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AUTHOR

Dima Dabbous

Legal Reform and Women's Rights in Lebanese Personal Status Laws



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Author

Dima Dabbous is a Gender Specialist at USAID, Associate Professor of Communication, Phoenicia University and the editor-in-chief of *al-raida*, Institute for Women's Studies in the Arab World

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I. INTRODUCTION: WOMEN'S RIGHTS IN LEBANON

The Lebanese constitution guarantees equality among its citizens (article 7):

All Lebanese shall be equal before the law. They shall equally enjoy civil and political rights and shall equally be bound by public obligations and duties without any distinction.

Moreover, Lebanon has ratified a number of international conventions that seek to protect and promote human rights in general and women's rights in particular, including the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention on the Rights of the Child.¹ Lebanon is also committed to implementing the Beijing Platform for Action and the Millennium Development Goals: in 1996 it created a National Commission for Lebanese Women (NCLW), the first body to be officially charged with promoting women's rights and gender equality in Lebanon.² In December 2016, the newly formed government of Prime Minister Saad Al-Hariri made a landmark decision to introduce a Ministry for Women's Affairs for the first time in the country's history.³ The Ministry for Women's Affairs has already proposed a draft law for dealing with sexual harassment in the workplace and is currently promoting the introduction of a quota for women in the Parliament of Lebanon, at a time when the country is gearing up for much awaited national parliamentary elections.

Nonetheless, despite Lebanon's political commitment at the national and international levels to promote and protect women's rights, Lebanese laws, both civil and religious, discriminate against women. Not only does Lebanon's legal framework treat Lebanese women as inferior to men with regard to personal status issues (such as marriage, divorce, child custody, and inheritance), but Lebanon's pluralistic religious law system treats Lebanese women as unequal among themselves. For example, consider two Lebanese mothers, one Sunni and one Shi'ite, each with a male two-year old child. Due to the different religious laws that apply to each mother, if they were both to get a divorce, the Sunni mother would be able to keep her son with her until he was 12, whereas the Shi'ite mother would automatically lose custody of her toddler to her Shi'ite husband, regardless of whether she was deemed to be a fit mother or not (see part III.C below for more details).

This report documents and analyzes two recent major reforms in Lebanese law whose purpose is to further gender equality for women in Lebanon: (i) the alteration of the Sunni personal status law to allow mothers to keep their children with them for a longer time following divorce and (ii) the promulgation of Law no. 293 of 2014, which deals with domestic violence. The first reform relates to the religiously based, personal status laws that control major aspects of a woman's life in Lebanon. The second reform shows the importance of civil law in the fight for women's rights and gender equality in the country and exemplifies, through its text and its implementation, the power struggle between Lebanon's secular, progressive civil society and its patriarchal religious establishment.

Indeed, Law no. 293 and the court decisions based on this law reflect "encroachment" on Lebanon's religious law and on the religious establishment's monopoly over the lives of women. This encroachment is due to interconnectedness between the issue dealt with in the civil law (domestic violence) and the issues already addressed by Lebanon's religious personal status laws (a woman's right to leave the marital home to escape an abusive husband, to take her children with her when she goes, and to obtain spousal and child

1 Lebanon ratified CEDAW with reservations to articles 9(2); 16(1)(c), (d), (f), and (g); and 29(2). For an analysis of the roots of this reservation, see Dabbous-Sensenig (2005).

2 The NCLW was created by Ministerial Decree No. 13 on 3 January 1996.

3 The excitement that creating such a ministry stirred among civil rights activists was dampened by the fact (seen to be ironic by some) that a male minister was appointed to head this ministry (McKernan 2016).

support). Hopefully, the advances made by Law no. 293 will pave the way for more positive changes to follow.

The report is divided into three major sections:

1. It begins by reviewing and comparing Lebanon's existing personal status laws and the ways in which they discriminate against women along three major axes: marriage, divorce, and custody of children.
2. It then documents challenges to introducing a critical reform in Muslim religious law in Lebanon—raising the age of maternal custody for members of the Sunni confession, which has enabled divorced mothers to keep their children with them until the age of 12.
3. The report ends with a detailed analysis of the policymaking process that led to the introduction of Law no. 293 to Protect Women and Other Family Members from Family Violence, starting with the introduction of the first draft law almost a decade ago and culminating in parliament's vote on the final bill on 1 April 2014. In addition, and perhaps even more importantly, the report discusses the law's (early) implementation phase to shed light on the weaknesses and strengths of this landmark law and to highlight the extent to which it actually has the potential to protect women from domestic violence, given that the personal status laws administered by religious courts have abysmally failed to do so.

The first section of the report relies on desk research relating to existing personal status laws and their discriminatory aspects, but the latter two sections are based almost entirely on original research and analysis, including in-depth qualitative interviews with major stakeholders involved in Lebanon's legal reform process. The 10 stakeholders interviewed include a state minister, the head of the Lebanese Council of Women, and several lawyers and members of major Lebanese NGOs who have been directly involved in key campaigns to reform Lebanese laws for the benefit of women in the country.

The report also relies on an examination of original court decisions relating to protective orders issued by civil judges soon after enactment of Law no. 293 (that is, from May through December 2014). Understanding the court decisions made by judges during this early, critical time period is key to understanding jurisprudential approaches to the new law, as well as the extent to which these decisions challenge or mirror the country's dominant patriarchal legal culture – a culture best exemplified in Lebanon's existing personal status laws.

II. OVERVIEW OF RECENT LEGAL REFORMS AND WOMEN'S RIGHTS IN LEBANON

During the last 70 years, the women's rights movement in Lebanon has sought to tackle the discriminatory aspects of the country's national laws and has successfully lobbied for change in some cases. For instance, women's rights activists successfully petitioned for women's suffrage, obtaining the right to vote for women in 1952. In the 1990s, women's rights organizations sought to abolish articles in the Penal Code related to so-called "crimes of honor" (that is, killing a female relative to defend the family "honor" following an alleged sexual incident). They were only partially successful in this endeavor: in 1999, article 562 of the Penal Code was finally amended to provide that a person who kills a female relative to defend the family honor cannot be entirely exonerated, although he can still benefit from mitigating circumstances, such as a very light sentence (much to the disappointment of women's rights activists).

The following decade witnessed a stalemate, with almost no progress with respect to legal reform and women's rights, despite consistent efforts by civil society groups and women's rights organizations in pushing for reform on several fronts, including citizenship, civil marriage, personal status, and protection against domestic violence. Finally, on 4 August 2011, parliament repealed article 562 of the Penal Code, the provision that had reduced the sentence for "honor" murderers (HRW 2011). Since then (and especially in the last five years), lobbying efforts seemed to have paid off, as additional legal reforms benefiting women have taken place:

1. In December 2009, the Association of Banks in Lebanon decided to allow women, for the first time, to open bank accounts for their underage children, independent of the father's legal consent⁴;
2. On 10 November 2012, a couple entered the first ever contract for a civil marriage in Lebanon (Sfeir 2013);
3. In 2011, the High Islamic Council for the Sunni Confession raised the age of maternal custody for Sunni children to 12 (see part IV below);
4. In 2014, parliament enacted Law no. 293 on domestic violence (see part V below); and

In late 2016, a parliamentary subcommittee approved a bill to abolish article 522 of the Penal Code, which allows the prosecution to drop charges against a rapist if he marries his victim (the bill still needs to be voted on in parliament).⁵

This combination of reforms and measures to improve gender equality and protect women's rights, along with the relative social freedom that Lebanese women currently enjoy in public life, might reflect a rather progressive environment regarding gender equality. However, an examination of the personal status laws that govern most aspects of the lives of Lebanese women shows the extent to which women continue to be discriminated against in the Lebanese context.

4 Even though Lebanon's banking laws do not expressly prohibit women from opening bank accounts, traditionally only male guardians of minor children were allowed to open a bank account in a child's name, since fathers are considered the de facto custodians of their minor children (Daily Star 2009).

5 "Activists ramp up pressure on Lebanon's rape law", Al Jazeera, 22 April 2017, available at <http://www.aljazeera.com/news/2017/04/activists-ramp-pressure-lebanon-rape-law-170422142640102.html>.

III. JUDICIAL PLURALISM, PERSONAL STATUS LAWS, AND DISCRIMINATION AGAINST WOMEN

A. Legal pluralism in Lebanese religious courts

When Lebanon finally ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1996, civil society activists and observers perceived this as a major step forward in the struggle for gender equality in Lebanon. However, the Lebanese government placed reservations on two core articles of the convention, and by doing so seemed to indirectly reject CEDAW's core objective. Those reservations related to articles 9(2) and 16(1), which regard gender equality in citizenship rights and family laws.⁶ Lebanon's reservations to these articles reaffirmed the state's unwillingness to grant women equal rights under the law and its intent to uphold inherent discrimination against women in all areas related to family life (marriage, divorce, custody of children, and inheritance).

In particular, the reservation on article 16(1) was meant to uphold the role and mandate of religious courts and institutions in controlling personal status laws, which are built on the

... notion that men should be at the head of the family unit, hence preserving the inferiority of women under the law. ... [T]his implies that discrimination is legalized and protected by law, as religious ideas and discourses—which often discriminate against women and define gender roles according to their particular understanding—are not merely personal beliefs, but applicable laws with a direct impact on peoples' lives. (Salameh 2014, 2-3)⁷

The Lebanese legal system is characterized by legal pluralism among 18 recognized confessions (religious denominations or communities) that follow 15 separate laws regulating the personal status of their members.⁸ Not only does each confession have its own laws, but it also receives state funding for and runs its own religious courts to adjudicate cases related to marriage, divorce, custody of children, inheritance, and other personal status issues. This legal and judicial pluralism is based on article 9 of the Lebanese constitution, which not only guarantees freedom of religion to the various religious communities that coexist in Lebanon, but also “guarantees that the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected.” The state, for its part, legislates and adjudicates regarding all other matters, such as those pertaining to criminal behavior, economic transactions, and political rights.

The implications of such a multiplicity of religious laws are manifold. Not only are Lebanese citizens treated differently in key aspects related to their lives, based on the religious community to which they belong, but the religious institutions that regulate areas such as marriage, divorce, and child custody are also dominated by traditional patriarchal values. Furthermore, these religious institutions are largely immune from state intervention and reform through regular parliamentary channels.

This situation of “inequality among Lebanese citizens” prompted civil society activists to advocate for a unified civil personal status law and for the right to contract a civil marriage

6 The full reservations are at <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.

7 In addition, the reservation to article 9(2) denied Lebanese women married to non-Lebanese men the right to pass on their nationality to their children.

8 The 18 religious communities recognized by Law 2 of April 1951 include twelve Christian, four Muslim, one Druze, and one Jewish denomination. The Christian confessions include Maronite, Greek Orthodox, Roman Catholic, Gregorian Armenian Orthodox, Armenian Catholic, Syriac Orthodox, Syriac Catholic, Eastern Nestorian (Assyrian Eastern Orthodox), Chaldean, Latin, Evangelical, and Coptic Orthodox. The Muslim confessions are Sunni, Ja'fari Shia, 'Alawite Shia, and Ismaili. The law also includes the Druze and the Beirut synagogue Jewish confession among the recognized “historical” sects.

in Lebanon soon after the country gained its independence nearly 70 years ago.⁹ However, the country's deeply rooted sectarian culture and practice have made it difficult to challenge the status quo, despite repeated attempts by human rights activists and high-ranking politicians to do so. For example, in 1998, President Elias Hrawi submitted a draft law to introduce the option of a civil marriage. The draft law was met with fierce opposition from both Muslim and Christian religious leaders and was not referred to parliament for a vote (Yerenian 1998).

In sum, the consequence of having 15 different personal status laws regulating the lives of Lebanese citizens is that Lebanese citizens are not equal to each other. Lebanese women have suffered the brunt of this situation by being subjected to religious laws that discriminate against them to varying degrees, depending on the religious denomination to which they belong. Thus, not only are Lebanese women treated as inferior to men in the personal status laws of all religious confessions, but they also are not equal among themselves, with some enjoying better conditions related to personal status issues than others.

Whereas the constitution guarantees, in general, the various religious interests of the population, article 2 of Decree 60 L.R. of 1936 specifically grants all recognized confessions the right to have their own family laws and religious courts. As a result, most confessions run and control their own religious courts. Several subsequent laws and legislative decrees passed by parliament and the Council of Ministers have established supreme councils for the Shi'ite, Sunni, and Druze confessions to oversee the administration and financial affairs of their courts. Although mostly funded by the state, these religious courts "enjoy a great deal of autonomy from the state and are subject to little or no oversight by state judicial bodies" (HRW 2015, 28).¹⁰

In addition, judges in religious courts do not have the same education and do not undergo the same selection process as civil judges; they are not required to hold national law degrees and are often clerics who are not required to have specialized judicial training to hold office.¹¹ Often, they have very limited or no knowledge of Lebanon's human rights commitments, have no obligation to implement these commitments, and (with the exception of the Evangelical and Armenian Orthodox denominations) are all men.¹² As a result, it is no wonder that the most recent Human Rights Watch report on Lebanon concludes that women are "vulnerable to discriminatory *application* of personal status laws" in religious courts (*ibid.*; emphasis added).¹³ Additional structural factors also prevent women from seeking justice in religious courts, including prohibitive court and lawyer's fees (especially in the case of the Christian Maronite courts) and the uncertainty of obtaining a favorable ruling (such as an annulment or divorce). This forces women to find alternative solutions to their marital problems, often at the cost of giving up their basic (and already limited) rights.

9 The first attempt by civil society to challenge religious personal status laws by lobbying to introduce an optional civil marriage law dates back to 1957.

10 According to personal status lawyers interviewed in the same report, no disciplinary action was ever taken against any of the religious judges due to malpractice or negligence. The reason for such a lack of oversight is explained by the nature of the make-up of the oversight bodies in such religious institutions where members are judges who are "keen to preserve the reputation of their peers, which ultimately reflects on the reputation of the religious group" (HRW 2015, 35–36).

11 Only the Druze and Evangelical confessions require that their judges hold a national degree in law.

12 By contrast, as of 2008, 42% of Lebanon's civil court judges were women, and this number was expected to rise to around 60% by 2011 (UNDP Lebanon 2008, 32).

13 HRW's report is particularly valuable because it documents various means by which the application and implementation of personal status laws disadvantage women and favor men, based on a thorough review of hundreds of religious court cases.

The following subsections examine discrimination against women as identified in the texts of the existing personal status laws, by focusing on two major aspects of these laws that deeply affect women's lives, namely marriage and divorce (including custody of children following a divorce). Prior research has documented the extent to which personal status laws in Lebanon discriminate against women, especially during divorce procedures (Tabet 2005). I chose to focus as well on the related, highly discriminatory issue of custody of children following divorce because this issue has a major role in deterring abused women from leaving their husbands (that is, they fear losing their children to their spouse). The custody issue is also significant because it highlights the clash between the traditional, largely unchanging (religious) personal status laws and the (often) progressive application of the recently passed (civil) Law no. 293 of 2014 on domestic violence.

B. Marriage in Lebanon

1. Civil marriage

Although a few people have contracted civil marriages in Lebanon since 2012, civil marriage does not exist as a practical matter for most Lebanese citizens (Sfeir 2013). This means that couples who wish to have a non-sectarian (non-religious) marriage—either because they belong to different sects or because they do not want to subject their marriage to the unfair and discriminatory laws of their sect—must travel abroad to contract a civil marriage.¹⁴ Upon their return to Lebanon, the Lebanese state will recognize their foreign, civil marriage.

There are no available statistics on the number of civil marriages contracted abroad, but newspapers articles and travel agencies speak of thousands who travel every year to get married in Cyprus (the closest and most favored destination in this respect), Turkey, or France. One travel agency that organizes civil marriages in Cyprus estimates that 1,000 couples fly to Cyprus every year to contract civil marriage there (El Hage 2009).

For such couples living in Lebanon, their marriage (and its dissolution) is governed by the foreign law of the country in which the civil marriage is contracted. In other words, the Lebanese civil courts are bound to apply the relevant foreign law when settling disputes between these married couples. Civil marriages contracted outside of Lebanon, however, pose several problems due to their incompatibility, in many ways, with the existing confessional system that continues to regulate other aspects of the couples' lives. These problems make such civil marriages, although recognized by the Lebanese state, a non-viable long-term solution and underscore the need for a solution that is more compatible with the confessional reality of the country. To start with, Lebanese civil judges must settle disputes according to the applicable law in the country where the civil marriage was contracted, but they are not always acquainted with these foreign marriage laws and their interpretation. As legal expert and lawyer Ibrahim Traboulsi explains, "Judges often have to scratch their heads to figure out how to apply the laws of the country where the marriage was contracted" (El Hage 2009). Furthermore, such civil marriages diminish the Lebanese state's sovereignty, since it is bound, in cases of disputes, to "import" and apply at home the laws of the foreign country where the marriage took place (*ibid.*).

Moreover, most couples who marry in a foreign country do not know the marriage laws that apply to them. For example, there have been cases where a couple wanted a divorce and found out that the foreign marriage was based on a community of property (which does not apply to religious marriages in Lebanon). The main breadwinners in these couples (usually men) often engage in fraud and financial transfers to avoid sharing assets with the spouses they are divorcing (*ibid.*). Other cases have involved women who have discovered,

¹⁴ This is made possible thanks to a legal loophole in article 25 of Decree 60 L.R. of 1936, passed during the French mandate. The article makes it possible for those who wish to leave the confessional community they are born into, or those that do not belong to one of the officially recognized religious communities, to adhere to what is known as a "non-community community" (or "civil law community") that is allowed to administer its own family affairs (Tabet 2005, 18). It should be noted that it is not possible to contract such civil marriages in the consulates or embassies (of other countries) located in Lebanon.

upon seeking divorce following a civil marriage in a country like Russia or Argentina, that the foreign laws that apply to them do not guarantee their rights as wives and mothers.¹⁵

Another problem arises from civil marriages contracted outside of Lebanon if the husband dies. A married Lebanese woman is usually entitled to custody of her children when her husband dies—a decision normally approved by the church she belongs to in Lebanon. However, in a telling case, a mother who had been married in a civil ceremony abroad was denied custody rights by her church in Lebanon because it did not recognize her civil marriage (*ibid.*).

Adoption, which is only possible for Christians in Lebanon (through the Christian churches), is also a problem for couples who marry civilly abroad. In one case, a Lebanese Christian man who married his wife in a civil ceremony in Cyprus and wanted to adopt her illegitimate child was turned down by the church, which required that the adopted child be legitimate and that the adopter have no biological children (the husband in his case had his own legitimate child). The husband eventually obtained the right to adopt thanks to the decision of John Kazzi, the civil court judge who legalized the adoption and caused an uproar in the Christian community.¹⁶

In spite of these problems, however, these unions have a few key advantages. First, marrying civilly abroad makes it possible for Christians to obtain a divorce.¹⁷ In addition, marrying abroad is (so far) the only solution available to Lebanese couples of mixed religion who wish to marry without either spouse needing to convert to the other's religion. (In these cases, the children are registered in Lebanon according to the father's denomination, as per the patrilineal laws of the country.)¹⁸

Importantly, all Lebanese are not equal when it comes to civil marriage. In the case of Muslim couples who contract a civil marriage abroad, their marriage will be accepted in Lebanon but Islamic *shari'a* law applies to them in cases of conflict, since Lebanon's Muslim religious leadership has categorically rejected civil marriage and any other possibility would be considered an attack on basic Islamic dogma.

Moreover, other personal status laws (such as inheritance laws) may still apply to a civilly married couple. For example, if one spouse in a civil marriage is Muslim and the other is Christian, the Lebanese inheritance law related to religion will still apply and will prevent the spouses from inheriting from each other (in Lebanon it is prohibited for a Muslim to inherit from a Christian and vice versa). This is a serious family issue that the "solution" of civil marriage is unable to solve, and it is a cause of great concern for individuals in families based on mixed marriages. For instance, if a Muslim husband dies, his Christian wife cannot inherit from him, and if a Christian wife dies, neither her husband nor her children can inherit from her (since children are by default registered according to their father's confession) (Zalzal 2006, 40). Therefore, couples in mixed marriages must resort

15 For details, see the ruling by Lebanese civil court judge John Kazzi that reinterpreted Argentina's marriage law to help a Lebanese mother retain custody of her children following a divorce (discussed in El Hage 2009).

16 Judge Kazzi justified his decision based on the "best interest" of the child, and his decision was upheld by the state (*ibid.*).

17 Unlike Muslims, who consider marriage to be a contract, Christians believe marriage to be a holy sacrament, which makes it very difficult for Christians married in Lebanon to obtain a divorce, especially those who are Catholics or Maronites.

18 Although the state recognizes civil marriages contracted abroad by Lebanese citizens, the Lebanese Court of Cassation has held that these marriages have no legal value if they are combined with a religious marriage in Lebanon. In such a case, the religious marriage is the one considered to have legal value. This is the opposite of what happens in similar cases in many European countries, for instance, where the civil marriage is the one legally recognized by the state.

to other legal measures to ensure that members of their mixed family can inherit from them, often at risk of jeopardizing their own ownership while still alive.¹⁹

Despite the legal complexity of contracting civil marriage in the Lebanese context, since 1951 there have been several (unsuccessful) attempts by civil society groups and political leaders to lobby for the introduction of civil marriage in the country. In 1998, President Elias Hrawi spearheaded such an effort by submitting a bill for the introduction of optional civil marriage. However, his move was met with fierce rejection by both Muslim and Christian religious leaders, who asserted that civil marriage “offends religious convictions and undercuts the role of religious institutions” (AP 1998). The Hrawi bill, despite being endorsed by a majority of ministers in the cabinet (22 out of 30), was never sent by Prime Minister Rafic Hariri for a vote in parliament (El Hage 2009).

In 2011, the Chaml Association (led by activists Ougarit Younane and Walid Slaiby), in conjunction with several other national NGOs, submitted a draft proposal for a civil personal status law to parliament. The bill covered all aspects of personal status, including marriage, divorce, child custody, and inheritance. Advocates for the law explained that the movement for this law was motivated by “a refusal to submit to laws governed by the confessional communities or to foreign laws applied in Lebanon” and that a civil personal status law would “accustom people to the idea of a civil state, where everyone is subject to the same laws” (Baaklini 2010). Although the bill enjoyed the support of a number of parliamentarians, who managed to put it on the agenda of the joint parliamentary committee on 18 March 2011, the draft has not yet been sent to parliament for debate.

2. Child marriage

Lebanon is a signatory to the United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962; the International Covenant on Civil and Political Rights of 1966; and the Convention on the Rights of the Child of 1989. These international instruments require that both parties to a marriage *personally* give their consent to the marriage in the presence of a relevant official or public servant. Nonetheless, in spite of Lebanon’s adoption of these conventions (which have supremacy over national laws), child marriage continues to be legal and practiced in Lebanon. This cultural phenomenon “is part of the taboos in ... Arab societies since it is directly related to the personal status laws that assert the supremacy of men over women and establish the power of the father over the family” (ABAAD and AIHR 2015, 5).

Since there are 15 different personal status laws in Lebanon, the minimum age for marriage varies according to the religious community a couple belongs to. Nonetheless, all confessions allow girls to marry at a younger age than boys, which clearly reflects the extent to which child marriage is also a gender-based phenomenon. The minimum age of girl marriage for some communities is set at 16, 17, or 18 (as in the Evangelistic, Sunni, and Greek Orthodox communities, respectively), while in others it can be as low as 9 (as in the Shi’ite community) (*ibid.*, 22). Even when religious communities set the minimum age for marriage at or slightly below the legal age of 18, they sometimes allow for exceptions at the discretion of the religious judge. For example, the minimum age for a Sunni girl to get married is 17, but a judge can allow the marriage of a nine-year-old girl. Similarly, the Greek Orthodox personal status law sets the minimum marriage age at 18, but an exception allows for the marriage of a 15-year old girl (*ibid.*).

Alarming, when allowing child marriage, religious judges ignore the issue of consent, which remains the prerogative of the legal guardian, who is almost always the father or another male relative. As a Sunni *shari’a* lawyer explained,

Based on my own experience, child marriages are happening a lot. Usually it is the mother of the bride or groom who arranges the marriage. The child-bride often comes to court

¹⁹ Some couples in mixed marriages try to circumvent these inheritance-related restrictions by resorting to alternative legal methods that come with their own set of risks. For example, they may sign contracts of sale or of gift to each other or to their children, with the added risk that they may lose their right to their property while they are still alive, should their children or spouse prove to be disloyal and dispose of the property before their death.

with no clue about what is happening and the sheikh conducting the ceremony does not ask her any questions, as long as her legal guardian is there. At best, he may sometimes glance briefly at her. The whole thing happens very fast. ... So yes, I see [in court] a lot of people under 18 get married. The problem became worse with the Syrian refugee crisis.²⁰

The alarming speed and effortlessness with which such marriages are conducted is not exclusive to the Sunni *shari'a* court, however. A 2015 qualitative study conducted by university professor Zuhair Hatab links the phenomenon of child marriage with the existing personal status laws that allow such marriages to take place without any oversight by the state. The study notes that 90% of child marriages take place “effortlessly” in Lebanese religious courts, following the completion of very “simple procedures” (WEE 2015). The study also highlights the negative role played by religious institutions in facilitating child marriages (especially for girls), and points to the links between such marriages and violence against women and girls.

While the above qualitative study is important for highlighting the various issues related to child marriage in Lebanon, research data and statistics on girl-child marriage in Lebanon remain very scarce, are not consistent, are often criticized for being unreliable in their methodology, and tend to generally reflect a lack of coordination and collaboration among the concerned research organizations (Osman, forthcoming, 8). In addition, child marriages, which are mostly practiced in rural areas, are still not receiving the attention they deserve from officials and researchers in general; rather, they continue to be treated, at best, “on a case by case basis as a random phenomenon that is not serious enough to be raised” (ABAAD and AIHR 2015, 5). As an employee at the Ministry of Social Affairs has explained, there are no official statistical data in the country, creating a gap in the evidence surrounding this social phenomenon (Osman, forthcoming, 4):

We didn't deal with early marriage directly before because it wasn't noticed on a high level. It represented only 4% of the population and it was taken care of through GBV programs. However, it has increased after the Syrian crisis and the big presence of refugees in our communities.

Indeed, the phenomenon of girl marriage in Lebanon has been on the rise recently. The social and economic upheaval created by the massive influx of more than 1.3 million Syrian refugees into Lebanon has led to a surge in girl marriages contracted in Lebanon, as noted by government and UN agencies, supported by women's rights NGOs. Minor Syrian girls are pushed into marriage by their parents, either due to extreme poverty or for “safety reasons,” that is, to “protect” them and their “honor” from sexual aggressions in unsafe refugee camps.

A study conducted in Lebanon in 2009 by the Central Bureau of Statistics and UNICEF, using a sample of 7,560 women shows that girl marriage at that time was highest in the poorest regions of Lebanon (e.g., 10.5% in the suburbs of Beirut and 7.7% in Mount Lebanon) (ABAAD and AIHR 2015, 49). The findings of a very recent study conducted by Saint Joseph University and shared at a conference on 29 June 2015 show that 13% of Lebanese women get married before the age of 18, with the highest prevalence of child marriage in Muslim communities (particularly the Alawites, Sunnis, and Shi'ites) and the lowest in Christian communities (7% of the Maronites and Greek Orthodox) (SP and USJ 2015). According to a very recent UNICEF report, 6% of children in Lebanon are married before age 18, while only 1% are married before age 15 (UNICEF 2016, 151). However, the percentages change significantly when broken down by refugee status: 27% of Syrian refugee women ages 15–19 are currently married, “a 9% increase over the last six years” (Osman, forthcoming, 1).

UNHCR data also shows a comparatively very high percentage of child marriage among Syrian refugees, with 23% of Syrian women in Lebanon married before the age of 18 (SP and USJ 2015). The study also shows a significant difference between the percentage of

20 Personal interview with Ranim Osman, *shari'a* lawyer, 28 Feb. 2017.

Syrian girls and boys under age 18 who are married (6.3% and 0.2% respectively). It notes that many Syrian girls are married off to adult Lebanese men in exchange for payments (ca. US\$ 2,000) to the girls' parents.

In an effort to curb this phenomenon and increase pressure on government, a number of women and human rights organizations and activists have submitted draft laws to raise the minimum marriage age to 18, regardless of the confessional affiliation of the couple contracting a marriage. Two such proposals have thus far been submitted: one draft proposal was submitted in 2014 by member of parliament Ghassan Mukhaiber and NCLW, and the second was submitted in 2016 by the Lebanese Women Democratic Gathering (RDFL).

The first proposal targets all marriage of minors in Lebanon and ensures that minors are not coerced into marriage by requiring approval from a juvenile court judge (i.e., a civil judge) who must hear the minor before a girl-child marriage is allowed. Naturally, this draft proposal came under heavy criticism by several civil society groups and activists because it provides a legal justification for child marriage instead of seeking to abolish the practice altogether. In response to the Mukhaiber–NCLW proposal, two other NGOs, KAFA (Enough Violence and Exploitation) and RDFL, submitted their own draft laws. None of these three drafts has of yet been sent to parliament for a vote.

C. Divorce in religious courts

Discrimination against women in the personal status laws continues throughout the dissolution of marriage. All confessions, whether Christian or Muslim, discriminate against women by making it easier for men to seek a divorce; it is especially hard for women to end Christian marriages compared to Muslim ones. Moreover, “[a]cross all confessions, Lebanon’s religious laws and courts are not responsive to spousal domestic abuse,” which is not considered grounds for divorce (HRW 2015, 4). For example, spousal violence, which disproportionately affects women, is not a ground in and of itself for a Christian court to grant a divorce to an abused woman, except in “attempted murder cases” (ibid.). Similarly, a Human Rights Watch review of 65 different Sunni court cases where women asked for divorce (through filing for severance) finds that the women were found partially responsible for the failure of their marriages and were consequently granted reduced financial compensation, “even when the husband beat them” (ibid., 3).

1. Divorce and discrimination within Muslim confessions

Both the Sunni and Shi’ite confessional laws allow a husband to divorce his wife without her approval or appearance in court. By contrast, a Muslim wife can terminate the marriage under much more limited circumstances, depending on whether she is Sunni, Shi’ite, or Druze.

Under Muslim law, where marriage is a mere contract, a Sunni or Shi’ite woman can guarantee herself the right to unilaterally divorce her husband later on if she includes this right (called *‘isma*) early on in her marriage contract. However, Muslim women rarely include this right in their contract for cultural reasons: in a society where divorce is perceived to be exclusively a male prerogative, societal and family pressures continue to prevent women from enjoying this religious right guaranteed to them by dominant Islamic jurisprudence. Indeed, engagements are often broken off due to pressure from the family of the would-be husband, when the would-be wife announces her desire to include *‘isma* in her marriage contract.

Although this phenomenon remains glaringly understudied and there are no nationwide statistics available, the 2015 Human Rights Watch report sheds light on the issue by documenting its near absence in a review of 150 divorce rulings before Shi’ite and Sunni courts. Muslim women who were interviewed to see if they included *‘isma* in their marriage contract admitted they had not done so due to cultural reasons and the risk of seeing pressure exercised by the family of the would-be husband “to prevent him from ‘giving in’ to the woman’s wish to share his right to divorce” (HRW 2015, 43). A request by the would-

be wife to include *'isma* in the marriage contract has in some cases led to breaking off an engagement altogether.²¹

The personal experience of a *shari'a* lawyer from the northern city of Tripoli confirms the findings of the Human Rights Watch report, but also explains how this right granted to women in Islam remains unknown to most of them:

I never witnessed a marriage where the wife requested *'isma*. To start with, women don't even know about it. I know that from the Oxfam training sessions for women that I conduct in order to make them aware of their rights under *shari'a* law. Second, in Tripoli, this is not something you can talk about. The bride does not have the courage to request it in her marriage contract. And the husband will not accept it. In only one case, the husband wanted to remarry his wife [after having divorced her], so we prepared a [Sunni] marriage contract with multiple conditions such as the wife has the right to divorce him if he marries another woman, the right to work, and the right to go to her parents during the week-end. But she did not request *'isma*. This has never happened in any of the cases I witnessed in court. Generally, it is very rarely practiced.²²

In a more extreme instance illustrating the extent of cultural resistance to the right of *'isma*, Iqbal Doughan, *shari'a* lawyer and president of the Lebanese Council of Women, recounted the story of a Sunni woman whose decision to include the Muslim right of *'isma* in her marriage contract was rejected by the officiating sheikh himself.²³

Unlike their Shi'ite counterparts, Sunni and Druze wives may also pursue their right to divorce by initiating a severance (or separation) case in court (*da'wa tafriq*), to obtain a unilateral dissolution of marriage by religious judicial order. The court will grant a woman severance if certain conditions for termination of the marriage are met, such as failure by her husband to pay spousal maintenance, to have sexual relations (due to impotence, disease, or insanity), or long absences from the marital home. Half of the severance cases dealt with in the Sunni court, however, have ended via quittance (*khul'*, also known as *mukhala'a*), whereby a wife is released from a marriage contract in return for forfeiting all or part of her legal rights, and even sometimes paying her husband a sum of money (HRW 2015, 42). As the Human Rights Watch report points out, the limited number of the acceptable grounds for requesting severance from the courts can, at times, make a wife and her children vulnerable to domestic violence and abuse. The report mentions the case of a woman who sought severance from a Sunni court after she found out that her husband was sexually abusing their daughter. "The case perplexed the judge since the legally enumerated grounds for severance do not include sexual abuse of children" (ibid., 45).

Moreover, as one *shari'a* lawyer has explained, the lengthy court process during severance cases often pushes women to forfeit their rights and opt for *mukhala'a* instead, by giving up all their financial rights in order to obtain a divorce:

If a wife initiates a severance case based on domestic violence, the judge, after determining the existence of violence, will mostly blame the husband (80%), while 20% of the blame is assigned to the woman. This means that she will receive only 80% of the end of marriage compensation [known as *mou'akhar*] that she is legally entitled to when getting a divorce. However, the process is very lengthy and can take up to three years, during which the wife has to remain in her marital home. Because of that, the wife may be compelled to explore

21 Only three out of 150 divorce rulings examined in the 2015 Human Rights Watch report were based on the wife's ability to exercise her right to divorce herself through *'isma* (HRW 2015, 43). Moreover, all 14 Sunni and Shi'ite women interviewed for the report said that they did not include *'isma* in their marriage contracts (ibid.).

22 Personal interview with Osman, *supra*.

23 Personal interview with Iqbal Doughan, 1 Apr. 2017.

another option. She will say, “I give up my end of marriage compensation [*mou'akhar*], just divorce me.”²⁴

Not only does the determination of fault have a significant impact on the financial rights of a wife during severance cases (since end of marriage compensation depends on the degree of each spouse’s “fault”), but the process itself “lacks transparency and basic due process guarantees, including a right to appeal the arbiter’s report” (HRW 2015, 45). When issuing a judgment based on the arbiters’ culpability findings, a judge is under no obligation to offer a legal justification for the decision. Moreover, the findings and recommendations of the arbiters are not binding: the judge “can alter blame assigned to either party at his discretion and without explanation” (ibid., 46). HRW’s review of court rulings related to severance cases concludes that “women are overwhelmingly found to be more culpable than men,” which also means they are unable to get the entire compensation sum to which they are entitled by law (ibid.).

Furthermore, while in all Muslim confessions courts require the husband to pay maintenance, the amount itself is often so low that it “does not reflect the wife’s actual need or the husband’s financial capability.”²⁵ The situation is rendered more difficult for women undergoing divorce proceedings when the husband knows the judge, and the process is influenced in his favor:

The judge can stall, often by delaying the notification of the husband, but in the end a judgment to pay maintenance has to be issued. It is true that the amount is often very low, and cannot cover the expenses of the mother and her children. It is also very hard for the religious court to determine the income of the husband especially when he is a merchant. The amount women and their children receive in Sunni courts varies between LBP 300 and 350 thousand [ca. US\$ 200 to 230]. This is not a realistic amount. But no matter how much we talk to them [i.e., religious judges], they just don't grant more.²⁶

In sum, although Muslim women have access to divorce in some cases, the limited grounds for seeking a divorce, the challenge of obtaining a positive ruling in severance cases, and the length of proceedings, coupled with the arbitrariness, lack of transparency, and long delays in determining culpability, have in practice forced many women to forfeit all their financial rights in order to opt out of a bad or abusive marriage. Women are often compelled to make such hard choices since, throughout the duration of the (lengthy) court proceedings, a wife is not allowed to leave her marital home. Rather, she is encouraged by the judge to be patient and reconcile, even if beaten and raped by her husband, because the husband has the right to demand sex of his wife while still legally married to her.

It should be noted that fault-based regimes like the severance system have been denounced by CEDAW because they often base financial rights on a lack of fault, a condition that can be easily abused by the husbands to free themselves from any financial obligation towards their wives. CEDAW’s general recommendation to article 16, titled “Grounds for divorce and financial consequences,” notes the following (CEDAW 2013, para. 39):

Some legal systems make a direct link between grounds for divorce and financial consequences of divorce. Fault-based divorce regimes may condition financial rights on lack of fault. They may be abused by husbands to eliminate any financial obligation towards their wives. In many legal systems, no financial support is awarded to wives against whom a fault-based divorce has been pronounced. Fault-based divorce regimes may include different standards of fault for wives and husbands, such as requiring proof of greater infidelity by

²⁴ Personal interview with Osman, *supra*.

²⁵ Ibid.

²⁶ Ibid.

a husband than a wife as a basis for divorce. Fault-based economic frameworks frequently work to the detriment of the wife, who is usually the financially dependent spouse.

2. Divorce and discrimination within Christian Confessions

Unlike their Muslim counterparts, it is almost impossible for most Christian spouses (male or female) to obtain a divorce, even when both consent to it. There are, however, a number of situations when Christian couples can apply for annulment, dissolution, or desertion. The provisions are different for the Catholic, Orthodox, and Evangelical denominations.

Although restrictions concerning the termination of marriage for Christian denominations are the same for men and women, there are instances where a man can apply for annulment but a woman cannot, such as a husband discovering, after marriage, that his wife is not a virgin. Moreover, there are instances when the law impacts Christian wives disproportionately. For example, while a wife can file for desertion due to spousal violence, in a number of Christian denominations she cannot obtain it unless the violence is just short of attempted murder. In other words, violence per se is not accepted by the courts as grounds for annulment. For example, in one case, a Maronite woman was unable to obtain a divorce from her husband, who had been “sentenced to 20 years in prison for an unrelated murder” (HRW 2015, 62).²⁷ Moreover, considering how difficult it is to end a Christian marriage, there is a “way out” for Christian husbands that is not available to their Christian wives. Some Christian men choose to convert to Islam to be able to marry again, without ever having to divorce their first (Christian) wife, since polygamy for Shi’ite and Sunni men is allowed in Lebanon. “There are no similar processes by which Christian women can bypass Christian personal status law after their marriages have been consummated” (ibid., 60).²⁸

In a situation similar to that undergone by Muslim wives wishing to speed up the divorce process, especially when their marriage is abusive, many Christian wives find themselves having to relinquish their financial rights and compensation in exchange for the husband agreeing to grant them a divorce, usually done by him agreeing to convert to another Christian confession whose laws allow the termination of marriage (e.g., the Evangelical or Assyrian denominations). What mostly prompts Christian women to give up their pecuniary rights is that, throughout the duration of the court proceedings, a judge will not order a husband to leave the marital home, even if it is owned by the wife (this being a civil matter outside the judge’s religious jurisdiction).

While couples married under the Evangelical or Orthodox confessions can possibly file for divorce if either spouse commits adultery, spousal rights to divorce are still not the same for men and women. For instance, a husband can divorce if he finds that his bride is not a virgin. The same does not apply to a woman. Moreover, spousal abuse does not lead to the dissolution of marriage, unless it leads to attempted murder.

Christian courts also cannot ask a husband to leave the marital home during divorce proceedings, even if the wife owns the home and the husband is abusive. In such cases, the wife must file a separate course case before a civil judge, which only adds to her financial burdens. The lengthy court proceedings, coupled with the inability of wives to physically separate themselves from their husbands for the duration of the proceedings, often forces women to forfeit their financial compensation (even when the husband would have eventually been found at fault), in return for the husband agreeing to dissolve the marriage by telling the courts that they have been separated for three years and leaving the spousal home.

27 For Catholics, for instance, spousal violence is grounds for annulment only if the reason behind the husband’s violent behavior is mental illness (HRW 2015, 60).

28 Elements for achieving equality between men and women in marriage and divorce are enumerated in CEDAW’s general recommendation to article 16, which specifically denounces polygamy because “polygamous marriage contravenes a woman’s right to equality with men” (CEDAW 2013, para. 27).

Finally, under all existing Christian personal status laws, husbands are not obligated to support their wives when a final divorce judgment is pronounced by the courts. The logic behind this approach is based on the understanding that a husband has the duty to support his wife in return for her cohabiting with him. However, husbands are often required to provide maintenance (spousal and child support) during the duration of court proceedings, based on the discretionary powers of the judge in the religious court.

3. Discrimination in custody laws

Just a few days before Mother's Day, on 18 March 2017, a small demonstration by a small group of activists who gathered in front of the High Islamic Council for the Shi'ite Confession brought to the fore the discriminatory religious laws that favor the fathers over mothers when it comes to custody of children following a divorce. Activists from the association Protecting Lebanese Women demanded that the Shi'ite council change the minimum age at which custody of children is taken away from the mother and given to the father. Currently, a divorced mother married in a Shi'ite court loses custody of her boys when they reach the age of two, while girls can stay with their mother until the age of seven. The rally was instigated by a judge's decision to allow Rita Choucair, a mother with a two-year-old son, to see her child only for three hours a week until a final decision was reached (Hamadi 2017).

As already noted, custody laws are not the same for all confessions, and as a member of the Shi'ite confession, Choucair's custody of her son ended at age two. The age at which the child of a divorced couple is required to leave his or her mother and live with his or her father not only depends on the confession, but also on the sex of the child; had her child been a girl, she would have been able to maintain custody until age seven. Similarly, in the Sunni confession, the custody age of boys and girls used to be seven and nine, respectively, until a landmark Sunni code was introduced in 2011, which allows both to stay with the mother until they are 12 (see part IV below).

In all confessions, legal guardianship (which is separate from custody) is granted to the father both during marriage and after divorce. This is because he is considered the unconditional moral and financial guardian of his children. As the 2015 Human Rights Watch report states, "[T]he time-bound, conditional, and revocable nature of maternal custody discriminates against women who cannot enjoy the right of guardianship, which remains restricted to fathers regardless of the child's best interests" (HRW 2015, 70).

Moreover, until 2011, Muslim custody laws did not consider the best interest of the child when deciding which parent the child should reside with following a divorce. This changed for the Sunni confession in 2011, following parliament's ratification of the new Sunni family code, which came as a result of a sustained six-year lobbying campaign by Sunni women's rights organizations. As a result of the new code, some Sunni judges have started using their discretionary powers to determine the best interest of the child in custody cases. However, Shi'ite and Druze courts still do not allow judges to issue rulings that take the best interest of the child into consideration during custody cases.

Similar to their Muslim counterparts, judges in Christian courts must rely on the age of the child in determining custody. For example, for Maronites, maternal custody of both boys and girls ends at age two, whereas for Greek Orthodox it ends at 14 for boys and 15 for girls. However, the Christian personal status laws allow religious courts (at their discretion) to make a decision based on the best interest of the child, which they take into consideration during custody cases.²⁹

The fact that Christian personal status laws allow judges to consider a child's best interest following a divorce does not necessarily mean that it is always applied, or that mothers are given priority to take care of their children. The 2015 Human Rights Watch report, while documenting cases where the interests of the child were taken into consideration by the judges in Christian courts, also notes how the rulings examined in the report are not always consistent: in some cases, the judge considered the best interest of the children, and in other cases the father was granted custody without any justification (HRW 2015,

29 Personal interview with Danielle Hoyek, lawyer, 23 Mar. 2017.

71–74). Moreover, in all the court cases examined, women were denied custody and found to be “unfit” if (i) they belonged to a different religion (than that of the father), (ii) their religious education was found “lacking” (iii) they remarried, (iv) they had long working hours, or (v) their social behavior was found to be questionable (e.g., they posted pictures of themselves with men from a social gathering on Facebook) (ibid., 8, 81). According to the report, religious courts generally apply different criteria to men and women in custody cases and often grant the custody of children to the father without considering the best interest of the child (ibid., 8):

A husband’s right to maintain primary care of his children is not contingent on his remaining unmarried and he is less likely to be found to be an unfit parent, except for example in extreme cases when he could not care for the child due to alcoholism or drug addiction.³⁰

30 I observed an incident supporting this conclusion in a Sunni court in May 2017. A man came to the highest Sunni judge in Beirut with a set of photographs of his ex-wife, taken from her Facebook page, where she could be seen mingling with men in various public social settings. The ex-husband’s argument was that his daughters could not be trusted with a mother who led such a “loose” and “immoral” lifestyle. The Sunni judge responded with utter dismay at the “unacceptable” behavior of the mother and promised that this would surely be taken into consideration in his decision regarding the mother’s custody of her children.

IV. AMENDING THE SUNNI FAMILY CODE: REFORMING PERSONAL STATUS LAWS FROM WITHIN

A. The Sunni campaign to raise the custody age

Considering the great difficulty in introducing reform in the personal status codes of religious confessions in Lebanon, especially for Muslims, the success of the civil campaign to raise the custody age for children of Sunni parents, launched nearly a decade ago, can be considered a watershed in the modern history of the country and a valuable case study for introducing future reforms in the religious personal laws in Lebanon. This section traces the course of this campaign, which began officially in 2006, spearheaded by the Family Rights Network (*Shabakat houkoug al mar'a*). It carried out sustained lobbying activities with politicians and religious authorities between 2006 and 2011, including organizing a sit-in on 4 June 2011 in front of Dar al-Fatwa—the seat of the highest Sunni authority in the country.

The idea for the campaign started unofficially in 2005 when the producers of a new satellite channel catering to the Arab woman, called “*hya*” (or “she” in Arabic), began to host lawyer Iqbal Doughan, a member of the Family Rights Network, on a weekly basis to discuss Lebanese personal status laws and their detrimental effects on women’s lives.³¹ Female viewers received the show positively, which gave members of the Family Rights Network the idea of orchestrating a campaign to unify family laws in Lebanon by replacing the multiple religious laws with a single, common one. The campaign initially sought to bring together activists and experts from all confessions. For strategic reasons, members of the network soon decided to focus exclusively on the sensitive issue of maternal custody. In their view, this was an issue of de facto violence against women, since mothers facing the possibility of losing their children at an early age following a divorce would feel compelled to stay in an abusive marriage (Al-Masri 2011; interview of Doughan).

Moreover, the activists chose to start with an issue that is not dealt with in holy scripture, to reduce possible opposition by religious leaders to their demands for change (neither the Qur’an nor the Bible specify the age at which children of divorced parents have to leave their mother to live with their father). Furthermore, the issue of custody had already been the subject of successful reform in most Arab (and Muslim majority) countries in the region, which precluded any “excuse” to reject reform on religious grounds. Finally, by opting to push for reform from “within the confessions,” activists hoped to create a “domino effect” (*tasalsol*), that would allow changes in the relatively easy issue of custody age to trickle down and effect change on religiously thornier issues (like equal inheritance for Muslim women, which is clearly proscribed in the Qur’an).³²

This was the start of the national campaign titled “13–15.” The campaign included male and female lawyers, social workers, and activists from all confessions. For the Sunni activists—the only group to have eventually succeeded in this nation-wide campaign, initial work centered on collecting evidence of mostly progressive custody laws from other Arab countries and using a Qur’anic jurisprudential approach to prepare a specialized draft law for Lebanon. The next step entailed meeting with political and religious stakeholders to seek their support, including a meeting that the then-head of the Muslim religious courts Sheikh Abdellatif Deryan called for and held at his own residence.³³ As the leader of the lobbying campaign for the Sunni confession, Doughan has explained,

Our objective in that meeting was to make sure that there were no religious texts regarding [maternal] custody. All *shari’a* judges present then agreed that there was no scriptural text

31 Doughan became president of the network in 2008.

32 In Islam, women inherit half the amount inherited by the male siblings (Quran 4:11).

33 Deryan is currently Grand Mufti of the Lebanese Republic.

related to custody age, and that all Muslim confessions leave the door open for *ijtihad* on that issue. Then it became clear to us that we were going to be able to amend it [i.e., the custody age], especially since the Greek Orthodox confession was able to amend its custody age in 2003 and to bring it up to 14 for boys and 15 for girls.³⁴ (Al-Masri 2011; interview of Doughan)

Because no Qur'anic text or any prophetic saying (*hadith*) specifies the maternal custody age, the issue was open to legal reasoning. This proved to be crucial to the success of the campaign, allowing it to garner support from inside the Sunni religious establishment, not just by members of the political elites. Indeed, the Sunni campaign won the support of several allies from within *shari'a* courts, as a result of persistent debates and discussions that were held with them over the years. As Doughan explained, "Those [sympathetic] judges were telling us about all the details of what was happening inside the courts" (quoted in Al-Masri 2011).

Grand Mufti Sheikh Mohammad Rachid Kabbani opposed the reform, but Deputy Mufti Omar Meskawi (also a former cabinet minister and lawyer) supported the reform³⁵:

In my position as deputy mufti and *shari'a* expert, I was responsible for collecting information on custody age according to Sunni Islam. I started with the oldest books written by Abou Hanifa.³⁶ His writings on the issue do not mention anything about custody age. Instead, he speaks of "puberty age" [*sinn el boulough*]. According to him, a boy is of age and can go to his father when he is 15, and a girl when she can "cook" and "wash" her clothes, literally these two words! ... This means she can now take care of herself. That's when she can go to her father. This is the cornerstone of this issue. Later, with changing social conditions, subsequent jurisprudence scholars started gradually decreasing the age at which children were allowed to join their father. They believed that a child can join his or her father when he or she starts knowing how to pray, and they estimated that this can be done at the age of seven for boys, and nine for girls. This is the historical background of this issue, and the practice was spread throughout Greater Syria [*bilad el-sham*]. As you can see, this has nothing to do with *shari'a*. It has to do with *fiqh* [the process of gaining knowledge through Islamic jurisprudence]. As such, amending these issues is premised on doing what is "appropriate" in such situations [*al shay' al munaseb*].³⁷

However, for the decision of the High Islamic Council for the Sunni Confession to become binding on *shari'a* judges, it was not enough for the Council to approve raising the age of maternal custody. The existing law organizing Sunni and Shi'ite courts also had to be amended and approved by parliament; otherwise the decision of the Council would not be binding on *shari'a* judges.³⁸ This step in the policymaking process required more lobbying, this time with politicians and Sunni members of parliament. Although the campaign succeeded in getting the support of highly placed politicians and members of the Sunni political elite (e.g., prime ministers Seniora and Mikati), other members of parliament opposed the amendment from within the very parliamentary subcommittee (*lajnet al idara wal 'adel*) that was meant to study the draft proposal. Opposition came mostly from Sunni

34 *Ijtihad* is a legal term referring to independent reasoning by a jurist for the purpose of finding a solution to a legal question that is not dealt with clearly in Scriptures (Qur'an and Sunna).

35 At the time, the grand mufti was Sheikh Mohammad Rachid Kabbani, who was quite resistant to changing the custody age for the Sunnis and later vehemently attacked the draft law on domestic violence.

36 Imam Abu Hanifa is an 8th century Sunni Muslim theologian and jurist. He is the founder of the Hanafi school of orthodox Sunni jurisprudence which is followed by Sunnis in Lebanon.

37 Personal interview with Omar Meskawi, former cabinet minister and lawyer, 4 Apr. 2017.

38 *Ibid.*

members of parliament Samir el Jisr and Bahij Tabbara. As a result, the campaign almost came to a halt for a full year, “based on the excuse that they [members of the parliamentary subcommittee] need[ed] to study the draft” (Al-Masri 2011; quoting Doughan). Sunni activists had to engage in renewed lobbying efforts to get the parliamentary subcommittee to approve the draft law.

In parallel to the lobbying efforts with parliament, and in order to step up pressure on the High Islamic Council for the Sunni Confession, Sunni activists, headed by lawyer Iqbal Doughan, organized a sit-in on Saturday 4 June 2011, in front of Dar al-Fatwa, the Council’s seat. The timing of the sit-in was chosen to coincide with Council meetings (which are held each Saturday) and to occur before the start of the summer break (in order to prevent further structural delays). As a build up to the sit-in, activists also worked to empower women whose custody court cases were ongoing or pending by providing them with legal counsel. As a result, as Doughan has explained, some *shari’a* judges in the religious courts “started hating [the activists] because [they] were helping women to stand up to them, by making numerous calls and establishing contact with these judges in order to hold them accountable for the decisions they were issuing with respect to maternal custody” (quoted in *ibid.*).

On the morning of 4 June 2011, a small group of female activists gathered in front of Dar al-Fatwa. The group included not only representatives of Sunni women’s rights organizations, individual experts, and activists, but also a small number of divorced mothers who came with their children. The timing of the sit-in coincided, intentionally, with a scheduled meeting of the Council taking place inside, in order to exert pressure on Council members. Unexpectedly, Grand Mufti Kabbani invited members of the sit-in inside the premises. As head of the campaign and lawyer Iqbal Doughan explained, the grand mufti was annoyed by the presence of protesters in front of Dar al-Fatwa (and the negative publicity this might generate against him), so

... he invited everyone in and locked the doors. We waited for three hours, while those in charge [at Dar al-Fatwa] were repeatedly asking us to leave. But we were adamant about staying. We have been waiting for this amendment for five years. It wouldn’t hurt us to wait a few more hours.³⁹

Nearly four hours later, the grand mufti came to meet the protesters waiting in a back room and personally announced that the custody age would be amended to age 12 for both girls and boys. The highest Sunni religious authority finally agreed to change the custody age. In addition, parliament agreed to ratify Law no. 177 of 29 August 2011, which amended article 242 of the Law of 16 July 1962 (relating to the organization of Sunni and Shi’ite courts), thus allowing the change in the custody age to become applicable in Sunni religious courts.

In short, in order for the women’s rights organizations and activists to succeed in changing the custody age for Sunnis and allow divorced mothers to keep their children with them longer, activists had to deal simultaneously with multiple challenges, some of them cultural and religious and others purely structural. For example, activists had to deal with two major, separate “structural” fronts to amend the laws—the high-level Sunni religious institution and parliament. Both had to agree to the change, but both proved throughout to be recalcitrant to raise the custody age, preferring instead to maintain the status quo.

According to the introduction of Law no. 177 of 2011 (which only applies to the Sunni confession), *shari’a* judges must now abide by decisions of the High Islamic Council for the Sunni Confession in matters of personal status laws and may only go back to the Ottoman Family Law of 25 October 1917 if “there is no text” on a specific family issue. In that case, the judge may issue “a decision based on the preponderant interpretations from the school of Imam Abu Hanifa.”

39 Personal interview with Doughan, *supra*. I was also part of the sit-in that day and witnessed the events described by Doughan.

B. Importance of the Sunni campaign to raise the custody age

Although raising the custody age to 12 years for both boys and girls was below the expectations and demands of the lobbyists (who had pushed for a custodial age of 13 for boys and 15 for girls), the campaign itself was a success, marking a watershed in the effort to reform one of the country's most powerful religious institutions that up until then had proved highly resistant to change, especially when it came to improving women's rights. As Omar Meskawi, deputy grand mufti and cabinet minister, has explained, the strong pressure from women's rights groups, combined with the fact that no scriptural text specified the proper custody age, allowed the High Islamic Council for the Sunni Confession to respond positively and agree to raise the maternal custody age to 12 for both girls and boys.⁴⁰

When asked which criteria were used by the members to reach this specific cut-off age, Meskawi explained that members were agreed on the need to raise the age, with the main criterion used being the "degree of awareness of the child" and the child's ability to discern what is happening around him or her.⁴¹ To the majority of Council members, this age was believed to be 12.

The details of the debate within the Council around the new custody age remain undocumented to this day. The leader of the lobbying effort has stated, "We were not allowed to attend the meeting" (Al-Masri 2011; quoting Doughan). Nonetheless, in spite of a lack of transparency in the process, the results of the vote on the new custody age within the Council became known unofficially through leaks by members of the Council itself:

We found out that 13 members of the Council were against us, and 14 members were with us. It passed by one vote! Eventually, we were able to know who voted against us through leaks. But I will not disclose the names of those members. To me, passing the decision means the opposition is not important. That's what finally counts for me. In my opinion, the reason why they voted against [the new custody age] is the result of pure patriarchal attitude. (Ibid.; interview of Doughan)

40 Personal interview with Meskawi, *supra*.

41 Ibid.

V. LAW NO. 293 ON DOMESTIC VIOLENCE: REFORMING PERSONAL STATUS LAWS FROM WITHOUT

A. A new civil law to protect women from domestic violence

In just the first eight months of 2013, a total of 10 women were killed by a male relative (son, father, or husband) in Lebanon (Salameh 2014, 16; citing Hamyeh 2013). In that same year, the prominent feminist NGO KAFA documented 450 cases of family violence.⁴² An older study on domestic violence in Lebanon shows that 35% of Lebanese women have been subjected to domestic violence at least once and 57% of battered women have reported the violence to a friend or family member (Kurdahi 2015). Extensive media coverage of many cases of violence throughout 2013 and the ensuing public uproar and interest in such cases has helped break the silence around the issue of family violence and has highlighted the inability or unwillingness of religious courts to deal with this serious, often deadly, social phenomenon:

The question of protection came to the forefront through women who began breaking the silence around the issue of family violence. Their stories revealed that religious courts are practicing injustice towards women in cases of divorce and custody and even incidents of severe violence. Such voices deemed religious courts as incapable of providing protection. Their role in such incidents was seen as enhancing and legitimizing the status quo, by imposing silence on women and insisting on considering family violence as a private matter and religious taboo. (Salameh 2014, 16)

The increasing occurrence and reporting of deadly incidents of domestic violence, coupled with the lack of punishment for perpetrators, has highlighted the extent to which Lebanon's criminal law has been incapable of protecting women at risk in the domestic sphere. For example, article 503 of the Lebanese Penal Code, which deals with rape, states that "whoever forces someone *other than his marital partner*, through violence or threats, to have sex, is punished with hard labor for at least 5 years" (italics added). In other words, a man who rapes his wife is not covered by the law and is even de facto exonerated, since the very crime of "marital rape" does not exist in the Lebanese Penal Code, which considers domestic violence "a private type of violence" relegated to the private sphere (Doughan 2016). The draft law on domestic violence sought to address precisely this absence of protection for abused wives in both criminal and religious laws.

Starting in 2007 and as part of a coalition of about 40 national NGOs, KAFA championed Lebanon's first draft law on domestic violence, which was prepared with the help of concerned judges and lawyers. By early 2014, parliament had still not voted on the much-needed bill. Therefore, in celebration of International Women's Day on 8 March 2014, KAFA organized a demonstration to support the draft law on domestic violence, with an aim of exerting pressure on parliament to pass the bill. An estimated crowd of 5,000 people participated in the demonstration, marking the first time citizens had collectively rallied for women's rights in the country on such a large scale. More importantly, the demonstration "stood out due to the absence of official participation by mainstream political parties or 'prominent' figures in society. Rather, the call was for people to raise their voices and pressure the parliament to endorse the law related to violence against women" (Salameh 2014, 13). Less than a month later, on 1 April 2014, parliament finally approved the draft law as amended by a parliamentary subcommittee. It went into effect on 15 May 2014.

B. A controversial bill

The "Draft Law to Protect Women from Family Violence" was innovative and daring in many respects. It represented an affront to the patriarchal culture in which it was

42 Layla Awada, lawyer, NGO KAFA (Enough Violence & Exploitation), personal interview, 13 March 2017.

introduced, as well as to the conservative religious and legal context it sought to (indirectly) address and reform. More seriously, the draft law, if passed, would inevitably encroach on the prerogative of Lebanon's religious institutions, since it dealt with issues that were historically under their mandate (such as child custody, marital rape, and recalcitrance).

Upon its introduction, the draft law enjoyed great support from civil society activists, professionals (judges and lawyers), and NGOs. However, Lebanon's main religious institutions harshly opposed the bill, particularly the country's supreme Sunni and Shi'ite councils, which tried to block it during various phases of the policymaking process and to prevent it from being passed in parliament. The High Islamic Council for the Sunni Confession, represented by Grand Mufti Kabbani and backed by a number of Muslim civil society organizations (including some Sunni women's associations), vehemently argued that the draft law violated *shari'a* and sought to destroy the Muslim family by eroding the authority of the father.⁴³ In a press release issued on 23 June 2011 (around the time the bill was being studied in a parliamentary subcommittee), the Council seat, Dar al-Fatwa, attacked the draft law for being a mere copy of "Western laws that encourage the demise of the family."⁴⁴

Dar al-Fatwa enumerated several reasons to prove that the draft law was unsuitable: (i) it was not meant to improve women's status (which is protected in Islam), "but rather to break up the family and to turn the social pyramid upside down, in compliance with Western ways"; (ii) it would deny "the Muslim father the right to educate his own children, and in particular his daughters"; (iii) it would "undermine[] the prerogatives of the Islamic religious courts"; (iv) it would lead to confusion in the legal system by introducing new concepts (such as "economic violence") and new types of crimes (such as "the heresy [*bida'a*] of marital rape"); and (v) it would transform "judicial institutions into reporting units that denounce alleged cases of family violence" (Dar al-Fatwa 2011, 79). Dar al-Fatwa argued that this last reason, along with the issuing of a "restraining order against the alleged abuser," would "preclude any possibility for amicable reconciliation between the different parties" (ibid.). Dar al-Fatwa also criticized allowing children to testify in cases of domestic abuse, arguing that "getting the children to testify against their father would have a negative impact on Muslim children, who are the future fathers of the next generation" (ibid.). Dar al-Fatwa's press release concluded by attacking the "feminist secularist organizations" which it said promote "distorted interpretations of Western laws that only conform to the aggressive capitalist and individualistic values, and are in defiance of the religious principles, the moral values, as well as the oriental and Islamic customs and traditions" (ibid.).

Less than a week later, the National Coalition for the Protection of Women from Family Violence issued a press release dealing with Dar al-Fatwa's objections to the draft law to protect women from domestic violence. The Coalition's response used the same saying (*hadith*) by the Prophet Mohammad cited by Dar al-Fatwa a week earlier to show that Islam cares for women: "Only a man of noble character will honor women, and only a man of base intentions will dishonor them".

In fact, this *hadith* was merely mentioned in Dar al-Fatwa's press release, but the Coalition commented more fully on this *hadith* to demonstrate the importance of going beyond a mere exhortation to treat women well in Islam. The Coalition's response highlighted the importance of standing up to the man of "base intentions" who attacks a woman by rhetorically asking if deterring those with "base intentions ... from wrongdoing constitute[s] a crime" (National Coalition 2015, 81). The Coalition's main purpose was to drive home the point that it is not enough in Islam to morally condemn men who do harm to women. Rather, legal mechanisms act as an important deterrent in cases of domestic violence, and not allowing for such mechanisms would constitute a "denial of the Islamic principles

43 Dar al-Fatwa's counter-campaign was organized with the support of the Women's Committees and Associations Gathering for the Defense of the Family (Salameh 2014).

44 "The Response of Dar al-Fatwa to the Draft Law on Domestic Violence", Press Release issued by Dar al-Fatwa on June 23, 2011, translated and published in *al-Raida*, Issue 131-132, Fall/Winter 2010-2011.

and ethics” (ibid.). The Coalition’s response also dealt with every single contentious issue regarding the draft law raised by Dar al-Fatwa’s press release in order to demonstrate why these issues were “fallacies” (ibid.). The Coalition’s main argument was that it is the *father’s* original act of violence—as well as the failure to report and punish it—that “leads to the disintegration of the family” (ibid.).

C. Amendments to the draft law on domestic violence

By the time the draft bill on domestic violence finally reached parliament for a vote in April 2014, various ministerial and parliamentary committees that had studied it for years had already made several changes to its content. Reflecting on the eight years of activism that preceded the passing of the law in parliament, lawyer and president of the Lebanese Council of Women, Iqbal Doughan, said (in 2017),

Lawyers and judges worked on the draft law, with the effort organized by KAFA, which acted as a catalyst for a national coalition of several NGOs. But we were met with fierce resistance at several stages. The draft was studied during the premiership of Saad Al-Hariri [current prime minister of Lebanon] in a committee at the Ministry of Justice, then in another committee presided by [Minister] Ibrahim Shamseddine. After the proposal was accepted, it was sent to parliament for further study. That’s where our problems started. The draft proposal was studied there by a small committee presided by MP Samir el-Jisr. That’s where they started tearing it apart. Even its title became “family law” [i.e., law for the protection of the family]. We were also opposed by several religious organizations and groups, especially the Islamist ones. I personally discussed the draft law with these groups, which also included Islamist women’s groups.⁴⁵

Indeed, after amendment by relevant (conservative) committees, the draft bill’s title was changed from “Draft Law to Protect Women from Family Violence” to “Law for Protecting Family Members from Family Violence.” The law’s final title reintroduced “women” as a category worth protecting on its own: “Law for Protecting *Women* and Other Family Members from Family Violence” (emphasis added). These changes at the level of the law’s title exemplify the tug of war between conservatives (both public officials and members of civil society) and women’s rights advocates. Women’s rights advocates wanted the law to expressly address the issue of gender—that is, the unequal power relationship between spouses and the possibility of intimate partner violence—by singling out women in the title. The resulting compromise led to a hybrid title: although the law now covers all family members and does not exclusively address women, it nonetheless highlights women as a category worth protecting on its own within the family sphere.

Several other issues and articles in the draft law were very contentious to the religious and legal establishment and led to delays in approving the law. One of these issues was the overlapping jurisdiction the law created between state laws and religious laws on issues related to the family and the protection of the children of abused women (especially when they are above the religious custody age). Another was the concept of “marital rape.” Civil society had introduced this concept in the draft law it presented; however, neither religious authorities nor their representatives in parliament acknowledged this concept, insisting on using the phrase “marital rights” instead.⁴⁶ The final draft of the law represented a compromise on these and other issues and thus was in some respects a watered down version of the original draft submitted by the national coalition. KAFA and its network of civil society organizations hoped to redress these issues and to reintroduce a number of pro-women clauses (especially the concept of “marital rape” and the issue of child custody) by lobbying and obtaining pledges from parliamentarians to propose amendments to the

⁴⁵ Iqbal Doughan, personal interview, 26 April 2017.

⁴⁶ Law no. 293 acknowledges the husband’s right to demand sex from his spouse (*houkouk zawjyyah*), and only criminalizes such behavior when marital sex is obtained by force through physical harm (*darb* or *izaa*) or threats (*tahdid*) (see article 3, paras. 7(a)–(b)).

related articles during the voting session that was to take place on 1 April 2014. KAFA's lobbying was ultimately unsuccessful:

70 MPs signed a petition that we prepared stating that the [original] draft law should be considered and that the amended proposed bill to be voted on in parliament should be discussed. During the voting session, however, those 70 MPs did not utter a word and the draft law was passed in a single motion, without any discussion. (Doughan 2015)

In short, the version of the draft law approved by the joint parliamentary subcommittee was quickly voted on and passed in parliament without any discussion about any of the amended articles that KAFA and its coalition had reservations on.⁴⁷ As Riwa Salameh notes, "Although the original draft was endorsed by MPs by a show of hands, the circumstances of the law to protect women from family violence and its final version are an indication of the direct influence of religious institutions in shaping legislation in Lebanon" (Salameh 2014, 17).⁴⁸

D. Law no. 293 of 2014 and the protection of women from domestic violence

In spite of the amendments discussed above that reduced the types of protection available to abused women and their children, Law no. 293 nonetheless remains revolutionary, as it managed to introduce for the first time at least some protective measures for women suffering from domestic abuse. Summarizing the importance of this new law, law professor Abdo Ghossoub (2016, 5) writes, "The importance of Law no. 293/2014 lies in its ... embodiment of a new methodology in legislation, one where the human being, rather than society, country, or nation, is the target of legislation." More importantly, the new law challenges the legal and judiciary monopoly of religious institutions over the private sphere:

It should be reminded and asserted that religious courts in Lebanon are nothing but exceptional courts, and cannot claim that what does not come under the jurisdiction of the three authorities enumerated in Law no. 293/2014 falls de facto under their own jurisdiction. Moreover, their [the religious courts] laws and religious culture continue to be incapable of providing the kind of protection secured by Law no. 293/2014. ... Law no. 293/2014 has instituted a new system [or order] and did not take away anything from them [i.e. the religious courts]. There would have been no need for such law [i.e. Law no. 293/2014] had the religious institutions been capable or willing to provide this much needed protection. (Ibid., 5)

In particular, Law no. 293 still reflects in many respects international standards when it comes to protecting women from domestic violence. First, it incorporates a nuanced, comprehensive understanding of domestic violence that goes beyond physical violence to include other types of violence as well, including emotional (or psychological), sexual, and economic violence (article 2). The law also includes several mechanisms aimed at

47 The members of this sub-committee were members of parliament Gilberte Zwein, Nabil Nicolas, Michel Helou (since deceased), Ghassan Moukheiber, Ali Ammar, Samir al-Jisr, Imad al-Hout, and Shant Janjanian.

48 For instance, a major problematic change concerned the title of the law itself, which broadened the scope of a law that was designed to protect women from domestic violence to include all family members and by doing so "de-prioritized women subject to family violence and dismissed the specific protection procedures highlighted in the draft law" submitted by the national coalition of NGOs (Salameh 2014, 16). The law does not criminalize or acknowledge marital rape, except where the spouse is physically harmed. Finally, the revised law does not extend protection to the children who are above the custody age specified in the personal status laws. This means that an abused mother can get an order of protection from her husband, while her children, depending on their age, might be ordered to stay with her abusive husband, in accordance with the religious laws of the country.

protecting women from family violence, mostly by allowing judges to issue temporary restraining orders against husbands of abused women within 48 hours of receiving a request for protection by a victim (article 13). Other provisions ensure, when necessary, that action against abusers can be taken swiftly by the public prosecutor, even *before* relevant authorities issue a protective order (e.g., prohibiting the abuser from entering the family home, arresting the abuser, or moving the victim to a safe house or to a hospital in case of injury—all at the expense of the abuser) (article 11). The protective measures include the children and other family members living with them “if they are in danger” (article 12). A main drawback in this latter protective measure is that it only *automatically* includes the children when their custody belongs to the mother (as per religious laws), a stipulation that respects and is in line with the religious personal status laws. Children under the custody of their father are not included in a protective order unless the judge determines so, based on assessing the level of danger they are in (article 14, para. 4).

Law no. 293 also encourages witnesses, including social workers, to report violence and extends the protection order to such witnesses, should reporting put them in danger (article 12). It also seeks to safeguard the family’s privacy by keeping secret all court proceedings related to domestic violence (article 19). In addition, the law mandates the establishment of specialized family units within police stations (known as internal security forces or ISF) and requires that ISF staffs include women who are properly trained to deal with conflict resolution and offer social guidance, with the help of specialized social workers (article 5).

To guarantee that law enforcement is effective in helping victims of family violence, Law no. 293 includes provisions to ensure that members of the police force show up, “without any delay,” on site when a case of domestic violence is reported and holds criminally liable any officer who “attempts to coerce the abused or to exercise pressure on him in order to make him withdraw the complaint” (articles 7, 8).⁴⁹ Articles 7 and 8, which boost the positive involvement of the police force, were the result of long cooperation between high-placed officials in ISF and civil societies who had worked on the draft law since 2007. As ISF Colonel Asmar has explained,

We [ISF] have participated in the drafting of Law no. 293 since 2007. I personally participated in 54 discussion sessions in parliament to that effect. We introduced the article penalizing members of the ISF [article 8] and conducted extensive training about domestic violence, while paying special attention to the psychological dimension. (Asmar 2017).⁵⁰

E. Implementing Law no. 293: Reform from without

Three years have elapsed since Law no. 293 went into force following its publication in the Official Gazette (no. 21, 15 May 2014). Since that time, the law’s implementation in civil courts has begun to create a cultural and legal shift in Lebanese society. This is so

49 According to the Penal Code, such an offense or “dereliction of duty” can be punishable with up to three years in prison (article 376).

50 Colonel Elie Asmar, ABAAD conference in celebration of International Women’s Day, Movenpick Hotel, Beirut, 7 March 2017. During the same conference, forensic pathologist Dr. Naji Sa’ibi explained the type of training that the police force (ISF) underwent to learn how to deal with sexual violence and institutionalize and mainstream intervention in cases of abuse. He emphasized the importance of training the police to properly document cases of sexual violence in Lebanon, in order to bring the perpetrators to justice. He also explained the difference between “sexual violence” and “rape,” noting how the first is a medical definition that is international, whereas the second is a legal concept that differs from one country to another. For instance, he explained that in Lebanon a woman cannot be raped by her husband, because the penal code does not include the concept of “marital rape” (citing article 503 of the Penal Code).

despite the shortcomings that remain in the text of the law.⁵¹ Most decisions made by civil judges based on the new law indeed reflect the progressive nature of civil courts and judges in comparison to religious courts, as well as the extent to which it is possible to introduce justice for women in a civil court of law, in a society otherwise controlled by a discriminatory and patriarchal religious legal system governing personal status laws.

Since Law no. 293 went into force, KAFA, the law's champion since 2007, has published a couple of studies monitoring the law's implementation.⁵² Most importantly, these studies include the actual text of the protective orders issued by civil judges over the last three years, which allows later researchers to access and directly study legal and public documents relating to Law no. 293 that are otherwise very difficult to obtain.⁵³

Barely two weeks after Law no. 293 went into force, the public prosecutor in Beirut, Bilal Dennawi, acted on the first complaint of domestic violence, based on article 11 of the new law. Judge of Summary Affairs Jad Maalouf, the first judge in the history of the country to issue a protective order in favor of a battered woman, recounted his experience with this landmark decision, exactly one year after voting for the bill in parliament:

It was a Saturday 31 May 2014, when I received news of a lady who was subjected to physical violence and sought a protective order. I went to the Palace of Justice to deal with the issue. The new law had just been published two weeks earlier in the Official Gazette, and we, lawyers and judges, had not had any time to read it or discuss it. What should I do? I arrived at court and saw a lady with beating marks on her. She was near collapsed. The first mistake I made was to spend time figuring out the legal technicalities, forgetting the human and social dimension of the case. The night before, she was severely beaten, and she had an infant and a young child with her. I called the police precinct and the public prosecutor. The husband was then arrested. The wife was thus able to appear in court the next day. This experience made me realize the importance of dealing with the victim, not just getting lost in trying to interpret the law. This is the important role of the judge at this stage. This wife was being subjected for years to severe physical abuse. She was practically a prisoner, along with her children, in her own home! Before I issued my decision, I felt I needed to comfort her. I asked her to tell me her entire story, and not just what happened the night before. This law should not just be ink on paper. Despite its gaps [or weaknesses], its implementation can be effective. (Maalouf 2015)

Within just six months of enacting Law no. 293, civil judges throughout the country received 36 requests for protective orders from women and consequently issued 30 protective orders (KAFA 2014). Within one year of introducing the law, Lebanese courts had issued 48 protective orders (and rejected six requests).⁵⁴ Although some of the abused women could not be saved by these protective orders (for example, Nisreen Rouhana was eventually killed by her husband, despite a protective order issued against him), "hope still remains [about the positive impact of the law] when we look at the number of women who

51 To name just two, the law does not offer protection (i) to divorced women or (ii) to underage married girls (since their legal guardian must file the complaint on their behalf). Personal interview with Leila Awada, KAFA lawyer, 13 Mar. 2017.

52 One such important study covers the challenges in implementing Law no. 293, and is titled "Tahadyat tatbik alqanoun raqem 293", KAFA (Enough Violence and Exploitation), Beirut, Lebanon, 2014

53 Lebanon's parliament voted on the country's first right of access to information law very recently, on 19 January 2017; however, it remains to be seen how this law will enable researchers and members of civil society to easily access government records (Zayadin 2017). The other main difficulty in obtaining court decisions related to domestic violence is that court archives do not allocate a special section for family violence. All decisions are filed based on their date, which makes browsing through them for relevant files a tedious process.

54 Personal interview with Awada, *supra*.

gained the confidence to go to court and whose lives have been changed by the protective orders” (KAFA 2014).⁵⁵

Some of the major challenges in implementing Law no. 293, based on the protective orders that were issued in the second half of 2014, include the following:

1. the extent to which the text of the law is read to consider the unequal power relations that lead to gender-based violence;
2. the extent to which victims can be truly protected from the various forms of violence they are subjected to, especially psychological and economic violence;
3. the ability of victims to provide legally acceptable documents that prove the occurrence of bodily harm or damage;
4. the ability of courts to activate the complementary roles of the public prosecution and judges of summary affairs, as provided by the law; and
5. the existence of appropriate mechanisms to implement protective orders and effectively pursue those who defy them.

For instance, a major challenge civil judges have confronted since the enactment of Law no. 293 shows the extent to which the judicial system, as it currently exists, is not equipped to deal with “psychological violence.” In a recent national conference assessing the implementation of Law no. 293, Elias Richa, judge of summary affairs in the region of Kesrwan, explained the difficulty untrained civil judges have when verifying the occurrence of psychological violence or marital rape, especially in cases where the wife does not exhibit physical signs of violence (Richa 2016). He acknowledged the need to create specialized courts to deal with family affairs and disputes, following the example of France, since Lebanon’s Law no. 293 is mostly fashioned after French Law no. 2010-769 of 9 July 2010 on Violence Against Women, Violence Between Spouses, and the Effects of These Types of Violence on Children (see also Atwill 2010).

According to a 2014 KAFA study on implementing Law no. 293, judges who have received requests for protection from an abusive partner have not taken similar jurisprudential approaches to the new law (KAFA 2014). For instance, whereas it is clear to all judges that protective or restraining orders are temporary measures taken to protect individuals at risk until a more permanent solution (such as reconciliation or divorce) can be reached, judges differ in deciding the duration of a restraining order. Some specify the time period (e.g., a week away from the marital home or no interaction with the victim for six months) that can be renewed or terminated upon the recommendation of a social worker, while others tie the duration of the order with the time needed to reach reconciliation or divorce. In addition, some judges require that the husband undergo psychological rehabilitation and an assessment report by a concerned expert as a precondition for determining whether a restraining order should be extended or not.

Moreover, according to the same study, judges who have dealt with complaints based on Law no. 293 can be classified into two distinct categories: Some judges stick to the letter of the law (and the literal meaning of the text) and do not engage in interpretation, especially

55 Nisreen Rouhana was murdered by her husband, who admitted that he “took the final decision to kill her after the judge of summary affairs decided that the children should stay with her and ordered the husband to pay a monthly payment of LL 300,000 (ca. US\$ 200) for living expenses and a compensation for damage inflicted of one million L.L.” (quoted in Beydoun 2016a). According to women’s rights researcher Beydoun, women and men live in “different eras” in Lebanon: women live in the present era and refuse to be discriminated again, whereas men are still clinging to past “beautiful” times where they were fully in control over women and supported by religion and a patriarchal culture. As a result, she argues, Law no. 293 may incite even more violence by men who resent the fact that their wives dare lodge a complaint against them based on the new law and consequently might seek “revenge” by hurting them even more (Beydoun 2016b).

where gaps or inconsistencies exist.⁵⁶ Other judges actively interpret the law to expand the scope of protection for women, often by citing and applying international conventions or other instruments that Lebanon has ratified that deal with the protection of women or human rights. Indeed, in a roundtable discussion about implementing Law no. 293, one year after being voted for in parliament, two invited speakers discussed these two contradictory approaches: the head of the Beirut Bar Association, Georges Greige, called for a “literal implementation of the law” and avoiding “over-interpretation” (*tawasso3 fi-tafsirihi*), while Judge of Summary Affairs Jad Maalouf argued that the best way to circumvent gaps in the law, deal with its limitations, and increase protection for victims was to interpret the law by applying international standards.⁵⁷

This dichotomy in the way judges apply Law no. 293 is also detectable in cases involving the inclusion of children in a protective order, under article 12. In some instances, judges faithfully apply the letter of the law and differentiate between the children of an abused woman depending on their (religious) custody age.⁵⁸ However, other judges hold that, regardless of the legal custody age, children should be protected and included in a protective order—based on the understanding that, simply by witnessing domestic violence, children “are exposed to danger.”⁵⁹ This latter approach is more in line with the internationally accepted view that children who witness violence are “secondary victims” of the violence. Judge Maalouf has justified this latter approach, explaining that “the judge of summary affairs has the prerogative to fill the gaps in the law encountered during its implementation” (Maalouf 2015).

In a public event about Law no. 293, Judge Maalouf gave several examples to support his exhortation to interpret Law no. 293 in line with international human rights standards (*ibid.*). He cited the difficulty of proving wife beating, especially when women do not show physical signs of beating. He argued that judges should not limit the types of evidence required to determine if physical abuse is taking place: “If we find that there is a minimum level of seriousness in the complaint and that we suspect that abuse is taking place we issue a protective order for one week. The judge of summary affairs has the prerogative to fill the gaps in the law” (*ibid.*). Indeed, in many cases, judges have not limited their decisions to material evidence of “physical violence”—a form of violence already covered in the Penal Code (i.e., not exclusive to Law no. 293) and have gone on to interpret the new, more nebulous types of “family violence” introduced in Law no. 293 (such as psychological and economic abuse). Thus, their rulings have “defined” these new categories by including the various means through which complainees (all of them males) have sought to hurt and control their wives—verbal abuse, control of the wives’ property and belongings, prohibiting the wife from seeing her minor children, and restricting the wife’s movement. Although these forms of family violence are not covered (or spelled out) in Law no. 293, some judges of summary affairs have considered them during the implementation phase in order to help victims, and consequently have issued protective orders against the husband:

There is no doubt that the complainee has resorted to beating the complainant [the wife] with his hands or his belt, which constitutes family violence according to the above-mentioned definition. However, violence is not restricted to its physical dimension. According to the givens of the current situation, the complainant has been subjected to

56 Regarding such gaps, KAFA lawyer Leila Awada has given the example of article 3 of Law no. 293 which does not list the crime of wife beating and the physical harm that ensues among the many domestic crimes punishable by the law (Awada 2015).

57 Roundtable organized by the NGO KAFA, Beirut Bar Association, 1 April 2015.

58 Article 12 provides automatic protection to children whose mother has custody over them based on their age; other (older) children are included in the order *only if* the judge deems they are in danger.

59 According to the KAFA 2014 study, article 12 should be amended to end the discrepancy related to protecting children by providing “protection to the victim and her children without any conditions” (KAFA 2014, 8).

various forms of violence that are not any less dangerous than physical violence, every time her husband started to verbally abuse her and hurl insults at her to demean her. Moreover, he prevented her from leaving her home except for a few hours a month, without any justification for this decision. This is a breach of her most basic rights, and certainly is included in the definition of family violence found in Law no. 293/2014, since the violence mentioned there is the one that causes psychological harm, too. We also must acknowledge the seriousness and extent of the psychological damage entailed by restricting, without any justification, the freedom of movement of the wife and the verbal abuse of her.⁶⁰

In another example (Decision no. 288 of 26 September 2014), Judge of Summary Affairs Antoine Nehme issued a protective order against an abusive husband based *exclusively* on the existence of psychological abuse, citing the importance of preserving “human dignity,” since the human being is at the center of all rights protected by the UN’s Universal Declaration of Human Rights and CEDAW. In this remarkable case, where a court of law acknowledged a woman’s right to protection based on psychological, and *not* physical abuse, the principle of “intimate partner violence” was legally introduced, marking a clear departure from general protections from physical violence provided by the Penal Code. In this case, the judge found the husband guilty of “various forms of psychological torture” (*taa’zib al-nafsi*) because, for over nine years, he was “kicking her out of the house,” “forbidding her to see her son,” “hurling insults at her,” making “false accusations” against her, “threatening her with exposing their marital secrets and making them public,” and “demean[ing] her social and economic standing since he is the main provider for the family.” Judge Nehme indicated that other “ugly and “selfish” acts constituting psychological violence by the husband included “choos[ing] inappropriate moments to have sexual relations with her, by force most of the times, and depriving her of sex for a long time on purpose, just in order to increase the psychological pressure on her to the point where marital life with him became unbearable.” The psychological abuse became so acute, according to the judge, that the wife started suffering from a condition known as “fibromyalgia,” as testified by two different doctors. As a result, the complainant was repeatedly hospitalized and stayed unresponsive to medication. In his decision, Judge Nehme did not simply mention applicable international conventions; rather, he cited specific articles of these conventions to emphasize that all human beings are born equal and free and are entitled to fair trials in national courts to safeguard this equality and be protected from acts of discrimination.

In another similarly progressive decision that involved interpretation of the law, Judge Nehme interpreted the meaning of “psychological harm” to include various hurtful (but not physically harmful) acts of a Christian husband whose Muslim wife had to escape his abuse by leaving her marital home. His decision was also the first to define aspects of the terms “psychological violence” and “economic violence,” which had been introduced by Law no. 293:

Since the beginning of their marriage, she [the wife] was suffering from psychological and economic violence by her husband, who always humiliated her because she was Muslim, exposed their marital secrets to others, devalued her, and took her salary, which made a life together impossible. Her husband’s actions forced her to leave the marital home, yet he forbade her to take her two daughters with her and also prevented her from even seeing them or talking to them ... This was in addition to the psychological pressure the father exercised on his two daughters, especially the oldest one, by telling them that their mother [the complainant] is a bad person because she is Muslim and portraying her as a neglectful and adulterous woman, with the objective of making her daughters hate her and avoid her. He even wrongfully accused her of theft, and when the public prosecutor decided to make the couple confront each other, the husband did not show up because the complaint was without basis and the purpose behind it was to hurt the wife. ... The type of violence exercised against her [the complainant] is psychological violence, manifested

60 Decision no. 539/2014 of 31 May 2014 (issued by Judge of Summary Affairs Jad Maalouf). This is the first restraining order ever issued based on the newly enacted Law no. 293.

in insults and false accusations, as well as depriving the mother of her children and the children of their mother.⁶¹

An examination of all protective orders issued in 2014 following the passage of Law no. 293 shows not only that many civil judges actively interpreted the law by offering jurisprudential definitions of the newly introduced concepts of “psychological violence” and “economic violence” (something the text of the law itself did not do), but also that they forced the complainers (all men) to pay financial compensation and monthly payments to cover the living expenses of their wives and their children. What is worth noting here is that the amounts determined by the civil judges in terms of wife and child support surpassed any amount these wives could have obtained from a religious court. Whereas the average amount of wife and/or child support determined in religious courts is around US\$ 200 per month, civil courts have granted wife and child support of up to US\$ 1,000 per month in cases of domestic abuse.⁶²

61 Decision no. 225 of 20 Aug. 2014 (issued by Judge of Summary Affairs Antoine Nehme). In another decision (no. 1134 of 19/12/2014), Judge Samer Michel Matta considered the attempts by one husband to prevent his wife from retrieving her personal belongings from the conjugal home as a form of “economic violence.”

62 Out of the 14 cases where the husband was ordered to pay his abused wife alimony and child support, eight cases required payments by the husband that were above US\$ 800 dollars per month—a relatively high number for a country like Lebanon. In decision no. 264 of 28 October 2014, the husband was ordered to pay his wife a monthly sum of LBP 4 million (ca. US\$ 2,666) in wife and child support and another US\$ 600 for rent. This was the highest amount ordered by a judge in 2014 in a case of domestic violence, based on Law no. 293 of 2014.

VI. CONCLUDING COMMENTS

Since the early 1950s, civil society activists in Lebanon have been fighting for gender and citizenship equality by attempting to reduce the control of Lebanon's various religious institutions and by introducing a civil personal status law and civil marriage in the country. Despite backing by political elites, often as high as the president of the republic himself, efforts to introduce a civil personal status law and civil marriage have completely failed. As lawyer and women's rights activists Iqbal Doughan has lamented,

With respect to a civil personal status law, since I started my activism some 40 years ago, there were many calls for introducing such a law. But the issue is very difficult for us ... since simply calling for such a law is considered by many religious authorities to be "apostasy." Even President of the Republic Elias el-Hrawi himself could not pass the law [i.e. the civil personal status law], because it is such a thorny issue. (Al-Masri 2011; quoting Doughan)

The inability to change or reform the deeply entrenched confessional system with its inherent discriminatory laws towards Lebanese citizens in general and women, in particular, has prompted some women's activist groups to try to work together towards the goal of gender equality. One viable strategy they have used has been to push for reform from within the confessions, rather than focusing on abolishing confessionalism, which is perceived as the root of gender inequality in the country. Considering that the most active and best organized Lebanese NGOs in Lebanon are secular in nature, the strategy of reforming personal status laws from within was undertaken by a network of activists and organizations who were willing to engage religious authorities using the dominant religious discourse, while deploying progressive religious arguments based on acceptable Islamic jurisprudence.⁶³ This is what I refer to as reform "from within," illustrated in the present report by the successful lobbying effort to raise the custody age for Sunni Muslims. This reform was led by a coalition of activists and professionals who were not necessarily affiliated with any religious NGO or group. However, rather than struggling for gender equality through civil law reform (e.g., a law to protect women from domestic violence or for equal citizenship rights), they tried to reform existing religious laws (i.e., personal status laws) because they realized the extent to which these religious laws harm women and discriminate against them.

The campaign related to the custody age of children is an important case study because of the nature of the issue itself. While it is important to safeguard the right of divorced mothers to maintain custody of their children while they are young, the issue of child custody was a relatively easier matter to tackle from a religious point of view. Unlike the topics of marriage, divorce, and inheritance, which are dealt with directly in Muslim and Christian scriptures, custody age is strictly determined by the religious authorities in the country (that is, neither the Bible nor the Qur'an refer to the issue). Consequently, a call to raising the custody age in favor of the mother could not be rejected by religious authorities on the basis that it would contradict existing religious texts.

The issue of child custody has serious repercussions on women's lives (in this case, mothers) and is often directly related to domestic violence. The low age at which divorced mothers lose custody of their children is a factor responsible for many women deciding to remain in abusive marriages. Many married women choose to endure domestic violence out of fear of losing their children if they leave their marital home or seek a divorce, as per existing confessional laws.

⁶³ In addition to KAFA and ABAAD, the Collective for Research and Training on Development-Action (CRTD.A) is also an NGO actively involved in promoting progressive women's issues. A number of conservative religious groups also work on women's issues and, indeed, some of these religious groups were involved in parliamentary discussions on Law no. 293 and lobbied for changes to the draft law that reflected their (conservative) religious convictions. However, the religious groups are not well-funded, well-organized, or independent the way the secular NGOs are; they function mostly as part of existing religious parties or organizations.

In summary, several factors converged to make the Sunni campaign regarding custody age a success:

1. The campaign focused on an issue that the scriptures do not openly and directly address, which made it harder for religious authorities to reject reform on the basis that it would contradict the Qur'an or the Sunna.
2. The campaign used religious discourse (jurisprudential arguments and reasoning) to argue for changing the custody age with the relevant religious authorities. In doing so, the campaign followed the example of other Muslim/Arabic countries that have successfully introduced change in Muslim personal status laws.
3. A sustained effort by activists, over nearly seven years, to lobby religious authorities culminated with a sit-in during the summer of 2011, in the midst of the Arab spring. The grand mufti indeed seemed unnerved by the sit-in and sought to deflect negative public attention by inviting the group of about 30 female protesters to come inside the premises for a special audience with him. Later that same day, the High Islamic Council for the Sunni Confession publicly announced its approval to raise the custody age to 12.
4. The campaign forged alliances with members of the political and religious elite (from the cabinet, parliament, *shari'a* courts, and the Sunni council itself) to reduce the power of opposition from within and to build strategic alliances.

Whereas the success story with respect to changing the custody age in the Sunni confession is evidence of the possibility, however difficult and slow, of reforming personal status laws *from within*, the introduction and implementation of Law no. 293 is evidence of the ability of civil society to reform the personal status of women *from without*. Faced with the deeply rooted, patriarchal, and often misogynistic attitude of religious authorities vis-à-vis women in Lebanon, as well as the myriad personal status laws that discriminate against them, women's and human rights activists had to take a legal detour, so to speak, and counter the discriminatory religious laws and practices with a *civil* law that actually encroached on the traditional territory of the religious establishment.

The three years that have elapsed since the introduction of Law no. 293 of 2014 have demonstrated the success, however incomplete, of this attempt to counter the hegemony of religious institutions over the lives of women in Lebanon. Whereas countless reports document the extent of discrimination and pain inflicted on women stuck in abusive marriages because they risk losing all (including their minor children) if they choose to leave, the last three years have witnessed the rise of a social and legal phenomenon: not only are women who have been forced to stay in abusive and violent marriages speaking out more loudly and seeking justice in court, but also the civil courts themselves have proven so far to be very responsive to the pain and plight of these women. Civil courts have issued many protective orders in favor of female complainants, and many civil judges have gone beyond the call of duty by interpreting the law's weakest and vaguest clauses in ways that increase the protection for victims. In doing so, these judges are following international standards of human rights and gender equality. Furthermore, courts have issued many protective orders that allow women to keep all their minor children with them (regardless of the custody age), while the husband has been ordered to keep his distance and to pay relatively high amounts in medical bills (for physical injuries incurred) and for wife and child support. Women who have left their marital homes to escape their abusive husbands have been justified in their actions in the eyes of many civil judges, at a time when religious judges might consider these women "recalcitrant" and "disobedient" simply for leaving and thus might declare them ineligible for *any* financial support.

Such a pro-women approach is not characteristic of all civil judges dealing with cases of family abuse in Lebanon, but it certainly represents a serious and largely successful concerted attempt by one official Lebanese institution (civil courts applying Law no. 293) to challenge the misogyny of another official Lebanese institution (religious courts applying

personal status laws). It may be too soon to predict the long-term success of the struggle for women's rights in Lebanon, which is being carried out simultaneously on more than one front against the powerful and deeply-entrenched religious establishment. One thing is clear, though: the "brick wall" has finally been breached.⁶⁴

64 As Doughan put it, "Reforming laws in Lebanon is very difficult. But reforming religious laws is even more difficult. It is like trying to walk through a brick wall." Personal interview, *supra*. Doughan, who is also the president of Lebanon's largest network of women's organizations, spearheaded the lobbying effort to reform the custody age for the Sunni confession.

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