the English learned to queue, and with time it became an act of civility and politeness and not a legal obligation. Hence, laws are interactive and are capable of changing behavior. Another point is concerning positive law: There is an outcome consequent to authority's imposition of laws. What Dr. Billani was saying was that even if you have the non-secular sect, namely the 18th sect, confessionalism will remain. There is a famous saying by [John Maynard] Keynes to the effect that good money chases bad money. So if someone wants to marry from a different religion he/she is free, and so is another who wants to marry from the same religion and opt for a civil marriage, but if he/she finds that religious marriage is better then it is ok too. The operation is not mutually exclusive. There should be room for freedom of the individual. Discrimination is prevalent among all religions and sects and so we have to broaden our horizons. We are not born with a manual. Religions try to take away the freedom of their followers.

AJ: Religion is a private matter. It is a personal relation between the individual and God. There is no reason why should we live at the mercy of religious laws. Had I been given the choice I would have contracted a civil marriage.

AZ: Concerning questions 2 and 3, I disagree that religious authorities, especially among Muslims, are not revered or respected. It depends on which laws these courts are implementing. If you want to allow civil courts to implement religious and *shari'a* laws, the courts need to be rehabilitated. *Shari'a* judges are more knowledgeable and capable of dealing with these problems. The whole issue revolves around which text should be applied. Until we have a unified law I would rather see the laws in the hands of the religious courts. These courts are less expensive and more efficient. There, having a lawyer is not obligatory. Also, appointing someone (*tawkil*) is easier and the sentencing is quicker. In principle, I am a secular person so I am in favor of an optional civil law with civil courts overseeing the rulings. Concerning corruption, it is everywhere. There are ethical and corrupt Christian and Muslim religious figures.

NH: Do you think there is more control in civil courts?

AZ: I disagree. In religious courts one can appeal and there is a complaint and inspection process.

AJ: I believe that the solution is in adopting a unified

obligatory civil law and civil marriage law for all sects and an optional religious law for each sect.

AZ: I personally believe that true religiosity is nonexistent in Lebanon. People are fanatic and pledge allegiance to their religion or sect without understanding the true meaning of faith. Had the judge who handled the case Dr. Najjar mentioned earlier been a pious and true believer he wouldn't have made such a ruling. Even though divorce is an acceptable practice in Islam it is still considered the most hated of lawful practices (*akrah al-halal*), and mothers can never be denied seeing their children. Usually in divorce cases the religious judges have to try and make amends between the couple. If the judge fails he tries involving parents and if, after all that, they are still adamant about getting a divorce, then a divorce will be granted.

IN: Religious courts are paternalistic in nature and religious judges believe that they are implementing justice that comes from God. Corruption is very prevalent in religious courts. Politics and political power, wealth, donations, as well as the right connections play an important role in resolving personal status issues.

MM: Christian and Muslim religious courts look down upon women. Anything given to women is regarded as charity. If you see how women are treated in religious courts you will be horrified. Women have no existence in religious courts, whereas in positive courts there is no such thing.

IN: Religious judges are not knowledgeable and lack the proper legal training. We should abolish all religious courts. What is happening in religious courts is horrifying.

AZ: Before abolishing religious laws or courts, let us first try to change the electoral law.

BB: I have no objection to adopting an optional civil law that oversees matters related to personal status, upon one condition: The law should contain a text that considers all individuals who adopt the civil law to have renounced their religious and confessional identity. This prerequisite prevents individuals from taking advantage of their religion and sectarian affiliations to secure jobs and top ranking positions within the government. In the case of couples who have contracted civil marriages abroad – in countries where civil marriages are a necessity – they should, upon returning to Lebanon, be required to either renounce their religious status, if they are willing to abide by the rules and regulations that govern their civil marriage, or else they should contract a religious marriage.

MM: (Answer to questions 4 and 5) This creates a schizophrenic situation. The confessional system is based on a multiplicity of positions and often ambiguity of solutions. In personal status issues one has to act in a certain manner. This schizophrenic situation is partly caused by the multi-colored confessional system.

BB: I believe that the many laws applied are not the problem given that people are never united. They will always argue over politics, belong to various political parties, etc.

AJ: People disagree on programs. This confessional system prevents one from fighting corruption and punishing individuals, because they are protected by their affiliation to a sect or religion.

MM: Any contract that is lop-sided, where one party has very many privileges over the other, leads to discrimination. I disagree that divorces are easily granted when the marriage is a civil one. However, religious divorces are more difficult and problematic because they are not egalitarian.

BB: Adopting a law for civil marriage will not solve the problem of sectarianism.

AZ: The problems the citizens are facing, in my opinion, are not the result of the variety in personal status codes governing sects in Lebanon. The prevalent political system is responsible for the absence of a true sense of nationalism. This causes citizens to be more affiliated with their sects. It is important to note that practicing one's religion freely while respecting that of the other is an important achievement.

Endnotes

1. *Ijtihad* or Islamic jurisprudence.
2. A *fatwa* is a legal pronouncement according to Islam, issued by a religious law specialist on a specific issue. Usually a *fatwa* is issued at the request of an individual or a judge to settle a question where *fiqh*, (Islamic jurisprudence) concerning the issue in question is not clear.
3. *Al-qa'ida el kulliya* stipulates: *La younkar taghayour al-ahkam bi taghayour al-zaman wa al makan*, (It cannot be denied that rulings of early jurists may change in accordance with change in the times or locations).
4. Article 9: Liberty of conscience is absolute. By rendering homage to the Almighty, the State respects all creeds and guarantees and protects their free exercise, on condition that they do not interfere with the public order. It also guarantees to individuals, whatever their religious allegiance, the respect of their personal status and their religious interests.

The Opinion of a Religious Authority
Parson Dr. Habib Badr President of the Evangelical Religious Courts of First Instance in Beirut

Editor's question:
Do you believe that giving jurisdiction over family legislation to religious courts rather than civil courts has any advantages? What are they?

Giving spiritual or religious courts jurisdiction over family legislation in Lebanon was not a decision taken on the spur of the moment or during a neutral time in history or in a vacuum. It is also not a pure legislative system independent of the public political system that constitutes the foundation of Lebanon's modern state and its prevalent political atmosphere. The confessional system applied in our country today was adopted during the French mandate and developed from the 'religious system' (millet) that prevailed in Lebanon and the wider region under the Ottoman Empire's 400-year rule.

This millet system is an Ottoman device by means of which non-Muslims enjoy Muslim protection. It derives from practices that the consecutive Islamic states (Umayyad, Abbasid, Fatimid, and others) applied to 'the people of the book' (believers in revealed religions i.e. Christians and Jews) and Muslim minorities.

Hence, it is not possible to judge the characteristics of the spiritual courts system in general without talking about the public, political and civil system prevailing in Lebanon today.

Giving religious courts jurisdiction over family legislation is based on the general principle that religion should determine the identity of the communities that make up the Lebanese state

History proves that the organizing frameworks and the political structure in any country, including family legislation, must stem from the social nature and sociological fabric of the country in question. In our country, the current confessional system does not draw a line between religion and state. This reality is the result of the region's history, which is marked by the Islamic conceptualization of the state and of its organization. Family legislation stemming from this vision is principally based on religious identity and therefore cannot fall within the jurisdiction of another legislative system, regardless of its kind, by simply writing it into another system.

Following the example of Europe, where state and religion have been separated for almost three centuries, is useless and does not help us in assessing the advantages and qualities of confessional legislation. Judging our system as 'retarded' or 'underdeveloped' compared to its counterparts in the West is similarly useless. It is important to remember that during the Middle Ages Europe knew a 'dark' period during which it confused religion with the state before progressing and relinquishing this confusion. The foundations of Western societies stemming from Greek, Roman and Christian heritages facilitated a shift from the system which confused state and religion to a system which distinguished between them. But our oriental society is of a different nature.

Islamic ideology, which prevails in our region, does not believe in separating religion from daily life. There is no shame in that – i.e. there is no shame in the fact that the religious or confessional factor, whether political or legislative, provides the foundation of a society or state, provided that this confessionalism preserves the principles of the rule of law, human rights, freedom, equality, and democracy. This is not impossible as the Lebanese experience has shown in the past two centuries. I believe that if confessionalism is correctly applied it can preserve many of the religious legislative system's advantages while reducing its disadvantages.

It is true that misuse of the jurisdiction of religious courts (even the entire confessional system) over family legislation has in recent years stained the reputation of the confessional system. It is also true that many younger Lebanese principally refuse this system in favor of the Western secular system, which gives the civil (or secular) state jurisdiction over civil and family legislation. However, the confessional system has many advantages that can be brought to light if it is correctly and ethically applied, and if amendments are introduced to modernize it and better adapt it to the requirements of our era.

One of the most pressing amendments needed relates to the rights of women as mothers, wives, and daughters. We, as an evangelical confession, have sought to amend our personal status system in this direction. However, there is much that is yet to be done.

In conclusion, I wish to say that the current confessional law, under the present circumstances and for our reality as Christians living in the Arab and Islamic world, remains the best guarantee of our freedoms and rights until the nature of our society and its civil political fabric are changed.

Islamic Family Law in a Changing World: A Global Resource Book

Abdullahi A. An-Na'im, ed.
London: Zed Books, 2002

■ Reviewed by Cassandra Balchin
Women Living Under Muslim Laws
H-NET BOOK REVIEW Published by H-Gender-MidEast@h-net.msu.edu (February 2004)

Shari'a Has Never Been and Should Never Be the Basis for Family Law

As the quintessential identity battleground, family law in Muslim countries and communities is one of the hottest political and developmental topics. Those situated within these contexts constantly find themselves struggling for progressive or (more often than not) against regressive reform, while for those with the outsider's gaze, 'understanding' Muslim communities is currently a major preoccupation.

In this context, a book which consciously explodes the myths – propounded by cultural relativists and fundamentalists alike – of one homogenous 'Muslim world' and the immutability of Muslim laws, and is edited by one of the field's most respected progressive scholars, must be warmly welcomed.

Muslim men, since the earliest days of Islam, have taken women-friendly positions and today some of the most outstanding gender-sensitive theological interpretations are being produced by men; yet this fact is often overlooked. This is particularly true among academic and policy-making circles outside Muslim contexts, where short-sighted political correctness has produced a form of segregation whereby only women are to propound upon gender relations in Islam and Muslim societies. It is therefore significant that the present book, which seeks to highlight the human rights of women, be primarily the work of a male scholar.

In all cultures, women are the pivotal territories, markers and reproducers of the narratives of nations and other collectivities.[1] In the case of Muslim societies this has had two identifiable outcomes. Firstly, fundamentalist forces and states that have failed to build alternative national identities have focused their politicization of identity on women – invariably through dress codes and/or family law. As women activists and researchers in many Muslim contexts have noted, the family is the site of women's most immediate and daily experience of imposed definitions of gender appropriate roles, and it is also where the converging influence of customs, culture (including religion), and laws (frequently justified with reference to religion) is most vivid.[2] Secondly, as Leila Ahmed argues, women have been the focus of an Orientalist discourse on Islam that characterizes it as inherently oppressive of women.[3] Even today, outside Muslim communities, discussion of women in Muslim societies is common shorthand for wider assertions of cultural superiority and the supposed benefits of the liberal Enlightenment.

While An-Na'im focuses on family law in Muslim societies and particularly on its impact on women's human rights, he is neither a fundamentalist nor a liberal. He is part of a long tradition of iconoclastic, questioning, progressive Muslims, both confident in Islam's message of social justice and convinced of the importance of human agency.

Before summarizing the scope, purpose, and content of the book, I would like to clarify my own position. I was closely involved in the 1992-2001 Women and Law in the Muslim World (W&L) action-research Program run by the international solidarity network, Women Living Under Muslim Laws (WLUML). This produced a very different – but possibly complementary – book on a similar topic: *Knowing Our Rights: Women, family, laws and customs in the Muslim World* (2003). My evaluation of An-Na'im's book is therefore bound to reflect commonalities and divergences in the theoretical and practical approaches of these two projects. Meanwhile, I am now on the Advisory Board to the Rights at Home project, the follow-up to the "Islamic Family Law: Possibilities of Reform through Internal Initiatives" project from which An-Na'im's book is derived, and which was until very recently headed by An-Na'im.

> ... family laws in Muslim countries are not shari'a but state law, & like all other law, derive authority from the political will of the state

The now-increasingly significant body of literature on these topics has to date fallen into five broad categories: anthropological or sociological works (generally based on Ph.D. theses and focusing in depth upon one or two particular countries); theological discussions and (re)interpretations; writings largely grounded in political science and again usually based upon the experience of a limited range of countries/communities; listings of statutory texts with usually perfunctory and/or generally legalistic commentary; and, cross-disciplinary writings which combine a knowledge of jurisprudence, statutory law, and the realities of women's lives – of the 'law in development' or 'women's law' schools. This last category is quantitatively by far the smallest – even if arguably the most relevant to understanding and formulating strategies for strengthening women's human rights in Muslim countries and communities. Rarer still is the sub-category within this of works that move beyond a country-specific or even region-specific focus to encompass the full diversity of Muslim societies and to offer a cross-comparative view. An-Na'im's book, as indeed the WLUML book, does precisely this.

Before discussing the theoretical underpinnings of An-Na'im's book reflected in his preface and introductory chapter, I shall first examine the bulk of the work. This is organized into nine parts, each covering a distinct geographical region, with sections on each region's social, cultural and historical background followed by legal profiles of countries in that region. A total of 38 countries are covered, in addition to Central Asia and the Caucasus (which includes Turkey), and southern Africa which are only covered via regional backgrounds. There are contexts such as Fiji and the United Kingdom where, although governed by non-Muslim, 'secular' laws (i.e., generally based on a Christian conceptualization of marriage), Muslim communities may find the courts making allowances for or even reinterpreting Islamic family law in their judgments. A publication aiming to map Muslim family laws globally needs at least to acknowledge such diasporic communities – even if only as a group falling outside the 'mainstream.'

This geographical tour de force reflects much of the diversity of Muslim countries and communities: Where Muslims are the majority and the minority, affected by diverse colonial histories and with differing models of statehood from theocracy to monarchy to democracies which have wavered between military rule and populist elected governments; in some, Islam is the state religion while others have an (increasingly forgotten) history of secularism.

The scope of topics covered is similarly ambitious, offering a history of Islam, political institutions and legal structures in the region, along with a summary about the family, marriage, divorce, polygyny, children, custody of children, and inheritance. Meeting An-Na'im's declared intention of providing a gender-sensitive analysis, each regional profile also examines the issue of seclusion of women (purdah) which is broadened to extend to questions of political and economic participation, education, and an analysis of trends in dress codes. For each country, the legal profile section examines its legal history, the locally predominant schools of Islam (and other religions), the constitutional status of Islam/Islamic law, the court system, 'notable features' (an overview of relevant legislation with some indication of case law trends in depth, varying from half a page to half a dozen pages),

notes on the local case law reporting system, and an indication of international conventions signed (with relevant reservations). Both the regional background and country legal profiles have accompanying bibliographies and sources.

An-Na'im is aware that the project is ambitious, not least because the law is organic and constantly changing; already commentary regarding Morocco and Iran have been rendered outdated by reform.

It is an extraordinary achievement to have brought all this information under one roof and in a structure that is generally successful: The organization of the material is logical and consistent (even if varying greatly in depth); the size certainly unintimidating; and the language refreshingly appropriate for a non-academic audience (if occasionally inconsistent in that in places laws are reproduced verbatim with attendant legalese). If I have one language-related criticism it is that spellings of certain Arabic words such as *shari'a, talaq-al-tafwid* or *qadi* have been made uniform rather than used in their local form (*shariat, talaq-i-tafweez, kazi/qazi*, etc). Is this an inadvertent privileging of Arabic-speaking Muslim communities as more 'authentic' than others? The failure to acknowledge local spellings of common jurisprudential terms is possibly behind An-Na'im's mistakenly separate glossary entries for *khul'* and *khula* (the latter incorrectly conflated with *mubarat*). Meanwhile the publishers, Zed, should simply not have allowed sentences such as "*Hasan 'ala dhikrihi's-salam* announced the *qiyamat*, which means a spiritualization of the *shari'a*" to pass (although none of such sentences detracted from the overall clarity of the book). Inevitable repetition of the specificities of legal provisions in the regional backgrounds and then in the country profiles should equally have been smoothed by a proper copy edit. This is particularly true for a region such as South Asia where a single colonial era law applies across the board with almost insignificant post-independence variations.

I cannot pretend to be sufficiently knowledgeable of the legal systems in all 38 countries covered to discuss the merits – or demerits of all An-Na'im's country legal profiles. I shall, therefore, restrict my analysis to the South Asian section and the legal profiles for Bangladesh, India, Pakistan, and Sri Lanka, presuming that these are representative of the overall book (although I suspect less so since An-Na'im's greater knowledge lies in legal systems of the Middle East and parts of Africa). Moreover, whatever criticism follows is to be seen in the context that nowhere else in the existing literature is there such a manageable socio-legal history that covers so many contemporary family laws with an avowed human rights perspective.

... 'Islamic perspective' is the preferred perspective & that preservation of religious identity is essential for all

But the very scope of An-Na'im's book is bound too to be the source of its weaknesses. It is all but impossible to produce such a work that is error-free. Indeed, recognizing this, An-Na'im notes that "all the information contained in this book was first presented on a website (www.law.emory.edu/ifl) for nearly two years with emphatic invitation and appeal to all concerned to correct our factual assertions and/or challenge analysis." (p. xiii) That the project did not receive a single response means the blame for factual error must at least be shared.

Examples of errors include the assertion that Pakistan's 'Islamization' laws decreed that in compensation (*diyat*) cases the value of a woman's life was to be half that of a man's (p.205). This assertion was indeed common among local women's rights groups but was an activist slogan rather than a reflection of the actual law. Other examples include the statement that Pakistan became independent in 1948 (p.205) (it was 1947), and that 'Bangladesh's Muslim Family Laws Ordinance' was passed in 1962 (p.210) (the Ordinance was promulgated in 1961 and when Bangladesh was still part of Pakistan).

Of greater concern is the possibility that very different people or sources of information were used for the regional background and the country profiles. In certain instances there are contradictions between information presented on the same topic in these two separate sections. For example, the regional background claims that women in Bangladesh can only seek divorce on the grounds of polygyny, and this too only if the husband remarries without permission from his existing wife and the local authorities. (p. 210) Yet the country profile makes clear that multiple grounds for dissolution of marriage are available to Bangladeshi women and that it is the local authorities' permission (not the existing wife's permission) that is required for a polygynous marriage. Similarly, the regional profile asserts Bangladesh's constitution is 'avowedly secular,' (p.206) while the country profile correctly notes that the secular principle was dropped in 1977.

Is the problem possibly that, certainly in the case of South Asia, there is a tendency to use academic, non-practicing lawyer sources that are largely based outside the region? Or is this merely pique on my part because, for example, none of the Pakistan Women and Law Country Project materials (three internationally recognized publications on laws, case law and customs by 1998) seem to have been consulted?

The scope of An-Na'im's book also does not leave room for a more nuanced understanding (particularly class, age, and ethnicity differentiated analysis) of, for example, female infanticide or the treatment of divorced women. We are left, therefore, with frustratingly broad assertions such as "divorced women are stigmatized and face a difficult time socially and economically in Pakistan." (p.209) Surely this is true for Christian women in the United Kingdom while overlooking the fact that among the Sindhi peasantry divorce is not particularly stigmatized.[4] It is possibly in the area of custom – rather than statutory law – that this book is at its weakest. But researching and reporting custom is notoriously complex; custom can differ widely according to a long list of variables and even within the same village numerous different practices may co-exist.

While in the area of statutory law, the book offers useful summaries of family law provisions for most countries, overall there are few case law citations (too many would become indigestible). Thus pointers are missing to the contentious family law issues in any given country. Perhaps more importantly, there is little sense of the very significant distinction between text and implementation. This is the crevice through which women's rights most often slip – either because under the influence of social mores and/or political trends the courts do not apply the law within a rights-based framework, or because procedural law works counter to the rights established under family law. For example, An-Na'im notes that Sri Lankan Quazis have 'exclusive jurisdiction over the adjudication of maintenance claims' but fails to point out that Quazis have no powers of enforcement and a woman has to apply to the ordinary courts for enforcement of a maintenance decree, leaving her running between the two forums.

In all cultures, women are the pivotal territories, markers & reproducers of the narratives of nations & other collectivities

But the gap between text and implementation does not always work to women's disadvantage. Wherever possible An-Na'im has clearly attempted to provide a sense of how legal practice is continuously evolving. Sadly he has, at least in the case of child custody law in Pakistan, missed commenting on hugely positive developments in recent decades where interpretation of the text in case law has all but changed the essential nature of the original law – overwhelmingly to women's (and children's) advantage. To refer, as he does in this section (probably using Pearl and Menski, 1998[5] as sources), to the 'classical Hanafi position' (p.235) is to miss the point entirely.

With these comments in mind, I would be cautious about fully agreeing that An-Na'im has met his stated objective of providing information on specific legal rules and practices in family law. But, as stated earlier, it is probably unfair to judge An-Na'im on the detail he has missed as the book is the acknowledged outcome of a 'global "mapping" survey' and admirably achieves its other objective of providing "an overview of the influence of Islam on the socio-cultural and historical context" across different countries. Where else, for example, would I be able to find a brief, accessible description of the legal history of Tanzania's Muslims and the family law provisions applicable to them? As symbolized by my participation in the Rights at Home follow-up project, An-Na'im's IFL project and WLUML's Women and Law in the Muslim World Program are essentially complementary, as are their publications; where An-Na'im provides a broad and geographical focus, WLUML provides an issue-based, more in-depth examination of fewer countries. Both are needed.

Whatever the strengths and weaknesses of An-Na'im's description and analysis of family laws in Muslim countries and communities, his preface and introductory chapter, "Shari'a and Islamic Family Law: Transition and Transformation," are outstanding. Within days of reading it, I had copied and shared this chapter with the Gender Unit head in a major international human rights organization who was struggling with concepts around *shari'a* and recent developments in Nigeria.

An-Na'im was a student of the great Sudanese Muslim reformer, Mahmoud Mohamed Taha, hanged in 1985 by the Islamist-influenced government. Taha was no wishy-washy liberal reformist but a radical non-conformist and An-Na'im's progressive apprenticeship shines through his introduction.

He notes at the very outset that the shari'a is not monolithic. There are significant theological, legal and other differences among and within Muslim societies, and its application is modified by customary practices and state policy. His neat history of *shari'a* talks of 'surviving' schools and the 'total extinction' of some, both indicating that *shari'a* has always been internally contested. Even among progressive scholars there are differences over the meaning of *shari'a*: Some such as Riffat Hassan (1994) contend that the *shari'a* is not divine while some such as Ziba Mir-Hosseini (1999) distinguish between *shari'a* and *fiqh*, regarding the former as divine and the latter human.[6] Given that all hinges on what precisely is included in *shari'a*, An-Na'im's introduction would have benefited from a clear definition. This is only obliquely offered towards its conclusion: 'a moral code for the individual's relationship with God,' (p.18) meaning An-Na'im falls into the latter category; in his view the more limited understanding of *shari'a* is a recent phenomenon, emerging in the colonial period. Refreshingly, his analysis does not limit to colonialism the origins of parallel judicial systems in Muslim countries and their 'division of responsibility' between religious courts for family law matters and secular courts for matters other than personal status law.

An-Na'im insists that family laws in Muslim countries are not shari'a but state law, and like all other law, derive authority from the political will of the state. This also contests analysis of family law as supposedly relegated to a 'private' issue. He is angered that the post-independence elites in Muslim societies sacrificed women's human rights for the sake of political expediency but notes that while gender is a new element, the political manipulation of religious legitimacy has been around since the beginning of Muslim history.

Unlike the Islamists who may also contend that current family laws are not *shari'a*, An-Na'im is categorical that *shari'a* has never been and should never be the basis of family laws for Muslims. This is where An-Na'im is at his very best. He counters the Islamists' claim that application of *shari'a* as a systematic normative order is somehow an inescapable requirement for a pious Muslim community. As he points out, *shari'a* in this form did not develop until some 150-250 years after the Prophet's death and was therefore not applied by the early generations of Muslims – who are usually taken to have been more devout than later Muslims. An-Na'im further contends that even in the supposed pre-colonial Golden Age, the practical application of *shari'a* has been grossly exaggerated. It is impractical to enforce *shari'a* as state law because it does not provide all the tools and materials for a comprehensive and sustainable practical legal system, particularly given the major theoretical problems and differences within and between the schools. Challenging those who misuse Islam as a political slogan, An-Na'im notes that if countries were to actually live in accordance with *shari'a*, they would have to entirely transform their political boundaries and the nature of government, also living in almost total economic and political isolation from the rest of the world. Iran's current reform movement – supported by many clerics – demonstrates the impracticality of theocracy in the modern world.

An-Na'im is a true secularist, for whom the transcendental essence of *shari'a* is sullied by the very step of enacting it as the positive law of the state. For him, the only means of achieving "equality and fairness for Muslim women within an Islamic perspective, without compromising the religious identity of Islamic societies and personal piety of individual believers" is for human agency to understand the underlying (historically contextualized) rationale and spirit of the Qur'an and Sunnah, and develop equivalent social policy applicable in our modern context. This, he suggests, already exists in the form of universal human rights norms.

Many in Muslim countries and communities might contest the assumption that an 'Islamic perspective' is the preferred perspective and that preservation of religious identity is essential for all. Indeed, in terms of women's access to justice in family law, WLUML's W&L research clearly revealed that it is neither the 'Islamic' nor 'secular' character of a law which makes it less or more option-giving for women. The issue is whether the state and human society root this law and apply it in a human rights framework. Through perhaps very different paths we have come to the same conclusion.

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Globalization, Gender and Religion: The Politics of Women's Rights in Catholic and Muslim Contexts

Jane H. Bayes and Nayereh Tohidi, eds.
Houndmills and New York: Palgrave, 2001

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Why Do Politics Play Out on Women's Bodies?

Studies dealing with the broad theme of 'women and religion' are often designed along the lines of edited volumes of essays on each of the major religious traditions, written (most often) by Western experts. Such an approach is perfectly legitimate and, when the results are informative, justified as well. It is an approach, however, that makes comparison between (and even within) traditions difficult, as one crucial aspect of this kind of tradition narrative is inevitably missing. That aspect, and the most important word in this book's sub-title, is 'contexts.' The contexts in the present case are not defined by there being only two traditions treated, the (Catholic) Christian and the (Sunni and Shia) Muslim. Very specifically, five of the ten contributors to the volume, including the two editors, attended the UN 4th World Conference on Women held in Beijing in 1994. Two others were members of their countries' official delegations in Beijing while a third was, during preparation of the project, arrested and charged with treason for critiquing discriminatory laws against women in her own country. The Catholic populations dealt with are those in the United States (Susan Maloney), Latin America, with special focus on Costa Rica (Laura Guzman Stein), Ireland (Yvonne Galligan and Nuala Ryan) and Spain (Celia Valiente), while the Muslim contexts include Turkey (Ayse Gunes Ayata), Iran (Mehranguiz Kar), Egypt (Heba Raouf Ezzat) and Bangladesh (Najma Chawdhury).

In the editors' words, the Beijing Conference reflected important international divisions of perspective and concern, one being "a new transnational and cross-cultural conservative and religious alliance against equal rights for women" and another the "growing implications of globalization for women and gender politics." Conference headlines were made by the alliance of some Catholic and Muslim delegations, including men and women and led by the Vatican in Rome. Their objective was a uniform position in opposition to various women's issues proposed in the Platform for Action (PFA). The editors bluntly ask, 'Why is it that politics in Catholic and Muslim contexts are so often played out on women's bodies?' The related but broader issue dealt with in this book is the variety of strategies adopted by women when traditional gender patterns are challenged by forces of modernity.

An important observation is made in the editors' introductory remarks concerning the connecting themes

between the essays, namely that in these debates "the ongoing tension [is] not only and simply between modernity and tradition, secularity or religiosity, but also between competing notions of modernity, modernization and traditionalism" (p. 14). The force of this remark, however, is blunted somewhat by the sentence immediately following, claiming that the "real line of demarcation seems to be between those forces who are committed to democracy, freedom of choice, and equal human/women's rights and those who support authoritarianism, discrimination and gender hierarchy under a religious or secular guise" (p. 14). There are surely also competing notions of some or all of these terms just as there are of the ones previously mentioned. A similar difficulty in the editors' presentation appears when they, quite rightly, assert that the feminist movement is not one but many and that negotiating modernity takes many forms. But it is not as immediately evident that what unites feminists is a belief in "human dignity, human rights, freedom of choice and the further empowerment of women *rather* than any ideological, spiritual or religious stance" (emphasis added, p. 50). This claim, like the one above, privileges a secular perspective. Yet both editors concede earlier that "a basic claim among various religious feminist reformers ... is that their respective religions, *if understood and interpreted correctly*, do not support the subordination of women" (emphasis added, p. 48). An illustrative point is the debate in Turkey over a woman wearing a headscarf in government offices or universities. In her fascinating piece, Gunes Ayata notes that the prohibition of the Kemalist government against headscarves dates from the 1930s. The ban included female students of theological colleges who could only cover their heads while reading the Qur'an. In the mid-1990s, the Islamic Welfare Party found itself ranged against secular state institutions, including the army, when it proposed legislation which would, in effect, make it a woman's free choice whether or not she wore a headscarf in these public places (p. 169). Is the situation here a clear-cut one of democracy versus authoritarianism or of free choice against discrimination?

This leads to a comment on what is, perhaps, the most interesting contrast between feminist movements in Muslim countries: that described in the accounts on Turkey and Iran. The authors set each country's context in the opening sentences of their narratives. With the founding of the Turkish Republic in 1923, reforms involving women's rights were "some of the most important... attempts to break away from the Muslim world and turn toward the West" (p. 157). Contemporary Iran, by contrast, is a country where 70 percent of its population is under the age of 25, most of whom were born and educated under Khomeini's Islamic revolution of 1979. Since 1980, both countries have witnessed new configurations in their feminist movements: In Turkey, the older, secular Kemalist groups were challenged by 'new' feminists, influenced by recent radical Western feminist examinations of patriarchy, while in Iran those who conformed to the new Islamic state's policies on women were opposed by 'non-conformists.' In Turkey, Gunes Ayata concludes, the 'ongoing threat of Islamic fundamentalism' has produced a bitter confrontation between women as symbols of opposing sides, the secular and religious (p. 173); as a consequence, the author laments, 'women have lost the search for new solutions and alliances.' Note that, by implication, only the secularist feminist view is deemed legitimate for all Turkish women. In Iran, Kar notes that while non-conformist and secular women who remained after the revolution agree that religious interpretation is not a beneficial strategy for women, there has nonetheless been a "convergence of elements of the religious and secular women in their thinking about an increasing number of issues with regard to women" (p. 199). Together with a commitment to debate, dialogue, and pluralism among the various feminist perspectives, these, ironically, appear to be precisely the elements lacking in the Turkish case.

Another fascinating contrast may be drawn between Maloney's account of women's issues among Catholics in the United States and Chowdhury's coverage of the same questions in Bangladesh. Of the Christian population in the United States, which is about 70 percent, the Catholics are in the minority, while in Bangladesh, the Muslim population stands at just under 90 percent; the total population of the United States is approximately twice that of Bangladesh. The United States is a secular state, while the state religion in Bangladesh is Islam. According to demographer Emmanuel Todd, the fertility rate between 1981 and 2001 in the United States rose slightly from 1.8 to 2.1 while it dropped dramatically in Bangladesh from 6.3 to 3.3. Adult literacy in Bangladesh is still low at 34 percent, but is apparently set to rise quickly, as the fertility rate declines further. In the secular, more highly educated and pluralist context of the United States, Maloney's article significantly deals with the more abstract subject of Catholic 'feminist theologies,' while Chowdhury discusses the very practical problems of the 'politics' of Muslim women's rights. The Catholic feminists' chief concern is not the American state but whether and how far to support the external authority of the Vatican. For Bangladeshi feminists the patriarchal state and the broader society represent the main focus of attention; the state itself must steer a cautious course between advocating policies that may benefit women and an awareness not to zealously confront conservative, patriarchal political forces. One Catholic perspective, described as 'holistic feminism,' is represented by the American academic who chaired the Vatican delegation to the Beijing Conference; Mary Ann Glendon employs traditional Catholic sources to promote the view of woman as chiefly wife and mother. Equality of the sexes, in the Biblical sense, means men and women complement one another, a position familiar among Islamic feminists in Iran and Turkish 'fundamentalists,' but rejected by the Turkish feminists described by Gunes Ayata. In Bangladesh, the women's movement invokes articles of the Constitution to promote gender equality, but argues that it does not explicitly cover the private sphere of women's lives in the home. As Chowdhury concludes, on questions of gender equality in Bangladesh, there is ever a gap between political rhetoric and reality. In the United States, where Catholic women enjoy (relatively) higher levels of health, education and disposable wealth than their Bangladeshi sisters, there is, according to Maloney, little communication or contact between women of different perspectives (whether holistic, moderate or reconstructive). This is a situation similar to the women's movement in Turkey, but much less so in Iran and Bangladesh.

This volume contains a wealth of material covering several important, but significantly different, contexts in which women contest, in varying degrees, traditional religio-patriarchal values and compete among themselves from a variety of perspectives. The final excellent essay of the book, by Heba Raouf Ezzat, on women's developments in Egypt reiterates the editors' point (noted above) that the struggle is not simply one between A and B, but of competing definitions of A and B or, in this specific case, between competing visions of secular modernity, Islamic modernity, and Islamist traditionalism. Ezzat's final cautionary words may fairly sum up all the contributions from whatever perspective each is offered, "that the story has no happy ending; it is still unfolding" (p. 272). Nonetheless, the story as told thus far is a must read.

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