



## Report on Sexual and Gender Based Violence in Lebanon

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[info@legal-agenda.com](mailto:info@legal-agenda.com)

Joseph Moawad 1970 Building, First Floor, Beni-Kanaan Street, Badaro – Beirut, Lebanon

Tel/Fax: +961 3 383606

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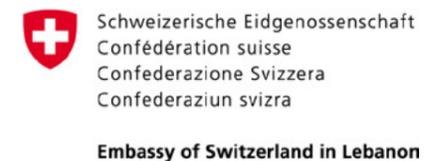
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# Index

<b>Lebanese Context</b>	6	<b>International customary law</b>	45
- Introductory Remarks	6	<b>Legal Responsibility</b>	47
- Violence against Women in Lebanon Takes Place on Multiple Fronts	8	<b>Responsibility of individuals</b>	47
- Social mobilization against gender discrimination: a success story of ‘change from within’?	10	- Actors incurring legal responsibility	47
- Domestic workers and the Kafala system: State Exploitation	14	- Individuals	48
		- Companies	49
<b>National Legal Framework</b>	16	<b>Responsibility of the state</b>	50
<b>Domestic Violence</b>	16	- Obligations to respect, protect and fulfil	50
- Enacting law 293/2014	16	- Obligations to pass laws that conform with international obligations	50
- Mobilization against Mitigating and Exonerating Factors	16		
- Comments on the Bill to Amend Lebanon’s Domestic Violence Law	18	<b>Responsibility of other states and state actors</b>	52
- Financial Resources Key to Protection against Gender-Based Violence	20		
		<b>Accountability</b>	54
<b>Sexual Violence</b>	23	<b>Individual accountability</b>	54
- Sexual violence in the Criminal Law and its amendments	23	- Using international law arguments in domestic cases	54
- Rape cases in front of Lebanese criminal courts	24	<b>Accountability of companies</b>	55
<b>Sexual harassment in the workplace</b>	30	<b>Accountability of states</b>	56
<b>Forced labor and human trafficking</b>	30	- Obligations to pass laws	56
- A law enacted under international pressure: what protection does it offer to victims?	30	- Obligations to respond to sexual violence	56
- Human Trafficking Victims Marginalized Before the Courts	31	- Committee against Torture inquiry procedure	56
- Domestic workers and forced labor	33	- ILO complaints procedure	57
<b>Anti-Torture law</b>	35	<b>Accountability of third-party states</b>	59
<b>Regional and International Legal Framework</b>	36	<b>Summary of options for accountability</b>	60
- Regional law	36		
- International law	37		
<b>International Human Rights Law</b>	40		
<b>International Humanitarian law</b>	45		

# Lebanese Context

## Introductory Remarks:

Women in Lebanon have been in a constant battle for the realization and respect of their equal rights. Despite the ratification of the CEDAW convention in 1996, Lebanon is still far from reaching gender equality. Violence and discrimination against girls and women remain, undoubtedly, prevalent.

The enactment of the domestic violence law 293 in 2014 has allowed the recognition of gender based violence as a human rights concern, thus providing a shift in its nature from a private matter concern to a social threat that must be legally addressed. The law was enacted as a result of a vibrant social movement led by feminist and women's rights groups, which highlighted the prevalence of a social problem that was long considered as a private family matter.

However, since 2014, various cases of domestic crimes leading to the death of more than 40 women have been reported.<sup>1</sup> Shocking stories of forced child marriage, sexual harassment, trafficking and exploitation continue to regularly appear in media and reports.<sup>2</sup> A woman's rights and duties within the family remain far from being equal to those of men, who retain the rights of divorce and custody in many situations.

The general discriminatory context thus provides a fertile ground for gender based violence, rooted in patriarchy and man privilege. Violence is not only facilitated by patriarchal social norms, but also by a lenient legal framework which continues to fail in fully criminalizing violence towards women. This is primarily seen in inadequate definitions of relevant crimes, but also, in the exoneration of perpetrators. While many cases of violence are regularly brought to courts, many other remain far from the reach of the law. The fact that the Lebanese judiciary is now composed of a majority of women judges<sup>3</sup> has not necessarily facilitated women's access to justice. While there is no actual estimate of number of sexual violence cases in Lebanon, the prevalent rape culture and victim blaming approaches are to be witnessed among law enforcement agencies and legal actors. Many cases of violence remain unreported, for reasons

including lack of trust in the system and victim intimidation, but also financial barriers to access to justice. Women's access to justice is impeded by the lack of effective gender-sensitive approaches, discriminatory stereotypes within the justice sector, and mostly the lack of legal aid and economic barriers. With the current devaluation of the currency and the deteriorating economic situation, it is expected that financial barriers to access to justice are likely to grow as more than 55% of the Lebanese population currently falls under the poverty line.

In addition to physical and moral violence, Lebanese women are subjugated to a discriminatory political and legal system treating them as second class citizens, denied the right to pass on their nationality to their children. Furthermore, and although Lebanese women have gained the right to vote in 1952, they remain under-represented in public and political life. In 2020, Lebanon ranked 145th out of a total of 153 countries according to the Global Gender Gap Index.<sup>4 5</sup>

Barriers to access to justice are exacerbated for particular vulnerable categories. Foreign domestic workers continue to be subjugated to the sponsorship (Kafala) system, which is a system mainly based on administrative regulations issued by the Ministry of Labor and the General Directorate of General Security. This system, as this report will indicate, provides a nurturing ground for the exploitation of workers and strips them from the ability to access courts. Not only does it facilitate human trafficking, but also guarantees employers' impunity and immunity from prosecution as will be discussed below. The country currently hosts more than 1.5 million Syrian refugees, of which only 1 million are registered with the United Nations High Commissioner for Refugees (UNHCR) in Lebanon.<sup>6</sup> In addition, approximately 174,000 Palestinian refugees living in Lebanon continue to face restrictions, including on their right to work and own property. More than 58 percent of the refugees live in extreme poverty, of which women represent more than half of the population (52%).<sup>7</sup> As women and girls

are disproportionately exposed to violence and human rights violations during forced displacements, reports have highlighted the violence, including physical and psychological abuse that refugee women experience.<sup>8</sup> Refugees are mostly employed within the informal sector, especially domestic and agricultural labor, with no legal regulations to protect them from exploitative practices such as minimal wages, violence, poor work conditions, and sexual harassment and abuse. Due to stringent residency policies which often lead to lack of legal registration, many women are unable to report harassment, violence, or abuse to official authorities, which furthers their vulnerability.

## About this report

This report aims to provide a contextual description of the legal landscape of gender based violence in Lebanon. It specifically addresses the different legal contexts of girls and women living in Lebanon exploring three levels of legality: the national, regional and international legal framework.

Starting with a general overview of the Lebanese legal system and the different strategies of reform adopted thus far, it then delves deeper in analyzing the national, regional and legal frameworks. It addresses the broader social, economic, political and cultural barriers which undermine women's ability to seek justice and hopes to provide a brief, yet thorough, analysis of the various forms of gender based violence that women in Lebanon face, serving as a guide for professionals and gender justice advocates.

This report does not intend to address all these barriers in depth, but rather focuses on assessing gender-based violence through 4 primary prisms: domestic violence, sexual violence, sexual harassment within the workplace, and human trafficking and forced labor.

The findings are the product of a three year project on the matter, a collaboration between The Legal Agenda and LAW.

The proposed reforms have been incorporated in the following strategic framework document.

## Methodology

The findings of this report are based on the analysis of existing laws and proposed reform bills in the area of gender-based violence. Where relevant, the report uses the findings of empirical studies to provide an understanding of the judicial practice in that regard.

[1] ICIJ, "Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies Report", July 2019

[2] Girls not brides, "Child marriage in Lebanon"

[3] Legal Agenda, "Alqodat nisaa fi ghalibiyatihom kabl khitam 2019: laken ay tamyiz fi tawzi3 almarakiz alkada2iya?", Legal Agenda, March 2019.

[4] World economic forum, "Global Gender Gap Report 2020", 2019

[5] United Nations, Women leadership and political participation, 2019

[6] Human Rights Watch, "Country Report- Lebanon, 2018"

[7] UN Women "REGIONAL OFFICE FOR ARAB STATES UN WOMEN Cairo, UNPACKING GENDERED REALITIES IN DISPLACEMENT: The status of Syrian refugee women in Lebanon", November 2018.

[8] Abaad, "Tackling Gender-Based Violence Among Syrian Refugees in Lebanon, 2018", 2018

# Violence against Women in Lebanon Takes Place on Multiple Fronts

Many are the manifestations of discrimination and violence against women in Lebanon. While the forms most present in public discourse are the discrimination and violence against women in the domestic sphere, especially the sphere subject to the sectarian religious courts, other forms are apparent in women's daily lives. Hence, attention must be called to them in any effort to diagnose the problem or explore means of treating it. In this regard, four primary sources of discrimination and violence against women are identified. These sources necessitate four fronts, each with its own form, actors, and discourse.

## Religious Beliefs

The first and most apparent form of discrimination stems from the approach of recognized sects towards their constitutional guarantee (the famous Article 9) to regulate personal status matters. This approach largely dominates public decisions. As a result, two main trends have prevailed:

The first is these authorities' strict monopolization of issuing rules that govern family life, i.e. their "personal status" within each sect. This strictness has manifested itself in their refusal to subject the rules they develop to any public regulation, oversight, or review, whether directly (e.g. parliamentary deliberation over amending the sectarian laws or subjecting their force to state recognition and oversight) or indirectly (e.g. the enactment of civil laws that could affect the extent to which sectarian rules are applied, as in the case of the proposals to amend the law protecting women from domestic violence, the bill on child marriage, and the ratification of the Convention on the Elimination of All Forms of Discrimination Against Women). It is also apparent in their apprehension about any public discussions about the soundness of these rules. The general absence of religious reform projects has worsened this discrimination and the resulting violence. Sectarian reforms, when they occur, remain limited to technicalities imposed either in isolation from any public conversation, as occurred in relation to Druze and Christian personal status laws, or only with great effort, as in the case of raising the age of maternal child

custody in Sunni personal status laws.

The second trend is the sectarian authorities' strict monopolization of the "freedom of belief". The freedom of individuals not to belong to any sect and their right to civil laws to regulate their personal and family lives continues to be denied. Despite some progress in this area, namely the acceptance of individuals' requests to delete their sect from their personal status records (2009) and the registration in 2013 of some civil marriages convened on Lebanese territory, public authorities have yet to enact a civil personal status law in contravention of Decision no. 60 L.R. or even recognize a range of political and civil rights for people who do not belong to sects. The loss of these rights deters many Lebanese from deleting their sect or prompts them to ask that these records be reinstated.

Reformist movements innovated various ways of confronting this approach over the decades, particularly in the post-independence era. During the last two decades, women's and rights movements became more prominent among these movements, while the roles of the "secular" political parties and the Beirut Bar Association declined. These rights movements managed to achieve several results, including a person's right to delete the reference to their sect from their records, a law to protect women from violence (albeit with fundamental amendments), and civil marriage on Lebanese territory, albeit for a brief period.

Remarkably, these movements, which arose to one extent or another in a state of conflict with various recognized sects or at least their monopoly over personal status, inspired other movements that chose to work from within the sects in order to push their jurisprudential rules in the direction of women's rights. The best example is the Family Rights Network movement, led by Iqbal Doughan, one of the most prominent women leaders. The movement succeeded in raising the age of maternal child custody. This movement began within the Sunni sect and later expanded to the Druze and Shia sects.

The extent to which the movements to reform the sectarian legal system from within and those trying to impose reforms on it from outside complement each other is obvious, irrespective of the ostensible difference or rift between them. While reform from without seeks

to impose an overall system that is binding, the movements from within the sect seek to push the sects to develop their systems in a manner that does justice to women and adapts them to social developments, and hence to comply with an overall system that the sects themselves enact. We have placed these movements on the same front because they both seek reform, though we do not wish to downplay the differences between them.

## The Sectarian Courts

Another source of discrimination concerns the religious court systems that examine personal status cases. The sectarian authorities treat these courts as an integral part of the guarantees that Article 9 of the Constitution grants them to regulate the personal status of their sectarian constituency. Since the Beirut Bar Association lost the battle of 1951-1952,<sup>9</sup> those seeking reform tend to concede to this view. Hence, these courts are usually grouped with the other sectarian arrangements, and the various stances and approaches to them are based on stances on these arrangements as a whole.

Accordingly, while some civil movements strive to exclude certain issues from the scope of religious beliefs and therefore from the jurisdiction of the sectarian courts, they usually see these courts as exceptional courts that should be abolished. Rarely do these movements show any effort or interest in reforming these courts as they fear that discourse around doing so will legitimize their existence and ensure their survival. Barring a few movements operating from within the sects and without any social resonance, these courts remain outside the scope of reformist demands.

Without downplaying the influence that judges – and the attributes required of them – have over the content and scope of the religious rules, we wish to emphasize that matters related to the regulation of the courts are in essence mere procedural and regulatory issues concerning the standards that must be observed to ensure the courts' independence and good performance in a manner that guarantees litigants' right to access a just and effective judiciary. These standards generally do not change in accordance with religious rules and beliefs and must remain

the same irrespective of whether the court is civil or sectarian and which sect it belongs to. This is best evidenced by the Constitutional Council's decisions subjecting the sectarian courts' regulatory matters to Article 20 of the Constitution, which declares the independence of the courts.<sup>10</sup> Needless to say, we find nothing in any of the religious beliefs that conflicts with the principle of the separation of powers or with the integrity and independence that judges are supposed to possess.

While it is possible, from a constitutional and rights perspective, to disagree over the nature of these courts and whether they are part of the judicial courts or separate from them (i.e. the issue that the 1950-1952 battle revolved around), the issue of their independence, integrity, and effectiveness is not open to any serious debate. Accordingly, any derogation from these standards is tantamount to derogation from them in all the civil courts and warrants an independent front that everyone can join irrespective of their beliefs.

## Social Considerations

The third source of discrimination relates to social traditions and stereotypical gender roles. While several forms of this discrimination are reflected in the definition of "honor" and the provisions resulting from it, some of which have been abolished (e.g. a rapist's impunity in the case that he marries the victim and honor crimes) and some of which remain in effect in the Penal Code (such as the issue of defloration and illicit intercourse), there is another, equally impactful form of discrimination that is rarely raised in public debate, namely the gender-based discrimination in education, income, salaries, and political participation. This form often economically subordinates women to men.

Despite the important consequences of this economic discrimination and its neutrality from a religious and ideological perspective, it remains absent from the legal proposals for protecting women and improving their position. Hence, instead of constituting a joint struggle for all liberal and conservative women's movements alike, the goal of women's economic empowerment continues to be eclipsed by the ideological struggles dividing them.

# Political Considerations

The fourth source of discrimination concerns political considerations, specifically the system of sectarian power-sharing. The most prominent form of this discrimination is the refusal to grant Lebanese women the right to pass their nationality to their children in order to preserve the demographic equilibrium among the sects, as has been expressed by many government documents, most importantly the Council of Ministers decision on 17 January 2013 that refused to amend the nationality law for this

## Social mobilization against gender discrimination: a success story of ‘change from within’? <sup>12</sup>

The feminist movement in Lebanon has been at the forefront of the battles for gender justice. The issues advocated are diverse, reflecting a diversity in feminist approaches and views of gender based violence. In the recent years, a classic debate amongst reformers related to the strategies of change. More precisely, the country witnessed a debate on whether it makes more sense to reform existing sectarian laws given that the demands for a uniform civil law have faltered.

In his article on “Lebanese Personal Status Laws: The Struggle in Sunni Courts”, Ghamroun has reflected on the only case in Lebanon, back in 2012, wherein a popular movement from below helped instigate partial change in a sectarian law, namely the Sunni personal status law. He argues that the amendment of the law, albeit instigated by Women’s rights group (the Family Rights Network led by lawyer Iqbal Doughan), was also influenced by a broader context. On one hand, he describes a [sectarian judicial system that had been in an unprecedented defensive position] for more than two decades, mainly due to the proliferation of feminist and rights movements. This system was also witnessing the emergence of ‘a long-standing reformist current within the Islamic courts.’ The enactment of

reason.<sup>11</sup> Remarkably, the political forces address the legacy of patriarchal values (which have come to conflict with all its public discourse) on the basis of political pragmatism alone. The generally conservative political forces (the Future Movement) reject this legacy because of benefits they anticipate from granting women this right, whereas forces that seem more liberal on women’s issues, (such as the Free Patriotic Movement or the Lebanese Forces) cling to them out of fear that their influence will decline. Given the stagnation of the political discourse on this matter and the escalation of the demographic imbalance among the sects year by year, Lebanon will probably become one of the few countries clinging to the legacy of patriarchy in nationality matters for political reasons.

the amendment was also the result of a long battle between religious and secular courts. As Ghamroun describes:

“In the years 2007–2012, when the women’s movement occurred, a confrontation was underway between the Sunni courts and juvenile judges over the protection of at-risk children. Some juvenile judges argued that the Islamic courts’ application of religious rules could put some children in a dangerous situation warranting their intervention, provoking a wave of objections from Islamic court judges. Hence, competition arose between the two judicial systems over which one is qualified to protect children, exacerbating anxiety among Christian and Islamic court judges and causing some changes in judicial practice and rulings. This factor also convinced key actors in the Islamic court system that they would inevitably have to compromise on the content of the “religious” law in order to preserve their authority to produce it in the domestic sphere.”

Below<sup>7</sup> are excerpts from Ghamroun’s analysis that are likely to provide important insights on the question.

## From Feminist Caution to Civil Frustration

While some feminist currents argue that the problem with personal status laws lies primarily in their religious nature and inherent bias against women and as a result call upon the state to intervene to protect them from the sects’ laws, the Family Rights Network adopted a different approach. It went directly and exclusively to the Sunni sectarian authority and its laws while ignoring the state, thereby replacing the aspiration for a strong legislating state with a state that merely registers rules produced in another sphere, namely that of the sects. This positioning provoked harsh criticism from some feminists, who accused the Family Rights Network of legitimizing the religious authorities, especially as Doughan had a long history of activism in the ranks of left-wing feminists.

The response by the movement’s women to such criticism was multifaceted. It focused on the complexities of the concept of “gender” that provokes many women, the western funding that some feminist organizations receive and that undermines the legitimacy of their demands, pragmatic considerations (i.e. that reforming the religious laws would be a short-term solution to relieve the women subject to them while the long-term goal would remain a civil law), and tactical considerations (i.e. that attacking the whole system to radically change it currently seems infeasible). Amidst these justifications, they frequently recited a long history of civil “defeats”, including the abortion of the civil personal status bill in 1998 (how could a few isolated women succeed where President Elias Hrawi himself had failed?) and the recent failures of the juvenile judges.

The juvenile judiciary issue played a role in pushing the women of the Family Rights Network away from the civil law option and toward the option of amending the religious laws. What they perceived as the juvenile judiciary’s “failure” to protect their children and its relative retreat in the face of the Islamic courts helped convince them that the path to change was not through the civil central state and its judges but the sects.

After 2007 (and Judge Fawzi Khamis’ famous rulings), many mothers, some among the movement’s women, had resorted to the juvenile judiciary to evade the age-of-maternal-custody rule in the Christian and Islamic courts. Interviews with the movement’s women show that the “failure of the civil judiciary” is

ubiquitous in their discourses. They mention the “removal of Judge Khamis”, who “dared confront the sects’ kingdoms”, and even the experience of Judge John Qazzi, who “was punished and no longer has an office” because he dared make interpretive judgements allowing Lebanese women to pass their nationality on to their children.

Hence, the women of the movement deemed civil judges to have been too tamed to be trusted in defending their children’s interest. This pushed them toward a notion opposite to the aforementioned notion among Islamic court judges: they would have to compromise on the source of the law (i.e. civil or religious?) in hopes of changing its content. The convergence of these two notions pushed the women toward working to change the sectarian laws one by one, on one hand, and boosted their odds of success by unsettling the sphere of the Islamic judiciary, on the other.

The women of the movement also presented other tactical arguments, such as that their movement is less provocative to the sects as the demand is only to change the content of sectarian laws, not the principle of such laws, and that focusing on each sect individually would reduce overall resistance while the subsequent accumulation of successes via each sect would lead to the same practical outcomes that the civil feminist currents desired. They also argued that the movement was confined to narrow, less contentious points (children and custody is an easy issue that enjoys a high degree of consensus among all involved parties, whereas difficult issues such as inheritance went unaddressed), which would weaken the resistance to it.

## A Different Rights Language

One of the most prominent features of the Family Rights Network movement is that it ignored the rights language generally adopted by feminist currents and based primarily on international agreements and texts. Instead of relying on the rights found in the Convention on the Elimination of all Forms of Discrimination Against Women or the Convention on the Rights of the Child, for example, the movement resorted to a different system of rights, one with more potency before the religious authorities. It exploited the plurality within Islamic law itself by highlighting the diversity of jurisprudential currents within the Hanafi school (the school adopted by Sunni courts in Lebanon) when it comes to custody. This constituted an unofficial process of *talfiq* [the derivation of new rules

[11] Shehrazade Yara El-Hajjar, Nizar Sahiyeh, “Denying Lebanese Women the Ability to Pass On Nationality”, *The Legal Agenda*-, October 2020

[12] Samer Ghamroun, “Lebanese Personal Status Laws: The Struggle in Sunni Courts”, *Legal Agenda*, September 2020.

by combining different Islamic legal opinions] from below. What distinguishes this process is that it was largely carried out by women who are neither legal experts nor experienced in Islamic law and in relation to an issue that in Lebanon is usually only spoken about by clerics.

With the silence of the 1917 Ottoman Family Rights Law on the custody issue, Article 242 of the law regulating the Islamic courts originally stipulated (before the 2011 amendment) that Islamic court judges should resort to the predominant view from the school of Imam Abu Hanifa. However, the women of the movement challenged the intuitiveness of this expression by highlighting the plurality within the Hanafi school and its views on custody. They thereby broke the monopoly of the religious authorities and clerics over the topic of religious rules, on one hand, and made rejecting their jurisprudential arguments much more difficult than the prompt, automatic rejection that arguments based on international rules usually receive, on the other. Besides this jurisprudential plurality, the movement highlighted another plurality: the laws of Islamic and Arab states such as Syria, Tunisia, Morocco, and of course Egypt and al-Azhar, where Islam had not posed an obstacle to radical and significant family law reforms. Finally, the movement devised new uses of certain principles such as justice and certain criteria such as the child's mental health to differentiate the various jurisprudential stances and views.

Highlighting these jurisprudential, international, and normative pluralities had two results. Firstly, it defused the cultural particularities discourse (i.e. the argument that the Lebanese or Islamic family is under threat) that the religious authorities usually use to reject proposals to reform family laws. Secondly, it dismantled the sanctity given to certain rules concerning the family on account of their religious nature because demonstrating Islamic plurality made such sanctification and argumentation based on it impossible. Hence, the custody issue was no longer an exclusively jurisprudential-religious issue thanks to the entry of new actors and rules into the operating principle whose sphere of action and language were previously monopolized by clerics. This resulted in unprecedented de-facto equality between the clerics and the women of the movement.

## The Role of Politics and Social Networks

Political actors constituted a final key factor that helped the women's movement succeed in

amending the Sunni sect's personal status law. Change required more than a strategy whereby the movement manipulated jurisprudential and legal rules to achieve its goals; it also required working to create circumstances that would allow prominent Sunni political figures, such as former prime minister Fouad Siniora, former minister Khaled Kabbani, MP Bahia Hariri, and former prime minister and current MP Najib Mikati, to intervene. All of them formed a liaison with Dar al-Fatwa, and some put pressure on the religious authorities, which is what similar movements in the other sects lacked. Actors and families from Beirut also played an important role in promoting the movement's goals and arguments in decision-making circles and among the affluent class within the Sunni sect. For example, the famous couple Omar and Adla Zain acted as an intermediary between the women of the movement and some influential families and institutions in the capital and the sect. Particularly remarkable is the role of the traditional morning gatherings of women in "upmarket" Beirut neighborhoods, such as Verdun and Ras Beirut, in marketing the movement's ideas, which formed a climate of pressure within the Sunni bourgeoisie that gave Dar al-Fatwa and the sect's hardliners limited options. Clearly, the women of the movement understood well that they would achieve quick results if they concentrated their efforts on specific spaces and networks within the sect, namely those to which most of the politicians, businessmen, and influential wealthy belong.

All these factors accelerated developments on the ground. In February 2009, Dar al-Fatwa adopted a bill including most of the movement's demands unmodified (including raising the age of maternal custody to 15 years for girls and 13 years for boys) and sent it to the Council of Ministers. The latter adopted it the same month and sent it to Parliament, creating a positive atmosphere among the women. Parliament was expected to be a walk in the park for the bill, for who would dare oppose a bill supported by Dar al-Fatwa and the sect's most important political forces? However, the bill encountered fierce opposition from several Sunni MPs, who froze it in the committees for more than a year. The reason given to the women at the time to justify this impasse was that these MPs refused to have Christian, Shia, and Druze MPs examine a bill linked to the heart of the Sunni sect, namely its personal status law. Hence, some MPs began demanding that equality be established among the sects by giving the Sunni sect autonomy "like the Christian sects" in family matters. Accordingly, they stipulated that Article 242 of the 1962 law be amended to make the sect's Supreme Sharia Council the primary source of the law applied by Islamic court judges. An opposing bill was proposed during 2010, providing what was at the time

portrayed as a middle-ground solution, namely a maternal custody age of 12, in exchange for the amendment of Article 242. After an extraordinary women's sit-in was held in front of Dar al-Fatwa in June 2011 to induce the Supreme Sharia Council to accept the latter bill, Parliament voted on the law on 29 August 2011. Then, the aforementioned council, with the powers that the new law granted it, promptly made a number of amendments to Islamic law rules, including raising the maternal custody age to 12, in October of the same year. The council's decision was published in the Official Gazette in January 2012.

## Amending Personal Status Laws: Preliminary Conclusions and Results

The legal change that occurred was undoubtedly limited and prompted many criticisms. The movement was accused of achieving little in exchange for giving the Supreme Sharia Council significant new powers via Article 242's amendment. However, irrespective of one's view regarding the movement's methods and results, it raises several observations – or at least questions – about reforming personal status laws in Lebanon.

First, change requires objective factors mentioned earlier and most of which may now exist in Lebanon in relation to certain sects. When these factors are present, change becomes possible via the legal and rights-related choices made by women activists in conjunction with sociopolitical networking with the influential actors in each sect, and each of these factors would not have been enough without the others.

Secondly, whatever the movement's legal results may be, it produced a certain liveliness in relation to sectarian-based institutions, as exemplified by women's new interest in the Supreme Sharia Council with its expanded powers (an elected council whose members are to this day all men), which has fueled conversation about the possibility of women running for its positions.

Thirdly, certain factors made the centralized parliamentary sphere seem more resistant to the movement's demands than the religio-sectarian sphere. The national, multi-sect parliamentary sphere clearly provided new weapons that the conservatives had lost in the religio-sectarian

sphere in the face of religious-jurisprudential arguments. The weapon of protecting sectarian particularities vis a vis other sects, which had become obsolete within the Sunni religio-sectarian sphere, was revived in the face of the other sects in Parliament.

The final question is the replicability of the Sunni experience in the other sects. In this regard, we have seen mixed results in relation to similar struggles to change Druze and Shia personal status laws, with the religious authorities deriving different lessons in each case. In the Druze case, the religio-sectarian authority was quick to understand the demands before the emergence of a movement in the public sphere, and adopted them as its own legal reforms. In the Shia case, the demands continue to face blanket rejection despite recent proposals of certain partial solutions. How can these differences be explained? Although the answer to this question is outside the scope of this article, it can clearly be found in the religious authorities' relationship with the political authorities within the sect. The political dimension has an important role – even more important than the religious dimension – not shown by the current public debate, which is only interested in the religious nature of the personal status laws.

In any case, whether we like it or not, today it is apparent that movement and change from within the sects is a difficult but serious option for amending personal status laws in Lebanon. These strategies, which played out in the case of Sunni courts, become more attractive to some Lebanese when they compare them to the chronic failure of the centralized civil reform projects.

The remarkable thing is that via this new approach, the sect and its laws seem more susceptible to change and reform than the state itself. But what are the political consequences of this inversion in the approach to reform after a century of focus on the civil options and near-absolute faith in them? And where will shifting the battle from the religious nature of family laws to the content of those laws, and from working to change the entire political system to working to change the law of each sect, lead? At that point, the sphere of the political system will seem non-politicized (in the sense of an apparent acceptance that it never changes and reforming it is impossible, at least for the foreseeable future) as politics moves into the religio-sectarian sphere and the relationship of people and political actors to the religious authorities within their same sect.

# Domestic workers and the Kafala system:<sup>13</sup> State Exploitation

The issue of migrant domestic workers in Lebanon has been a subject of continuous scrutiny and activism. The legal framework governing the work of migrant workers is the Kafala sponsorship system. Under this system, workers are excluded from the protection of the labor law<sup>14</sup>, the sponsor – often the employer – is given full authority to decide on the rights and obligations of the worker. This system is a clear example of state exploitation. Via this system, the state consciously grants the overwhelming majority of citizens the chance to exploit migrant workers whom they recruit from abroad and are placed in charge of as sponsors, all highly affordable wages. Thus, the state shirks its responsibility to provide many social rights (such as nursing homes and childcare facilities) by enabling anyone in need of such services to secure them by exploiting these workers. What applies to all foreigners recruited to Lebanon to work under this system applies especially to domestic workers, as they are excluded from the Labor Code and reside at their workplaces.

Rather than intervening to protect migrant workers (the party that is weaker socially, economically, linguistically, and legally) and restore some balance these workers desperately need to their relationship with employers in accordance with the philosophy underpinning the entire Labor Code, the state intervenes to grant the employers (the party that is stronger in all respects) enormous privilege: the right of the sponsor. This right is an enormous privilege because it not only facilitates human trafficking but also guarantees impunity.

To comprehend this, three features of this system of sponsorship and privilege must be understood:

- Firstly, a worker's legal residency is tied to the employment relationship. In other words, the worker's status becomes illegal if this relationship ends for any reason, even if the employer failed to pay the worker's wages or sexually assaulted her.
- Secondly, the sponsor cannot be changed, which means that the worker's status cannot be regularized without the sponsor's permission.
- Thirdly, General Security usually combines deportation orders with another order

banning the worker from reentering Lebanon for a period, usually three years. This closes the circle by making it impossible for the worker to circumvent the sponsorship system by leaving Lebanon without regularizing her status with her first sponsor and returning under a new sponsor's name.

Together, these features provide ample room for the employer to bully and impose exploitative conditions that could amount to forced labor. In most cases, the worker ultimately submits to these conditions, however degrading and inhumane they may be, to preserve her ability to work [in Lebanon] or simply for fear of worse (the unknown). This is especially true in cases where the worker has no social protection of any kind.

Even in the few cases where the worker is able to leave her job and seek help from her embassy or a rights or humanitarian organization, she usually either retracts her complaint against her sponsor or refrains from filing one to begin with. She does this to reach a settlement ensuring she can stay in Lebanon or can obtain but a portion of her dues before being deported so she does not return to her family empty-handed.

Only two cases deviate from these images. In the first, the worker insists on her rights. Generally, this choice results in her being deported without any settlement, so her claim lingers in the courts for years. In the second, the worker goes into hiding to work as long as possible in the black market. This case usually ends either in arrest and deportation or in viler exploitation by gangs that extort and employ fugitive workers residing illegally. In both instances, the court case occurs in absentia, meaning that the worker is unable to appear before the judge.

These various images clearly show the scope of the privilege given to the sponsors. This system enjoys extraordinary impetus and strength: from one angle, it secures the interests of the various groups of citizens and allows them to improve their lives by exploiting migrant workers. From another angle, these workers are in a state of vulnerability and need that usually prompts them to accept exploitation with no mentionable resistance or, in the best case, to flee from the exploitation without anyone being held the least bit accountable for it.

Of course, this system would be less harsh if the process of recruiting a domestic worker and bringing her into the country did not cost citizens dearly. Because citizens pay a large initial sum, they feel that recruiting a worker is an investment they must preserve. This belief prompts them to treat the worker as a hostage, retaining her papers, limiting her freedom of movement and communicate with the outside world, and engaging in other such practices that go as far as imprisoning her inside the house when the family goes out or withholding her wages until the employment ends.

Many of these practices would not occur were it not for the payment of these sums, as was proven by a survey of employers conducted by researchers from the American University of Beirut in collaboration with the International Labour Organization.<sup>15</sup> The survey produced the following figures:

- Approximately 38% stated that the monthly wage is less than US\$200, and approximately 80% stated that it is less than \$300.
- Approximately 40% stated that they do not pay the worker's wages at the end of each month.
- Approximately 94% stated that they retain the worker's passport.
- More than 57% stated that the worker works seven days a week.
- More than 11% stated that the worker works for more than 10 hours a day (3% stated that she works for more than 12), whereas more than 53% stated that the worker works for more than eight.
- No more than 25% stated that they allow the worker to go out alone on her weekly day off.
- Approximately 23% stated that they lock the worker in the house, though 100% deny the worker's right to a private life on the basis that she came to Lebanon for the purpose of serving them.

The Legal Agenda considered these figures – which were gathered from the respondent employers themselves and are therefore expected to be lower than the true figures – to be in and of themselves profound proof of human trafficking

practices. Hence, The Legal Agenda deemed that the existence of this study obliges the Cassation Public Prosecution to investigate these practices in order to deter and stop them to protect public order.<sup>16</sup>

Hence, it is very evident that the state has, via the sponsorship system, delimited the various roles. Just as it has locked the worker in the position of submissive acceptor of the work conditions irrespective of how harsh and degrading they may be, it has locked the employer in the position of the perceptive watchman protecting his investment from any chance of loss, which entails restricting the worker's freedom. This issue peaked when General Security began requiring employers to pledge, within the residency conditions, to inform it of any emotional or familial tie the worker has in Lebanon as a precursor to deporting her. This circular perfectly reflected General Security's conceptualization of the [employment] relationship: the worker, completely stripped of her humanity, is a mere piece of equipment, and the employer is the watchman ensuring this equipment runs well without disruptions, including emotional ones.<sup>17</sup>

Of course, this relationship based on exploitation is linked to the circumstances of the countries that export these workers. Usually, these countries are unable to defend the interests of their citizens or effect any amendment that mitigates their exploitation. While some countries (such as the Philippines) have resorted to banning their citizens from working in Lebanon because of the absence of a safe work environment, their citizens' need for work has compelled them to flaunt the ban and subsequently find themselves in circumstances even more precarious and conducive to exploitation. Hence, it is very clear that the state's success in imposing the sponsorship system rests in particular on exploiting the vulnerability and need of the citizens of the labor-exporting countries.

From this angle, it is no exaggeration to say that in this case, the human trafficking is stated-based trafficking.

[13] This section is an edited version of the following article:

Nizar Saghih, "The Kafala System: State Exploitation", The Legal Agenda, November 2018.

[14] Article 7, Lebanese Labour Law states: "Are exempted from the present Law: 1- domestic servants employed in private houses; ..."

[15] Nizar Saghih, "Attention Lebanese Prosecutor: Yes, We Traffick Humans", The Legal Agenda, October 2016.[5] United Nations, Women leadership and political participation, 2019

[16] Nizar Saghih, "Attention Lebanese Prosecutor: Yes, We Traffick Humans", The Legal Agenda, October 2016.

[17] Sarah Wansa, "Ata'ahhad Annahu Laysa li- 'Amilati Ayy 'Alaqat Zawaj aw Irtibat min Ayy Naw' fi Lubnan", The Legal Agenda, May 2015; and "Revoking the Love Ban or the Enslavement Circular: the Backlash and the Success", The Legal Agenda website, July 31, 2015.

# National Legal Framework

The legal framework that applies to issues of sexual and gender-based violence includes a panoply of laws, with varying legal sources. As explained earlier, the Lebanese system is characterized by its legal pluralism. Accordingly, issues relating to violence, especially in the private family sphere, are likely to be heard in front of both religious, personal status courts, and civil jurisdictions dealing with protection and criminal responsibility. Issues relating to violence beyond the private sphere fall under the jurisdiction of state criminal courts. However, as research has shown, even though these courts are in principle secular, their interpretations often comply with traditional social ideals and stereotypes.

In what follows, the report will draw on the legal framework for domestic violence, sexual violence, sexual harassment in the workplace, human trafficking and forced labor and, finally, torture. These five themes cover the primary areas of sexual violence towards women, and highlight gender-based violence within the private and public spheres. While providing a critical analysis of the current laws, and the proposed reforms, the report also aims at reflecting beyond the rigid legal categories to analyze how these laws have impacted women in practice and how they've been understood and applied by legal actors, namely judges.

## Domestic Violence

This section discusses the recent developments in the legal framework on domestic violence. Starting by an overview of Law 293/2014, it then moves to discuss the mitigating and exonerating factors that courts have used in domestic violence cases, including the 'honor crime' defense and provides insights from the activism of a vibrant feminist movement in Lebanon. Further on, an analysis of the most recent amendment to the domestic violence law is provided. The section culminates by highlighting the failure of the existing social and legal framework to protect women from economic violence and the financial barriers to accessing justice.

## Enacting law 293/2014

The enactment of Law No. 293 on Protection of Women and other Family Members from Domestic Violence is considered one of the most important victories achieved by civil society in 2014. The law includes both punitive and protection measures and establishes important policing and court reforms. It has increased the sanctions of certain crimes when committed between family members and included protection orders which can be requested by the victim in order to keep the offender away from her, her children and her home. It was the first national law to expressly recognize domestic violence as such.

Despite the importance of its enactment, and the amendments that followed (see below), the domestic violence law remains far from protecting women. In practice, numerous challenges have presented themselves as barriers to the fulfilment of the purpose of the domestic violence Law in protecting women from violence. Article 22 of the law had explicitly stated that the rules of jurisdiction of the Personal Status Courts and the provisions on Personal Status remain solely applicable in their field of jurisdiction despite the enactment of the law. In case of conflict between the new law and personal status laws, personal status laws would take priority, even where they appear to tolerate violence against women. In practice, this has meant that women granted protection under law 293 would still have to be subject to the rulings of religious courts in what concerns divorce, alimony and children's custody. In a study published in 2015, Human Rights Watch found that across all confessions, Lebanon's religious laws and courts are not responsive to spousal domestic abuse. Christian personal status laws hold that spousal violence is in itself insufficient to obtain a prompt end to marriage. Under Shia and Sunni laws, men have the express right to discipline and have intercourse with their wives.<sup>18</sup>

The main concern in this law is related to the narrow definition of violence.<sup>19</sup> Initially the

drafts of the Law had included a broad definition of violence, extending to physical, sexual, psychological, and economic violence which were eventually excluded from the Bill.<sup>20</sup> Even though jurisprudence have provided an extended interpretation of the definition of acts of violence to include verbal and emotional violence, this stand differs among judges. Additionally, the CEDAW Committee commented in 2015 that the law excludes explicit reference to gender based violence, does not criminalize marital rape,<sup>21</sup> and does not abolish the practice of 'honor

crimes'.<sup>22</sup> The law imposed a certain 'equality' between men and women in regards to the crime of adultery, where the conditions of convicting men and women of adultery became the same. Prior to the amendment of article 487-489 of the criminal code discriminated between men and women in terms of sanctions, conditions of investigation of the offense and means of proof. In practice, and despite the law amendment, women continue to be convicted for adultery crimes at higher rates than men.

## Mobilization against Mitigating and Exonerating Factors

In 2011, a law was passed to repeal Article 562 of the Criminal Code, which had granted a mitigating excuse to a husband who catches his wife in the act of intercourse and then kills her or her partner.<sup>23</sup> Despite the clear will of the legislator to put an end to this practice, often referred to as 'honor crimes', Lebanese courts have resorted to other articles in the Lebanese criminal law to exonerate perpetrators or reduce their sentences. The iconic case of Manal Assi is the perfect illustration of this phenomenon.

Manal was savagely killed by her husband in the presence of her mother and several members of her family. The husband justified his act by stating that he was in a fit of fury after discovering his wife's infidelity with another man. On July 14, 2016, the Criminal Court in Beirut issued its decision in the case.<sup>24</sup> In the conclusion of a 45 page-long analysis of the facts, the court, having found that the adultery did occur and that the husband was indeed angry, accepted this mitigating excuse and ultimately reduced his punishment to three years and nine months of actual prison time. The Criminal Court invoked Article 252 of the Penal Code, and which states "a perpetrator benefits from extenuating circumstances if the crime was committed due to severe anger resulting from an unjust act and a degree of seriousness brought on by the victim."<sup>25</sup>

Immediately after the decision was published, KAFA (a Lebanese NGO that played a pioneering

role in the passing of the law on violence against women) expressed its astonishment and called for a sit-in to demand that the Public Prosecution appeal the decision before the Court of Cassation. According to KAFA, the decision resurrected 'honor' as an excuse for murdering women after Lebanon had taken important steps to fight so-called honor crimes. The decisions of the Criminal Court instigated an uproar in media and civil circles. Members of both communities saw the ruling as a threat that rendered women fair-game by legitimizing the concept of 'honor'. In July 2016 The Legal Agenda dedicated an issue to this case under the telling title "The Return of the Macho". The Legal Agenda discussed the bloody spectacle that Nhaily arranged to exact revenge on his wife who dared to defy him – a spectacle that the Criminal Court was subsequently sympathetic to, thereby restoring the legitimacy of excuses based on honor, along with male chauvinism in its harshest forms.

Following public outrage and the campaign led by women's rights and feminist groups, the public prosecutor appealed the decision in front of the Court of Cassation. On November 2, 2017, Lebanon's Court of Cassation issued a principled decision in the case, sentencing the husband, Mohammad al-Nhaily, to 18 years imprisonment for murdering Manal. The court reached this conclusion after denying him the mitigating excuse that the offense occurred while in an enraged state.<sup>26</sup>

[21] The definition of rape in Articles 503 and 504 of the Penal Code of 1943 excludes forced sex within marriage.

[22] UN, "Convention on the Elimination of All Forms of Discrimination against Women", 2015.

[23] Human Rights Watch, "Lebanon: Law Reform Targets 'Honor' Crimes", 2011

[24] Nizar Saghiyeh, "Judging Manal Assi: Return of the Macho", Legal Agenda, September 2016

[25] "In 2018, Attorney Elie Keyrouz proposed a law amending Article 252, which currently applies to someone who kills, injures, or harms his wife, divorcee, sister, daughter, mother, or any other woman that the law recognizes as having a legal guardian. The proposed amendment would strengthen the penalties for murder, injury, abuse, and beatings against women".

[26] Nizar Saghiyeh, "A Principled Decision in the Case of Manal Assi: The Demise of the Macho?", Legal Agenda, 2018.

[18] Human Rights Watch, "Unequal and unprotected: Women's Rights under Lebanese Personal Status Laws", 2015.

[19] Youmna Makhlouf, "Domestic Violence on Trial", Legal agenda 2014

[20] Human Rights Watch, "Lebanon: Domestic Violence Law Good, but Incomplete", 2014.

# Enacting the Amendments to Lebanon's Domestic Violence Law

The parliament enacted the bill to amend the domestic violence law in December 2020, while introducing major changes to its initial version. The Legal Agenda has taken a critical reading of the amendments and their dimensions, the primary observations are the following:<sup>27</sup>

## **1 The Definition of a Family: Domestic Workers Lack Protection**

The bill had made an important amendment to the definition of a family, adding “divorcee” to the list of people encompassed by the law. This addition aimed to address a number of instances where men have perpetrated violence against their ex-wives, usually amid a custody dispute, and the latter were unable to request protective measures. However, the parliament rejected this addition.

On the other hand, the parliament retained a definition that is still based on legal ties of marriage and filiation and ignores the notion of a family formed outside of such ties, such as one arising from cohabitation or stable intimate relationships. Although one summary affairs judge in al-Matn (Antoine Tohmé) ruled to expand the concept of a family to include a (foreign) domestic worker as she “leaves her country to stay in her employer’s home to provide him service for a given wage, [does not] depart said home, attends to the needs of the family members (especially the children), and lives with that family day and night”, the amendment now ignores this group. Irrespective of the arguments for or against incorporating this group within the family definition, the result is that the worker is excluded from family protection under the pretext that she is a worker while also already excluded from the Labor Code’s protection on the pretext that she works within a family. This excludes her from all protection. From this perspective, the state would again be failing to take the measures needed to protect this group from any act of violence it may face.

## **2 Defining Violence:**

This is the most important dimension of the bill as one of the previous law’s main weaknesses is the definition of violence. While the parliamentary micro-committee that

drafted the law in 2013 justified narrowing this definition on the basis of limiting the instances in which a civil judge can intervene in family affairs in order to preserve families and the powers of the religious courts, in practice it ultimately restricted the definition to the cases involving penal offenses that it assesses to be “violent”, such as murder, injury, threats, adultery, and prostitution. Hence, the law had followed Lebanese legislation’s tradition of separating the penal realm (to be examined by the state and regular judiciary) from the realm of personal status (which, under Article 9 of the Constitution, the sects may regulate for their own members). Moreover, it responded to the religious authorities’ stated concern that any flexible definition of violence could lead to results akin to those that juvenile judges reached based on the definition of “at-risk children”.<sup>28</sup>

Consequently, the definition of violence seems deficient in comparison to the internationally adopted definition. It also lacked consistency as it excluded forms of violence just as serious (or perhaps even more so) than the forms it encompasses. One of the gravest consequences is the exclusion of forms of violence justified by traditions, which had also remained outside the bounds of criminal law. Such forms include forcing a daughter to marry, preventing a wife from leaving the house, insults and degradation, and marital rape. Meanwhile, the law characterizes certain acts as violence in and of themselves irrespective of their effect on family members, including acts that traditionally constituted pretexts for committing violence against women, such as adultery.

Accordingly, and whereas the first proposal had rightly sought to amend the definition to include violence “that is, an act or abstention from an act or the threat thereof, committed by one of its members against one or more members of the family ... resulting in the murder or physical, psychological, sexual or economic harm”, the joint committees and the general assembly added the sentence “occurring during or because of marital life”. In all cases, linking the definition of domestic violence to violence occurring during the marital bond, is likely to create confusion regarding its application to other cases of violence that may be committed against sisters, daughters or parents.

## **3 The concept of public morals masks exploitation**

The initial bill has deemed all instances of sexual exploitation and incitement to prostitution or beggary against any family member to be human trafficking. However, the legislative committees refused to broaden the definition of human trafficking and the definition of victims.

On the other hand, the bill was overly zealous toward the law’s punitive aspect. It expanded the severity of punishment for all acts of violence, but especially acts that violate public morals, such as prostitution and incitement to immorality for anyone who has not yet reached the age of 21, which are acts that traditionally constituted pretexts for committing violence against women.

Accordingly, and while the majority of laws tend to abolish the criminalization of prostitution on the grounds that it constitutes trafficking, the parliament has increased the penalty for prostitution from one to three years. In practice, this amendment would allow the expansion of cases that may be subject to pre-trial detention (perpetrators of crimes with a penalty up to three years are subject to a pre-trial detention of up to four months). The current amendments are also likely to discourage women working in prostitution from notifying the authorities or submitting complaints or against exploiters for fear of punishment and prosecution.

Finally, and while the initial bill had proposed to decriminalize adultery, the approved amendments have kept the crime of adultery within the scope of acts sanctioned by the law. The parliament re-introduced one section which was removed in 2014 regarding the proof of adultery and increased the sanction in case the adultery was committed in the marital home.

## **4 Who Benefits from Protective Measures?**

One positive reform in this regard is that the amendment also included all children below 13 years of age in the protective measures, whereas the previous law granted protection only to children in the age of legal [maternal] custody according to the personal status laws and the other laws in effect.

## **5 Specialization Across Judicial Bodies**

Regarding the institutional framework for applying the law, the amendments have expanded the judicial specialization – previously limited to specialized Public Prosecution offices – such that it also encompasses the investigating judges and trial courts. While specialization in theory improves judges’ performance, it is feared that expansively adopting it in a given area (such as the protection of women or the environment or combating corruption) in small countries like Lebanon could narrow the domain of the regular and natural (universal) judiciary, thereby undermining guarantees of a fair trial. In this regard, instead of the adoption of comprehensive specialization, it may be better for judges to undergo training or awareness-raising courses in this area as part of their initial or ongoing training.

## **6 Failure to endorse anti-violence rehabilitation courses**

The law did not approve the stipulation to oblige the perpetrator to undertake anti-violence rehabilitation courses, which is a protective measure included in the bill to amend the 2014 law.

## **7 An empty fund to assist victims of domestic violence**

While the Fund for Assistance to Victims of Domestic Violence has remained empty throughout the last six years, the amendment was limited to adding a new resource consisting of funds resulting from the fines imposed under this law, without any strategy to activate the fund.

[27] Nizar Saghih, Taadil qanun Himayat al-nisa'a wa afraad al usra min al-unf: al-adab al'ama lati tahjub rawabet al-istighlal, Legal Agenda, December 2020.[28] Youmna Makhlouf, “Domestic Violence on Trial”, Legal agenda 2014.

[28] Nizar Saghih, “Mashru' Qanun li-Himayat al-Usra Yu'idu Ta'rif al-'Unf: Fard al-Taqaqid 'Anwatan Laysa 'Unfan, al-'Unf fi al-Khuru'j 'Anha”, The Legal Agenda, is. 11, September 2013. Nizar Saghih, “al-Tifl fi Hal al-Khatar, al-Qada' Yukarrisu Nizaman Mulziman li-l-Tawa'if”, Al Akhbar, August 2009.

# Financial Resources Key to Protection against Gender-Based Violence <sup>29</sup>

Half a decade after Lebanon adopted the Law on the Protection of Women and Family Members Against Domestic Violence, victims face new obstacles when accessing the courts to break free from domestic violence. Foremost among these is women's lack of economic empowerment.<sup>30</sup> While existing protective measures go as far as removing the abuser from the marital home and lending the victim a sum of money for food, clothing, and education, the removal decision is temporary, lasting "for a period determined by the competent authority when it senses any danger to the victim".<sup>31</sup> Moreover, women with no economic independence remain hostage to their abusers: if they resort to the judiciary and the marriage ends via a divorce, dissolution, or annulment decision, their husbands' obligation of financial support ceases and they find themselves struggling to make ends meet.

Despite the importance of this issue, discussion about economically empowering women in the family context remains limited. It revolves around the amount of maintenance decided for her and occasionally addresses the importance of considering housework as a form of tangible contribution. On the other hand, rarely is the need to adopt a system of joint ownership of movable and immovable assets acquired during the marriage, or at least of the marital home, raised for discussion.<sup>32</sup> Similarly, there is no talk about the need to guarantee a spouse's right to access information about all such assets.

## Traditional Gender Roles Block the Economic Discussion

The near absent discussion about issues of women's economic empowerment in the family context raises the question of why the legislature and organizations concerned with women's rights shy away from them, especially when they, unlike many other women's issues, do not in principle provoke any ideological conflict between liberal and conservative parties.

One of the main reasons may be that tackling financial issues within the family institution requires rethinking the social stereotypes that still govern family relationships. According

to the sectarian and civil laws that address (primarily or even tangentially) marital relationships in Lebanon, the man is the head of the family and its breadwinner, while the woman is vested with raising and nurturing the children. Under these stereotypes, the economic role remains monopolized by the man.

This gender-based division of roles within the family results in the man's control of the economic resources, especially when the woman is compelled to sacrifice her career to devote her time to housework and raising the children. Usually, this control is portrayed as legitimate: decisions about how to use money belong to the person who earns it directly, and the wife may only be involved at the husband's exclusive discretion if he so desires.

Aspects of the implicit denial of a woman's right to participate include not recognizing the value of her contribution via housework and raising the children and the reluctance to enshrine any right for her to access information about the assets earned during the marriage in civil laws. The persistence of this view of family relationships is further underscored by Lebanon's social security law, which to date still includes articles that treat a woman working or assuming material responsibility for the family's affairs as an exception. Under Article 14, of the members of a registered woman's family, the only one to whom her coverage extends is her husband, and only if he "is at least 60 full years old or incapable of making a living because of a physical or mental disability". Similarly, under Article 46, a husband receives family benefits "for a lawful wife who resides in the home if she does not engage in paid work", whereas a wife receives no such benefits for a husband who does not engage in paid work.<sup>33</sup>

## Economic Abuse as a Form of Violence

A man's control of the economic resources within the family raises the question of economic violence as a form of domestic gender-based violence that falls within the internationally adopted definition of gender-based violence specified in General Recommendation no. 19

("Violence against Women") by the Committee on the Elimination of Discrimination against Women.<sup>34</sup>

Economic violence can be defined as "behaviors that control a victim's 'ability to acquire, use and maintain resources thus threatening her economic security and potential for self-sufficiency'".<sup>35</sup> Naturally, this definition presents difficulties because it relies on "control" as one of its cornerstones, which necessitates searching for criteria for adopting the definition. In my view, economic violence requires two elements: an objective element, namely a state of economic "dependence", and a subjective element that appears in the spouse's behavior, namely "exploitation" of this state of dependence to obtain benefits.

This is the situation of a married woman who leaves her work to devote herself to caring for the children and marital home and who is pressured by her husband to persevere with marriage and not resort to the judiciary to dissolve it. In this regard, the proposed amendments to the domestic violence law in the draft by the joint committee of the Ministry of Justice and the organization KAFA rely on a definition of domestic violence that includes "abuse of authority within the family" resulting in economic harm and punishes such violence with "three months to three years of imprisonment and a fine ranging from the minimum wage to three times the minimum wage, or one of these two punishments, if the violence causes a family member economic harm such as deprivation of financial resources or of the family's basic needs".

Although these proposals aimed to amend the domestic violence law, which lacks any discussion of economic violence, we must question their effectiveness in deterring such violence in the domestic sphere given the continued reliance on the false assumption that victims of economic violence can access the judiciary. In this regard, I can only stress that Lebanese law's lack of any serious economic empowerment for women in the family context renders the fight against economic violence futile. Perhaps it is time to discuss the means of combatting economic violence that the

Committee on the Elimination of Discrimination against Women called for in its general recommendation regarding Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women. These means revolve around granting women "recognition of use rights in property related to livelihood", "compensation to provide for replacement of property-related livelihood", "adequate housing to replace the use of the family home", and even "the valuation of non-financial contribution to marital property subject to division, including household and family care, lost economic opportunity, tangible or intangible contribution to either spouse's career development and other economic activity, and to the development of his or her human capital".<sup>36</sup>

## Toward Adopting Joint Ownership and Activating a Spouse's Right to Access Information About Acquired Assets?

Economic violence can be addressed via two amendments to the financial relations between spouses. The first pertains to the system of movable and immovable property acquired during marriage, while the second involves developing the provisions that govern maintenance payments between spouses, particularly by granting each spouse the right to access information about the other spouse's economic resources.

The issue of ownership of assets acquired during marriage does not fall within the recognized historical sects' legislative and judicial power in the realm of personal status. The full bench of the Court of Cassation has deemed that the texts pertaining to the sects' powers must be interpreted restrictively such that the judicial judiciary alone may examine spouses' ownership of movable and immovable assets, and this must occur in accordance with civil laws.<sup>37</sup>

Consequently, while the adoption of an optional civil marriage law poses the issue of inference with the sects' powers (which, in my view, is not a serious issue given that Article 9 of the Constitution protects absolute freedom of belief), the power to legislate on and adjudicate spouses' ownership of movable and immovable assets falls exclusively within the powers of Parliament and the judicial judiciary. Hence, a civil law

[29] Youmna Makhlof, "Financial Resources Key to Protection against Gender-Based Violence", Legal Agenda, August 2020

[30] Fatima Moussawi & Nasser Yassin, "Dissecting Lebanese Law 293 on Domestic Violence: Are Women Protected?", Policy brief #5/2017, AUB Policy Institute, August 2017.

[31] Paragraphs 3 and 5 of Article 14 of Law no. 293 of 2014, on the Protection of Women and Family Members Against Domestic Violence.

[32] To the best of my knowledge [Makhlof], this issue has only been addressed in the context of applying foreign civil laws in the case of a civil marriage contracted outside Lebanese territory.

[33] Regarding the need to amend these articles, see the Hakkik Damanik campaign. "Haqqik Daman 'Iltik' Tastamirru li-Ta'dil al-Qawanin wa-Ilaq Musabaqa l'lamiyya 'an Wad' al-Mara'a", Annahar, 23 February 2016.

[34] See, in particular, the committee's comments on Article 16 of the agreement: Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality. Article 3 of the 2011 Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (a.k.a. the Istanbul Convention) also included economic violence as a form of domestic violence.

[35] Amanda M. Stylianou, "Economic Abuse Within Intimate Partner Violence: A Review of the Literature", Violence and Victims, vol. 33, is. 1, 2018.

[36] General recommendation of the Committee on the Elimination of Discrimination against Women regarding Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women.

[37] Dr. Sami Badih Mansour, Dr. Nasri Antoine Diab, Dr. Abdou Jameel Ghasoub, al-Qanun al-Duwaliyy al-Khass: Tanazu' al-Ikhtisas al-Tashri'iyy, p. 481; P. Catala & A. Gervais, Le droit libanais, T.L.L.G.D.J., 1963, p. 56; Decision no. 8/98, dated 23 January 1998, Civil Cassation, full bench, published on the Cassandre database; Decision no. 63/2014, dated 30 June 2014, Civil Cassation, full bench, published on the Cassandre database.

governing such property – one based on the principle of partnership between husband and wife as both their earnings during marriage are the product of both their contributions to the family and therefore should be divided evenly between them in the absence of a prenuptial agreement dictating otherwise – could be debated and adopted.

Some civil courts in Lebanon have applied these concepts based on civil laws of foreign countries, which must be applied to the cases brought before them because they stem from civil marriages contracted in such countries. In this regard, in a ruling issued on 10 June 2009, the 1st Chamber of the Court of First Instance in Mount Lebanon deemed that

Based on the concept of the institution of marriage, whereunder each spouse dedicates their life to the other and to the family and makes sacrifices and compromises to make their marriage work and last and preserve their family; and based on the immeasurability of the sacrifices or damages that occurred or the benefits provided; and based on the virtually constant shared responsibility in divorce cases; the wealthy party – the husband or wife – must support the other party in order for them to continue their life in an acceptable manner after the divorce. ... For example, a wife leaving her work upon marriage to care for her husband, house, and children, as in the present case, or a woman not working to begin with for the same reason, falls within this [legal] characterization [and] cannot be ignored upon a divorce judgment.<sup>38</sup>

As for maintenance, the biggest obstacle in practice is the spouse's lack of any paid work or, in the case of nondisclosure of the actual wage earned or of business profits, proving the spouse's movable financial resources as the Banking Secrecy Law includes no exception for spouses. In this regard, we must question the legitimacy of withholding this information, especially given the development of exceptions to combat money laundering and tax evasion.

[38] Ruling no. 42, issued on 10 June 2009, published in al-'Adl, 2010, is. 2. In the same vein, see Decision no. 159/2018, dated 27 June 2018, issued by the Civil Court of Appeal in Mount Lebanon, 13th Chamber, and published in the Cassandre database. Regarding the application of foreign law requiring the division of joint property, see Ruling no. 59/2018, dated 27 February 2018, issued by the Civil Court of First Instance in Jdeidet al-Matn, Personal Status Chamber, unpublished. This ruling ordered the division of joint assets and application of the law of the state of Virginia.

In this regard, note also Article 74 of the Orthodox sect's personal status law, which stipulates that "the court may, in the case that the woman is in financial straits, order the man to pay her a monetary sum for her to confront her new situation after the breakup of the marriage", and the decisions issued by the Orthodox Court of First Instance in Mount Lebanon on 22 March 2010, 30 June 2001, and 15 November 2010, which compelled the husband to pay the wife a monetary sum on the basis of this article.

## Sexual Violence

### Sexual violence in the Lebanese Criminal Law

The Lebanese Criminal law does not provide a thorough definition for sexual offenses. However, the majority of crimes involving sexual violence often fall under section 7 of the criminal code (articles 503–546) entitled 'Crimes violating public morals'. Rape and sexual assault crimes are regulated under subsection 1 entitled 'honor assaults'. In fact, the vocabulary used to describe sexual crimes as an attack on 'honor' is in itself indicative of the patriarchal approach adopted within the law. Sexual crimes are often treated as an assault on the honor of the woman and not as an act of violence. This section was amended in 2017, the most important amendment was abolishing article 522 which exonerated the person who commits a crime mentioned under this section, including rape, in case they married their victim.

Article 503 of the criminal code criminalizes 'forced sexual intercourse [against someone] who is not his wife by violence or threat', thereby excluding marital rape.<sup>39</sup> The efforts to include marital rape within the sanctioned crimes have so far been met with resistance and rejection. Furthermore, article 505 provides for statutory rape in the case of sex with a minor, the severity of the sentence depends on the minor's age. Intercourse with a minor younger than 12 years is punishable by at least 7 years of prison, with a minor younger than 15 years the punishment is at least five years. Furthermore, intercourse with a minor between 15 and 18 is considered an infraction punishable up to two years. The 2017 amendment which abolished the exoneration of the rapist in case of marriage, has excluded the situations that fall under article 505. In this case, if a valid marriage was concluded between them, the prosecution or trial would cease and if a judgment was issued in the case, the execution of the sentence imposed will be suspended, provided that the judge's decision to suspend trial is issued on the basis of a social worker's report that can attest to the minor's social and psychological conditions. The judge should also appoint a social worker to submit a report on the minor's social and psychological state every six months and for three years starting the date of his decision. In case the marriage was terminated without valid cause, or

due to the perpetrator's fault, the prosecution shall be resumed. This amendment was largely criticized as it legalized child marriage despite vigorous campaigns and demands to raise the age of marriage to 18 years old.

The criminal law also stipulates for other specific sexual crimes, including incest (article 506), debauchery and committing acts contrary to public morals (articles 507–510), kidnapping for the purpose of marriage (article 514) or for the purpose of committing debauchery (article 515), "deflowering" a girl by promising her marriage (article 518), and (man) dressing up as woman to enter women-only designated areas (article 521). It is to be also noted that article 518 also allows the exoneration of the perpetrator in case of valid marriage. These stipulations apply even if the victim is a minor. The penal code does not expressly define or criminalize sexual harassment, however, it includes the punishment of some actions that can fall under the wide description of sexual harassment such as Articles 385, 507, 519, and 532.

It is to be noted that the repeal of article 522 came after a long civil society campaign entitled 'white [referring to bridal gown] shall not cover rape'.<sup>40</sup> The unfortunate amendment of article 505 in a way to legalize child marriage thus prompted the introduction of a bill fixing the minimum age of marriage to 18. The bill is still under discussion in the parliament.

[39] UN Women- UNDP- UNFPA, "Gender-Related Laws, Policies and Practices in Lebanon", 2018.

[40] UN Women, Historic day for women in Lebanon as Parliament repeals rape law, 2017

# Court Trends in Rape Cases in Beirut and Mount Lebanon<sup>41</sup>

How do Lebanese courts handle sexual violence cases, with all the prejudices they involve? What values does the judiciary protect via its intervention in these crimes, and on what factors does the court bench focus? How does the Lebanese judiciary adapt to the difficulty of proving sexual crimes? How does the legal system intervene in minors' lives and relationships? How does class and social discrimination manifest itself in these rulings? Which victims reach the judiciary, and who are the defendants? What are the common denominators among them, and what behavioral patterns of judges can be deduced? What influence do people's identities and backgrounds have on judicial practices?

The Legal Agenda has published a paper that proposed some answers and hypotheses for these questions by analyzing a sample of judicial rulings issued in 2016, 2017, and 2018 by the Beirut Criminal Court and the Mount Lebanon Criminal Court, especially those based on articles 503 to 513 of the Penal Code ("Chapter 7: Crimes Breaching Public Morals and Ethics, Section 1: Assault on Honor"). These articles address rape and sexual assault, which the law defines as "indecent acts" ["amal munafiya li-l-hishma"]. The sample included 67 rulings in Mount Lebanon and seven in Beirut, totaling 74.<sup>42</sup> Note that the Penal Code does not use the term "rape"; rather, it refers to "coercion into intercourse using violence or threats". The law also distinguishes between intercourse, which the rulings usually interpret as vaginal rape (which encompasses 22 cases in the sample), and indecent and obscene acts, which the rulings mostly interpret as anal rape or other, nonpenetrative sexual acts (which encompasses 35 cases in the sample). Ten rulings in the sample acquitted the defendant, while seven convicted the defendant only of other crimes unrelated to rape (e.g. theft or violation of the Law on Foreigners).

Below, we present the preliminary observations concerning these rulings, though we must emphasize two points: firstly, the sample studied is limited in terms of time and place and therefore does not represent all orientations in the Lebanese judiciary. Secondly, we obtained the

rulings without the other case documents and without interviewing the actors involved (e.g. the judges, lawyers, or victims), so the analysis may have missed important information.

## Observation 1: Who Are the Victims and Defendants? Few Affluents and Many Minors

The sample contains only the rulings issued by the Criminal Court and therefore does not include all the cases that were dismissed by the Public Prosecution or at the investigation stage<sup>43</sup> or that are still being tried. This explains the high conviction rate among the rulings.<sup>44</sup> As cases must pass through various judicial authorities (Public Prosecution and investigating judges), those that lack clear proof are eliminated and only the strongest ones are prosecuted.

The sample includes 86 victims, though many of the rulings mention "many other victims" not represented or identified in the case. This indicates that victims rarely resort to the judiciary and that investigating judges are not sufficiently thorough in their investigations. As for the defendants, they numbered 83, of whom 64 were tried in person and 19 in absentia.

A preliminary analysis of the identities of the victims and defendants reveals two things:

### *The Middle and Affluent Classes Are Nearly Absent*

The rulings in the sample do not provide all the details of the crime and its circumstances or the social background of the defendants and victims. However, social status can be deduced from information that does appear, such as place of residence, occupation, and education level.

Most victims and alleged offenders in the sample are evidently from poor social groups. For example, most of the crimes occurred in poor and crowded residential areas ("they were living in Shatila camp", "al-Salam neighborhood", "she works in a shop in Bourj Hammoud", "residing in Ouzai, in the Saint Simon neighborhood, behind the Ghazal wedding hall").<sup>45</sup> A large percentage of the defendants are foreign workers and therefore belong to the

poorest and most vulnerable groups.<sup>46</sup> Most cases pertain to assaults by relatives or members of the immediate family (e.g. the father, brother, or uncle) or assaults by strangers unconnected to the victims (e.g. a construction worker and a girl living in the neighboring building). Very few involve attacks among people with previous social ties (e.g. work, friendship, or study). Even in the cases in which the victim appears to be from the middle or affluent classes, the defendant is always from a lower class.

This does not necessarily mean that the affluent classes are immune to or innocent of rape or that rape rates among poor groups are higher than the overall rates in society. Rather, the absence of affluent groups from the judicial arena indicates a disparity between the judicial reality and social reality. Two hypotheses may explain why sexual violence cases in the Criminal Court are limited to the most vulnerable groups and affluent social groups are absent.

The first is that victims from affluent classes usually do not file allegations with the authorities. While this could be explained via a lack of trust in the judicial authority, it could also be explained, in particular, on class-related grounds: the appearance of social cohesion in the affluent classes, as well as the system of common interests among them, may deter victims from resorting to the judiciary. This hypothesis is strengthened by the aforementioned absence of cases involving assaults among people with previous social ties.

The second hypothesis, which concerns judicial performance and the perceptions that govern it, is that judges are influenced by the prevalent social stereotyping of offenders (e.g. as Syrian, poor, or construction workers). In this manner, the judiciary may play a role in "filtering" the cases before they reach the Criminal Court such that only people from low-income groups are charged. The working classes are usually portrayed as violent and more susceptible to commit sex crimes<sup>47</sup>, so an educated, affluent defendant does not match the criminal stereotype and is more difficult to convict.

This hypothesis is strengthened by the disparity in the ability of affluent groups and poorer groups to defend themselves. A defendant who enjoys social, political, material, intellectual, and cultural privileges (such as Lebanese nationality or the ability to hire a lawyer) can

usually present a more believable story to the investigating judge and therefore has a better chance of avoiding charges before the Criminal Court.

This observation stems from several studies from around the world showing that most defendants in sexual violence cases are from low-income groups<sup>49</sup> and that they usually receive harsher sentences than middle-class defendants.<sup>50</sup> In this manner, the class system works to project negative values on "others" such that the other from the "uncivilized violent working class" becomes a repository for the traits that the middle class fears or rejects.<sup>51</sup>

Of course, these observations remain mere hypotheses and indicate a field of research in need of further exploration.

### *Most of the Victims Are Minors (Male or Female)*

In the sample, 59% of the victims are minors (45% male and 55% female) while 41% are adults (95% female and 5% male).

The number of cases pertaining to assault on adult women (33) is low in comparison to the high figures for sexual crimes against women in Lebanon (229 incidents were reported to police in 2019 alone).<sup>52</sup> The explanation could be that women are not resorting to the judiciary because of a lack of faith in the justice system or the difficulty of proving the rape and the fear that they will be blamed and socially stigmatized for it. Their complaints may also be getting eliminated at the investigation stage, as previously explained.

On the other hand, the fact that most rape cases before the criminal courts pertain to minors could be explained by the protective perspective on them. Protecting childhood is one of the most socially agreed-upon and perhaps least problematic subjects. Culturally, intercourse with a child is considered a "mental illness". A child, according to the prevalent understanding of childhood, is "innocent" and "helpless". Most importantly, the defendant cannot justify the assault on the basis that the minor consented, i.e. the justification found in most cases involving adult women. Moreover, while adult women may hesitate to approach the judiciary because they fear for their "reputation" and the social stigma that could result (especially if the case is dismissed and they cannot provide proof

[41] Lama Karame, Court Trends in Rape Cases in Beirut and Mount Lebanon, Legal Agenda, May 2020

[42] These rulings were obtained under an access-to-information request sent to the first presidents of the criminal courts in Beirut and Mount Lebanon. They were identified, copied, and supplied to us by judicial staff. However, because of the lack of computerization in the courts, we cannot be certain that the sample includes all rulings issued in the years mentioned.

[43] Under the Code of Criminal Procedure, before reaching the Criminal Court, criminal cases pass through the investigating judge, who conducts all investigations and issues an indictment, and then the Indictment Chamber, which issues another indictment and refers the case to the Criminal Court.

[44] The conviction rate was 67% in rulings issued in presence and 100% in rulings issued in absentia.

[45] Criminal Court in Mount Lebanon, 28 May 2018.

[46] 47% of defendants are Syrian, Palestinian, Sudanese, or Egyptian foreign workers.

[47] Joanna Bourke, Rape: A History from 1860 to the Present, Virago Press, London, 2007, p. 121-125.

[48] Amedeo Cottino and Maria-Grazia Fischer, "Pourquoi l'inegalite devant la loi?", Deviance et Societe, vol. 20, no. 3, 1996, p. 199-214.

[49] Susan Brownmiller, Against Our Will: Men, Women, and Rape, Fawcett Columbine, 1975, p. 174, 181, 195, 348-349.

[50] Elizabeth Anne Stanko, Intimate Intrusions: Women's Experience of Male Violence, Routledge & Kegan Paul, London, 1985, p. 91.

[51] Alison Phipps, "Rape and Respectability: Ideas about Sexual Violence and Social Class", Sociology, vol. 43, is. 4, 2009, p. 667-683.

[52] Lebanese Broadcasting Corporation, "al-'I'tida'at al-Jinsiyya bayna al-Arqaq al-Sadima wa-Sifah al-Qurba", 12 November 2017 (based on statistics from the General Directorate of Internal Security).

that the assault was nonconsensual), for the aforementioned reasons this fear is not a factor in cases involving children. Hence, resorting to the judiciary to protect children from sexual violence is easier than resorting to it to protect women.

### Observation 2: In the Absence of Conclusive Evidence, How Does the Court Make Its Decision?

The issue of proof is one of the greatest obstacles in rape cases. By nature, these crimes occur in private and are difficult to prove with conclusive evidence. Hence, judges have broad leeway to acquit or convict the defendant based on how convinced they are by the circumstantial evidence presented. What factors seem to affect the judges' thinking and convictions? In this regard, we shall focus on the sample's cases involving rape against women.

Social sciences refer to the concept of "rape myths",<sup>53</sup> a set of misconceptions and erroneous beliefs about rape that are prevalent on a wide scale and aim to deny or justify sexual assault on women.<sup>54</sup> These myths are based on a number of stereotypical ideas that stem from a patriarchal view of women and their role in society. The most prominent include that rape is impossible as a woman can prevent it, that rape victims "ask for it" or seduce the man,<sup>55</sup> and that men rape women because of an "an uncontrollable instinct".<sup>56</sup> Besides their social impact, these myths have clear effects on the authorities' handling of rape survivors and the extent to which they are believed. These stereotypical ideas undoubtedly bolster violence against women by victim-blaming and excusing the assailant or justifying his action.

Hence, to what extent does the Lebanese judiciary contribute to the reproduction of stereotypical views on rape? Based on what societal values and what view of women does it do so? And what groups are most exposed to prejudices?

#### *The Behaviors, Virginity, and Sexual History of the "Liberal" Woman*

One of the sample's rulings involves an oriental dancer who filed against a person whom she said was close to her and, after arguments broke out between them, raped her in her chalet. She presented a medical report confirming the

rape. The court acquitted the defendant based on several factors, including that the victim waited some time before filing the case and contradictions in her testimony. Regardless of the details of the case, the court's analysis displayed dangerous stereotypical views and re-enshrined a patriarchal system that underpins sexual violence. The ruling stated:

"Noting that the plaintiff is a liberal and open [mutaharrira wa-munfatiha] woman as required by the nature of her work – she is an oriental dancer also well versed in foreign dancing who works in several hotels in Lebanon and abroad – and that all these facts, taking into account all the above, create doubt and ambiguity over the present complaint..."

The same ruling, quoting the defendant's testimony that the sex was consensual, also stated, "[The defendant] declared that he actually did have a relationship with the plaintiff and was normally having sex with her and that she has a big libido."

This ruling shows how sexual violence cases are turned into a theater for judging the women victims' behaviors. Rape cases, particularly those involving adult women, often involve a discussion of the victim's consent to intercourse with the offender. Usually, this consent or lack thereof is ascertained by assessing the victim's identity and behaviors or, as researcher Alison Phipps says, her "respectability". There is a presumption that women who do not comply with socially agreed-upon standards of respectability have given perpetual consent to be sexually violated.<sup>57</sup> Thus, these standards are employed as a tool not only for controlling women and classifying and discriminating among them but also for recharacterizing the acts committed against them and ultimately denying their right to justice.

Thus, a woman's "morals" and her conformity to the prevailing values and customs take a central position in the case and become a standard that determines how "responsible" she is for the rape. In other words, the victim has to prove that she is conservative or "respectable" to be believed, and when she cannot do so, the court assumes that she must be at least partially responsible for what happened to her.<sup>58</sup> In such cases, the trial often becomes a trial of the plaintiff woman's reputation.

In the same vein, the issue of the hymen occupies significant space in the sample's rulings as it is discussed extensively, with references to the victim's virginity or lack thereof and whether the rape tore her hymen.

The rulings also include intimate details about the intercourse or sexual act that, according to the court, are evidence of the victim's virginity or lack thereof. For example, one ruling stated, "Because of his sexual urges, he removed his daughter's clothing and had sex with her, and he did not see blood".<sup>59</sup> This observation can be historically contextualized: in several laws, particularly English law, the crime of rape required that the victim be a virgin,<sup>60</sup> which reflected a reluctance to consider a woman who has not previously abstained from sex as a sexual victim.

This "obsession" with virginity is evidence more of an effort to protect traditional values (the hypothesis we advanced earlier) than of an effort to protect women and their bodies.

#### *Rape Amidst the Practice of Prostitution*

One of the rulings states that the defendant had intercourse with a female minor. The ruling's grounds indicate that the intercourse occurred in the context of prostitution, that her father – who is "the biggest prostitution operator in Lebanon" – was "intimidating her with electricity and [threats of] murder", and that the defendant was the father's partner in the operation. The accused was convicted under Penal Code articles 527 (depending on another person's prostitution) and 505 (intercourse with a minor),<sup>61</sup> not 503 (compulsion into intercourse using violence or threats). The court apparently deemed that engaging in prostitution with a minor is akin to intercourse and not rape. It thereby ignored the circumstances of the case, namely that the minor was coerced into prostitution and her father had been tried on this basis. Does the court mean to say that practicing prostitution negates rape, even when the prostitution is coerced?

This observation is connected to a general tendency to assume that sex workers consent to all forms of sex and that intercourse through violence is therefore part of the job of prostitution. Women are thus divided into two categories: "those with whom there are no prohibitions on having sex" (such as sex workers),<sup>62</sup> and "those with whom sex is

prohibited" categorically, such as virgins (hence the focus on the virginity issue). The consent of some women to some sexual acts thereby transforms into consent to all forms of sexual activity.<sup>63</sup>

#### *Domestic Workers Are Not Victims?*

The sample contained five rulings in which the victims were domestic workers of various foreign nationalities, only two of which convicted the defendant. In comparison to the other rulings, these rulings display several issues and contradictions concerning light sentences, grounds that reveal prejudices, and an even an unfair burden of proof placed on the victim.

From one angle, the two rulings that convicted the defendant handed down light sentences not commensurate with the gravity of the offense. One of the rulings stated:

"Whereas the court has found... that the defendant abducted and raped... and violently robbed her, smuggled foreigners from and to Lebanon, and demanded a ransom for her release, which constitute the felony of articles 503, 569, and 638 of the Penal Code and the misdemeanor of Article 600 of the Penal Code and Article 32 of the Law on Foreigners, and he must be criminalized and convicted under them."

The court found that the accused had abducted the victim and taken her to Syrian territory – where he raped her – as part of a human trafficking network yet sentenced him to just three years of imprisonment, including time served.<sup>64</sup>

From another angle, the grounds of one of the rulings indicate that the investigating judge tasked the plaintiff with submitting detailed evidence of the alleged events. The court then relied on the worker's nonsubmission of the documents corroborating her rape to acquit the defendant. It should be noted that this ruling, while showing the pivotal role played by the investigating judge in rape cases, is the only one in which the victim was tasked with substantiating her allegations in such detail. The ruling stated:

"The investigating judge tasked the plaintiff with clarifying who took the pictures of her presented in the file, whether these pictures were taken abroad, how they were obtained, and the date that

[53] Brownmiller, *Against Our Will*, op. cit.

[54] Lonsway and Fitzgerald, "Rape Myths: In Review", op. cit., p. 133–164.

[55] In 1980, Martha Burt developed the first study to propose a scale for determining the extent to which individuals accept or believe in "rape myths" (the "Rape Myth Acceptance Scale" or RMA). See Martha R. Burt, "Cultural Myths and Supports for Rape", *Journal of Personality and Social Psychology*, vol. 38, no. 2, February 1980, p. 217–230.

[56] Julia R. Schwendinger and Herman Schwendinger, "Rape Myths: In Legal, Theoretical, and Everyday Practice", *Crime and Social Justice*, no. 1, 1974, p. 18–26.

[57] Phipps, "Rape and Respectability", op. cit., p. 10.

[58] Stanko, *Intimate Intrusions*, op. cit.

[59] Mount Lebanon Criminal Court, 22 May 2018.

[60] Brownmiller, op. cit., p. 23–29.

[61] Mount Lebanon Criminal Court, 27 April 2018.

[62] Sophie Day, "What Counts as Rape? Physical Assault and Broken Contracts: Contrasting Views of Rape among London Sex Workers" in Penelope Harvey and Peter Gow (eds.), *Sex and Violence: Issues in Representation and Experience*, Routledge, London, 1994, p. 185.

[63] Sue Lees, *Carnal Knowledge: Rape on Trial*, Hamish Hamilton, London, 1996, p. 129.

[64] Mount Lebanon Criminal Court, 12 July 2018.

they were taken, in addition to tasking the plaintiff's attorney with providing the medical reports he mentioned in the preliminary investigation, writing a letter to the Philippine embassy in Lebanon for information about whether the plaintiff had informed it of any assault on her, and serving the plaintiff with the attestation attributed to her and presented in the file by way of the aforementioned embassy so that an attestation by her to the accuracy of its content could be added to the file... Whereas subsequently, and given what was presented above, particularly the failure to specify the date and location of the defendant's pictures or the means whereby they were sent to Lebanon if they were taken abroad..."

In another case, the worker, who suffered a period of poor health, collapsed in the employer's home and was taken to hospital. She told her sister that she had been raped by a carpenter who was working in the home. Notably, the victim's sponsor also filed against the accused alongside the victim's action. Yet, even though the plaintiff's poor health was established and despite her sponsor's testimony, the court ultimately acquitted the defendant. While we are not in a position to assess the outcome of the ruling, we can say with certainty that the ruling's analysis contains many stereotypical views. On one hand, the ruling, quoting the plaintiff's testimony, stated that, "It was not her first time practicing [sex] as she has a boyfriend in her country", implying that the plaintiff's sexual activity or lack thereof impacts her credibility as a victim. Moreover, the ruling mentioned the defendant's confession to intercourse with the victim by stating that she was the one to "hit on him" and that he "got aroused".

The final case is the best example of the obstacles that obstruct domestic workers' access to justice in general under the Kafala system. The victim is a domestic worker who suffered a rape attempt. The facts of the ruling state that the accused "assaulted her, brandished a knife against her, threatened her, drove her into a bedroom, and attempted to rape her, grabbing her legs. The plaintiff got away, and a resident saw her and gave her pants to wear". Yet once again, the ruling acquitted the defendant for insufficient evidence, mentioning that the victim had been tried in absentia because she did not attend the trial hearings. Hence, she was probably deported without being able to exercise her right to litigate.

These rulings may therefore indicate that the judiciary is soft on sexual crimes against domestic workers and skeptical of their narratives. Of course, this orientation is made all the graver by the obstacles that the Kafala system imposes on the workers and the fact that most are compelled to leave the country [before they can complete their litigation]. It can also be attributed to a widespread tendency to question the credibility of working-class women and to consider subjection to violence part of the risks of their work. American author Susan Brownmiller mentions, for example, that it was historically difficult, if not impossible, to guarantee justice for working-class women who had been raped even though men from the same social class were the most liable to be tried and convicted.<sup>65</sup> Explaining this difficulty, she notes that working-class women do not conform to traditional feminine behavior and gender roles because they are in the "public sphere" designated for men. The female worker thereby becomes responsible for any harm done to her.<sup>66</sup>

### Observation 3: Minors' Sexuality Confuses the Courts

The rulings pertaining to child victims indicate an extremely important issue, namely how the criminal judiciary handles their sexuality when intercourse with a minor is criminalized under Article 505 of the Penal Code while most personal status laws permit minors to marry. In this area, we have a number of comments,<sup>67</sup> the most prominent being the following.

#### *Marriage as Cause to Discontinue Proceedings*

In two rulings from the sample, proceedings against the defendant under Article 505 were discontinued because of a marriage contract between him and the female minor. In one of these cases, the marriage contract was verbal (i.e. a mut'a or "pleasure" marriage). One ruling stated:

"Whereas the minor is the accused's wife, as established by the copy of the marriage contract presented in the file;

And whereas although Article 505 of the Penal Code punishes intercourse with a minor below 15 years of age, Article 503 of the Penal Code punishes sex with a person other than the wife, not with the wife, so the elements of Article 505 of the Penal Code are not met and proceedings against the defendant must be discontinued in this regard;

And whereas the defendant's act of

abducting the minor without deception or violence in order to contract the marriage constitutes the misdemeanor of Article 516 of the Penal Code, and he must be convicted under it;"<sup>68</sup>

The other ruling stated:

"Hence, her contradictory statements cannot be relied upon as conclusive evidence that the accused did the act imputed to him. It is illogical for a person to have sex with a woman whom he considers his lawful wife in the home of a family to which he personally brought her to protect her. Moreover, it is established that when he brought her to his brother's home, he did not touch her, and he could have done so, especially as the house was empty. Additionally, the disagreement arose between the accused and the minor because he wanted to take her to his home on the basis that she is his wife given the verbal marriage contract existing between them".<sup>69</sup>

While the first defendant was acquitted on the grounds of a marriage contract even though the minor was no older than 13, the second defendant – who confessed to having sex with the minor after a verbal marriage (i.e. mut'a) was contracted – was acquitted for insufficient evidence. Hence, in these two cases, the marriage contract – even if the court acknowledged that it was mut'a, i.e. verbal and temporary – blocked any questioning of the child's will not just to have intercourse but even to enter the marriage itself. Consequently, the rape proceedings against the defendant were ultimately discontinued.

In this manner, the law places symbolic limits on adolescents' sexuality: while an adolescent who has [extramarital] sex is seen as an innocent, deceived child and the other person must be punished even if the act is proven consensual, an adolescent who marries (irrespective of how young the adolescent is or the circumstances of the marriage) becomes an independent sexual being that can make decisions whose circumstances will not be subject to any scrutiny. The law has thereby placed prohibitions on minors' sexuality not only to protect them but also to control them. Consequently, legal practice becomes ambiguous, both criminalizing a minor's sexual activity and allowing a minor to marry. The court plays a role in reinforcing and reproducing this ambiguity by developing a different understanding of adolescence in each context.

This approach appears to be aimed not necessarily at protecting minors and securing their needs individually but at protecting the concept of childhood and the social system that generally governs it: on one hand, this system prohibits the "scourge" of extramarital sex and promotes the repression of such relationships, and on the other hand, the system promotes control over adolescents' sexuality and molds it into the desired social and legal framework, namely marriage. The problem therefore is not "intercourse with a minor" so much as it is the issue of extramarital intercourse and protecting "public morals". Thus, the principles of the child's best interest become a gateway for molding minors' lives to social and political legacies and society's conception of "appropriate" and inappropriate,<sup>70</sup> and these cases become an opportunity for the authorities to regulate minors' lives and create the "ideal adolescent" who conforms to society's moral values.

[65] Phipps, op. cit., p. 667–683.

[66] Brownmiller, op. cit., p. 28–29.

[67] Lama Karame, "Iqtirah Qanun hawla Tazwij al-Atfal: Min Ajl Warsha Tashri'iyya Akthar Waqi'iyyatan", The Legal Agenda, 27 March 2020.

[68] Mount Lebanon Criminal Court, 15 November 2018.

[69] Mount Lebanon Criminal Court, 16 February 2017

[70] Daniel Monk, "Childhood and Law: In Whose 'Best Interests'?" in Mary Jane Kehily (ed.), An Introduction to Childhood Studies, 2nd edition, Open University Press, Berkshire, 2009.

## Sexual harassment

Harassment within the workplace is a widespread phenomenon in Lebanon, exacerbated by the absence of a legal framework to avoid it or deter it. The General comment No. 23 (2016) on the right to just and favorable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights) has stipulated that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to just and favorable conditions of work. Specifically, this requires States parties (including Lebanon) to define and prohibit harassment, including sexual harassment, at work through law, ensure appropriate complaints procedures and mechanisms and establish criminal sanctions for sexual harassment.

On March 3rd 2020, the National Commission for Lebanese Women presented a draft bill criminalizing sexual harassment.<sup>71</sup> Furthermore, The Legal Agenda has drafted a model defense to help victims of harassment at work.

In December 2020, the Lebanese parliament has passed a law criminalizing sexual harassment. This is the first law that has explicitly recognised harassment as a separate crime, requiring legal intervention.

However, The Legal Agenda has argued that this law fails to protect victims of harassment.<sup>72</sup> First, it offers a vague and moral definition of harassment as ‘any recurring bad behavior out of the ordinary and unwanted by the victim’. This definition constitutes a moral approach to harassment and promotes the protection of morality rather than the victim. The law has only allowed for victims to make use of the criminal justice system and not the civil courts. This may deter victims from filing complaints as their case will be public.

In addition, the law does not distinguish between the employee and the employer in the event that harassment occurs within the workplace without taking into account the hierarchical and unequal powers within labor relation. It thus provides space for the exploitation of this text by employers against their employees. The text also does not stipulate specific sanctions for employers who fail to protect their employees. Finally, the law places the burden of proof on the victim, rather than requiring the perpetrator to prove their innocence.

## Forced labor and human trafficking

Sexual violence often occurs in a context characterized by unequal power dynamics and exploitation. This section discusses the anti-trafficking legal framework, first by offering an analysis of the anti-trafficking law enacted in 2011, followed by explaining the findings of an empirical study in Lebanese courts on trafficking cases. Finally, this section highlights the absence of legal protection to forcibly employed domestic workers.

### A law enacted under international pressure: what protection does it offer to victims?<sup>73</sup>

The anti-trafficking law was enacted in August 2011, and included major amendments to the penal code. It introduced the concept of trafficking and its implications, providing a strong basis for combatting human trafficking, namely as suffered by exploited sex workers and domestic workers. However, and despite its importance, major concerns were raised regarding the circumstances surrounding the enactment of the law, and some of its provisions.

Law No. 164/2011 was primarily enacted as a result of US and international pressure and the fear of sanctions, with minor concerns to the rights of the victims. The justifications for adopting it were primarily focused on the necessity of harmonizing Lebanese legislation with the international conventions that Lebanon has joined, without paying attention to the victims or the grievances of exploitation actually occurring in Lebanon. It was thus completely separate from the reality of exploitation in Lebanon, which constituted an obstacle to its effective implementation. More dangerously, and while the law aimed at stricter penalties for the exploitation and trafficking of persons, it

kept the victim vulnerable to prosecution and punishment, provided that she would be exempt from punishment in the event she was forced to “commit acts punishable by law or violate the conditions of residence or work.” (Article 586–8). The law thus exonerated the victim from punishment but not from criminal responsibility, which is a clear violation of international standards. Furthermore, it did not address the difficulty that the victim may encounter in proving the element of coercion to committing the crime, especially in cases where the crime of trafficking is not investigated or the identity of the perpetrator is not identified. Furthermore, the anti-trafficking law does adopt a clear mechanism to identify victims of trafficking, especially those unable to reach authorities. Finally, the law fails to provide any protection measures for victims of human trafficking, and does not include any measure or policy that aims to prevent human trafficking or facilitate it.

### Human Trafficking Victims Marginalized Before the Courts<sup>74</sup>

In light of the weakness of the state’s mechanisms for protecting human trafficking victims and the fact that civil society organizations bear the brunt of this responsibility, what place do victims have in the trials of those accused of trafficking and exploiting them? What approach has the judiciary taken towards the victims, particularly with regard to providing them protection or compensation for the suffering they endured as a result of their subjection to trafficking? We shall attempt to answer these questions via the most important findings of The Legal Agenda’s study on human trafficking cases pending before or examined by the Criminal Court in Beirut and the Criminal Court in Baabda in 2016 and 2017. Most of these cases pertain to exploitation in begging or prostitution.

#### Excluding the Victims of Exploitation in Cases of Begging

In begging cases, the judicial authorities tended to exclude the children suspected of being exploited from all judicial proceedings related to their exploiters’ trials.

The Public Prosecution generally refrained from interviewing the minors apprehended while begging in the streets. Instead, it merely placed them in social institutions. In fact, of the 24 minors involved in these cases statements were taken from only three. Two were interviewed in the presence of their father, who was suspected of exploiting them and later was in fact charged with trafficking. In addition, the judicial police interviewed two minors “verbally upon their arrest” without duly recording their statements.

The Public Prosecution handed 15 minors over to the Home of Hope in Kahale, which is administered by the Lebanese Evangelical Institute for Social Work and Development, and handed just two minors over to the Reform Institute in Fanar, which is administered by the Union for the Protection of Juveniles in Lebanon. While the judicial documents used the expression “placed” in most cases, one of the minors was described as detained, as the public prosecutor referred to “not taking any measure or infraction [sic] against the minor... and merely detaining him in the foster home in Kahale”. Usually, the Public Prosecution referred the investigation reports to the juvenile judge to take whatever measures judge saw fit, but we were unable to determine what role the juvenile justice system played in this area or the term for which these children stayed in the social institutions.

In most of the begging cases, the children’s exploitation was of a familial nature. In other words, the investigations revealed that they were transported or monitored by a family member or with their family’s consent. However, the judicial files included no investigation into the care these children were receiving from their families, their families’ socio-economic conditions, or whether they were receiving adequate protection from a family member, even in the instances where the accused was one of their parents. The files also contained no medical examinations or verification of the children’s physical or mental health. In most cases, only one parent was investigated and arrested while the other was completely excluded.

As such, we must question the choice to remove these children from their family environment and isolate them in foster institutions without confirming the need for this measure. It seems that the Public Prosecution continues to use mechanisms to remove the children of poor families without any regard for their specific circumstances, potentially against the children’s best interest.

The children in the begging cases were totally excluded from the trial proceedings just as

they had been excluded during investigation proceedings. None appear to have been interviewed by the Criminal Court. The court also does not appear to have interviewed their guardians not accused of exploiting them, nor even the social workers following their cases or the staff in the foster institutions where the Public Prosecution placed the children. The Criminal Court also did not cite the results of the juvenile judges' investigation in these cases and did not look into the fate of the children and whether they were still in the care of social institutions or had returned to their family homes. Hence, the Criminal Court issued convictions for the felony of human trafficking, usually against the exploited children's parents with sentences ranging from five to fifteen years of imprisonment, without obtaining any information about these children's circumstances or ordering any compensation for them. The harshness of the sentences imposed on the children's parents raises the question of their negative impact on the children themselves, especially when the circumstances of their care went unexplored.

### Prosecuting and Detaining the Victims of Sexual Exploitation

The judicial authorities handled the female victims of sexual exploitation in prostitution differently to the child victims of exploitation in begging. In 12 of the 17 cases included in the study sample, they were indicted for clandestine prostitution, drug use, or neglecting to renew residency (all misdemeanors resulting from their subjection to trafficking). Hence, 16 female victims of sexual exploitation, including two minors, were tried in conjunction with those accused of exploiting them. The judicial authorities do not appear to have taken any measure to protect these women. None of these cases contained any medical examination or verification of the victims' physical or mental health. Nor did they contain, in relation to the two minors, reports by authorities in charge of juvenile protection. While the victims remained anonymous in one of the cases pertaining to a trafficking ring, 30 identified victims of sexual exploitation were not charged across just three cases. Most of them were the women exploited in the "Chez Maurice"<sup>75</sup> case, who joined the proceedings as civil claimants against the members of the ring.

As a result of this prosecution, 14 human trafficking victims in these cases were ordered detained by the Public Prosecution offices or investigating judges – , either held in custody, or in pretrial detention, or the subject of an arrest

warrant issued against them in absentia. None of the victims were sent to trial before the Criminal Court while detained as the judicial authorities released them at various stages of the judicial proceedings before they reached the Criminal Court. The average length of the victims' pretrial detention was 25 days. These detentions occurred between 2011 and 2016. Needless to say, detaining these women for prolonged periods runs counter to their status as trafficking victims eligible to be exempted from punishment under Article 586 (8) of the Penal Code. Also, placing them in pretrial detention violates Article 107 of the Code of Criminal Procedure as the punishment for the misdemeanor of prostitution does not exceed one year of imprisonment. Moreover, according to another study, their detention exceeded the average period for which women accused of prostitution were detained between 2005 and 2011 – i.e. before the adoption of the anti-human trafficking law – namely 13 days (11.5 days for Lebanese and 15 days for foreigners). Did introducing harsher punishments for human trafficking lead to harsher treatment of its victims?

In the sample, we observed no judicial decision granting residency to a victim based on Article 586 (6) of the Penal Code even though the overwhelming majority of victims (43 of 46) were not Lebanese and many did not have legal residency when the investigations began.

To the contrary, three Syrian victims of sexual exploitation were charged with the crime of neglecting to renew residency. Note that a victim who filed a complaint against her partner, with support from the organization KAFA (Enough Violence & Exploitation, obtained temporary residency from General Security based on the existence of a pending legal case. General Security occasionally takes this measure even in cases not related to human trafficking.

Most of the victims don't appear to have been defended by lawyers during their joint trial with those who exploited them. According to our observations, only three victims were represented by lawyers during the stage of judicial investigation or trial. Additionally, the victims who filed claims in the "Chez Maurice" case and a victim who filed a rape and exploitation complaint against her partner were represented by a lawyer from KAFA.

In two of the cases where the Criminal Court issued rulings on the victims of sexual exploitation, the victims were punished for prostitution after those accused of trafficking them were acquitted. The court held that these two women did not fall victim to

exploitation; rather, they were partners in a moral offense with those accused of exploiting them. This finding was based on a group of preconceptions that completely ignored the means and circumstances of exploitation, not on any scientific or psychological standard. As for the cases where convictions for human trafficking were issued, the court convicted one

of the victims for prostitution even though it established that exploitation occurred, whereas it refrained from punishing two victims. It did not award any of these victims compensation for the damages they suffered as a result of their exploitation in prostitution, though their prosecution prevented them from participating in the case as civil claimants.

## Domestic workers and forced labor

Despite the enactment of the anti-trafficking law, Lebanese law does not punish the offense of "forced labor" as an existing crime in and of itself independent of the crime of trafficking in persons, unlike the case in many other countries and the recommendations of the International Labor Organization's Legal Experts Committee.<sup>76</sup> In fact, the concept of forced labor is broader than the concept of trafficking in persons as it includes any situation in which a person is forced to work without their consent, regardless of whether the matter includes human trafficking. There are many cases of exploitation in forced labor which do not necessarily contain all the elements of trafficking. Since the enactment of Law No. 164/2011 was not accompanied by any review of the legal landscape that facilitates the occurrence of trafficking, foreign domestic workers remain subjugated to the exploitative sponsorship (Kafala) system.

Studies have shown that domestic workers are rarely able to resort to the judiciary to claim their rights, due to the legal, economic and social obstacles they face. Among the most prominent of these obstacles are: the restriction of the worker's freedom of movement and communication with others, the high cost of litigation, the slow pace of judicial procedures, in addition to the loss of residency once the work relationship ends, and the policies followed by the public prosecution offices and the General Directorate of General Security that lead to the deportation of the worker without enabling her to resort to the judiciary.<sup>77</sup> As indicated earlier, the majority of rulings issued against domestic workers are issued in absentia. It also emerged that most of the investigations conducted by General Security into potential cases of trafficking in persons ended either with the prosecution not being proven or the worker leaving Lebanon before referring the files to the judiciary.<sup>78</sup>

### **Based on the findings of an empirical study on trafficking cases within Lebanese courts, and the monitoring of rulings issued against domestic workers, The Legal Agenda has made three primary findings on the lack of protection that domestic workers face:**

One of the primary findings of a study on human trafficking conducted by The Legal Agenda and which included monitoring 34 human trafficking cases, was that none of these cases were related to forced labor, whether domestic work or any other kind of labor (such as child labor in agriculture).<sup>79</sup> This absence is in and of itself a strong indication of a grave shortcoming in the application of the anti-human trafficking law. It was as though the law's effect could not penetrate the sponsorship system, which once again proved itself immune to all rights and humanitarian considerations, even if they have acquired the weapon of criminal prosecution. The complete absence of this kind of cases confirms that the sponsorship system not only facilitates human trafficking but also safeguards the sponsors from prosecution because of the aforementioned limited choices available to the workers. The reality is that any claim that this law is being applied demands clear answers from the security and judicial authorities about this absence. Does the problem lie in the work of these authorities, or does it extend further to include the difficulty (or impossibility) of accessing justice under the sponsorship system?

The second fact emerges from our monitoring of all rulings issued by criminal single judges on domestic workers in the courts of Beirut, Baabda, and Jdeideh el-Matn. Approximately 91% of these rulings were issued against the workers in absentia. In the overwhelming majority of these cases, the workers were arrested after their "flight" or departure from work was

[76] ILO Report, "Giving Globalization a human face", 2012

[77] Sara Wansa, "aamilat almanazel amam majales alaamal altahkiyima fi loubnan: da3awa men doun ahkam"

Legal Agenda, April 2014; "aamilat almanazel aala hamesh almahkama" alsarika wahdaha tasmah laki bilikkaa alkadi, Legal Agenda, August 2018; "nashat majales alaamal altahkimiya fi mouhafazatay Beirut w jabal loubnan 2018: mahiyyat nizaat alaamal" Legal Agenda, August 2019

[78] Nizar Saghieh, "madbatat etiham birasm alniyaba al aama: naam nahnou noutajer bl bashar", Legal Agenda, October 2016

[79] Ghida Frangieh, "Human Trafficking Crimes Before the Courts: In the Shadow of Prosecution", Legal Agenda, September 2018

reported, they were investigated, and then they were deported before their cases were sent to the Public Prosecution and, a fortiori, before the workers could appear before any judge. Hence, the investigations were limited to the “flight” and compliance with the Law of Foreigners and did not include any questions about why the worker left the job, which remained irrelevant. While some of the case files contained many indicators of potential exploitation, the investigations in them were limited and not expanded. On the whole, they ended in the referral of the worker for violating the Law of Foreigners and then the issuance of a ruling convicting her on that basis in absentia some time later.

The volume of trials in absentia reflect what we labeled “the industry of trials in absentia”, which, in practice, deprives the judge of any chance to listen to the workers’ stories and the suffering they might contain. Hence, it leads to their virtually automatic conviction while immunizing the sponsors from [accountability for] any exploitation they committed.

The Legal Agenda also studied the 13 trials in which the workers did appear before judges as defendants.<sup>80</sup> Which type of trials are conducted in domestic workers’ presence rather than in absentia? What procedures are followed during these trials? Do they allow the worker to confront the employer on equal footing as part of a trade-off between rights and responsibilities? Do they allow judges to document the conditions of domestic work and the abuse that might pervade it? Do they allow judges to restore some balance to these conditions? Or do the prevailing practices that marginalize the workers also apply, for one reason or another, to these cases such that they have no effect, if not a negative one? Here too, the answers may shock:

- The defendant workers only appeared before the court in cases of theft complaints against them and, of course, where it was possible to arrest them before or during the trial. What prevented the workers’ deportation in these cases was the issuance of judicial decisions to detain them. This prompted The Legal Agenda to give one of its articles on this subject the provocative headline “‘Theft’ Alone Grants Domestic Workers an Audience with a Judge”.

- Fair trial conditions were largely missing. The workers were able to bring a lawyer with them in only two cases, and neither lawyer submitted a written or oral pleading. Similarly, there was no interpreter in court to help the workers in any of these cases. Additionally, the rate at which the workers were not transported to the trial hearings was very high. In the seven cases whose files we were able to obtain, this rate was 43% (the workers were able to attend 12 of 21 hearings). Of course, this prolongs the periods of preventative detention and undermines the judge’s ability to administer the trial.
- In five cases, the plaintiff employers appeared before the judge in person. In another five cases they were represented by a lawyer. Even when the plaintiffs appeared in person, the defendant workers were not able to question them, and the judges did not confront them with statements the workers made in the responses they had given before the court. Hence, even in the rare instances where confrontation occurred, it seemed pro forma.

The third fact emerges from the information we obtained about the investigations that the General Directorate of General Security carried out in potential human trafficking cases. This information indicates that from 2013 to 2017, General Security investigated 150 complaints of workers who were “potential victims” of the crime of human trafficking, though the number of complaints declined from 55 in 2013 to just 11 in 2017. This information – which still needs further examination – indicates that all the workers left Lebanon before their cases were referred to the judiciary, with the exception of those who returned to work for their sponsors. Similarly, many of these investigations ended either in General Security declaring the allegation unproven following administrative investigations or in settlements despite the gravity of the alleged acts (torture, beating, mistreatment, and nonpayment of wages). One thing is certain: the study sample included none of these cases. We believe that most ended up as mere labor disputes before the Labor Arbitration Councils.

## Anti-Torture law

The anti-torture law was enacted in 2017, pushed by human rights organizations, criminalizing torture and other cruel, inhuman or degrading treatment or punishment. The law came into effect on 26 October 2017. Despite its importance, the law does not comply with all the recommendations from the UN committee Against Torture.<sup>81</sup> It has been criticized as it fails to explicitly ban the Military Court from looking into allegation of torture, but also for introducing a statute of limitations (3-10 years) for prosecuting torture. The law was also seen as breaching international standards in that it criminalized torture only in specific situations, i.e. torture allegations taking place during the trial (pre-detention, preliminary investigations, judicial investigations, trials, or execution of sentences<sup>82</sup>).

The law does not include any stipulation that relates to gender violence, however, it might provide basis for international advocacy and state accountability as will be discussed below.

# Regional and International Legal Framework

This section describes the applicable regional and international legal frameworks under which those responsible for sexual violence may be held accountable, including individual perpetrators, state institutions, private companies, and foreign

entities. It contains both an overview of the applicable laws and a description of how those laws may be used to promote accountability in practice.

## Regional law

Applicable law	Who is bound by the law?
Arab Charter of Human Rights	The State of Lebanon Lebanese state institutions such as the police and military
Accountability mechanisms	Who could take action to promote accountability?
Lebanese courts Shadow reports to the Arab Human Rights Committee	Lawyers and civil society organizations could rely on the Arab Charter in their legal arguments in domestic courts in cases against state actors. Civil society organizations could write and publish a shadow report to the Arab Human Rights Committee.

This section will discuss the regional laws applicable to perpetrators of sexual violence; how these laws apply to and in Lebanon; whether any accountability mechanisms exist for the enforcement of the law; and whether and how these accountability mechanisms could

be engaged with by actors pursuing justice for sexual violence.

Lebanon is a founding member of the League of Arab States and ratified the *Arab Charter on Human Rights* in 2011.<sup>83</sup>

1994	League of Arab states adopts an Arab Charter on Human Rights
2004	League of Arab states adopts a revised (current) Arab Charter on Human Rights
2008	Arab Charter on Human Rights Comes into force
2011	Lebanon ratifies Arab Charter on Human Rights
2013	Lebanon submits its first report to the Arab Human Rights Committee
2018	Lebanon submits its second report to the Arab Human Rights Committee

The Arab Charter includes the following Articles relevant to protection from sexual violence:

Article 3(3) guarantees equality between men and women and obliges states to

undertake all necessary measures to protect the right to equality;

Article 33(1) gives men and women the right to marry and found a family, but does not provide for equal rights in entering marriage, during marriage or at the dissolution of marriage, leaving this instead to the domestic laws of the states. It provides that no marriage shall be entered without the full consent of both parties.

Article 33(2) provides for the right against violence within the family, particularly for women and children, and places an obligation on “State and society” to provide

care and special protection for mothers, children and the elderly.

The Charter’s only enforcement mechanism is the Arab Human Rights Committee, which is mandated to consider the reports submitted by the member States Parties once every three years and to submit its own report, together with the views and comments of the States, to the Standing Committee on Human Rights at the

Arab League.<sup>84</sup> Lebanon submitted its first report to the Charter Committee in 2015 and its second report in 2018.<sup>85</sup> The state report discussed challenges for Lebanon in protecting the rights under the Charter, but focused predominantly on the successes made. In 2018, the Arab Organization for Human Rights submitted a shadow report. It appears that a shadow report was also submitted in 2015, but has not been published online.

### HOW COULD THE ARAB CHARTER BE USED BY ORGANIZATIONS WITHIN LEBANON?

The League of Arab Nations does not have a judicial body to apply the Arab Charter or an enforcement mechanism for it. However, the Arab Charter is directly applicable within Lebanon by virtue of Section 2 of the Preamble of the Lebanese Constitution, which states that Lebanon is a ‘founding and active member of the League of Arab States and abides by its pacts and covenants.’

**Applying the Charter in domestic courts:** The Charter primarily applies to the conduct of the government, rather than to individuals. However, the explicit prohibition on violence within the family and the acknowledgement of the obligations of both the State and ‘society’ in relation to such violence provide some flexibility

to make arguments based on the Charter in cases of sexual violence perpetrated by private actors.

**Submitting a shadow report to the Arab Committee:** It would be possible for a consortium of civil society actors to submit a shadow report which highlights any breaches of Article 3 and 33 by the state when Lebanon is next required to submit its state report to the Arab Human Rights Committee in 2021. Shadow reports submitted by consortiums of actors may carry greater weight than reports compiled by a single organization. Translating the report into English and making it widely available on the internet and through social media may also assist in advocating around the implementation of the recommendations in the report.

## International law

Applicable law	Who is bound by the law?
International human rights law treaties including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), International Covenant on Civil and Political Rights and Convention Against Torture (CAT); International Humanitarian Law as embodied in the Geneva Conventions; International Customary Law.	The State of Lebanon; Lebanese state institutions such as the police and military; Individuals involved in the conflict (‘combatants’); Private individual actors can be held accountable to the standards set out under international law in Lebanese courts, which is in general a more stringent standard than under domestic law.
Mechanisms for promoting accountability	Who could take action to promote accountability?
<b>Legal accountability:</b> Lebanese courts CAT inquiry procedure ILO complaints procedure	Lawyers and civil society organizations could rely on international law in their legal arguments in domestic courts. Civil society organizations could write and publish a shadow report to the Arab Human Rights Committee.

[84] Arab Charter on Human Rights

[85] League of Arab States website: [www.lasportal.org/ar/humanrights/Committee/Pages/Reports.asp](http://www.lasportal.org/ar/humanrights/Committee/Pages/Reports.asp)

[85] League of Arab States website: [www.lasportal.org/ar/humanrights/Committee/Pages/Reports.asp](http://www.lasportal.org/ar/humanrights/Committee/Pages/Reports.asp)

## Mechanisms for promoting accountability

### Promoting compliance:

Shadow reports to the Human Rights, CEDAW, CRC and CAT and Economic, Social and Cultural Rights (ESCR) Committees and during the Universal Periodic Review  
Letters to UN Special Rapporteurs

This section will discuss the international law applicable to perpetrators of sexual violence, including the relevant international human rights treaties; relevant rules of international humanitarian law, as set down in the Geneva Conventions; and the relevant rules of international customary law. International customary law is law that is considered settled and applicable to and in all countries, whether or not they have ratified the treaties that set down the relevant norms (unless those countries have consistently demonstrated that they do not consider themselves bound). This section will also discuss the mechanisms established to enforce international laws relevant in this case and how actors within Lebanon could

engage with these mechanisms to promote accountability and compliance with the law.

Subsection 2 of the Preamble to the Constitution of Lebanon provides that Lebanon is a “founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights.”<sup>86</sup> Though this does not describe the hierarchy of laws within Lebanon, it acknowledges the applicability of international law. As the constitution itself is silent as to which international laws should be applied, consideration should be given to the general principles of international law, namely, that a country is bound both to the treaties it has ratified and to the rules of customary international law. Customary international law describes legal norms that are considered so settled as to be binding on all states, except where a state has consistently indicated an objection to the norm with an intention to prevent it being binding upon them. Furthermore, article 2 of the Lebanese Civil Procedure Code states that: “(...) In the event of conflict between the provisions of international treaties and those of ordinary law, the former shall take precedence over the latter.”

# International Human Rights Law

Lebanon has ratified the following relevant international instruments:

Convention	Year ratified	Next reporting date	Complaints/ inquiry mechanisms available?
The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	1996	Currently responding to issues raised by Committee following last report; next report due in 2024	No
The Convention on the Rights of the Child (CRC)	1991	June 2023	No
The International Covenant on Civil and Political Rights (ICCPR)	1972	April 2023	No
The Convention Against Torture and Other Inhuman or Degrading Treatment of Punishment (CAT)	2000	May 2021	Yes; Inquiry Procedure under Article 10
International Covenant on Economic, Social and Cultural Rights (ICESCR)	1972	October 2021	2004
Protocol to Prevent, Suppress and Punish Trafficking in Persons	2005	N/A	No
International Labour Organization Constitution	1948	-	-
Discrimination (Employment and Occupation) Convention	1977	-	Yes; inter-state complaint
Universal Periodic Review (not a Convention)	N/A	November 2020	No

## Convention on the Elimination of All Forms of Discrimination against Women

Lebanon ratified Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1996, entering reservations on the Articles relating to nationality, equal rights relating to dissolution of marriage and custody, and the provision that allows arbitration between states parties over interpretation of the Convention.

Though CEDAW contains no explicit reference to violence against women (VAW), with the exception of a prohibition on human trafficking, the CEDAW Committee, mandated to oversee implementation of the convention, has consistently identified violence against women as a form of discrimination and within the scope of the convention.

General Comment 19 (1992) describes which rights are violated by the commission of violence against women and makes clear that states are required not only to refrain from the commission of VAW, but also to prevent, investigate and punish VAW when it does occur. This includes acts of VAW committed by non-State actors.

General Comment 35, released in 2017, expands on General Comment 19 by more comprehensively setting out the legal duties

of the state to investigate, punish and prevent VAW, including tackling of bias, stereotypes and discrimination. According to General Comment 35, CEDAW Article 2 requires state parties to ‘pursue by all appropriate means and without delay a policy of eliminating discrimination against women,’ including gender-based violence against women. Examples of what ‘all appropriate means’ includes: passing laws and policies targeted at eliminating gender stereotyping and discrimination; providing reparation to survivors of VAW; developing and implementing monitoring mechanisms for allegations of VAW; establishing and funding national tribunals where necessary; and eliminating the institutionalized sexism and the culture of tolerating VAW within public bodies, including through investigations to detect inefficiency, complicity and negligence by public officials in responding to VAW. As emphasized by the Committee, these are all ‘obligation[s] of an immediate nature; delays cannot be justified on any grounds.’

Lebanon has not ratified the optional protocol to the CEDAW, which allows individuals to submit complaints to the CEDAW Committee alleging violations of the Convention by the state, and which enables the Committee to conduct enquiries into allegations of systematic violations of the Convention.

## HOW COULD CEDAW BE USED BY ORGANIZATIONS WITHIN LEBANON?

**Applying CEDAW in domestic courts:** CEDAW primarily binds state parties, but General Comments 19 and 35 make clear that private individuals also have obligations under the treaty, which must be enforced by the state. As international law is applicable in domestic courts through the preamble of the Constitution, arguments may be made that rely on CEDAW in circumstances where Law 293 or other domestic laws relating to gender are inadequate.

**Letters to Special Rapporteurs/ Representatives:** It is also possible for individuals or organizations to write letters to the Special Rapporteur

on Violence against Women, its Causes and Consequences, or to Special Representative of the Secretary-General on Sexual Violence in Conflict, to provide information on violations of human rights falling under the area of competence of each, including in relation to violations of CEDAW.

**Shadow reports:** Finally, a consortium of organizations could compile a shadow report alleging violations of CEDAW as an advocacy tool when Lebanon comes up for its review in front of the Committee in 2024.

## Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) defines children as anyone under the age of 18 years, and includes: the right to be protected

from all forms of physical or mental violence, injury or abuse, including sexual abuse;<sup>92</sup> the right to the enjoyment of the highest attainable standard of health;<sup>93</sup> and the protection from all forms of sexual exploitation.<sup>94</sup> State parties

[87] Reservations to CEDAW by country, <https://www.un.org/womenwatch/daw/cedaw/reservations.htm>

[88] CEDAW Committee, 1992, General Recommendation No. 19: Violence against women, accessible at <https://www.refworld.org/docid/52d920c54.html>

[89] Para 21

[90] Paras 24- 26

[91] Para 21

[92] Art 1 CRC 67 Article 19

[93] Article 24

[94] Article 34

are obliged to take all appropriate legislative, administrative, social and educational measures to protect those rights.<sup>95</sup>

Lebanon has not ratified the optional protocol to the CRC, which would allow individuals

to submit complaints to the CRC Committee alleging violations of the Convention by the state, and which enables the Committee to conduct enquiries into allegations of systematic violations of the Convention.

## HOW COULD CEDAW BE USED BY ORGANIZATIONS WITHIN LEBANON?

**Arguments in domestic courts:** Arguments based on rights enshrined in the CRC may be made directly in Lebanese domestic courts.

**Letters to Special Rapporteurs:** Individuals or organizations may also write letters outlining violations of the CRC related to sexual

exploitation of children to the Special Rapporteur on the sale and sexual exploitation of children.

**Shadow reports:** Additionally, a consortium of organizations could compile a shadow report alleging violations of CRC when Lebanon comes up for its review in front of the Committee in June 2021.

### International Covenant on Civil and Political Rights

Lebanon ratified the International Covenant on Civil and Political Rights (ICCPR) in 1972. The ICCPR guarantees:

- the right to equality,<sup>96</sup>
- the right to security of the person,<sup>97</sup>
- the right against torture and cruel, inhumane and degrading treatment,<sup>98</sup>
- the right to equality before the law,<sup>99</sup> and
- the right to a remedy.<sup>100</sup>

Equality is both a right in itself and one that links to the enjoyment of all other rights. Women's enjoyment of the rights of security of the person and against torture and cruel, inhumane and degrading treatment must be equal to that of men's. Sexual violence in Lebanon is disproportionately committed against women and girls. The commission of sexual violence is therefore a violation of the right to equality in itself.<sup>101</sup>

In General Comment on Article 9 of the ICCPR, which guarantees the right to security of the person, the Human Rights Committee stated that the Article gives states parties an obligation to "respond appropriately to patterns of violence against categories of victims such as... violence against women, including domestic violence."<sup>102</sup>

Rape and other types of sexual violence have now been accepted as forms of torture by the international human rights authorities and forums described below.

The right to equality before the law requires that women be treated with the same respect and have their complaints responded to with the same seriousness as complaints brought by men when accessing the formal justice system. Patterns of police failing to proactively or effectively investigate complaints more commonly brought by women, such as complaints of sexual violence, are indicative that the right of female survivors to equality before the law has been violated.

The right to equality before the law requires governments to implement laws and policies that effectively hold all perpetrators of sexual violence accountable. This provision is only meaningful if the law is enforced. The existence of laws criminalizing sexual violence is not sufficient in itself; they must be implemented and respected to fulfil the government's obligations under this provision.

Lebanon has not ratified the optional protocol to the ICCPR, which would allow individuals to submit complaints to the Human Rights Committee alleging violations of the Convention by the state.

## HOW COULD ICCPR BE USED BY ORGANIZATIONS WITHIN LEBANON?

**Arguments in domestic courts:** Arguments based on rights enshrined in the ICCPR may be made directly in Lebanese domestic courts.

**Letters to Special Rapporteurs/ procedures:** Individuals or organizations may also write letters to many of the Special Rapporteurs, Independent Experts and Working Groups on issues relating to sexual violence in Lebanon. Individuals and groups with special mandates over civil and political rights which include rights against sexual violence and are particularly relevant to the situation in Lebanon include:

- Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: useful in circumstances where an argument may be made that sexual violence is not sanctioned by the state;
- Special Rapporteur on contemporary forms of slavery, including its causes and its consequences: a request could be made to recognize the situation of many domestic workers as modern-day slavery, and that in these circumstances sexual violence against them could constitute sexual slavery;
- Special Rapporteur on the human rights of migrants: including the rights of migrants against sexual violence;

- Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity: relevant in addressing the high levels of sexual violence committed against the lesbian, gay, bisexual and trans (LGBT) community.

It is common practice for two or more Special Rapporteurs or Independent Experts to release joint statements on a particular issue. Advocates may also therefore write their letter to multiple Independents/ Experts requesting a unified statement on a particular issue. Special Rapporteurs and Independent Experts have the advantage of being able to make recommendations to both state and non-state actors, which could be utilized by those wishing to address widespread committed within families, communities or workplaces.

**Shadow reports:** A shadow report alleging violations of ICCPR could be compiled when Lebanon comes up for its review in front of the Human Rights Committee in April 2023. A shadow report may also be compiled for Lebanon's Universal Periodic Review. This is generally considered to be the most impactful review procedure, as it is undertaken for all UN member states every five years on the entirety of their human rights record.

### Convention against Torture

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) gives all people the right to be protected from torture and cruel, inhumane and degrading treatment or punishment, and places positive obligations on member states to prevent and punish its use.

The CAT defines torture as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as... or intimidating or coercing [her]... when such pain or suffering is inflicted... with the consent or acquiescence of a public official.'

The Committee against Torture established by the CAT considers violence against women, including rape, sexual abuse, forced marriage and female genital mutilation/ cutting (FGM/C) to be within its remit.<sup>103</sup> The 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment' released to the Human Rights Council in January 2016 stated that sexual and domestic violence by private actors may also violate the CAT where the state fails to punish perpetrators and protect victims, and creates "conditions under which women may be subjected to systematic physical and mental suffering, despite their apparent freedom to resist."<sup>104</sup>

CAT imposes a number of duties on State Parties regarding the prevention and punishment of torture. The following Articles all refer to torture

[95] Article 19(1); Article 2(1); Article 9(1); Article 26

[96] ICCPR, Article 2(1)

[97] ICCPR, Article 9(1)

[98] ICCPR, Article 7

[99] ICCPR, Article 26

[100] ICCPR, Art 2(3)

[101] Amnesty International, 'Rape and Sexual Violence: Human rights law and standards in the International Criminal Court', 2010, p 6.

[102] Human Rights Committee, General Comment 35, 2014.

[103] CAT, VL v Switzerland (2006) Comm. No. 262/2005 Views adopted 20 November 2006, UN Doc. CAT/C/37/D/262/2005 at para. 8.10

[104] Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 2016, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment', UN Human Rights Council, accessible at [antitorture.org/wp-content/uploads/2016/02/Gender\\_Report\\_A\\_HRC\\_31\\_57\\_E-5.pdf](https://antitorture.org/wp-content/uploads/2016/02/Gender_Report_A_HRC_31_57_E-5.pdf)

specifically, but extend to cruel, inhumane and degrading treatment or punishment by virtue of Article 16.

State parties- and therefore state governments- are the target of the Convention. It also however sets out the standards that must be met by individual actors, whether public or private,

and imposes a duty on the state to investigate, prosecute and punish those who fail to meet those standards. The definition and prohibition of torture contained in the Convention are therefore applicable in Lebanese courts by virtue of section 2 of the preamble of the Lebanese constitution, whether the alleged perpetrator in the case is acting in a public or private capacity.

Duties of government to increase access to justice for torture by public and private actors	
Prevention (non-exhaustive list)	Response (non-exhaustive list)
<ul style="list-style-type: none"> <li>Duty to take effective legislative, administrative, judicial or other measures to prevent torture. This involves criminalizing torture under domestic law, recognizing international law as informing domestic law, and implementing policies to ensure that it is prosecuted and punished;</li> <li>Duty to include information on prohibition of torture in training of law enforcement.</li> </ul>	<ul style="list-style-type: none"> <li>Duty to ensure impartial investigation into allegations of torture;</li> <li>Right of victim to complain and duty to ensure they/ witnesses are not subject to intimidation as a result;</li> <li>Right of victims to redress and access to justice.</li> </ul>

The above obligations all relate to improving investigations and prosecutions of torture, thereby increasing access to justice for survivors. They require that complainants have their allegations taken seriously, that comprehensive investigations are undertaken, that the case is prosecuted wherever there is credible evidence, and that the judicial proceedings are fair and impartial. They also require that special assistance is offered to the complainant and that action is taken to ensure they do not experience intimidation or harassment. Finally, if torture is

found to have occurred, CAT mandates that just compensation be paid.

Lebanon has not made a declaration under Art 22 of CAT, which would allow individuals to submit complaints to the CAT Committee alleging violations of the Convention by the state. However, it has not made a declaration to opt out of Article 10 of CAT, which gives the Committee authority to consider inquiries on grave or systematic violations of any of the rights set forth in the Convention.

HOW COULD THE CAT BE USED BY ORGANIZATIONS WITHIN LEBANON?	
<p><b>CAT inquiry procedure:</b> Any individual, organization or consortium of actors has the ability to provide the CAT with information indicating that the rights contained in the Convention against Torture are being systematically violated by a state party, and to request to undertake an enquiry into the allegations. The CAT may then undertake an inquiry into the situation and make recommendations to the state.</p> <p><b>Arguments in domestic courts:</b> Arguments based on rights enshrined in the CAT may be made directly in Lebanese domestic courts.</p>	<p><b>Letters to Special Rapporteurs:</b> Individuals or organizations may also write letters outlining violations of the CAT to the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.</p> <p><b>Shadow reports:</b> It would also be possible for a consortium of civil society actors to submit a shadow report which highlights any breaches of CAT by the state when Lebanon is next required to submit its state report to the CAT Committee in 2021.</p>

### International Covenant on Economic, Social and Cultural Rights

Lebanon ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), in 1972.<sup>105</sup> Article 24 guarantees the highest standard of physical and mental health. In its General Comment on Article 24, the ICESCR Committee has stated that this includes the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to

be free from torture.<sup>106</sup> It specifies that a major aim of state governments should be reducing women's health risks, particularly lowering rates of maternal mortality and protecting women from domestic violence.<sup>107</sup>

Lebanon has not ratified the optional protocol to the ICESCR, which would allow individuals to submit complaints to the ICESCR Committee alleging violations of the Convention by the state.

HOW COULD ICESCR BE USED BY ORGANIZATIONS WITHIN LEBANON?	
<p>The ICESCR may be directly referenced in domestic cases, though economic, cultural and social rights are notoriously difficult to litigate on.</p> <p><b>Letters to Special Rapporteurs:</b> Individuals or organizations may also write a letter to the Special Rapporteur on the right of everyone to</p>	<p>the enjoyment of the highest attainable standard of physical and mental health to make a comment on the ways in which widespread sexual violence violates this right.</p>

### Protocol to Prevent, Suppress and Punish Trafficking in Persons

Lebanon ratified the Protocol to Prevent, Suppress and Punish trafficking in Persons, especially Women and Children (The Palermo Protocol), which supplements the Convention against Transnational Organized Crime, in

October 2005. As described in section 2, the Lebanese law on trafficking falls short of the Protocol including because the victim bears the responsibility of proving that she was exploited.

HOW COULD THE PALERMO PROTOCOL BE USED BY ORGANIZATIONS WITHIN LEBANON?	
<p><b>Arguments in domestic courts:</b> The Protocol could be relied on in domestic courts in areas and to make arguments where the 2011 Punishment for the Crime of Trafficking in Persons Law does not conform to the standards required under international law.</p>	<p><b>Letters to Special Rapporteurs:</b> Individuals or organizations may also report on violations of the Palermo Protocol and other concerns relating to trafficking for the purposes of sexual exploitation to the Special Rapporteur on trafficking in persons, especially women and children.</p>

### International Labor Organization Constitution

Lebanon is a member state of the International Labor Organization (ILO), having ratified the ILO Constitution in 1948. The ILO has produced numerous Conventions covering specific issues relating to labor. The ILO Convention most relevant to incidents of sexual violence in the

workplace is the 2019 Convention on Violence and Harassment, which has not yet come into force. Other Conventions have some relevance to the types of sexual violence most commonly committed in the workplace in Lebanon, including against vulnerable populations such as refugees and migrant domestic workers. Lebanon has not ratified the Convention on Domestic Workers. Lebanon has however

[105] OCHCR, Ratification Status for Lebanon, accessible at [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=96&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=96&Lang=EN)

[106] General Comment 14, para 8.

[107] Ibid, para 21.

ratified the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).<sup>108</sup> Though the Convention does not explicitly pertain to sexual violence, it is relevant in the case of Lebanon because sexual violence is part of the discrimination faced by many migrant and refugee workers during their employment.

The ILO Constitution establishes a complaints mechanism which may lead to the establishment of an ILO Commission of Inquiry, findings about whether a state party is in violation of one of the Conventions and recommendations made by the ILO Governing Body about how that state party may be brought into line with the Convention. The three groups with standing to initiate such a complaint are another State Party to the same Convention, a delegate to the International labor

Conference or the ILO Governing Body of its own motion. Many recognized Non-Governmental Organizations (NGOs) operational in Lebanon are delegates to the International labor Conference.

States are requested to report annually on the actions taken to implement the ILO Conventions they have ratified.<sup>109</sup> The ILO Constitution is unique in that it also requires States to report when requested to do so by the ILO Governing Body on non-ratified Conventions and on Recommendations, indicating in their reports the progress they have made towards ratifying the Conventions or implementing the Recommendations.<sup>110</sup> There are currently twelve pending requests for a response from Lebanon made by the ILO Governing Body in relation to various Conventions.

### HOW COULD THE ILO CONSTITUTION BE USED BY ORGANIZATIONS WITHIN LEBANON?

**LO Complaints-receiving mechanisms:** As the information available indicates that sexual violence is widespread amongst domestic worker populations, an argument may be made that the Lebanese state has obligations under various ILO Conventions to provide more effective protections to this population. For example:

- A state of origin of the domestic workers may initiate an inter-state complaint against Lebanon under the inter-state complaint function of the ILO Constitution for failure to meet the obligations under the ILO Discrimination (Employment and Occupation) Convention;
- Such a complaint could also be initiated by an NGO active in Lebanon that is a delegate to the International Labor Conference;
- It is possible to engage with the ILO to ask it to- for example- make specific requests of Lebanon to report to it on the issue of sexual violence in the workplace. The ILO however is not particularly receptive to NGOs because its constitution recognizes unions, not NGOs as the workers' representatives. This step would therefore require a collaboration between civil society and unions.

Articles 26 to 34 of the ILO Constitution allow for any member state, delegate to the International labor Conference or the ILO Governing Body in its own capacity to file a complaint against another member state for not complying with a convention that both states have ratified.

## International Humanitarian Law

International humanitarian law (IHL) is the body of international laws that apply to the conduct of states during times of armed conflict. The primary source of IHL insofar as it relates to the treatment of both civilians and combatants during wartime are the four Geneva Conventions (the first, second, third and fourth Geneva conventions in 1949) and their Additional Protocols, which regulate the conduct of armed forces on land and at sea, prisoners of war, and treatment of civilians. Lebanon is state party to all four Geneva Conventions and their Optional Protocols. IHL does not apply in Lebanon itself, which is not in conflict, but applies to the conduct of Lebanese actors which operate abroad, and to perpetrators of sexual violence against survivors who are now

within Lebanon. There is some debate as to whether the conflict in Syria is international or non-international in character, with the 2016 Commentary of the International Committee of the Red Cross seeming to support a position that there are multiple ongoing conflicts, some of which are international armed conflicts (IACs) and some of which are non-international armed conflicts (NIACs).<sup>111</sup> The Geneva Conventions prohibit “outrages on personal dignity” against civilians in both types of conflict. Additional Protocol 1, covering IACs, provides that this includes “humiliating and degrading treatment, enforced prostitution and any form of indecent assault”. Additional Protocol II, covering NIACs, specifically adds that this includes rape.<sup>112</sup>

## International customary Law

Lebanon also has residual obligations under international customary law. International customary law is the body of norms and rules in international law that are considered internationally binding whether or not countries have ratified Conventions that contain them. International customary law includes norms that have ‘jus cogens’ status; that is, laws applicable to all countries from which no derogation can be made, even in times of conflict or emergency

The following are examples of jus cogens norms, which should be directly applicable in Lebanese courts through section 2 of the Preamble of the Constitutions, and which are relevant to survivors of sexual violence:

- The right against torture, including sexual violence as a form of torture; <sup>114</sup>
- The right against slavery, including sexual slavery; <sup>115</sup>
- The prohibition of human trafficking; <sup>116</sup>
- The right to substantive equality and equality before the law; <sup>117</sup>
- The right to non-refoulement, and the corresponding obligation not to return anyone to a place where they would face a real risk of persecution, torture or other ill-treatment, or a threat to life. <sup>118</sup>
- The prohibition of international crimes and atrocities, including war crimes, crimes against humanity and genocide; <sup>113</sup>

International customary law also includes accepted rules of international criminal law. While Lebanon has not signed the Rome Statute of the International Criminal Court, most of

[108] Lebanon has also ratified other major ILO conventions. See Appendix I.

[109] ILO Convention, Article 22

[110] ILO Constitution

[111] ICRC, Commentary of 2016, Article 2: Application of the Convention, available at [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#102\\_B](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#102_B); A. Ahmad Haque, 2016, ‘The United States is at War with Syria (according to the ICRC’s New Geneva Convention Commentary)’, available at <https://www.ejiltalk.org/the-united-states-is-at-war-with-syria-according-to-the-icrcs-new-geneva-convention-commentary/>

[112] Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, Article 4, 2(e).

[113] ICRC, Customary IHL database, accessible at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule156#\\_viofciu](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156#_viofciu)

[114] ICRC, Customary IHL database, Rule 90, accessible at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule90](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule90)

[115] ICRC, Customary IHL database, Rule 94, accessible at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule94](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule94)

[116] Ibid.

[117] ICRC, Customary IHL database, Rule 94, accessible at [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule88](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule88)

[118] UN High Commissioner for Refugees (UNHCR), The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93, 31 January 1994, available at: <https://www.refworld.org/docid/437b6db64.html>

the laws relating to war crimes, crimes against humanity and genocide in the Rome statute reflect international customary law. Under these laws, rape, torture sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity may constitute war crimes,<sup>119</sup> crimes against humanity,<sup>120</sup> or acts of genocide.<sup>121</sup> The definition of each sexual crime in the Elements of Crimes document that accompanies the Rome Statute includes a breakdown of their constituent elements. Rape, for example, is defined as penetration of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or body part. The act must take place in circumstances where the penetration is committed by force, or by threat of force, by coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power or by taking advantage of a coercive environment or against a person incapable of giving genuine consent. These detailed definitions provide a helpful international standard for national systems, such as Lebanon, that do not have a comprehensive definition of all sexual violence crimes written into their legislation.

Where the sexual violence was committed as part of a widespread or systematic attack directed against a civilian population, it constitutes a crime against humanity. Where the sexual violence took place in the context of and was associated with an armed conflict, this constitutes a war crime. Rape and other forms of sexual violence are both stand-alone offences and may be considered as part of the separate offences of torture and persecution under the Rome Statute definitions, both of which may also be committed as part of a war crime or a crime against humanity.<sup>122</sup>

It is particularly pertinent to consider the definition of a crime against humanity under international criminal law, which may, in Lebanon, be applicable to widespread and systematic sexual violence, particularly those committed against domestic workers and

refugees. Under international criminal law, a crime against humanity is committed when the criminal act constitutes an “attack” which is “widespread or systematic” and “directed against any civilian population[.]”<sup>123</sup> The Rome Statute provision, which is likely indicative of customary international law, defines an “attack” as a “course of conduct involving the multiple commission of acts [including rape and other violations]”.<sup>124</sup> The attack must be “widespread or systematic”.<sup>125</sup> This is a disjunctive rather than conjunctive definition: it is enough to prove that the attack is either widespread or systematic.<sup>126</sup> ICL jurisprudence indicates that “widespread” refers to the number of people affected, while the “systematic” nature of an attack refers to the organized, non-accidental repetition of an offence and the improbability of its random occurrence.<sup>127</sup> The phrase “directed against any civilian population” contains three requirements: (i) the attack must be “directed”; (ii) it can be directed against “any” victims; and (iii) the victims must constitute a “population”.<sup>128</sup> For crimes against humanity that are proven on the basis that they are widespread, but not systematic, this introduces an extra requirement that they cannot have been randomly committed.<sup>129</sup> Finally, the Rome Statute definition of crimes against humanity includes a requirement that the attack must be committed in furtherance of a “State or organizational policy to commit such an attack”.<sup>130</sup>

As Lebanon is not currently in conflict and there are no allegations of genocide, only crimes against humanity would be relevant for crimes committed within Lebanon. Sexual violence committed against Syrian refugees and asylum seekers while still in Syria may amount to war crimes.

# Legal Responsibility

## Responsibility of individuals

This section considers which actors and states attract legal responsibility for sexual violence

under the international laws described in this report.

### WHAT IS THE DIFFERENCE BETWEEN LEGAL RESPONSIBILITY AND LEGAL ACCOUNTABILITY?

**Legal responsibility:** ‘Legal responsibility’ refers to whether a particular actor- whether an individual, a corporation or a state- has a responsibility to act in a certain way under an applicable law. Individuals, for example, will incur legal responsibility for rape under domestic law. In circumstances where rapes were committed by state forces in a widespread and systematic way, and pursuant to government policy, the state will also incur legal responsibility for rape as a crime against humanity under international humanitarian law.

**Legal accountability:** ‘Legal accountability’ refers to whether the actor attracting legal responsibility can actually be held accountable for violating the law in practice. It includes both hard accountability, such as criminal sentencing, financial penalties and sanctions, and soft accountability, such as complaints receiving mechanisms and declarations that a state has violated international law by a competent forum. In international law, mechanisms do not always exist for holding actors attracting legal responsibility legally accountable. For example, in circumstances where a state government is legally responsible for the commission of rape as a crime against humanity, there may be no forum to take a case against the state, make a complaint against the state or otherwise formally demand justice.

## Actors incurring legal responsibility

The following actors have legal responsibilities under the laws described below:

Category of perpetrators	Perpetrators	Type of responsibility	Relevant law
Individual perpetrators	Individual perpetrators within Lebanon	<ul style="list-style-type: none"> <li>Must not commit sexual violence (Lebanese domestic law).</li> </ul>	<ul style="list-style-type: none"> <li>Lebanese Penal Code</li> <li>Law 293 on Protection of Women and Family Members from Domestic Violence</li> <li>Law 164 on the Punishment for the Crime of Trafficking in Persons</li> </ul>
Individual perpetrators	Individual perpetrators outside of Lebanon, whose victims are inside Lebanon	<ul style="list-style-type: none"> <li>Must not commit sexual violence as a violation of domestic law or as a war crime or crime against humanity.</li> </ul>	<ul style="list-style-type: none"> <li>Domestic law of the relevant country</li> <li>International criminal law</li> </ul>

[119] Rome Statute Articles 8 (2)(b)(xxii) and 8(2)(e)(vi)

[120] Rome Statute Article 7(1)(g)

[121] Rome Statute Article 6

[122] ICC Office of the Prosecutor, 2014, ‘Policy Paper on Sexual and Gender-Based Crimes’, para 18, accessible at <https://www.icc-cpi.int/iccdocs/otp-otp-policy-paper-on-sexual-and-gender-based-crimes--june-2014.pdf>

[123] Rome Statute, supra note 7, art. 7(1).

[124] Id. art. 7(2)(a).

[125] Rome Statute, supra note 7, art. 7(1).

[126] Prosecutor v. Kordic, Case No. IT-95-14/2-T, Judgement, ¶¶ 174-75 (Int’l Crim. Trib. for the Former Yugoslavia Feb. 26, 2001), [http://www.icty.org/x/cases/kordic\\_cerkez/tjug/en/kor-tj010226e.pdf](http://www.icty.org/x/cases/kordic_cerkez/tjug/en/kor-tj010226e.pdf); Prosecutor v. Blaškić, Case No. IT-95-14-T, Judgement, ¶¶ 201-02 (Int’l Crim. Trib. for the Former Yugoslavia Mar. 3, 2000), <http://www.icty.org/x/cases/blaskic/tjug/en/bla-tj000303e.pdf>.

[127] Prosecutor v. Kunarac, Case Nos. IT-96-23 & IT-96-23/1-A, Judgement, ¶ 94 (Int’l Crim. Trib. for the Former Yugoslavia June 12, 2002), <http://www.icty.org/x/cases/kunarac/acjug/en/kun-aj020612e.pdf>.

[128] Id.

[129] Id. ¶ 645.

[130] Article 7.

Category of perpetrators	Perpetrators	Type of responsibility	Relevant law
State institutions	Lebanese police, General Security, Internal Special Forces	<ul style="list-style-type: none"> <li>• Must not themselves be involved in the commission of sexual violence.</li> <li>• Must conduct independent, impartial, and efficient investigations into allegations of sexual violence crimes.</li> </ul>	<ul style="list-style-type: none"> <li>• Penal Code</li> <li>• Internal Security Forces code of conduct</li> </ul>
State institutions	Lebanese Army	<ul style="list-style-type: none"> <li>• Must not commit sexual violence as a violation of domestic law or as a crime against humanity</li> </ul>	<ul style="list-style-type: none"> <li>• Code of Military Justice</li> <li>• International criminal law with international customary law status</li> </ul>
State institutions	Lebanese government	Must take appropriate action to ensure the prevention and prosecution of sexual offences.	<ul style="list-style-type: none"> <li>• International human rights law (Arab Charter, CEDAW, CRC, CAT, ICCPR, ICESCR, Palermo Protocol, jus cogens norms)</li> </ul>
Private companies	Lebanese domestic worker placement agencies	<ul style="list-style-type: none"> <li>• Must obey the Lebanese Penal Code and other laws and administrative policies regulating migrant workers</li> </ul>	<ul style="list-style-type: none"> <li>• Penal Code</li> <li>• Contract law</li> <li>• Immigration policies and procedures</li> <li>• Human Rights Law</li> </ul>
Private companies	Transnational employment agencies Domestic worker placement agencies outside Lebanon	<ul style="list-style-type: none"> <li>• The laws of the countries in which they are registered</li> </ul>	<ul style="list-style-type: none"> <li>• Constitutions, and any treaties the country in which they are registered have signed</li> </ul>
Other states	Other states through their Embassies in Lebanon	<ul style="list-style-type: none"> <li>• Extra-territorial duty to protect the rights of their citizens abroad, as far as possible and in the areas in which they have control</li> </ul>	<ul style="list-style-type: none"> <li>• International human rights law (including CEDAW, CRC, CAT, ICCPR, ICESCR, Palermo Protocol, jus cogens norms)</li> </ul>

## Individuals

Individuals attract legal responsibility under domestic Lebanese law and international criminal law. As Lebanon has not ratified the Rome Statute, the relevant international criminal

laws are those that have reached the status of customary international laws. These apply in Lebanon by virtue of section B to the preamble to the Constitution.

## Companies

Business enterprises, whether national, transnational, or multi-national do not have any direct human rights responsibilities under international human rights law. Though there have been attempts to introduce such responsibilities through, for example the “Guiding Principles on Business and Human Rights (2011)”, such instruments have ultimately focused on the responsibility of states to ensure that business enterprises respect human rights and merely provide encouragement to businesses to avoid activities in violation of human rights.<sup>[131]</sup> Corporations operating in Lebanon do, however, have obligations under international criminal law. Lebanese law recognizes corporate criminal liability,<sup>[132]</sup> and the customary rules of international criminal law are applicable in Lebanon through section 2 of the Preamble to the Lebanese constitution. International criminal

law is limited to war crimes, crimes against humanity and genocide. As Lebanon is not in an active conflict or genocide, any allegation that a company had international criminal liability for sexual violence would need to prove that the sexual violence was committed as part of a crime against humanity- that is, that it was part of an attack committed in a widespread or systematic way.

There are some other options for accountability of corporations, such as litigation against states that fail to control the conduct of companies in a way that ultimately violates the rights of the citizens in that state, and extra territorial litigation against companies that are responsible for abuses within Lebanon but are registered abroad, but these options are complicated and not obviously useful in increasing accountability for sexual violence.

[131] Subedi, S. (2018). “International Investment Law” in International Law, M. Evans (Ed.). Oxford: Oxford University Press.

[132] G. Sluiter, “The ICTY and Offences against the Administration of Justice”, 2 Journal of International Criminal Justice (2004) 631-641, at 631.

# Responsibility of the state

## Obligations to respect, protect and fulfil

In general, the obligations on a state to protect the rights of its citizens are threefold, and include the obligations to respect, protect and fulfil those rights. The obligation to ‘respect’ means that a state must refrain committing violations of human rights itself, or from interfering in the enjoyment of a right. The

obligation to ‘protect’ means that a state must protect its citizens from abuses by private actors, including by providing adequate access to justice. Finally, the obligation to ‘fulfil’ means that a state must take proactive action to ensure its citizens have access to the rights set out in international law.<sup>133</sup>

## Obligations to pass laws that conform with international obligations

One of the most straightforward obligations Lebanon has under international law is to pass domestic legislation that conforms with its treaty obligations. Those treaties also often specify how quickly Lebanon is expected to pass such laws. Article 2 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and Article 4 of the Convention on the Rights of the Child (CRC) identify the duty to amend and pass legislation as an immediate obligation. The Committees overseeing the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) have also been clear that the obligation to take some steps is immediate, and that states must demonstrate progress over time.<sup>134</sup>

Lebanon ratified the ICCPR, CAT, CRC and CEDAW in 1972, 1990, 1991 and 1996

respectively. The table in Annex 1 identifies the laws currently in place in Lebanon that do not adequately protect or make woman more vulnerable to sexual violence, and describes the obligation on the state to repeal and replace those laws. Lebanon had an obligation to make these changes either immediately upon ratifying the Conventions, or in some cases to at minimum demonstrate progress over time. It is currently and continuously violating these obligations. The table in Annex 1 focuses not only on the laws explicitly related to sexual violence, but on laws that discriminate against women in a way that leaves them vulnerable to such violence, for example because they make it difficult or impossible to leave an abusive marriage. The row of the table pertaining specifically to sexual violence legislation is included below.

Domestic law	Contravention of international human rights law	Obligation of state
<p><b>Sexual violence:</b> The Penal Code uses an outdated definition of rape and does not comprehensively criminalize all sexual offences.</p>	<ul style="list-style-type: none"> <li>Articles 2 (b), (c), (e), (f) and (g) and article 5 (a) of CEDAW, read in conjunction with General Comment 35: obligation of States to adopt legislation prohibiting all forms of GBV against women and girls and to harmonize domestic law with the Convention.</li> <li>Articles 2(1), 2(3), 7, 9(1) and 26 of the ICCPR: rights to equality, a remedy, against cruel, inhuman and degrading treatment; security and integrity of the person; and equality before the law.</li> <li>Articles 2, 10, 12, 13, 14 and 16 of CAT: duties of the state to take measures to prevent torture, include information on prohibition of torture in training of law enforcement, ensure impartial investigation into allegations of torture, protect rights of victim to complain and to access to justice.</li> <li>Article 19 of the CRC states that States Parties shall take all appropriate measures to protect the child from all forms of physical or mental violence, exploitation, and sexual abuse.</li> </ul>	<p>To immediately adopt legislation prohibiting all forms of gender-based violence against women and girl, and harmonizing that domestic legislation with CEDAW; passing legislation to provide a right to a remedy for survivors; pass legislation and policy recognizing sexual violence as a form of torture, requiring trainings on responding to sexual violence as torture to security and law enforcement and establishing accountability mechanisms for law enforcement who do not adequately respond to allegations of torture committed through sexual violence; and provide survivors of gender-based violence the right and means to access appropriate and affordable healthcare.</p>
<p><b>Domestic violence:</b> Law 293 uses a narrow definition of domestic violence and does not provide adequate protection from all forms of abuse. Marital rape is not specifically criminalized. Only violence against family members is criminalized—other people who live within the house, such as domestic workers or are excluded. However, some judges have interpreted the law differently and considered that domestic workers are to be included in the protection orders.</p>	<ul style="list-style-type: none"> <li>International Covenant on Economic, Social and Cultural Rights (ICESCR): Art. 12: The Right to the Highest Attainable Standard of Health: the ICESCR Committee’s General Comment No 14 makes clear that states parties have an obligation to make healthcare services available for survivors of gender-based violence, including sexual violence and domestic violence.</li> </ul>	<p>ICESCR Articles 2 and 12: Lebanon has an obligation to take steps with a view to achieving progressively the full realization the right to health including healthcare services for survivors of sexual violence</p>

[133] See eg the description of the rights in the Conventions on the Rights of Persons with Disabilities in UN Department of Economic and Social Affairs, Handbook for Parliamentarians on the Convention on the Rights of Persons with Disabilities, ‘Chapter Two: The Convention in detail – Obligations of States parties under the Convention’ accessible at <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-two-the-convention-in-detail-4.html>

[134] For example, the Human Rights Committee has stated that the obligation under the ICCPR to begin taking steps is “unqualified and of immediate effect”, and that “States Parties are required on ratification to make such changes to domestic laws and practices as are necessary to ensure their conformity with the Covenant.”: Human Rights Committee, 2004, General Comment 31, para 12 and 13

# Responsibility of other states and state actors

## Obligations to respect, protect and fulfil

Many sexual violence survivors within Lebanon are nationals of other states. Origin states have some residual and complementary obligations to prevent and protect their nationals from sexual violence that occurs abroad. First, the 186 of 193 UN member states that are members of the International Labor Organization (ILO) have obligations under various ILO Conventions to protect their citizens from illegal and abusive employment practices, in which sexually exploitative, abusive or violent treatment may occur.<sup>135</sup> These obligations apply at least for the duration of time migrant workers are within the origin state-- during the advertising and recruitment process, up until the point the worker leaves the country. It is well known that recruitment agencies use illegal, dishonest tactics to recruit migrant workers into employment arrangements that leave them extremely vulnerable in countries such as Ethiopia, Bangladesh, the Philippines, Indonesia and Sri Lanka.<sup>136</sup> These states have an obligation to protect their citizens from exploitation; hold these agencies accountable when they break the law; and facilitate access to justice for citizens who have been convinced into working abroad under false pretenses and then been sexually exploited or abused.

Secondly, states have obligations to their citizens abroad in specific circumstances.<sup>137</sup> According to the European Court of Human Rights' authoritative ruling on the scope of the European Convention of Human Rights in *Banković v. Belgium*,<sup>138</sup> the circumstances include:

- 1 Extradition or expulsion cases in which there is a risk of mistreatment or death in the receiving state;
- 2 Cases 'where the acts of state authorities produce effects... outside their own territory';
- 3 Cases where 'as a consequence of military action... [a state] exercised effective control of an area outside its national territory'; and
- 4 Cases 'involving the activities of [a state's] diplomatic or consular agents abroad'.

Applying the reasoning of *Banković v. Belgium* to international treaties generally, the states of origin for domestic workers have legal responsibilities both where their action towards citizens in their own countries, before they leave, produces effects on their rights abroad; and when their nationals enter or approach their Embassies abroad for help in protecting their rights. Testimonies from many migrant domestic workers reveal that they were deceived into coming to Lebanon by agents who told them false information about the terms and conditions of their work.<sup>139</sup> In one case received by Legal Action Lebanon, the worker was told she would be going to work in London.<sup>140</sup> Deceiving migrant workers about the conditions of work in the place they are going to, or about the place they are going to itself, and then creating a situation that makes it difficult or impossible for the worker to leave once she arrives, constitutes trafficking under international law.<sup>141</sup>

Sending states such as Ethiopia are aware that recruiting agents operating within their countries are using deceptive techniques. Organizations including Amnesty International and the International Organization of Migration (IOM) have reported on this extensively,<sup>142</sup> and the US department of State releases an Annual Report on Trafficking in which it assesses the risk of trafficking within at-risk countries and the steps taken by the government of that country to address it. The US department of State ranks governments on a Tier system, where Tier 1 means the country is fulfilling its minimum obligations to prevent trafficking as set out in the USA's Trafficking Victims Protection Act; Tier 2 means the country is taking some steps, but not enough; Tier 2 "Watchlist" lists Tier 2 countries who have made commitments to take steps but have not provided evidence of doing so in practice, or where the number of trafficked people is increasing; and Tier 3 refers to countries that are making no effort to comply with the minimum standards under the Act. Of the five states that make up the primary

contributors to Lebanon's migrant domestic worker labor force-- Ethiopia, Bangladesh, the Philippines, Indonesia and Sri Lanka-- only the Philippines is ranked as a Tier 1 state. The other four are Tier 2, with both Bangladesh and Sri Lanka being on the Tier 2 watchlist.<sup>143</sup> The governments of the sending states are aware, or should be aware, that failure to prevent these organizations from conducting dishonest and fraudulent recruitment practices or to punish organizations that violate the laws on deceptive business practices is likely to result in harm to their citizens abroad. Their international legal obligations to protect their citizens abroad are engaged when they act, or do not act, to regulate recruitment agencies within their own borders.

There are also numerous examples in Lebanon where foreign nationals have contacted their Embassy for assistance and where it is alleged that the Embassy did not fulfil its basic human rights obligations towards those seeking their assistance.

### CASE STUDY: THE CASE OF LENSA

Migrant worker rights group This Is Lebanon have produced a short documentary and an online timeline detailing allegations of abuse of Ethiopian domestic worker Lensa Lelisa Tufa, who arrived in Lebanon in July 2017 to work for Eleanore Ajami, the owner of high-end fashion company Eleanore Couture. In her statements to This is Lebanon, Lensa details nine months of abuse at the hands of Ajami and her family, saying, "They beat me every day with an electric cable and wrapped my hair around their hands and dragged me around the room. They smashed my head into the walls. Every hour there was some form of torture."

On 11 March 2018, Lensa tried to escape from the house, where she was locked inside, by jumping from the balcony. In doing so, she broke both legs, her pelvis, some teeth and her jaw. The Ethiopian Embassy conducted an investigation into her treatment at Eleanore Couture and

concluded that no abuse had taken place. Officials at the Embassy told legal advocacy group Legal Agenda that they considered torture unlikely because "the members of the sponsoring family are very well-presented".

On 27 March 2019, Lensa was sent back to the home of her employers. On 30 July, Lensa's aunt visited the Ethiopian Embassy to ask that they request Lensa to be brought to the Embassy so that she could speak to her. The Ethiopian community pressured the Ethiopian Embassy to make such a request. The Embassy refused. On 2 August, Lensa's employers' put her on a plane back to Ethiopia. She has ongoing medical complications from her fall from the balcony and the injuries sustained, and is unable to pay for medical treatment. According to This is Lebanon, she is owed almost half her salary from her time working for Eleanore Couture.

[137] It is often mistakenly believed that the law of an Embassy's state applies on Embassy property, rather than the law of the host state. This is inaccurate. Article 22 of the Vienna Convention on Diplomatic Relations (1961) provides that the premises of the embassy shall be 'inviolable' and not subject to 'search, requisition, attachment or execution' by the host state, but it does not provide that the laws of the origin state apply. However, numerous human rights bodies, including the European and Inter-American Courts, Human Rights Committee and CAT Committee have concluded that the treaties they oversee has extraterritorial effect where a State exercises power and authority over persons outside its national territory, and that its obligations "can be rebutted only when the nature and content of a particular right or treaty language indicate otherwise" See, for example: Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 7 August 2015, 'Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms'.

[138] Grand Chamber, 12 Dec. 2001, 44 EHRR (2001) SE5, at paras 31-53.

[139] Amnesty International, 2019, "Their House is My Prison: Exploitation of Migrant Domestic Workers in Lebanon" accessible at <https://www.amnesty.org/download/Documents/MDE1800222019ENGLISH.pdf>

[140] Case received by Legal Action Lebanon in March 2019.

[141] Under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, trafficking is defined as: "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

[142] Eg, the IOM has written that agencies typically target women between the age range of 18 and 25 and conduct their recruitment in colleges, poor villages and urban areas: Ethiopia: Focus on Trafficking in Women, Oct. 14, 2002, United Nations Integrated Regional Information Networks (IRIN News), <http://www.irinnews.org/report.asp?ReportID=30386&SelectRegion=HornofAfrica&SelectCountry=ETHIOPIA>

[143] US State Department, 2019, 'Trafficking in Persons Report' accessible at <https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf>

# Accountability

'Legal accountability' refers to whether the legal entities identified in this report as attracting legal responsibility could in practice be held legally accountable for violations of national

or international law. This section discusses possible forums in which these entities could be held accountable, divided between individuals, companies, and the Lebanese and foreign states.

## Individual accountability

### Using international law arguments in domestic cases

Perpetrators of crimes recognized as international criminal acts in Lebanon should be held accountable in accordance with international standards under domestic law. This requires judges within Lebanon to interpret national laws in accordance with the standards set out under international customary law, made applicable in Lebanon through part B

of the preamble to the Lebanese Constitution and article 2 of the Civil Procedures Code. As discussed in section \_\_\_\_\_, the definition of rape and other sexual crimes under intentional customary law provide helpful best-practice standards for criminalizing rape, both as a domestic crime and as a war crime, crime against humanity, and as an act of genocide.

#### CASE STUDY: VIOLENCE AGAINST MIGRANT WORKERS

It could be argued that sexual violence and other violations committed against domestic workers in Lebanon constitute a crime against humanity, as defined in Article 7 of the Rome Statute, which has now attained the status of international customary law. It would have to be proven that:

- Acts of sexual violence (and other violations) committed against domestic workers in Lebanon are part of a course of conduct that involves the multiple commission of such acts;
- The attacks are "widespread", meaning that they are being committed against a high number of people;

- The violations experienced by domestic workers are repeated over time and against numerous victims in a way that is not random or coincidental;
- The victims of the violations are civilians and constitute a recognizable segment of the population.

It may therefore be possible to lodge complaints against perpetrators of sexual violence against migrant domestic workers in Lebanese courts that not only accuse them of crimes committed under Lebanon's domestic law but which also allege violations of international criminal law.

### Universal jurisdiction and extra-territorial jurisdiction

Those responsible for sexual violence committed in Lebanon may also be held to account abroad, either through the exercise of universal jurisdiction (UJ) laws or through legislation which otherwise allows for the exercise of extra-

territorial jurisdiction in certain circumstances. Extra-territorial litigation may be possible where: the victim, the perpetrator, or both, have a close connection to another state, such as citizenship or residence; and that state has

laws that allow a case to be heard relating to acts occurring outside of its jurisdiction, on the basis of that connection.

Depending on the laws governing the exercise of this form of jurisdiction, the case taken may be a civil action between two individuals, for example, through the US Alien Tort Statute or Torture Victim Protection Act,<sup>144</sup> or a criminal case, whether lodged privately or by the

prosecution authority of the state.

Under international law, certain crimes are agreed to be subject to universal jurisdiction, though individual legislatures may vary these in domestic legislation. The most relevant of these crimes include torture and crimes against humanity.<sup>145</sup> Rape may amount to a crime against humanity and a form of torture.

#### CASE STUDY: ARREST WARRANT ISSUED IN GERMANY FOR CRIMES COMMITTED IN SYRIA

In November 2017, nine Syrian men and women living in Germany, two activists and the European Center for Constitutional and Human Rights filed a criminal complaint concerning crimes against humanity and war crimes in Syria with the German Federal Public Prosecutor. The complaint outlined allegations of crimes including killing, persecution, torture and sexual violence committed by ten officials of the National Security Office and Air Force Intelligence, including Jamil Hassan, who until July 2019 was head of the Syrian Air Force Intelligence Service. In June 2018, it was announced that the

Germany Federal Court of Justice had issued an arrest warrant against Jamil Hassan, who was serving in his position in the Syrian government at the time. This case is one of many universal jurisdiction cases being taken around the world in an attempt to prosecute perpetrators of serious violations of human rights and humanitarian law in Syria. Though the perpetrators generally are not in the jurisdiction they are being prosecuted in, the arrest warrant generally prevents them from traveling to any country that would extradite them to face trial, thereby imposing some measure of accountability.

While relevant universal and extra-territorial jurisdiction laws across Europe, historically the region most inclined to apply jurisdiction, have been diluted in recent years, prosecutions do take place. According to a 2019 report by Trial International, 149 people were investigated under universal jurisdiction laws in 15 countries in 2018- and 18% increase on 2017. The charges included 111 for war crimes, 90 for crimes

against humanity, 15 for genocide and 42 for torture, and resulted in 8 convictions and 2 acquittals. The report attributed the increase in such cases to heightened motivation for taking universal jurisdiction cases relating to crimes committed in Syria in Germany, France, Sweden and Belgium.<sup>146</sup> Many countries, particularly in Europe, the Americas and Africa have some form of UJ laws in place.

## Accountability of companies

**International law:** Though it has not been done before in Lebanon, it may be possible to make an argument in the domestic courts that a company is criminally liable for its involvement in sexual violence committed as a crime against

humanity. It would need to be proven that the company committed, instigated or aided and abetted sexual violence committed as part of a widespread and systematic attack on a civilian population.

[144] Where such acts meet the 'touch and concern' test, set out in *Kiobel v Royal Dutch Petroleum Co* (2013). In *Kadic v Karadzic*, the US Appeal Court upheld the application of the TVPA to acts of sexual violence.

[145] Amnesty International, 'Universal Jurisdiction Around the World', 2011, <http://www.amnesty.org/en/library/asset/IOR53/004/2011/en/d997366e-65bf-4d80-9022-fcb8fe284c9d/i0r530042011en.pdf>, (accessed 29 November 2013)

[146] <https://www.justiceinfo.net/en/tribunals/national-tribunals/40483-is-syria-giving-universal-jurisdiction-new-life.html>

# Accountability of states

The obligations of the Lebanese state to respond to sexual violence include both its obligations to pass or adopt legislation, policy and legal procedures, and its obligations to practically

respond to the commission of sexual violence within Lebanon, in a way that conforms to relevant international laws.

## Obligations to pass laws

Section 2 of the preamble to Lebanon’s constitution makes clear that international laws take precedence in Lebanon. An ordinary court, however, cannot make a declaration that Lebanese law is inconsistent with international law, and therefore unconstitutional. That is the exclusive role of the Constitutional Council which

is independent from the judicial court system. It does not hear appeals of cases, but is tasked with responding to questions about the interpretation of the constitution and its conformity with the national laws. Individuals and organizations do not have standing to submit these questions to the Council (See discussion below)

## Obligations to respond to sexual violence

The Lebanese state attracts legal responsibility for direct commission of sexual violence, where the violations have been carried out by Lebanese state actors and where the response of the state has been inadequate; and for failure to take all possible measures to prevent, prosecute and punish acts of sexual violence committed by private actors. Though there are allegations of

sexual violence committed with impunity by Lebanese state actors, including the police and armed forces, the evidence of these violations is piecemeal and in general has not been recorded in sufficient detail to support a legal complaint. Greater evidence is available to support the argument that the state has failed to adequately respond to such violence.

## Committee against Torture inquiry procedure

Lebanon has not made a declaration to opt out of Article 10 of the CAT, which give the CAT Committee the authority to consider inquiries on grave or systematic violations of the Convention. Under the CAT inquiry procedure, the Committee may choose to undertake an investigation if it ‘receives reliable information which appears to it to contain well-founded indications that torture is being systematically practiced in the territory of a State Party’. The ‘reliable information’ brought to the Committee’s attention may come from organizations or

individuals, through communications made to the Committee. The Committee may nominate one or more of its members to undertake the inquiry, including through a visit to the state party, if deemed necessary and always with the consent of the state. Inquiries are confidential, and the Committee carries them out insofar as is possible with the cooperation and collaboration of the state. It may decide to release a summary of its findings in its annual report, or, with the consent of the state party, to make public the full text of its report.

Lebanese civil society used the inquiry procedure on one previous occasion, when the organization Alkarama brought evidence of systematic patterns of torture by Lebanese security forces to the attention of the Committee. The procedure is slow. Alkarama brought the evidence to the Committee in 2008; the inquiry was conducted between May 2012 and November 2013; and the summary of the inquiry was released in October 2014. The summary found that torture was a “pervasive practice that is routinely used by the armed forces and law enforcement agencies”.

Though the period between submitting the communication to the CAT Committee and releasing the report was six years, the eighteen months inquiry procedure provided important opportunities for the CAT Committee to engage with the Lebanese government and civil society on issues relating to torture. The activism of anti-torture activists in Lebanon, including through the use of this mechanism, was key to achieving progress such as the adoption of a new anti-torture law in 2017. The inquiry procedure would therefore be one mechanism that could be used to hold Lebanon to account for complacency and complicity in the face of widespread patterns of sexual violence, including that committed against migrant domestic workers and Syrian refugees.

## ILO complaints procedure

The ILO complaints procedure is regulated by Arts. 26–35 of the ILO Constitution.<sup>147</sup> A complaint may be filed against a Member State for not complying with a ratified convention. The complaint may be filed by (1) another Member State that ratified the same convention, (2) a delegate of the International Labor Conference or (3) the Governing Body in its own capacity. Delegates to the ILO include representatives of international and national NGOs that have been accepted to attend the conference.

sexual abuse of migrant workers could form an important part of the body of evidence supporting the contention that the Lebanese government has violated its obligations under the ILO Conventions to respect the basic rights of migrant workers.

When a complaint is received, the Governing Body may choose to form a Commission of Inquiry, which subsequently carries out a full investigation of the complaint and issues a list of recommendations. The complaints procedure is outlined in the graph below.

Though complaints to the ILO may not specifically be related to sexual violence, the

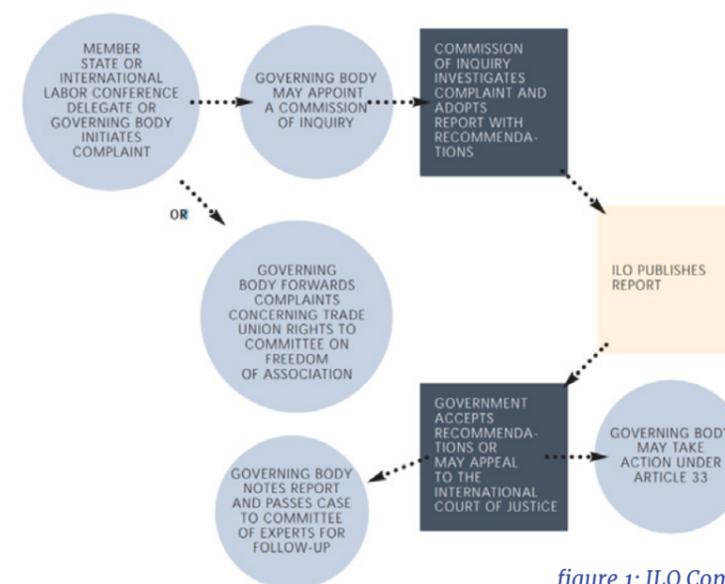


figure.1: ILO Complaints Procedure <sup>148</sup>

[147] The ILO Constitution can be accessed at: < [https://www.ilo.org/dyn/normlex/en/?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](https://www.ilo.org/dyn/normlex/en/?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO)>

[148] Available at: <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/image/wcms\\_088451.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/image/wcms_088451.pdf)>

Between 1919 and 1960, there was only one Article 26 complaint. Since then, there have been an average of six complaints a decade.<sup>149</sup> The Governing Body has decided to form Commissions of Inquiry in 13 of these cases.<sup>150</sup> If

a country refuses to fulfil the recommendations listed by a Commission of Inquiry, the Governing Body may take action under Art. 33 of the Constitution in order to secure compliance.

a challenge to the constitutionality of any law to the Constitutional Council. Key civil society actors could lobby these figures to submit such a challenge.

of Parliament (MPs)- the Parliamentary Commission on Women would fall within this definition- and the heads of recognized religious communities. The latter may only initiate challenges pertaining to “matters of Personal Status, freedoms of belief, exercise of religious rights, and the freedom of religious education.”

Other actors with standing to submit challenges include groups of at least ten Members

### CASE STUDY: INVOKING ARTICLE 33 OF THE ILO CONSTITUTION IN MYANMAR

Art. 33 was invoked for the first time in 2000, when after failing to respond to recommendations made by an ILO Commission of Inquiry on forced labor, the International Labor Conference adopted special measures intended to put pressure on Myanmar to take action. The restrictions included a decision to deny them any technical assistance from the ILO, other than assistance for the purpose of ending forced labor; a decision to deny

Myanmar officials the right to participate in ILO conferences and events; and asking international organizations working with the ILO to reconsider any cooperation with Myanmar that may directly or indirectly abet the practice of forced labor. These restrictions were lifted when Myanmar agreed to a joint strategy to eliminating forced labor with the ILO in 2013.

Lebanon has ratified the Forced Labor Convention, 1930 (No. 29) and the Abolition of Forced Labor Convention, 1957 (No. 105). Ethiopia, Bangladesh, Sri Lanka and the Philippines, where most domestic workers employed in Lebanon are from, have also ratified these conventions and could thus file a complaint against Lebanon.

There have been no complaints against Lebanon under the ILO complaints procedure to date, though there have been complaints against other Arab States based on labor law systems comparable to the Kafala system in Lebanon.

### Possible Challenges from Religious Leaders

The leader of a recognised religious community could, for example, submit a question to the Council about whether marital rape was a ‘religious right’ - a topic fully within its jurisdiction. A negative judgment may build momentum

for removing the marital rape exception from the Domestic Violence Law. A religious leader from a community with the highest marriageable age could also submit a question to the Council about whether younger marriageable ages would violate the constitutional and international law.

### CASE STUDY: INVOKING ARTICLE 33 IN QATAR

In 2014, a complaint was filed against Qatar by the Governing Body based on non-compliance with the Forced Labor Convention, 1930 (No. 29) and the Labor Inspection Convention, 1947 (No. 81). The ILO decided to drop the complaint in 2017 when Qatar announced it would dismantle the kafala system and introduce reforms that would set a minimum wage for workers as well as allow workers to leave the country without their employers’ permission. Unfortunately, while Qatar has implemented several reforms since then, domestic workers continue to be

subjected to the kafala system. If a complaint is made against Lebanon by a state of origin of domestic workers, that state would also benefit from referencing the case against Qatar and cautioning the ILO against making decisions based on the promises, rather than the actions, of the respondent state. The ILO complaint did, however, place international pressure on the Qatari government to initiate reform processes, which has for example resulted in some migrant workers being allowed to leave Qatar without an exit visa.

### Constitutional challenge

One potential avenue for highlighting the obligations of the Lebanese government to pass laws and regulations to implement its obligations under international law would be to challenge a current law, or the absence thereof,

for its constitutionality. As the constitution demands that international laws are abided by, any piece of legislation or gap in legislation that has the effect of violating an international law should be considered unconstitutional. The President, Prime Minister and Speaker of the Parliament each have standing to submit

## Accountability of third-party states

As described in section \_\_\_\_\_ above, the states from which migrant workers originate also have legal obligations to protect the rights of people who are outside of their territory in cases where ‘the acts of state authorities produce effects... outside their own territory’ and in cases ‘involving the activities of [a state’s] diplomatic or consular agents abroad’. This applies both to the conduct of Embassies in Lebanon, and to action or inaction taken by governments within their own jurisdiction where the ‘foreseeable consequence’ is that their rights will be violated in another jurisdiction<sup>151</sup> - such as, for example,

failure to prosecute recruitment agencies when their clients are trafficked, exploited or abused. The table in Annex 2 outlines individual complaints or inquiry procedures relevant to sexual violence that are applicable to the top five origin states of migrant domestic workers within Lebanon. It also identifies the legal basis for the assertion that each of the relevant international treaties have extra-territorial effect. The possibilities for action against Ethiopia, as the largest sending state of migrant domestic workers, is included below.

Country	Possible Forums	Extra-territorial application?
Ethiopia	<ul style="list-style-type: none"> <li>African Commission communications procedure</li> <li>CAT Committee inquiry procedure</li> </ul>	<ul style="list-style-type: none"> <li>There is no territorial limitation in the African Charter, and the African Commission has accepted that it has extra-territorial application to violations committed outside of the territory of the state party.</li> <li>The CAT has extra-territorial application: all states have an obligation to prevent torture wherever person aboard are within their power or effective control, and where they therefore have the ability to prevent them from being tortured or to punish those who commit torture.</li> </ul>

[149] K. A. Elliott and R. B. Freeman, 2003, ‘The ILO to the Rescue?’ in Can Labour Standards Improve Under Globalization?, Peterson Institution for International Economics; and a list available at [https://www.ilo.org/dyn/normlex/en/f?p=1000:50011:855558967060:::P50011\\_DISPLAY\\_BY:1](https://www.ilo.org/dyn/normlex/en/f?p=1000:50011:855558967060:::P50011_DISPLAY_BY:1)

[150] A list can be found here: [https://www.ilo.org/dyn/normlex/en/f?p=1000:50011::NO:50011:P50011\\_ARTICLE\\_NO:26](https://www.ilo.org/dyn/normlex/en/f?p=1000:50011::NO:50011:P50011_ARTICLE_NO:26)

[151] Soering v. United Kingdom 161 ECHR 1 (1989); Banković v. Belgium, Grand Chamber, 12 Dec. 2001, 44 EHRR (2001) SE5, at paras 31-53.

# Summary of options for accountability

The following table summarizes the options for cases that could be taken to establish the legal responsibility of individual perpetrators, state

actors, and foreign states for sexual violence committed in Lebanon or against people currently within Lebanon.

Cases that could be taken	Forum	Who could take the case	Assessment of likelihood of success
<i>Individual criminal responsibility for sexual violence committed against survivors in Lebanon</i>			
Using international law arguments in domestic cases within Lebanon	Criminal, civil and military court within Lebanon.	Individual lawyers; civil society groups with a legal aid component.	LAW recently began taking cases using arguments based in international law in Lebanese courts and will be monitoring and publishing their success. Other cases using international law have been successful in recent years. Success may depend on the level of familiarity with international laws of the judge adjudicating the case; trainings with judges and lawyers on international laws continue to be vital.
Extra-territorial litigation through universal jurisdiction laws or civil jurisdiction in the US	Criminal courts in Europe, the Americas or Africa; civil courts in the US	Civil society organisations could undertake documentation within Lebanon and engage with organisations specialising in strategic organisations abroad to take cases. LAW has both a presence on the ground in Lebanon and experience in taking strategic cases internationally.	Successful universal jurisdiction (UJ) cases are rare, and when they do take place, are usually related to the most serious international crimes from recognised armed conflicts. A successful UJ case based on the experiences of someone within Lebanon would therefore be more likely if related to sexual violence they experienced during the conflict in Syria (see below).
<i>Individual criminal responsibility for conflict-related sexual violence committed against survivors in Syria, who are now within Lebanon</i>			
Using international law arguments in domestic cases within Lebanon	Criminal, civil and military court within Lebanon.	Individual lawyers; civil society groups with a legal aid component.	Only possible if both victim and perpetrator are present within Lebanon. Additionally, the criminal courts would likely request proof of residence from claimants which would discourage the majority from bringing a case.
Extra-territorial litigation through universal jurisdiction laws or civil jurisdiction in the US	Criminal courts in Europe, the Americas or Africa; civil courts in the US	As above, civil society organisations could undertake documentation within Lebanon and engage with organisations specialising in strategic organisations abroad to take cases.	Trial International reported in March 2019 that there had been an %18 increase in universal jurisdiction cases between 2017 and 2018, adding that much of the increase could be attributed to investigations into suspects accused of international crimes committed in Syria. In 149 ,2018 suspects were investigated under universal jurisdiction laws in 15 countries.

Cases that could be taken	Forum	Who could take the case	Assessment of likelihood of success
<i>Options for highlighting the legal responsibilities of the Lebanese state</i>			
Request for an inquiry into systematic torture by the CAT Committee	CAT Committee	Lebanese civil society organisations focusing on domestic workers, in collaboration with civil society organisations in the states of origin of the domestic workers who focus on preventing nationals from their own countries from traveling through exploitative arrangements to other states.	This has been utilised once before in Lebanon with some success. The CAT Committee gave the Lebanese state clear recommendations and worked with them to improve their laws and procedures related to torture. However, implementation of the recommendations remains partial, and the entire process took six years. If a request for an inquiry were to be undertaken, it may be most effective for advocacy purposes to request the inquiry into the situation in Lebanon at the same as requesting the inquiry from the states of origin of the domestic workers, so that the Committee could do one visit in which they also spoke to the relevant Embassies, and worked with all governments simultaneously to reduce the risk of sexual violence and other abuses against migrant domestic workers within Lebanon.
ILO complaint	ILO Governing Body	A national or international NGO with delegate status at the ILO Annual Convention; or the state government of a state of origin of migrant workers.	There have only been 13 Commissions of Inquiries established by the ILO Governing Body in its history. However, the number of complaints submitted and Commissions established are gradually increasing. The likelihood of establishing a Commission would be increased if multiple states and/or delegates made similar complaints.
<i>State responsibility of Lebanon to pass laws to prevent sexual violence</i>			
Request to Constitutional Council	Constitutional Council	10 MPs; President Aoun, or leaders of recognized religious groups	This would be a challenging process. An initial challenge would be determining which piece of legislation to challenge on the basis of unconstitutionality. A second challenge would be convincing the President, 10 MPs or religious leaders to submit a complaint challenging that piece of legislation.
<i>State responsibility of a state of origin for migrant domestic workers subject to sexual violence</i>			
Request to Constitutional Council	African Commission	An Ethiopian individual or individuals, represented by an organisation registered in a member state of the African Union.	It is unclear if such a case would be successful as no comparable communication has been made to the Commission. If it was successful, it would create groundbreaking jurisprudence. It would be expected to take several years.

Cases that could be taken	Forum	Who could take the case	Assessment of likeliness of success
Individual complaint to the Human Rights Committee (Philippines and Sri Lanka); CEDAW Committee (Philippines, Sri Lanka and Bangladesh), or CAT Committee (Sri Lanka); or request for an inquiry into systematic torture to the CAT Committee (Ethiopia, Philippines, Indonesia, Sri Lanka, Bangladesh).	Human Rights Committee; CEDAW Committee; CAT Committee	A Philippine, Sri Lankan or Bangladeshi individual, represented by an organisation registered in their state.	There is a moderate likelihood of success in each of these cases, and each would be more likely to be successful if they were lodged together.

## ANNEX 1: Lebanon's international obligations to reform laws by type of legislation

Domestic laws	Contravention of international human rights law	Obligation of state
Sexual violence: The Penal Code uses an outdated definition of rape and does not comprehensively criminalise all sexual offences.	<p>Articles 2 (b), (c), (e), (f) and (g) and article 5 (a) of CEDAW, read in conjunction with General Comment 35: obligation of States to adopt legislation prohibiting all forms of gender-based violence against women and girls and to harmonise domestic law with the Convention.</p> <p>Articles 1)9 ,7 ,(3)2 ,(1)2 and 26 of the ICCPR: rights to equality, a remedy, against cruel, inhuman and degrading treatment, to security and integrity of the person and right to equality before the law.</p> <p>Articles 14 ,13 ,12 ,10 ,2 and 16 of CAT: duties of the state to take measures to prevent torture, include information on prohibition of torture in training of law enforcement, ensure impartial investigation into allegations of torture and inhumane treatment, protect rights of victim to complain, and protect right of victims to redress and access to justice.</p> <p>Article 19 of the Convention on the Rights of the Child (CRC) states that 'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence... exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child.</p>	<p>To immediately adopt legislation prohibiting all forms of gender-based violence against women and girl, and harmonising that domestic legislation with CEDAW; passing legislation to provide a right to a remedy for survivors; pass legislation and policy recognising sexual violence as a form of torture, requiring trainings on responding to sexual violence as torture to security and law enforcement and establishing accountability mechanisms for law enforcement who do not adequately respond to allegations of torture committed through sexual violence; and provide survivors of gender-based violence the right and means to access appropriate and affordable healthcare.</p>
Domestic violence: The Law on Protection of Women and Family Members from Domestic Violence uses a narrow definition of domestic violence and does not provide adequate protection from all forms of abuse. Marital rape is not specifically criminalised, only a spouse's use of threats or violence to claim a "marital right to intercourse" is criminalised, which implies that consent is given when there is no physical resistance. Only violence against family members is criminalised- other people who live within the house, such as domestic workers or are excluded.	<p>International Covenant on Economic, Social and Cultural Rights (ICESCR): Art. 12: The Right to the Highest Attainable Standard of Health: the ICESCR Committee's General Comment No 14 makes clear that states parties have an obligation to make healthcare services available for survivors of gender-based violence, including sexual violence and domestic violence.</p>	<p>ICESCR Articles 2 and 12: Lebanon has an obligation to take steps with a view to achieving progressively the full realization the right to health including healthcare services for survivors of sexual violence.</p>

Domestic laws	Contravention of international human rights law	Obligation of state
Divorce laws: Personal status laws and religious courts grant women fewer rights than men when filing for divorce.	<p>CEDAW, Art. 15: equality before the law; Art 16: equality in matters relating to the family, including rights to dissolution of marriage</p> <p>ICCPR, Art 3: equal enjoyment of rights; Art 14: equality before the law; Article 23: equal rights in marriage, including rights to dissolution of marriage</p>	<p>CEDAW Art 2: Lebanon has an immediate obligation to repeal discriminatory laws relating to divorce and to pass legislation which gives each gender the ability to divorce their spouse on an equal basis.</p> <p>Human Rights Committee General Comment 28: States must take all necessary steps to enable every person to enjoy those rights, including by repealing discriminatory legislation and replacing it with</p> <p>Human Rights Committee General Comment 19: Any discriminatory practices relating to acquisition of nationality, dissolution of marriage and custody must be prohibited.</p>
Custody of children: Religious laws generally maintain that a child's age, rather their best interest, should determine who gets custody of the children following a divorce.	<p>CEDAW, Art 5: obligation to take action to eliminate practices based on stereotyped roles for men and women; to ensure that family education includes 'a proper understanding of maternity as a social function'; to recognise the common responsibility of men and women in the upbringing and development of their children- in all cases the interests of the child shall be paramount.</p> <p>Art 16: equality in matters relating to the family, including rights to custody of children- in all cases the interests of the child shall be paramount.</p> <p>CRC, Art, Art 3: the best interests of the child must be the paramount consideration in all decisions related to his or her welfare.</p>	<p>Lebanon must immediately pass laws which override religious custody laws to ensure that the paramount consideration in matters of custody is the best interests of the child.</p>
Nationality law: Children and spouses of Lebanese women married to foreigners are denied citizenship.	<p>CEDAW, Art. 15: equality before the law; Art. 9: equal right to nationality</p> <p>ICCPR, Art: equality before the law</p>	<p>CEDAW Art 2: Lebanon has an immediate obligation to repeal discriminatory nationality laws and to replace them with laws that allow men and women equal rights to pass on their nationality.</p>
Torture: LAW No. 65 criminalises torture and other cruel, inhuman or degrading treatment or punishment. The law does not fully comply with the recommendations of the UN Committee against Torture, as the law only criminalises torture in specific situations, places a statute of limitation on the prosecution of torture, and gives military courts, which often do not respect due process and undermine the right to a fair trial, jurisdiction over certain torture cases.	<p>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment- entirety of Convention.</p>	<p>Lebanon must immediately pass legislation to bring Law No 65 in line with the Convention Against Torture and which specifies that sexual violence may constitute torture.</p>
Child marriage: There is no minimum legal age for marriage in Lebanon. Religious courts can thus set the age based on personal status laws, some of which allow girls under the age of 15 to marry.	<p>CEDAW, Art. 2 :(2)16. The marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage.</p> <p>The Convention on the Rights of the Child:</p> <p>Article 24: States Parties will abolish traditional practices prejudicial to the health of children.</p> <p>Article 28: Right to education.</p> <p>Article 34: Obligation to protect the child from all forms of sexual exploitation and sexual abuse.</p>	<p>CRC Art 24: The Lebanese government will immediately pass legislation to prohibit child marriage, and will take other policy and practical measures 'with a view to' ending child marriage in practice.</p>

Domestic laws	Contravention of international human rights law	Obligation of state
Anti-trafficking law : Under the 2011 Punishment for the Crime of Trafficking in Persons Law (Law 164), the victim bears the responsibility of proving that she was exploited; orders to grant the victims alternative residence are made on a discretionary and arbitrary basis; and there a special trafficking unit of the police investigators but no corresponding unit within the prosecution.	Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol); Convention on the Rights of the Child's Optional Protocol on the Sale of Children: These treaties provide detailed standards for the protection of victims of trafficking and make clear that they must not be subject to negative legal consequences due to their involuntary, coerced involvement in illegal activities.	Lebanon must immediately amend Law 164 to bring it into line with the Palermo Protocol and the Optional Protocol on the Sale of Children of the CRC.

## ANNEX 2 Possible Forums for legal action to be taken against the sending states of domestic workers

Country	Possible Forums	Extra-territorial application?
Ethiopia	<ul style="list-style-type: none"> <li>African Commission communications procedure</li> <li>CAT Committee inquiry procedure</li> </ul>	<ul style="list-style-type: none"> <li>There is no territorial limitation in the African Charter, and the African Commission has accepted that it has extra-territorial application to violations committed outside of the territory of the state party.</li> <li>The CAT has extra-territorial application: all states have an obligation to prevent torture wherever person aboard are within their power or effective control, and where they therefore have the ability to prevent them from being tortured or to punish those who commit torture.</li> </ul>
Philippines	<ul style="list-style-type: none"> <li>Human Rights Committee complaints procedure</li> <li>CAT Committee inquiry procedure</li> <li>CEDAW Committee complaints procedure</li> </ul>	<ul style="list-style-type: none"> <li>States parties to the ICCPR have an obligation to 'respect and ensure the rights contained therein to all persons within their power or effective control outside their territories'.</li> <li>The CAT has extra territorial application.</li> <li>CEDAW Committee stated in General Recommendation 28 that the obligations of States parties applied extraterritorially to persons within their effective control, even if not situated within their territory. The CEDAW Committee has also held that 'if a State party takes a decision relating to a person within its jurisdiction, and the necessary and foreseeable consequence is that that person's rights under the Convention will be violated in another jurisdiction, the State party itself may be in violation of the Convention.'</li> </ul>
Indonesia	<ul style="list-style-type: none"> <li>CAT Committee inquiry procedure</li> </ul>	<ul style="list-style-type: none"> <li>The CAT has extra territorial application.</li> </ul>
Sri Lanka	<ul style="list-style-type: none"> <li>Human Rights Committee complaints procedure</li> <li>CEDAW Committee complaints procedure</li> <li>CAT Committee complaints and inquiry procedures</li> </ul>	<ul style="list-style-type: none"> <li>The ICCPR has extra-territorial application.</li> <li>CEDAW has extra-territorial application;</li> <li>CAT has extra-territorial application.</li> </ul>
Bangladesh	<ul style="list-style-type: none"> <li>CEDAW Committee complaints procedure</li> <li>CAT Committee inquiry procedure</li> </ul>	<ul style="list-style-type: none"> <li>CEDAW has extra-territorial application;</li> <li>CAT has extra-territorial application.</li> </ul>