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Al-Raida

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One Way or the Other

■ Najla Hamadeh

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

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

Unconvincing laws and irrational justifications of laws often indicate that the legislator realizes that he/she is not going to be challenged, perhaps because he/she represents an authority 'higher' than that of common people

and common sense. When laws are supported and perpetrated by religious or political powers that cannot be questioned or cannot be held accountable or by the claim that the legislator is speaking in the name of such authority, the need to be convincing becomes trivial. Indeed, in such cases the general public may sense the futility of subjecting the laws to the scrutiny of reason and may learn to either accept the authoritarian legal system without discussion or to ignore its shortcomings, focusing on ways to get around it. Such a public may even lose the habit of rational scrutiny altogether.

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

Examples of Irrationality in Lebanese Laws that Pertain to Women

I. In Civil Law:

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

- a. Prostitution was legal¹ under certain specified conditions.
- b. Punishment for pimps is so lenient: For professional pimps incarceration six months to two years and indemnity between LL20,000 and 200,000 (Article 527 of the Lebanese Penal Code LPC); and for luring to and facilitating prostitution for individuals less than 21 years of age,

incarceration one month to one year and indemnity between LL50,000 and LL500,000 (Article 523 of LPC).

c. The penalty for deflowering a girl after giving her false promises of marriage is so manageable: incarceration up to six months and indemnity up to LL200,000 (Article 518 of LPC).

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

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

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

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

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

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

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

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

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

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

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

II. In Family Status Laws

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

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

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

The irrationality of this form of discrimination is most apparent in the literature that tries to justify it by totally unrealistic claims, capricious judgment, and weird advice. Thus Murtada Mutahhari (1991: 182-4) claims that Muslim husbands love their wives dearly and sacrifice money and comfort to gain their favor; and Muhammad

Al-Salih Bin-Murad (1931: 186-7) bears witness to the harmony that pervades Muslim family life, unlike what is to be found in families in the West. Al-Asfi (1968: 218-20) concludes, on the basis of the irrationality and emotionality of women, that if women are given the right to divorce they would divorce their husbands for the most trivial reasons, like disagreement over the color of a dress; and Mutahhari (ibid. 273) gets more explicit about the 'trivial reasons' adding that "the husband's refusing to kiss the dog or his choosing to watch a different movie than the one of her choice is capable of causing the wife to file for divorce, just as in America and Europe!" In his letters to his daughter, Al-Ibshheehi (1981:112-13) advises her to bear her burden and accept her lot, even if her husband were to turn out to be as cruel and ruthless as the Pharaohs of Egypt!

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

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

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

In denying mothers the custody of their children, after the first few years of life, the religious judge (*qadi*) follows the

jurisprudence of eighth and ninth century Islamic jurists (*fukaha*), of whom it is said: "They are the peak of judgment for all time." However, even those early jurists recognized "variation in judgment with the variation of the times."

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

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

The above are examples of the lack of rational coherence and/or the lack of agreement with the requirements of common sense and practical convenience in a great deal of Lebanese legislation regarding women. Legislation in many other countries of the Arab world, regarding women, suffers from similar shortcomings. Indeed, in the Arab world, changing such laws has rarely taken place on the basis of discussion and/or pressure applied by public opinion. Most reforms of discriminatory laws against women were prompted by the will or caprice of the totalitarian ruler or his wife, as was the case with the reforms introduced by Burghibah in Tunisia and Jihan Sadat in Egypt. Although such reforms are welcome as means to

alleviate discrimination against women, experience has shown that such reforms may be short-lived or may not effect a change in the mentality and attitudes prevalent in society. Thus, Jihan's Law was revoked soon after the assassination of her husband; and Burghibah's prohibition of polygyny does not seem to have affected people's preference, except negatively: Statistics published by the UNDP Report on Women (2006) show that polygyny is presently more favored by the people of Tunisia than by any other people of an Arab country.²

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

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

Endnotes

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

References

- Al-Asfi, Muhammad Mahdi. *Al-'Ilaqat Al-Jinsiyah fil Qur'an Al-Kareem*. Najaf: No'man, 1968.
- Al-Ibshheehi, Muhammad Muhammad-Ali. *Rasa'el ila Ibnati*. Beirut: Mu'assasat Al-Risalah, 1981.
- Bin Murad, Muhammad Al-Salih. *Al-Hidad 'ala Imra'at Al-Haddad*. Tunis, 1931.
- Muslim, Saheeh Muslim (10 volumes). Beirut: Dar Al-Fikr, 1972.
- Mutahhari, Murtada. *Nizam Huqum Al-Mar'a fil Islam*. Translated by Haidar Al-Haidar. Beirut: Al-Dar Al-Islamiyah, 1991.
- UNDP, *Fourth Human Development Report: The Report on Women*. In Press.

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

■ Razan Al-Salah

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

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

In 1945, my father was born in Haifa shortly before his family was expelled from their home and forcefully fled to Lebanon. Since then he has spent 57 years of his life on Lebanese soil and has grown to call this country his home. My father graduated from the University of Cairo with a BE in Aeromechanical Engineering. He was one of the first graduates in this specialized discipline, which is in high demand in the Arab employment market. When he came back home, my father certified his degree in the Ministry of Education and obtained a per-

mit for practicing his profession from the Ministry of Labor. The General Directorate of Civil Aviation was quick to call him in for an interview and immediately offer him a job. When he was about to sign the contract the government discovered he was a Palestinian and withdrew the offer. My father was also restricted from working in the private sector. As an engineer, he has to fulfill two conditions before legally practicing his profession; he has to obtain a work permit and join the syndicate. While getting a work permit might be feasible, it is ineffective because no Palestinian can join a Lebanese syndicate. Consequently, my father had to travel away from his family, away from his home to get a decent job in the Gulf.

My older brother also faced similar problems. Lebanese work law effectively rules out Palestinians' prospects for employment except within a limited number of permissible jobs that do not require the hardship of getting a work permit. My brother, a graduate of the American University of Beirut (AUB), started working for a Palestinian NGO at a relatively low salary. Other jobs he applied for were legally permissible, yet Lebanese companies refused to get into the labyrinths of government bureaucracy to obtain a work permit for him (that is, if

we exclude the high probability of the decision being racist or sectarian). In contrast, when my brother applied to a multinational corporation, he was accepted and appointed to a comparatively high position, tripling his previous income. Obviously, the reasons behind these variations in treatment are vague, and cannot be ascertained empirically. Yet based on logical speculation, one of two things can be concluded: A multinational corporation is disinterested in the applicant's nationality and sect, and thus is far from taking a racist or sectarian decision. It is also possible that a company with a considerable international reputation and power in the market has enough corporate power to efficiently obtain a work permit, even for a Palestinian. Yet even as an employee in a multinational corporation, my brother is not entitled to full social security coverage, although he pays for it!

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

The final blow was two years ago, in 12th grade. I got the highest score nationwide in the official exams, specifically in the Sociology and Economics sections. The first three students in ranking received a 30 million Lebanese Lira scholarship from the Educational Center for Research and Development. I was denied this scholarship, which I academically earned, on a purely racist basis. The president then had the courtesy to invite us to his palace yet didn't

have enough courage to speak to my mother, a Lebanese citizen, when she required justification for this racist decision. Like all our official bureaucrats, he denied responsibility and 'transferred' her to 'those in charge' who only had one thing to say: "You know how it is for Palestinians in this country." Two things they failed to see and admit: they are 'those in charge' of this inhumane treatment, and the person they were talking to is Lebanese!

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

A check for voting status...

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

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

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

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

*I was denied
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racist basis.*

New Publication

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

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

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

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

Visiting Fellowship Collaboration

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

Chief Executive of the ESRC, Professor Ian Diamond commented, "I am delighted that by working together with the British Academy we can facilitate the sharing of skills and knowledge between talented researchers from an increasingly influential area of the world and the UK, helping to invigorate, and further strengthen, British social science and the research methods behind it." Dr Robin Jackson, Chief Executive and Secretary of the British Academy, said, "the British Academy is very pleased to be working in partnership

with ESRC to support these fellowships, which will offer invaluable opportunities to strengthen research links between this country and areas of rapidly growing interest and importance to the UK."

Further information about the scheme can be found at www.britac.ac.uk/funding/guide/intl/vfsame.html <http://response.pure360.com/_act/link.php?mld=A8178192455989741686&tld=748356>

Films

In My Father's House

Directed by Fatima Jebli Ouazzani

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

Maid in Lebanon

Directed by Carole Mansour

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

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

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

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

"There was apparently an increase in violence against women. At least six women were killed during the year, mostly by male relatives, as a result of family crimes or other forms of violence against women. Such crimes continued to be committed by men with near impunity facilitated by lenient sentences for killings carried out in a 'fit of fury.' Information was received on alleged torture, including rape, of Filipina maids working in Lebanon. ... A 27-year-old Palestinian man killed his sister by cutting her throat for allegedly having pre-marital

sexual relations with her fiancé. The attack reportedly took place in October in a Beirut hospital where the woman worked. The man handed himself to the authorities. ... Seventeen-year-old Fadela Farouk Al-Sha'ar died on February 5 in Tripoli apparently after being strangled, allegedly by her brother. He was said to have confessed to the murder before disappearing. She was apparently killed for allegedly eloping with a man she wanted to marry without the consent of her family. ... A Filipina woman, Catherine Bautista, one of thousands of maids reportedly working in difficult conditions in Lebanon, died on May 4. Her body was found almost naked in the garden of the building in Beirut where she worked. An investigation ordered by the authorities closed the case in July apparently after concluding that she had died after jumping out of her employers' apartment." (Amnesty International, Report 2005, *The State of the World's Human Rights*, 160)

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

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

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

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

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

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

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

The Women's Learning Partnership (WLP) joins with partners in the Middle East, North Africa and the Gulf to call for:

- Legal reform enabling women to confer their nationality to their husbands and children without condition
- Full implementation of reformed nationality laws and equal access to these laws for all women
- Recognition of women as equal citizens in all areas of life

Focus Countries

- Algeria: Centre d'Informatique et de Documentation sur les Droits de l'Enfant et de la Femme (CIDDEF) is coordinating the campaign. The nationality law was reformed in March 2005, allowing Algerian women married to non-nationals to

confer nationality to both spouses and children. CIDDEF and regional partners are monitoring the implementation of the reform.

- Bahrain: Bahrain Women's Society (BWS) is coordinating the campaign. Limited changes to the nationality law are under discussion in the Parliament for women married to Gulf citizens only. BWS and regional partners are calling for the recognition of nationality rights for all women.

- Egypt: Forum for Women in Development (FWID) is coordinating the campaign. The nationality law was reformed in July 2004 allowing Egyptian women married to non-nationals to grant nationality to their children only. FWID and regional partners are monitoring the implementation of the reform.

- Jordan: Sisterhood is Global Institute Jordan (SIGI-J) is coordinating the campaign. Current nationality law does not allow Jordanian women to confer nationality to either spouses or children. JCNW and regional partners continue to advocate for reform.

- Lebanon: Collective for Research and Training on Development-Action is coordinating the campaign. Current nationality law does not allow Lebanese women to confer nationality to either spouses or children. CRTD-A and regional partners continue to advocate for reform.

- Morocco: Association Démocratique des Femmes du Maroc (ADFM) is coordinating the campaign. The King proposed a new nationality law in a speech given in the summer of 2005 and a Ministry of Justice commission has been established to submit proposals to parliament. ADFM and regional partners are advocating vigorously for a 'no conditions' law, which will apply retroactively to pending citizenship applications by children of Moroccan women married to non-nationals.

- Syria: Syrian Women's League (SWL) is coordinating the campaign. Nationality law does not allow Syrian women to confer nationality to either spouses or children. SWL and regional partners continue to advocate for reform.

Take Action

Help support the campaign for women's equal citizenship rights.

- VISIT our Claiming Equal Citizenship Campaign WEBLOG for personal stories, country updates, and recent campaign news.

- SIGN our petition calling for legal recognition of women's right to confer their nationality to their husbands and children and full implementation of this right in the Middle East, North Africa and the Gulf.

- RAISE AWARENESS in the media. Write a letter to the editor, or an op-ed to your newspaper to express your concern.

- CONNECT US with women living in the focus countries married to non-national men. Encourage them to share their experiences on the Campaign WEBLOG.

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

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

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



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

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

In collaboration with the Collective for Research and Training on Development and Action (CRTD-A), the Institute for Women's Studies in the Arab World (IWSAW) and the Human Rights Club at Lebanese American University (LAU) sponsored a nationality campaign on: My Nationality a Right for me and my Family. The campaign addressed the lack of rights of Lebanese women that marry non-Lebanese to transfer their nationality to their husbands or children.

The campaign was extremely positive and within four hours 216 students' signatures were secured for a petition demanding to change the Lebanese law on nationality and grant full citizenship rights to Lebanese women.

Following the campaign, a panel discussion was held with a Lebanese lawyer and representatives from the Rassemblement Democratique des Femmes Libanaise who discussed the subject with LAU students.



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

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

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

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



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

The four day meeting resulted in a unified expert report that assessed the implementation of the Beijing Platform for Action and identified priority issues and recommendations to accelerate the implementation of the Platform and to advance women's rights worldwide. The report was then presented at the United Nations headquarters in New York City to representatives from Member States and civil society. The report contains the following sections/priorities and related recommendations: Women and Economic Justice, Women and Armed Conflict, Human Rights of Women, and Women and Access to Information. The report can be accessed at [http://www.un.org/womenwatch/daw/meetings/consult/10-review/Expert Consultation Report Feb27.pdf](http://www.un.org/womenwatch/daw/meetings/consult/10-review/Expert%20Consultation%20Report%20Feb27.pdf)

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

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



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

The Status of Women in Lebanese Legislation

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

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

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

The inequality between the rights of Lebanese men and women within the family are discussed in three other articles. Thus,

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

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

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

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

Najla Hamadeh



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

■ Nada Khalifeh

Attorney at Law

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

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

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

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

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

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

In spite of the obvious increase in the number of states which have ratified the Convention, CEDAW remains the Convention with the highest number of reservations, pre-

sented particularly by Arab states. Although in Article 28(a) it allows states, upon ratification or accession, to voice reservations – namely to not abide by one or more of the articles – it nevertheless does not accept any reservations that are incompatible with the object and purpose of the Convention.

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

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

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

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

Concerning Nationality

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

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

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

Meanwhile, Article 7 stipulates that: "having renounced

her nationality upon marrying a non-Lebanese, a woman may upon her request regain the Lebanese nationality once her marriage is terminated."

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

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

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

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

There are two exceptions to this:

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

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

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

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

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

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

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

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

Lebanese society has witnessed a humanistic and particularly feminist movement to eliminate all forms of discrimination against women that impinge on all social and political strata. However, one issue repeatedly raised in the face of those demanding a change in citizenship laws is that of the Palestinian refugees. The argument goes as follows: if the laws are changed, Palestinian men might seek marriage with Lebanese women with the intention of securing for their offspring the Lebanese citizenship, thereby helping their perma-

nent settlement in Lebanon. This, of course, is a specious argument whose outcome is the withholding of women's rights granted in the Universal Declaration of Human Rights. For, if it were true, then it should cause legislators to be equally wary of the outcome of Lebanese men marrying Palestinian women, whose children would thus acquire the Lebanese citizenship.

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

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

Concerning Family Relations

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

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

- a. The same right to enter into marriage
- b. The same right to choose freely a spouse and to enter into marriage only with their free and full consent
- c. The same rights and responsibilities during marriage and at its dissolution
- d. The same rights and responsibilities as parents, regardless of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount
- e. The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights
- f. The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation. In all cases the interests of the children shall be paramount
- g. The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation. Same rights in owning, care-taking, running and disposing of property

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

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

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

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

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

What follows is an exposé of the major violations of women's rights found in personal status laws and which are in breach of the principles of equality and of international charters:

- Defining marital age goes against international charters. In the cases of Sunnis and Shiites, this age is set as low as nine years.
- Marriage between persons of different religions is one of the many prohibitions for the Christian Orthodox church, while Muslim sects prohibit the marriage of Muslim women to non-Muslims.
- In matters of marriage contracts, Muslim sects equate one male witness with two female witnesses, while the Druze and Armenian Orthodox sects require that both witnesses be male.
- Most sects base marriage on obedience rather than on mutual respect. The man is considered to be the head of the family with a given right to take all decisions, while wives are required to obey, submit, and care for the household. Some sects even grant the man the right to

control his wife's mobility, keeping her at home and returning her by force if she escapes.

- It is not a woman's right to be custodian of her children. Rather, this is a role delegated to her by her husband who has the right to claim the children when they reach a certain age. Moreover, a woman might lose the right of child custody based on reasons that demean her and greatly restrict her freedom (e.g. a second marriage contract, unfit to raise children, bad behavior).
- Child custody is basically the father's prerogative. In the event of the father's death, custody is relinquished to the mother in only very few sects; in the majority of sects it is passed to the paternal grandfather, uncle or other male patrilineal kin.
- Polygyny is authorized in both Sunni and Shiite sects.
- Sunni and Shiite men are allowed to divorce their wives without recourse to the court. For many sects, men and women are not equal when it comes to reasons for divorce.
- Marriage between persons of different religions is an obstacle to inheritance. Moreover, a woman has an unequal and unfair share of the inheritance in both Sunni and Shiite sects.

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

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

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

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

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

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

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

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

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

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

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

For example, the many amendments made by the Tunisian state on July 13, 1956, prohibited polygyny and granted both sexes equal rights to file for divorce before a court of law, bearing in mind that Tunisia is an

Islamic state that follows Islamic teachings, as the introduction to its Constitution clearly states.

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

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

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

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

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

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

Translated by Samar Kanafani

Women's Civil Rights in Lebanon

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Legislation for Equality

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

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

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

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

- The International Covenant on Economic, Social, and Cultural Rights in 1976
- The International Covenant on Civil and Political Rights in 1976

- The International Labor Office Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value in 1953
- The International Labor Office Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation in 1960
- The Convention Against Discrimination in Education in 1962

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

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

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

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

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

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

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

Such deviation from the equality that the Lebanese Constitution embraces, however, concerns mainly family law, which applies to marriage, paternity, filiation, adoption, and succession. This is because the only authorized marriages on Lebanese territory are religious ones, con-

tracted respectively according to the codes of the various religious sects. Moreover, the Lebanese legislative system recognizes (tolerates, or permits alongside the local trend of exclusively religious marriage) civil marriages that are contracted abroad. Such marriages remain subject to the civil law of the country where the marriage was contracted, with Lebanese civil jurisdiction being responsible for the application of those foreign laws, provided that they conform to the public order. Between the different laws and courts that pertain to the various religious sects and the civil laws of the various countries, under whose authority the Lebanese may choose to get married, implemented by the Lebanese civil courts, marriage in Lebanon is subjected to very different conditions. This is a very strong and influential source of inequality.

Women in Lebanese Legislation: Inequalities in the Penal Code

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

For example, Articles 487 and 488 of the Lebanese Penal Code condemn women who have committed adultery much more severely than men, and make proving their guilt much easier than that of men. The penalty for the same crime of adultery is three months to two years for the wife, and one month to one year for the husband. Also, the definition of adultery for husband and wife vary. For him to be

accused of adultery he has to commit the act in the marital home or install a declared mistress in a house for which he pays. But the wife may be accused of committing the act anywhere and under any circumstances.

Moreover, the initial version of Article 562 of the Penal Code granted pardon for non-premeditated homicide or attack by a person on his spouse, relative, offspring, or sister surprised in the act of adultery or other illegitimate sexual relation with a third person. This article was amended on February 20, 1999. At present, the perpetrator of the homicide or injury would receive only the

benefit of the extenuating excuse. Both the old article and the new one recognize the right of the males of the family to carry out private justice regarding the women of their kin whenever they are guilty of a breach in the sexual rules.

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

In ratifying the Convention on the Elimination of all Forms of Discrimination Against Women, Lebanon agreed to its provisions except for the above-mentioned reservation. Article 2 in paragraphs (f) and (g) (not included in the reservations) calls on the states which ratified the convention to undertake all of the appropriate measures, including legislation, to modify or abrogate all

laws, customs, practices, or penal codes which discriminate against women. As a consequence, Lebanon must work to apply these provisions and abrogate the inequalities contained in Articles 487, 503, 504, 522 and 562 of the Penal Code. A draft law in this regard has been submitted to the parliamentary Commission for Administration and Justice within the scope of the revision of the Lebanese Penal Code, which has not been reviewed since it was promulgated in 1943.

Some Amendments towards Equality

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

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

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

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

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

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

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

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

Arguments Valid for Once Only

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

In July 2005, an NCLW delegation⁴ represented the Republic of Lebanon in order to carry out a constructive dialogue with the CEDAW Committee⁵ in a plenary session at the United Nations headquarters in New York. The delegation outlined Lebanon's achievements in improving women's conditions, as per the said report, and highlighted the efforts exerted to adequately implement the Convention during the years that followed its ratification, emphasizing the obstacles that faced the implementation process. The 23 members of the CEDAW Committee con-

gratulated Lebanon on the progress achieved in the advancement in women's conditions in some areas, yet they also questioned why some articles of the Convention were still not implemented. The Committee held the Lebanese government accountable for this delay.

Discussion/Questions

First and foremost, it must be said that the official Lebanese report was candid and straightforward in outlining women's conditions in our country. Neither the authors⁶ of the report nor the committee responsible for its preparation⁷ made use of self censorship when giving their presentations. These presentations were based on statistics and field studies that were exhaustive in some instances and only partial in others. While the Committee welcomed such candidness, it noted with concern the state's failure to work actively to change the discriminatory situation against Lebanese women, described by the report.

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

First: They expressed their concern regarding the inade-

quacy of the government in implementing the Convention's provisions.

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

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

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

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

Discussion/Defence

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

1. They mentioned, in detail, some positive privileges

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

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

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

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

Defence and Declaration of Constants

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

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

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

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

The Lesser of Two Evils?

Needless to say, insisting on depriving the children of a Lebanese woman married to a non-Lebanese of Lebanese

nationality is a policy aiming at reducing intermarriages and preserving the delicate and 'treasured balance' between religious communities. Intermarriages – or, as the French used to call them, 'white weddings' between Lebanese women and non-Lebanese men belonging to a certain religious majority, namely Muslim Sunnis – is bound to disrupt the 'treasured' sectarian (religious) balance. The ordeal of Lebanese women married to men of other nationalities, especially Palestinian nationals, is an example that constitutes an almost final dissuasion to all Lebanese women. Indeed, out of 840 women residing in Lebanon who got married to non-Lebanese men between 1995-2000, those married to Palestinians did not exceed 16 (see *As-Safir* newspaper, June 22, 2005). In this context, it is worth noting that a non-Lebanese wife, even if she happens to be Palestinian, can be naturalized; which means that the latter – as well as her children – become Lebanese citizens with full rights and obligations. Thus, the Nationality Act in our country does not only differentiate between men and women but also

between categories of women, where a woman who is not Lebanese by birth receives better treatment than a Lebanese woman married to a non-Lebanese. It is worth noting that CEDAW calls for the elimination of discrimination against all categories of women on Lebanese territories, this was also mentioned by one of the CEDAW Committee members in the context of talking about foreign domestic workers in Lebanon.

An ongoing concern of the Lebanese is the preservation of the sectarian balance, given that many strive to maintain stability through

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

Discrimination and Religious Pluralism

The sectarian system discriminates against women and

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

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

Though it might seem that the comments and recommendations⁹ of the CEDAW Committee indicate that it is not taking into serious consideration the so-called cultural specificities of Lebanese society, its position seems to be more complex than this. The Committee requested that the Lebanese delegation provide it with a detailed description of the personal status codes that govern the country's 18 different sects. However, even though the CEDAW Committee was aware of the cultural specificities of Lebanese society, this is not necessarily a prelude to the recognition of the necessity for a plurality of codes, nor a reason to acquiesce to their discriminatory provisions.

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

It is worth noting that the CEDAW Committee takes

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

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

The Positive Shock

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

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

Means of its Investment

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

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

In this respect, it is important to shed light on the joint effort that was established during the preparation for the Beijing Conference¹⁰ between the Lebanese state, women's NGOs, and women's rights activists. However, the partnership between the state – represented by the NCLW – and the women's NGOs is required to be the result of initiatives and activities referred to in the second official CEDAW report in the form of common programs between both groups – as is the case in some programs of the Ministry of Social Affairs and the Ministry of Health. A comprehensive alliance between all governmental and non-governmental forces constitutes a necessary condi-

tion to move forward towards new levels and fields of action along the path already designated, under a unifying umbrella with new impetus and a clearer horizon.

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

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

Translated by Nadine El-Khoury

Endnotes

1 Lebanon ratified CEDAW in 1996 and made reservations to items of Article 16 that contradict civil status codes of religious communities and to a paragraph of Article 9 related to the Nationality Act, in addition to reservations to an article on international arbitration not specifically related to women's issues.

2. The National Commission for Lebanese Women (NCLW) is an official Commission whose members are appointed by the Council of Ministers. They are women "whose activism for women's issues is recognized." It has a consultative mission to the state administrations and institutions, and a coordination mission between those administrations and institutions and civil society, as well as between Arab and international commissions dealing with women's issues.

3. The report is available to the public at the NCLW office in Hazmieh, and on the NCLW website: www.nclw.org.lb

4. The delegation was formed by Layla Azuri Jumhuri, head, Azzah Shararah Beydoun, Ghada Hamdan and Jumanah Mufarraj, members.

5. The Committee on the Elimination of all Forms of

Discrimination Against Women (the CEDAW Committee) is formed of 23 members of the United Nations, delegated by the General Assembly to supervise and monitor the implementation of the Convention in state parties, where each state party appears before it once every four years.

6. The following researchers drafted and supervised the publication of the report: Maha Al-Muqaddam, Azzah Shararah Beydoun, Layla Azuri Jumhuri, Jumanah Mufarraj, Marguerite Helou, Fadya Hoteit, Rana Khoury, Becharah Hanna, Hiam Kaai.

7. The authors of the report and the committee supervising its preparation are male and female researchers specialized in the areas of concern covered by the Convention.

8. The first and second periodic reports were discussed together.

9. Available on the NCLW website: www.nclw.org.lb

10. The Fourth International Conference for Women held in Beijing issued recommendations to the member states, including Lebanon, on main areas of women's issues.

Proposed Procedures to Fight Discrimination Against Women in Marriage and Inheritance

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

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

The Problems

Historical Background

Legislation that discriminates against women is mostly

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

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

Discrimination in Marital Relations:

- Both Christianity and Islam seem to consider the husband as the head of the family. From this, there ensue some biased moral precepts, like the wife's obedience to the husband, as well as biased legislation. In rare cases, as in stipulating that the husband must provide for his wife and family, discrimination favors the wife. But the general trend is towards legislation that favors husbands, as in the following examples:

- Both of Muslim husbands and husbands of the Israeli sect have the right to chastise their wives.
- A Muslim husband has the right to marry up to four wives.
- A Muslim man may marry a non-Muslim woman provided the chosen wife's religion is one of the revealed religions (Christianity or Judaism) but a Muslim woman cannot marry a non-Muslim.
- A Sunni Muslim husband may divorce his wife in her absence and without her knowledge, without cause, and without due legal process. A Sunni or a Shi'a husband is entitled to revoke the divorce, within the period of the 100 days (*'iddah*) required before the divorce becomes final. Either of the two husbands has the right to demand his wife's return to him, without her consent. Moreover, in both Islamic sects divorce is very easy when wanted by the husband and very difficult when wanted by the wife. Indeed, for a Shi'a woman, to divorce her husband without his consent is very close to impossible.
- Where child custody is concerned, most sects give the preferential right to the father, and sometimes even to other male members of the father's family.

Proposed Solution

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

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

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

Poverty: Discrimination in Inheritance

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

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

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

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

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

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

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

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

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

In short, I would say that the inheritance laws in vigor and applicable in Lebanon, are:

1. Islam according to the Hanafi School for Sunni Muslims
2. Islam according to the Ja'afari School for Shiite Muslims
3. The Law of February 23, 1948 as amended by the law of July 2, 1959 for the Druze community
4. The inheritance law of June 23, 1959 for all non-Muslims (i.e. Christians, Jews and all other religions)

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

Ja'afari School

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

Hanafi School

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

Druze Sect

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

The 1959 Inheritance Law for Non-Muslims

Although this law has decreed equality between men and women in matters of inheritance we still frequent-

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

Proposed Solutions

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

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

**The Text of Law Project 1
Raison d'être:**

The woman adopting her husband's family name and neglecting her maiden name, even at the social level, has the following risks:

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

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

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

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

The Text of Law Project 2

Raison d'être:

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

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

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

takes place, all wealth acquired during the marriage becomes the property of both partners. This same rule applies to income from property as well as any other income.

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

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

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

Endnotes

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

References

- Dr. Bashir Bilani, *Qawanen al-Ahwal al-Shakhsiah fi Lubnan (Personal Status Laws in Lebanon)*, Beirut: Dar al-'Ilm Lilmalayeen, 1971.
- Dr. Sobhi Mahmasani, *Al-Mabadi' al-Shar'iyah wal Qanuniah (The Principles of Shari'a and Law)*. Beirut: 1959 (second edition).

Lebanese Women and Discriminatory Legislation: The Case of Nationality Law

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Background: Nationality Law from an International Perspective

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

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

Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) assert the equality of human beings, and their civil, political, social, economic and cultural rights.

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

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

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

Nationality law in Lebanon

Background

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

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

Lebanon ratified CEDAW² with reservation to Article 9(2) concerning nationality. As a consequence, Lebanese law deprives Lebanese women of their basic right to pass Lebanese nationality to their children. This contradicts the principle of equality between citizens, enshrined in the Lebanese Constitution and emphasized in the international treaties to which Lebanon has acceded.

By and large, all nationality laws fall into two categories:

1. Jus Sanguinis (law based on blood);
2. Jus Soli (law based on land).

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

Undoubtedly, Lebanon falls within the first category, not only because it is densely populated, but more importantly because it wishes to maintain its delicate confessional balance. Moreover, we should not underestimate the role of the overwhelming patriarchal values that

shape a score of behavioral patterns that cast their shadows on nationality law.

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

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

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

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

As states have the right to draw their own nationality laws in line with their own national interests, as stipulated by international law, the argument forwarded by the Lebanese government to justify its reservations with respect to Article 9 of CEDAW is that Lebanon is protecting the Palestinian refugees from any form of settlement in Lebanon that would jeopardize their right to return to

Palestine. If this is the case, why does the Lebanese government refrain from promulgating a new law that grants Lebanese women the right to pass their nationality to their children, with the exception of those married to Palestinians? Is it fear of being accused of passing a racist law? If this is the case, then the racist property law of 2002, which deprives the Palestinians living in Lebanon of ownership rights, has already set a precedent. Another possible unvoiced rationale for this law lies in the desire to maintain the delicate demographic balance between the various sects in Lebanon.

Ramifications of the Lebanese Nationality Law

The ramifications and problems of withholding nationality from the husband and children of Lebanese women are varied. Luckily, we have before us a serious recent study (2004) undertaken by the Gender, Citizenship and Nationality Program in the Center for Research and Training on Development (CRTD) and the United Nations Development Program. The study had its limitations and challenges, but by focusing on the collection of qualitative data and carrying out interviews with married women, it reflected certain general patterns:

1. There is a general lack of awareness among women, cutting across class lines and educational levels, of the problems entailed by their marriage to non-nationals.
2. The shock the women received and the intense feeling of humiliation precipitated by curtailing their rights as citizens was also underlined in this study.

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

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

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

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

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

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

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

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

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

Sadly, Lebanon still lags behind in terms of introducing any effective changes to the nationality law. In the mean-

time Lebanese women are suffering and impatiently waiting for lifting the injustice inflicted upon them and their families. Will the positive force of change in the Arab world and the dynamic work of women's NGOs impact our nationality law soon?

Endnotes

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

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

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

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

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

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

For the full report, please consult the following link:
<http://www.iris-lebanon.org/inner/Gender%20and%20nationality%20Regional%20report%20-%20final.Ar.pdf>
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Mixed Marriage in the Lebanese Law

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

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

The legal autonomy enjoyed by each and every confession created tension between the various confessions

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

Duality of Affiliation to State and Confession

Equality between Sects:

The Ottoman Sultanate ruled Lebanon and the Arab region for a period of 400 years during which it implemented Shari'a law based on the Hanafi School of Jurisprudence in handling issues of personal status.² In dealing with non-Muslims, Islam³ distinguishes between the House of War, which is the land of the enemy, and the House of Peace, which is the land of Islam. Non-Muslims

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

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

Equality between Citizens and the Rights of Groups:

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

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

The issue of minorities was also raised in the West but from a different angle that does not affect the rights of citizenship: A citizen can be a member of the ethnic

minority if he/she so wishes, and this is one of his/her rights as a citizen. This is why groups try to be more appealing to individuals where each group wants people to join it. However, in Lebanon, affiliation to a confession is a compulsory natural identity required for acceding to the right of citizenship, regardless of the citizen's will. Consequently, there is clear rivalry between confessional and national affiliations, a competition that is generally won, especially in times of crisis, by confessional affiliation, even in issues that require that national loyalty be placed above all.

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

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

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

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

First: Mixed Marriage in Lebanon

1. The Confessional Structure

Mixed marriages in Lebanon have to be officiated by a

confessional authority.⁶ Any marriage contracted in Lebanon before a civil authority is considered void.⁷

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

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

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

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

2. The Marriage Law

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

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

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

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

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

3. Judicial Competence

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

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

Civil courts exclusively have competence to settle litigation resulting from a marriage contracted between two foreigners or a foreigner and a Lebanese, provided that the foreigner abides by the civil law in his country Decree No. 109, R.L. endorsed on May 14, 1935.¹³ Jurisprudence of the Court of Cassation (Supreme Court) decided a long time ago to grant competence to the civil court that applies on the foreigner his/her national law. If a Lebanese man marries a French woman abiding by the civil law of her country, then the civil courts are competent to settle litigations resulting from their marriage and to enforce the marriage law. However, there is a trend in the courts' jurisprudence that aims at expanding the scope of competence of confessional courts.¹⁴ For example, such courts may regain competence from civil courts upon a foreigner's acquirement of the Lebanese nationality at a date previous to filing the lawsuit in a bid to subject him/her to the applicable confessional court.

4. The Conflict of Laws

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

Positive Conflict:

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

their marriage (Article 15 of a law endorsed on April 2, 1951). The court refused to consider that their agreement on the marriage contract before the court of the wife's confession also expresses their agreement to abide by the laws of this confession.

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

Article 9¹⁶ of the Lebanese Constitution and Lebanese law in general guarantee freedom of belief and describe it as absolute. This guarantees freedom of belief and the freedom to change one's belief as well. This is why a citizen has the right to change his/her belief and, therefore, his/her confession under the protection of the law and without embarrassment. It is a personal matter. However, in order for that change to be valid, it should be registered in the personal status register,¹⁷ which entails a full changing of the personal legal system. An Orthodox who embraces Islam, particularly the Sunni confession, must have his/her personal status system changed starting from the date of transfer from the register of the Orthodox system to the register of the Sunni system.

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

When both Spouses Change their Confession

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

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

It is known that Catholic confessions do not recognize divorce and do not void or cancel marriages except exclusively in cases specified by the law. If a Maronite man, for instance, married an Orthodox woman before the Court of the Maronite Church, and discord broke out between

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

When One of the Spouses Changes his/her Confession

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

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

Thus, changing confessions for the husband has its outcome in the future and the husband becomes subject to the laws of his new confession: A husband who once was Christian and therefore faces prison if charged with polygamy, becomes legally capable of marrying another under the cover of his new personal law. As for his first marriage, it remains standing since changing religions is not a reason for divorcing or canceling the first marriage. The first wife remains 'tied' and incapable of seeking a new personal or family life. The court of the husband's new confession becomes the authority having jurisdiction to settle litigation resulting from his new²⁰ marriage.

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

b. When a Foreigner Residing in Lebanon Changes Religions

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

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

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

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

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

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

5. Issues of Inheritance

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

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

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

Second: Marriage Contracted Abroad

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

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

According to Article 18 of the Procedures Regulating Muslim Courts, such courts are competent only when the two partners in the marriage are affiliated to the confes-

sion the court rules, and at least one of them is Lebanese. So, if two Sunni Muslims married before a civil court abroad and one of the two is Lebanese, the religious court announces its competence to settle litigation. Article 18 is not applied if the two Muslims were of a different confession or if one was Muslim and the other non-Muslim.

Marriage Contracted Abroad Causes Several Conflicts:

1. Multiple Marriage Contracts:

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

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

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

2. The Custody of Children:

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

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

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

Child Kidnapping:³⁰

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

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

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

3. Acquiring Nationality:

A foreign woman married to a Lebanese man has the right to acquire the Lebanese nationality upon her

request one year after the date of registration of the marriage in the census office. However, a Lebanese woman married to a foreigner cannot pass her nationality to her husband or children, even if they permanently reside in Lebanon.

4. Implementing Foreign Verdicts:

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

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

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

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

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

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

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

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

Translated by Nadine El-Khoury

Endnotes

1. The definition provided by the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities is the following: "A non-dominant group of individuals who share certain national, ethnic, religious or linguistic characteristics which are different from those of the majority population."
2. Issues pertaining to personal status are varied and target the nationality, census, inheritance, and family rights, but what we mean in this study by personal status is exclusively the issues that are examined by confessional courts and that abide by the laws applied on the members of the confession only. As to recognizing the 'Lebanese confessions,' it was made by virtue of Article 2 of Decree No. 60, R.L. endorsed on March 3, 1936 which stipulates: "Recognizing a specific confession has the effect of giving the text defining its system the power of law and putting this system and its implementation under the protection of the law and the supervision of the public authorities."
3. *The Legislative Situation in Arab Countries, Their Past and Present*, attorney-at-law Sobhi Al-Mahmasani, Beirut: Dar al-Elm Lel-Malayin, 1965, p.174.
4. Antoine Kheir 'Les Communautés religieuses au Liban personnes morales de droit public.' *Droit et Religion*. Bruxelles : 2003, Brurflant (œuvres du colloque organise par CEDROMA, Université Saint Joseph, Beyrouth, 2000) p. 457.
5. See 'Minorités et organisation de l'état,' textes présentés au 4e colloque international (CICLEF), Bruylant, 1998 Université Libre de Bruxelles.
6. As an expression of their refusal of the system of closed boundaries for each religious sect, some Lebanese individuals, of different religious sects, attempted to enter into civil marriage contracts, in Lebanon, before a public notary. Their attempts were thwarted because of the ruling of article 16 of the law endorsed on April 2, 1951.
7. Article 16 of the law endorsed on April 2, 1951, stipulates: "Every marriage contracted in Lebanon by a Lebanese affiliated to a Christian or an Israeli confession before a civil authority is considered void."
8. Article 15: In mixed marriages, in principle, the contract must be signed before the religious authority to which the groom is affiliated unless both parties agree to marry before the authority to which the bride is affiliated by virtue of an agreement in writing signed by both parties and in which they pledge to abide by the laws of the mentioned confession. To the same effect, we

have Articles 61 and 62 of a law that was endorsed on July 16, 1962 regarding Muslim confessions.

9. Attorney-at-law Ibrahim Traboulsi, *Marriage and its Effects According to the Confessions Included in the Law endorsed on April 2, 1951*, 2nd edition 2000, pp. 249-250.

"Catholic and Orthodox patriarchs held a meeting at the Syriac Catholic Patriarchate's headquarters at Saydet al-Najat-Ashurfa Convent, on Monday, October 14, 1996. Discussions focused on mixed marriages... they stressed the importance of a law regulating this new reality and highlighting the ecumenical understanding in all our churches.

Catholic and Orthodox patriarchs promised to circulate the following: 1. The bride has the freedom to remain affiliated to her church, 2. The marriage ceremony is to be held at the church of the husband, and the priest presiding over the ceremony invites the priest of the bride's confession, if present, to hold prayers together, 3. The children are to be baptized in the church to which their father is affiliated, 4. The decisions regarding this stand are to be taken into consideration in the various holy councils."

10. Article 17, paragraph K of the new law of the Orthodox Church.

11. Article 14 defining the competence of the Christian and Israeli authorities: "The confessional authority that has the jurisdiction to examine a contract of marriage and its outcome is the authority before which marriage was contracted according to the rules and by virtue of the jurisdiction rules specified in Article 15 on mixed marriages. In case there are two or more valid contracts, the concerned authority is the one before which marriage was contracted first. In case there are two or more contracts, one of which fulfills the mentioned rules, then the concerned authority is the one before which the correct contract was signed."

12. Article 6 of a law endorsed July 16, 1962 regarding religious courts and Article 31 of a law endorsed on April 2, 1951 regarding the non-Muslim courts.

Article 31 of a law endorsed on April 2, 1951 stipulates: "The confessional authorities, according to their competence recognized by this law, implement their confessional laws on their members only, taking into consideration the special cases mentioned in this law."

13. Article 1 of Decree No. 109, R.L. stipulates the following: "Civil courts only have the competence necessary to examine

personal status issues concerning one or several foreigners if one of them at least is a citizen of a country where civil right prevails according to their laws in effect."

14. The Court of Cassation (Supreme Court) Decision No. 19/74 which considered that the acquisition of Lebanese nationality by a foreign woman married to a Lebanese religiously, before the lawsuit was filed, is enough to grant authority to the confessional court.

15. Article 4 of a law endorsed on April 2, 1951: Confessional authorities have jurisdiction over: first, filiation and the legitimacy of children and its effects; second, adoption; third, parental authority over the children; fourth: custody of the children and their upbringing until the age of maturity, i.e. 18 years, inclusive. 16. Article 9 of the Lebanese Constitution stipulates: "Freedom of belief is absolute and the state, by assuming its obligations to God, respects all religions and confessions, guarantees the freedom of celebrating rituals under its protection provided they do not breach public order. The state guarantees to its citizens, regardless of their confessions the respect of the system of personal status and religious interests to which they happen to choose to belong."

17. Article 41 of a law endorsed on December 7, 1951 stipulates: "He who changes religion or confession must file a request for the purpose to the personal status office enclosed with a certificate by the leader of the religion or the confession which he wants to embrace."

18. See the general committee of the Court of Cassation (Supreme Court) Decision No. 47 dated May 26, 1961. Also the Justice Minister's circular No. 11 endorsed on February 24, 1953, and the Justice Minister's report No. 222 dated February 15, 1954.

Abdo Younes, *Personal Status in Legislation and Implementation*, Beirut 1996, p.74.

19. The general committee of the Court of Civil Cassation (Supreme Court) Decision No. 24/96 dated October 17, 1996 Judicial Review, Issue 11, No. 22/96 dated October 3, 1996, p.1146; and Justice, issue 1, 1997, p.9; and others.

20. Dr. Afif Shamseddine, *Jurisprudences of the Cassation Court's General Committee from 1961-1999*, p.300 onwards. Decision endorsed by the general committee of the Court of Cassation (Supreme Court) on August 3, 1995;

21. Judge Sami Mansour, *The Protective Role of the Civil Judiciary in Personal Status Issues, the Lebanese judiciary building the authority and developing institutions*, Center for Lebanese Studies 1999, pp. 309-10.

"Only two decisions made an exception to this rule: the first issued by the Beirut Appellate Court, chamber six, No. 104, dated June 10, 1974, to deprive the first family. The second issued by the second civil chamber at the Court of Cassation (Supreme Court) Decision No. 30 dated November 8, 1989 and authorized the inheritance of both families. The first decision was challenged by the Cassation Court, the second decision remained intact."

22. Abdo Younes, *Personal Status in Legislation and Implementation*, Beirut 1996.

23. A decision by the general committee of the Court of Cassation (Supreme Court) Decision No. 13 dated May 9, 1996 from a study by Dr. Sami Mansour about religion and the conflict of laws in the personal status course, *Droit et Religion*, oeuvres du colloque CEDROMA Mai 2000 Bruylant, 2003.

24. Muslims in Lebanon abide by the religious inheritance law of every confession, whereas the Christians abide by the inheri-

rance law of non-Muslims which is a civil law endorsed in 1959. This law was expected to become a public civil law applicable to all Lebanese, but its implementation created a problem to the Muslims, which killed the attempt. According to religion, a Muslim does not inherit a non-Muslim. The rule of treating the other equally was adopted in the inheritance law for non-Muslims, which meant there is no inheritance in the case of a mixed marriage.

25. Ibrahim Najjar, *Droit patrimonial de la famille Droit matrimonial-successions*, 2e édition 1997, p. 35.

26. Jurisprudence is unified about giving authority to the civil courts that implement the foreign civil law according to which marriage was contracted.

27. Article 79 of the law of civil procedure stipulates: "Civil Lebanese courts have the jurisdiction to examine litigation resulting from the contract of the marriage that took place in a foreign country between two Lebanese or between a Lebanese and a foreigner civilly according to the law of that country."

28. The issue of custody in the internal law still raises more than one problem, especially regarding women's right for the custody and guardianship of their children, and at the level of the implementation of verdicts granting custody to women. It is worth noting that confessional laws are unjust to women and their children and do not take into consideration the children's interest when deciding who should be granted custody, contrary to what was mentioned in the Declaration of Children's Rights which Lebanon signed.

29. Pierre Gannage, *Problemes soulevés au Liban par la garde des enfants nés d'époux de communautés ou de nationalités différentes. Le pluralisme des Status personnels dans les états multicommunautaires*, Bruylant 2001, p. 131 onwards.

The issue of the children's custody created a dilemma at the international level, which resulted in the signature of a number of documents aiming at protecting the children's stability and the rights of their mothers in particular, since courts in every country usually tend to grant the children's custody to their citizens. Among the treaties that came as a solution to the exacerbating problem was the one related to the civil aspects of kidnapping on the international level, The Hague, 1980.

30. The use of the expression child kidnapping has created problems in international conventions since some countries consider it an infringement on the rights of parents to exercise their legal rights.

31. According to Article 1010 of the Civil Procedure Code "Foreign verdicts that affect assets or intimidation of the persons involved cannot be implemented except after being granted the power of implementation on Lebanese soil according to the terms of this law.

32. The Lebanese courts refuse to allow implementation, on Lebanese soil, of any foreign civil verdict that rules to divorce two Lebanese who have been married in Lebanon before a religious authority. They consider that the jurisdiction of settling such litigation belongs exclusively to the authority before which marriage was contracted.

33. In a decision issued by the Civil Court of Cassation Chamber 1 No. 39/99 dated March 16, 1999, the Cassation Court said that the decision, which grants the power of implementation on Lebanese soil to a French verdict authorizing divorce between a Lebanese man and French woman who married in Kuwait before the Greek Catholic religious authority, is legal and constitutes no breach to the Lebanese public order. Al-Adl, *Bar Association Review*, 1999, issue 2, p.178.

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

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

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

Some lawyers consider that the articles present in the Penal Code (Articles 554-559) are sufficient to punish domestic violence. In fact, not only are the articles not enough, but the entire Lebanese judicial system is not

prepared – and is even hostile at times – to deliver sentences in cases of domestic abuse.

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

Lebanese society is a very conservative society that still condones honor crimes and shows a very tolerant attitude towards the killing of female relatives. Thirty-six honor crimes were reported in Lebanon between 1995 and 1998.¹ As this number includes only crimes reported to the police, researchers believe that the actual number of incidents is much higher. This kind of crime is not usually reported, or is often documented as accidental death or suicide.

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

Rape and the Discriminatory Legislation

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

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

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

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

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

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

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

Lebanon has many discriminatory laws that should be addressed, not to mention the absence of many other important laws that should be established to ensure bet-

ter protection for women at home and in the work place. During my work as a lawyer I was asked to handle many cases of sexual harassment, but I could not file a complaint under criminal law. The cases were qualified as subject to labor law, and the victim was to seek compensation for being dismissed from her job because she resisted sexual advances, but the offender was never punished for his criminal act.

The Situation of Foreign Domestic Workers

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

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

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

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

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

The report of the Committee on the Elimination of Racial Discrimination 2004⁵ expressed concern regarding the situation of migrant workers. The recommendations issued were as follows:

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

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

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

In the concluding observation of the Human Rights Committee of the International Covenant on Civil and Political Rights in 1997⁶ about Lebanon, the United Nations condemned this practice:

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

Two Malgashi workers decided to sue their employer for holding their passports. The confiscation of their passports made them unable to leave the country without being

caught and held in prison. Unfortunately they lost the case. The investigating judge in Lebanon said in her judgment: "It is natural that the employer confiscates the maid's passport and keeps it with him in the event that she runs away to work in another place without compensating him."⁸

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

Conclusion

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

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

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

Endnotes

1. Moghaizel, Fady and Abdel Sater, Mirella '*Honor crimes, jurisprudential study*' Moghaizel Foundation, Beirut, 1999.
2. Suline is a Lebanese University medical student who was abducted on 9 May 1998 on her way to class at the Islamic Hospital in Tripoli, in northern Lebanon.
3. Suline was forced to accept marriage. Ziad Zuhurman, the rapist, asked the local MP of northern Lebanon to oversee the marriage. However, Suline's mother reported her daughter's abduction and rape to the Lebanese Council to Resist Violence Against Women. The actions of the Council reverted Suline's situation to her favor. Besides providing her with free legal representation, the Council acted in the following ways to secure the result achieved:
 - It widely publicized the issue.
 - It appealed to the President of Lebanon, the House Speaker, the Prime Minister and also the Justice Minister for urgent action to be taken.
 - It appealed to human rights associations and held meetings on the issue.
 - It held a public debate at the Lebanese Law faculty in Beirut,

- calling for a cancellation of Article 522 of the penal code that legalizes a marriage between a victim and a man who has committed crimes of seduction, rape, forced prostitution and/or kidnapping if both parties consent to the marriage. By marrying a victim, a perpetrator is not punishable for his acts.
- It publicly protested against, and condemned, the involvement and support given by Akkar MP Wajih Baarini and his brother.
- It publicly demonstrated, outside the Tripoli Serail, where Ziad Zuhurman was being questioned and temporarily detained.
- 4. WorldSocialistWebsite <http://www.wsws.org/articles/2004/jan2004/srme-j13.shtml>
- 5. Sixty-fourth session, 23 February-12 March 2004, CERD/C/64/CO/3.
- 6. CCPR/C/79/Add.78. Concluding Observations/Comments.
- 7. Article 12 of the International Covenant on Civil and Political Rights:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.
8. Judgment Number 228 date 2 September 2001 - Beirut investigating judge.
9. National law reform report of The National Committee to Eliminate all Forms of Discrimination Against Women, Beirut, Lebanon.

Brief Summary on the Situation of Migrant Women Workers in Lebanon

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

I. Background

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

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

Who are they?

Prior to 1973, most female workers were

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

How many are they?

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

II. Working Conditions

Conditions of workers vary depending on category of employment. Migrant workers are not governed by Lebanese labor law. Their status is governed by a contract between the worker and the employer. The fact that migrant workers are not governed by labor law means that they are denied a right to earn Lebanon's minimal salary, they do not have a maximal number of working hours, they have no guaran-

teed time off or vacation, they are denied accident and end-of-work compensation, and they are barred from joining labor unions.

Women migrants often face difficult conditions, including:

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

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