Women's Rights
in Religious Personal Status Laws in Lebanon

Possible Reforms

Adyan Foundation
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Introduction

Introduction

Adyan Foundation's mission focuses on the values of diversity, solidarity and human dignity. The Foundation's work is based on the standard of equality in human dignity under a legal, constitutional system that embraces diversity, centered on individuals who enjoy rights and freedoms on equal footing with others in terms of duties and responsibilities before the Law.

In parallel, Adyan Foundation has been working for a decade on developing the concept of religious social responsibility, which it defines as being a religious commitment towards practicing the human values advocated by religions at the level of society as a whole, and not merely at the level of their own affiliated members.

The concept of religious social responsibility opens the way for the various religious authorities to work together towards the common good and core values and principles, namely mercy, justice, solidarity and human dignity. In this regard, Adyan Foundation has previously worked with the different religious authorities on earmarking a set of public life values and providing related material for sermons, as well as developing pedagogical material that can be integrated into religious education. The main focus was on the values of the common good, human dignity, acceptance of others, mutual trust, respect for laws and covenants, justice, interdependence, solidarity, pardon and forgiveness[1].

Religious social responsibility also urges attentiveness to the cases where religious practices fall short of the core values vehicled by religions themselves. One of the issues that exemplify this discrepancy is that of women's rights and their perceived status in Christianity and Islam, as well as in most of the world's religions.

This situation is not due to the essence of religions themselves, but to a patriarchal culture in the course of which religious interpretations crystallised, and which affected women's status in its applications. This patriarchy that is primarily cultural and subsequently expressed in some religious interpretations, bases itself on a hidden principle, which is to always count the male as 'the norm'. We see this in the grammatical rules of the Arabic language and others, where

[1] See the educational manual The Role of Christianity and Islam in Fostering Citizenship and Living Together, developed in collaboration with the Middle East Council of Churches, Dar el Fatwa, the Supreme Islamic Shiite Council, and the Unitarian Druze Council at https://adyanfoundation.org/library/training-manuals/the-role-of-christianity-and-islam-in-fostering-citizenship-and-living-together/ [ENG]; Islamic Social Responsibility of Citizenship and Living Together: A Guidebook at https://adyanfoundation.org/books/publications/islamic-social-responsibility-for-citizenship/?lang=ar [AR]; and the book Believers, Men and Women, on the Path of Common Good at https://adyanfoundation.org/books/publications/believers-on-the-paths-common-good/?lang=ar [AR]

it is sufficient to have one male element in a group constituted of hundreds of female elements, for the speech to or about them to be formulated in the masculine form. This also applies to many daily interactions where the reference and the norm is the male, not to mention that this invisible patriarchy and masculinism – which we all carry, men and women, and were raised to consider as the natural standard – is translated into perceiving women as less competent and qualified than men. Such was the culture of the entire world until the 20th century, and it led feminist movements to demand women's civil, political, economical and social rights. What was initially a of valuing women's capacity to care for the members of their family, became a restriction of the role of women to the private sphere, and their quasi-prevention from participating in the public sphere, while no religious justifications for this prohibition exist.

To return to the two major religions in Lebanon, Islam and Christianity, we do not find in their sacred texts a belittlement of women. The Holy Qur'an affirms that God created the male and the female from one soul[2], and the Holy Bible affirms that God created the human being as male and female in His image and example[3].

Based on this, numerous feminist[4] believers are conducting a re-reading of religious texts and putting forward interpretations that remove the layer of interpretations inspired by patriarchy, in order to show the justice inherent to the essence of religious messages. To give an example, Musawah[5], a global movement for equality and justice in the Muslim family, works with Muslim women from all over the world, specialized in jurisprudence and exegesis, to re-read Islamic jurisprudential and interpretive texts with the purpose of achieving just Islamic personal status laws in the countries with Islamic Sharia courts.

In Lebanon, we have fifteen Islamic and Christian religious courts for personal status with their sets of laws, and no civil court for personal status or family law. Therefore, Adyan Foundation saw it fit to work with religious court representatives and employees, under the headline of religious social responsibility, to think together about ways to integrate reforms aiming at lifting the injustice endured by women due to some laws and practices.

This work comes in parallel with that of legal and feminist organizations of Lebanese civil society, which have presented proposals for a unified civil code of personal status.

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[2] "O people, fear your Lord, Who created you of a single soul, and from it created its mate, and from the pair of them scattered many men and women; and fear God by whom you claim [your rights] from one another and kinship ties. Surely God has been watchful over you." (Surat An-Nisa' (Women), 4:1)

[3] "So God created man in his own image, in the image of God created he him; male and female created he them." (Genesis 1:27)

[4] Feminists are women who strive to eliminate gender-based injustice.

[5] https://www.musawah.org/

A study conducted by ARA Research and Consultancy firm at the request of Adyan Foundation included a survey that targeted 1000 respondents (50% males and 50% females) from the different Lebanese regions, sects and beliefs, to chart their views about personal status laws in the country. The survey found that 61% of respondents hold a negative view of compulsory civil marriage, but that 51% hold a positive view of optional civil marriage.

This means that if an optional civil marriage law were to be enacted in Lebanon, a great number of Lebanese men and women would still opt for religious marriage and prefer to be governed by religious personal status laws. And yet, only 50% of Lebanese men and women consider the practices of their sect's religious courts to be fair, and 45% of the respondents see these court practices as having a potentially harmful effect on society's perception of religion[6].

On account of this, and in the framework of its work with religious authorities on activating the principle of religious social responsibility, Adyan Foundation initiated, in partnership with the Danish organization Danmission and with the support of the Danish Ministry of Foreign Affairs, the project "Women, Religions and Human Rights." The project's objective is to think together of potential reforms to the religious personal status codes in place and the practices of the religious courts, by way of dialogue between religious, political, legal and civil actors, based on the universal core values and the social responsibility shared by these parties. The initiative is based on striving to depart from polarized positions, finding common ground between the parties, and opening the field of cooperation for the good of all.

The different phases of the project included the aforementioned survey, followed by a series of interviews conducted by Esquire Manar Zeaiter and Ms. Chantal Bou Akl with 38 judges and lawyers practicing in the Christian and Muslim religious courts. These interviews included questions that constituted the first nucleus of this report.

Adyan Foundation also facilitated three consultative meetings with men and women specialized in the fields of religion, politics, law, as well as civil society activists, which addressed the primary conclusions drawn from the aforementioned interviews. Some of the points raised in these meetings were included in the report. Due to the sensitivity of the topic in religious circles, we opted for quoting the religious authorities and lawyers (women and men) working in the religious courts anonymously when stating their views. On the other hand, the political personalities and civil judges we consulted with had no

[6] See The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon, a study conducted by ARA Research and Consultancy at the request of Adyan Foundation, Beirut, 2020, in Arabic on the following link: https://bit.ly/3O8Nydq

reservations about their names being stated. This explains why in our report some names are mentioned while others are not.

The consultation meetings were followed by a roundtable that brought together civil and religious judges from the different sects, along with religious leaders (men and women), jurists and civil society activists. Together they considered the best ways to eliminate discrimination, and to protect and promote women's rights. This resulted in a White Paper (see Appendix) that includes the recommendations put forth during the roundtable.

Adyan also organized, in partnership with the Lebanese American University (The Arab Institute for Women and the Department of Social and Education Sciences), an international conference that brought together religious leaders (women and men) experts, academics and activists from 13 countries, who are members of the Islamic, Christian and Hindu faiths. Together they thought about the new interpretations of religious texts that are characterized with fairness towards women and that deconstruct the prevalent patriarchal approach; they also discussed religious personal status law reforms in light of international human rights standards, as well as reforms to the judicial practices and procedures related to implementing religious personal status laws.

All these interviews, meetings and events were conducive to the present report: experts Manar Zeaiter and Chantal Bou Akl collected the material with the aim of presenting an accurate picture of the possible amendments to personal status laws and court practices, in order to lift the injustice suffered by women. The report focuses on what may be currently amended with relative ease, without necessitating a radical review of prevalent interpretations. As such, it did not address more complicated issues such as polygamy in Islam or the indissolubility of marriage in Christianity, but kept to the domain of the possible.

This report, in its three chapters, presents the following: First, an overview of the personal status system in Lebanon, illustrating its historical, political and legal frameworks, from the constitutional order, to the personal status mandate granted to the sects and the resulting complications, to the manner in which this system affects the condition of women. Second, an overview of the Islamic and Christian religious court systems in Lebanon, their establishment, laws, problematic issues and the areas where reforms are possible. Third, the basic legal personal status cases, such as the age of marriage, divorce, custody, guardianship and the economic rights of wives, divorcees and widows, in addition to inheritance in Islamic sects especially, with their main flaws and possible means of amendment. The report's Conclusion frames the main deductions and possible steps forward.

We hope that this report is one step that will be followed by other practical steps towards enacting the possible reforms and amendments to the laws and

mechanisms of the courts, and that it will also be followed by a continuous, ongoing process of reflection as to what can be improved. We believe that every amendment towards greater justice for women not only helps the religious courts to be more in tune with international human rights standards and particularly the Convention for the Elimination of All Forms of Discrimination Against Women, but also allows them to be more in line with the fundamental message of religions.

Dr. Nayla Tabbara
President of Adyan Foundation

Chapter 1

Personal Status Laws in Lebanon and their Impact on Women

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1- The Constitutional System and Sectarian Jurisdiction over Personal Status

1. The Constitutional System in Lebanon

Under the 1926 Constitution[1] and its amendments, the political system of the Lebanese Republic is founded on the principles of separation and balance of power, and cooperation among the executive, legislative and judicial branches of government. It is based on democracy and guarantees the representation of Lebanon's sectarian components in political power and administrative positions. This system has been in effect since the mid-nineteenth century, and its principles were gradually established with the founding of the State of Greater Lebanon, with the 1926 Constitution and the National Pact of 1943, and then through political practice after the Independence. This practice rose to the status of constitutional convention (political custom), until it was enshrined in the Constitution in 1990 under the Charter of National Reconciliation (known as the Taif Agreement[2]), which was drawn up in 1989.

The Lebanese Constitution laid provisions defining the rights and duties of Lebanese citizens. Under the constitutional amendment of 1990, a Preamble was added that stipulates in paragraph B that "Lebanon is Arab in its identity and in its affiliation. It is a founding and active member of the League of Arab States and abides by its pacts and covenants. Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception." Paragraph C stipulates that "Lebanon is a parliamentary democratic republic based on respect for public liberties, especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination." Moreover, the Constitutional Council of Lebanon's

[1] See https://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf [ENG]

[2] See https://www.un.int/lebanon/sites/www.un.int/files/Lebanon/the_taif_agreement_english_version_.pdf [ENG]

jurisprudential Decision N.1 dated 12/09/1997 considers the Preamble as an indivisible part of the Constitution, with the principles therein enjoying the same constitutional status as those of the Constitution itself.

In addition to what was stated in the Preamble to the Constitution regarding the principle of equality, Article 7 of the Constitution states: "All Lebanese shall be equal before the law. They shall equally enjoy civil and political rights and shall equally be bound by public obligations and duties without any distinction." Article 12 guarantees the right of every Lebanese citizen "to hold public office, no preference shall be made except on the basis of merit and competence, according to the conditions established by law."

On the other hand, Article 9 of the Constitution stipulates that the State is obligated to respect the religious interests and the personal status codes of every sect, and Article 10 states: "There shall be no violation of the right of religious communities to have their own schools provided they follow the general rules issued by the State regulating public instruction."

The first paragraph of Article 95 of the Constitution, as amended by the Constitutional Law of 21/9/1990, stipulates that "The Chamber of Deputies that is elected on the basis of equality between Muslims and Christians shall take the appropriate measures to bring about the abolition of political confessionalism according to a transitional plan. A National Committee shall be formed, headed by the President of the Republic, and shall include, in addition to the President of the Chamber of Deputies and the Prime Minister, leading political, intellectual, and social figures.

The tasks of this Committee shall be to study and propose the means to ensure the abolition of confessionalism, propose them to the Chamber of Deputies and to the Council of Ministers, and to follow up the execution of the transitional plan.[3]" Despite the agreement over this Article in the amendments stipulated in the Constitution after the Taif Agreement, it has not been implemented to this day, nor has the mechanism for its implementation been discussed.

The Lebanese legal system is as such characterized by the coexistence of two parallel legal systems: the first is a civil law system that comprises those laws that apply to all citizens, male and female, and regulates their public lives on different levels[4]; the second is a system of religious personal status laws for female and male citizens of each sect based on Article 9 of the Constitution, and which regulate marriage and its effects, that is all that is related to engagement, the marriage contract and its validity, the effects of annulment/dissolution or

[3] See https://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf [ENG]

[4] Inheritance cases of Christian denominations are regulated in the framework of a civil law: "The Inheritance Law for Non-Muhammadans" of 1959. http://77.42.251.205/LawView.aspx?opt=view&LawID=244354 [AR]

divorce, maintenance, compensation, custody, guardianship, trusteeship, etc...

Hence, the regulation of the personal status of Lebanese women and men is subject to religious legal systems identified by each sect. Accordingly, their personal status documents are registered under a specific sect, and they are thus legally subject to its regulations.

2. The Legislative and Judicial Personal Status Mandate Granted to the Sects

The mandate granted to the sects stems from the Lebanese Constitution, primarily from Article 9, which remains unamended despite the numerous amendments to the Constitution since its adoption. Article 9 of the Constitution explicitly decrees: "There shall be absolute freedom of conscience. The State in rendering homage to God Almighty shall respect all religions and creeds and shall guarantee, under its protection, the free exercise of all religious rites provided that public order is not disturbed. It shall also guarantee that the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected.[5]"

Article 9 of the Constitution effectively started the process whereby the Lebanese government mandates the officially recognized sects' return to the 1926 personal status law.

The latter had been followed by French High Commissioner Damien de Martel's Decree 60/LR on 13 March 1936, whereby he called on the officially recognized sects in Lebanon and Syria to submit to Parliament the complete texts related to their personal status codes. Under this decree, the Syrians and Lebanese affiliated to these recognized sects are subject to the religious legal code of their sects in matters related to personal status, and they are subject to the rulings of civil law when it comes to cases that do not fall under this code[6].

[5] https://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf [AR]

[6] Article 10 of Decree 60/LR (amended by Decree 146 by the High Commissioner in 1938). See Decree 60/LR: http://jafbase.fr/docAsie/Syrie/loi%20sur%20les%20sectes%20religieuses%201936.pdf [AR] and the 1938 Amendment http://77.42.251.205/LawView.aspx?opt=view&LawID=244457 [AR]

The Decree called on the sects it recognized[7] to organize their affairs and the affairs of their members in the fields of legislation and the judiciary exclusively. In parallel, the Decree included the category of ordinary law communities, which it subjected to civil laws[8], thus recognizing that it is possible that other communities exist "that are under ordinary law, that organize and administer their affairs freely within the limits of civil laws" (Article 14)[9] The Decree, however, did not give specific details about the "community subject to ordinary law", which includes Syrians and Lebanese who do not belong to a religious sect, and who are governed by civil law in matters related to personal status. And to this day, no civil law pertaining to personal status has been passed in Lebanon. Decree 60/LR also regulated conversions from one sect to another among the Lebanese, and recognized civil unions contracted between Lebanese persons outside Lebanon[10]. It also provided for the establishment of a Supreme Judiciary Court tasked with settling disputes between the personal status courts, or between these courts and ordinary courts. Decree 60/LR guaranteed freedom of religion and belief, which includes the freedom to convert, but it restricted it to the denominations and religions that are officially recognized, while other religions that exist among the Lebanese or among expatriates on Lebanese soil were not recognized. Article 11 stipulates the right "of whoever has reached the age of majority and is in possession of their mental faculties to leave or embrace

[7] Sects recognized legally or defacto: Christian sects: the Maronite Patriarchate, the Greek Orthodox Patriarchate, the Melkite Catholic Patriarchate, the Armenian Gregorian (Orthodox) Patriarchate, the Armenian Catholic Patriarchate, the Syriac Orthodox Patriarchate, the Syriac Catholic Patriarchate, the Assyrian Orthodox Church of the East, the Chaldean Patriarchate, the Latin Catholic Church. The Coptic Orthodox Church was added to the list under Article 1 of Law 553 (24/7/1996), see: http://77.42.251.205/LawView.aspx?opt=view&LawID=184505 [AR]. The Evangelical/Protestant sect was not included in Annex 1 to Decree 60/LR promulgated on 13/3/1936. In response, and after its leaders conferred with the competent authorities, the Evangelical Churches set up a meeting to study the means to secure the legal recognition of their sect. This resulted in the establishment of the Supreme Council of the Evangelical Community in Syria and Lebanon on December 14, 1937, which laid down the personal status code for the sect and submitted it to the legislative authority for ratification. Accordingly, the Evangelical sect was counted as a legally recognized sect and included in Annex 1 to Decree 60/L.R, pursuant to Article 28 of Decree146/LR, promulgated on 18/11/1938. Muslim sects: the Sunni sect, the Shiite (Jaafari) sect, the Alawite sect, the Ismailite sect, the Druze sect. Israelite sects: the Synagogue of Aleppo, the Synagogue of Damascus, the Synagogue of Beirut. For Decree 60/LR of 1936, see: http://jafbase.fr/docAsie/Syrie/loi%20sur%20les%20sectes%20religieuses%201936.pdf [AR] For Amendment N. 146 of year 1938, see: http://77.42.251.205/LawView.aspx?opt=view&LawID=244457 [AR]

[8] Paragraph 2 of Article 10 of the Law Regulating Religious Communities as amended by High Commissioner Damien de Martel by Decree 146 on 18/11/1938 states: "All Syrians and Lebanese persons belonging to community under ordinary, as well as the Syrians and Lebanese who are not affiliated with a sect, are subject to civil law in matters of personal status."

[9] "Communities that are under ordinary law can organize and administer their affairs freely within the limits of civil laws"

[10] Article 5 of Amendment 146 dated 18/11/1938 (previously Article 25 of the Law Regulating Religious Communities by High Commissioner Damien de Martel's Decree 60/LR on 13/3/1936): "Should a marriage be contracted in a foreign country between a Lebanese and a Syrian, or between a Lebanese or Syrian and a foreigner, and if it was celebrated according to the norms followed in that country and was thus valid, and if the personal status code the husband is affiliated with does not recognize the marriage contract and its effects as they pertain to the law regulating the marriage contract, then the marriage will be subject to civil law in Syria and Lebanon."

a community with an officially recognized personal status code....[11]". And in 1996, Law 553 was promulgated, which added the Coptic Orthodox Church to the list of officially recognized sects.

According to Article 4 of the Decree, each sect had to submit its legal documents and codes to the governmental authority[12]. Article 5 then indicates that the code adopted by these sects is to be ratified through a legislative decree that would render it a law in force. Article 6 further clarifies: "Any amendment to the legal code of recognized sects (...) shall be effected by a legislative instrument." However, the sects' adherence to these articles was not absolute, and many religious laws remain outside the control of the legislative authority.

Decree 60/LR was thus a cornerstone of the process of delegating legislation and the judiciary, in all personal status cases pertaining to citizens affiliated to the sects officially recognized based on the sole criterion of being "historical sects", to these religious sects. But while the aforementioned Decree conferred on the sects the status of a legal personality, with the right to legislate and judge, it restricted them somewhat, which caused religious authorities to revolt against it.

When the Decree was issued, the leaders of the Christian sects rebelled against it on the principle that it is inadmissible for religious authority to be subject to civil authority, and they considered this measure as infringing on their religious rights as guaranteed by Article 9 of the Constitution.

Muslims also objected to the Decree and considered it as going against Islamic Law (Sharia), especially with regard to permitting freedom in religious matters, such as converting to another faith. Under pressure from religious authorities to abolish the Decree, the High Commissioner began to prepare a new text in early 1938, and issued Decree 146/LR on 18/11/1938, taking into account the remarks of the sect leaders. The new decree canceled a number of provisions of Decree 60/LR, which Muslims had considered offensive to the principles of Sharia[13]. Subsequently, continued protests by Muslims led High Commissioner Gabriel

[11] "Whoever has reached the age of majority and is in possession of their mental faculties can leave or embrace a sect with an officially recognized personal status system. This renouncement or adherence will have its civil effects and this via the corrections of their relevant personal status entries listed in the civil status registry by submitting a declaration to the civil status department in their area of residence, and when required a certificate of acceptance by the relevant authority within the sect they wish to join." (Article 11 of the Law Regulating Religious Communities, Decree 60/LR dated 13/3/1936.

[12] Article 4 of Decree 60/LR stipulates: "In order to obtain this recognition, every sect must submit to the scrutiny of the governmental authority a legal code drawn from the texts according to which the sect is administrated. The system should specify the following:

1- The hierarchy of ranks of religious heads and religious staff, the manner of their appointment and their powers.
2- The formation of councils, courts, committees, etc...and their jurisdiction.
3- The jurisdiction of religious courts and their trial procedures.
4- Legislation pertaining to personal status in everything related to the laws of the religious community.
5- The way in which the properties of the community are managed.
6- The teachings of the religious community and the moral duties imposed on its members."

[13] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244457 [AR]

Puaux to issue Decree 53/LR on 30/3/1939, whereby Muslims were exempted from applying Decrees 60/LR and 146/LR, given the great number of objections presented, which made it impossible to review the Decree without reconsidering it in its entirety. Decree 53/LR consequently stipulates in Article 1 that "Decree 60/LR promulgated on 13/3/1936 to regulate the religious communities as well as Decree 146/LR promulgated on 18/11/1938 amending and supplementing Decree 60/LR, do not apply to Muslims and it shall remain so[14]."

After the application of Decree 60/LR on Muslims was suspended, it was no longer possible for Islamic sects to submit their legal codes to the State (as Christian sects did), rather it became the State's obligation to regulate these sects directly by issuing legislation allowing them to establish their various institutions, courts and administrative bodies. This took place gradually with the Sunni sect (1955), the Druze sect (1962), the Shiite sect (1967) and finally the Alawite sect (1996). Regulating the affairs of Islamic sects was not limited to the establishment of their institutions and courts but included defining the content applied by these sectarian courts.

As for the heads of the Christian sects, after objecting to the 1936 Decree, a number of them reconsidered their position in 1939, stating that "it is unreasonable and unacceptable to transfer religious intolerance to the field of politics. Rather it is the function of the civil authority to guarantee a balance between religious sects and the Law, to maintain order and justice.[15]" When it came to presenting legal documents regarding personal status, the drafts presented by the Christian denominations did not provide texts as stipulated in Article 4 of Decree 60/LR, and the legislative process in this regard did not start until after the Independence with the 2/4/1951 Law[16] Defining the Congregational Privileges of Christian and Israelite[17] Communities.

3. Personal Status Laws in Force in Lebanon

Although there are 18 sects that are recognized on the basis of being historical sects, there are in fact 15 personal status courts[18], and the laws that these courts rely on are listed below[19]:

[14] See http://77.42.251.205/LawView.aspx?opt=view&LawID=187138 [AR]

[15] For the objections to Decree 60/LR in Lebanon and Syria, see: "Religious Authorities Perpetuate the Sectarian System", an article by Joelle Boutros published in the Legal Agenda magazine on 12/3/2020: https://bit.ly/3cxHUo8 [AR]

[16] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258197 [AR]

[17] See "The Israelite sect" is Lebanon's official name for the members of the Jewish faith, in reference to 'the children of Israel'.

[18] There exists 15 religious courts distributed as follows: 1 court for each of the 6 Catholic sects, 1 court for each of the 5 Orthodox sects, 1 court for the Evangelical sect, 1 court for the Shiite sect (that also hears cases for members of the Alawite sect), and 1 court for the Druze sect.

[19] It also includes the legal rulings on personal status for members of the Israelite sect promulgated on 1/1/1990 as well as the procedural laws for the Israelite sect promulgated on 1/1/1990.

a- Christian Personal Status Laws

Catholic sects: These laws apply to the six Catholic denominations, namely the Maronite sect, the Melkite sect, the Armenian Catholic sect, the Syriac Catholic sect, the Latin sect and the Chaldean sect:

- Personal Status Code of the Catholic Sects promulgated on 22/2/1949[20].
- "On the Discipline of the Sacrament of Marriage in the Eastern Catholic Churches" (Crebrae allatae sunt: de disciplina sacramenti pro ecclesia orientali), Apostolic letter issued on 22/2/1949[21].
- Code of Canons of the Eastern Churches, which came into force on 1/10/1990[22].
- Law on Marriage in the Lebanese Latin Community of 1/1/1990[23].
- Code of Procedure for Tribunals of the Eastern Catholic Churches of 6/1/1950[24].
- Code of Procedure for Tribunals of the Lebanese Latin Community of 1/1/1990[25].

Orthodox and Eastern Orthodox sects:

- Personal Status Code and Code of Procedure for Tribunals of the Greek Orthodox Patriarchate of Antioch and All the East of 16/10/2003[26].
- Personal Status Code of the Armenian Orthodox Church of 22/2/1949[27].
- Code of Procedure for Tribunals of the Armenian Orthodox Church of 1/1/1990[28].
- Personal Status Code of the Syriac Orthodox Church of 10/9/2003 (adopted by the Synod of Antioch and ratified by Patriarch Ignatius Zakka I)[29].
- Personal Status Code of the Coptic Orthodox Church in Lebanon of 11/9/2010[30].
- Code of Procedure for Tribunals of the Coptic Orthodox Church in Lebanon of 11/9/2010[31].

[20] See https://bit.ly/3zmKR3l [AR]
[21] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=165615 [AR]
[22] See https://www.jgray.org/codes/cceo90eng.html [AR]
[23] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=258200 [AR]
[24] See http://77.42.251.205/Law.aspx?lawId=243792 [AR]
[25] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=258202 [AR]
[26] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]
[27] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258204 [AR]
[28] See http://77.42.251.205/Law.aspx?lawId=258205 [AR]
[29] See قانون الأحوال الشخصية للسريان الأرثوذكس – دائرة الدراسات السريانية (dss-syriacpatriarchate.org) [AR]
[30] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246386 [AR]
[31] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246399 [AR]

- Personal Status Code of the Assyrian Orthodox Church of the East in Lebanon of 2/11/1974[32].

The Evangelical sect:

- Personal Status Code of the Evangelical Church in Lebanon and Syria of 1/4/2005[33].
- Code of Procedure for Tribunals of the Evangelical Church in Lebanon and Syria of 1/4/2005[34].

b- Personal Status Laws adopted by Islamic sects:

The Sunni and Shiite sects:

- The Ottoman Law of Family Rights of 25/10/1917[35].
- Law Regulating the Sunni and Jaafari Judiciary of 16/7/1962 and its amendments[36].

The Sunni sect:

- Legislative Decree 18 of 13/1/1955 regulating Fatwas and Islamic Endowments, amended by the Supreme Islamic Sharia Council by Decree 5 of 2/3/1967 and a number of other decrees[37].
- Decree 46 of 1/10/2011 on the Code of Family Provisions[38].
- The Islamic Civil Law Code *(Majallat al-Ahkam al-'Adliyya[39])* which is sometimes referred to by judges.

The Twelver Shiite sect:

- Law 72 of 19/12/1967 Regulating the Islamic Shiite Sect in Lebanon and its amendments[40].
- The Jaafari jurisprudence[41].

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[32] See http://77.42.251.205/Law.aspx?lawId=255320 [AR]
[33] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR]
[34] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246065#Section_294045 [AR]
[35] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258195 The Ottoman Family Rights Law of 25/10/1917 still applies to the Sunni denomination in the absence of documents, and this based on the provisions of Decree 117 of 29/8/2011 amending Article 242 of the Law Regulating the Sunni and Jaafari Judiciary. It applies to the Jaafari denomination in accordance with the tenets of Jaafari doctrine. See "Personal Status in Islamic and Christian Denominations" by Judge Saji Al Aawar – 2016, p.15.
[36] See http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244292 [AR]
[37] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244319 [AR]
[38] See http://77.42.251.205/LawView.aspx?opt=view&LawID=230626 [AR]
[39] See www.moj.ps/images/majallatalhkam.pdf
[40] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=166931 [AR]
[41] Meaning the currently upheld jurisprudence by Twelver Shiite religious authorities.

The Unitarian Druze Sect:

- Personal Status Code of the Druze Sect of 24/2/1948[42], amended by Law 58 of 17/10/2017[43].
- Law Regulating the Druze Judiciary implemented per Decree 3473 of 5/3/1960[44].

The Alawite sect:

- Law 449 of 17/8/1995[45] Regulating the Islamic Alawite sect in Lebanon, amended by Law 427 of 6/6/2002[46].
- Law 450 of 17/8/1995[47] on the establishment and regulation of Alawite Jaafari courts.

2- The Role of the State Recedes before the Sects' Mandate

1. Lack of Parliamentary Involvement in Legislation and Oversight

Parliament is an essential - and possibly the only - authoritative reference in a parliamentary system. It is therefore responsible for instituting and upholding the principle of equality in the face of any group seeking to promote its personal agenda. It addresses this by securing the balance between rights and public freedoms on the one hand, and political authority on the other, and by prioritizing the public good over personal interests when the two are in conflict. The task of parliamentary legislation includes sustained oversight over the personal status laws issued by the sects based on the mandate given to them for this purpose.

Parliament also represents the fundamental guarantee for the protection of the existing system and the establishment of the foundations of democracy and its complements (freedom and equality), through its institutional, legislative and monitoring powers. Hence, to safeguard the role of the State and the rule of law, it may not relinquish these powers to any other party.

Lebanese Parliament has failed to fulfill this role and instead has relinquished its legislative powers over personal status in accordance with the mandate given to sectarian and religious authorities. The Sunni sect was

[42] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258196 [AR]
[43] See http://77.42.251.205/LawView.aspx?opt=view&LawID=274009 [AR]
[44] See https://bit.ly/3PNsdHL [AR]
[45] See http://77.42.251.205/LawView.aspx?opt=view&LawID=185017 [AR]
[46] See http://77.42.251.205/LawView.aspx?opt=view&LawID=183333 [AR]
[47] See http://77.42.251.205/LawArticles.aspx?LawArticleID=752664&LawID=185015&language=ar [AR]

granted the right to legislate its religious affairs and endowments as per legislative decree 18 of 13/1/1955; the Druze sect was granted the right to regulate its affairs as per the law of 13/7/1962; the Shiite sect was granted the right to regulate its affairs as per the law of 19/12/1967; and the sectarian authorities of the Christian and the Israelite sects were granted the right to legislate and judge on matters of personal status by the law of 2/4/1951[48].

The law of 2/4/1951 was promulgated to define the powers of the Christian sectarian authorities and the Israelite sect, drawing clear boundaries between civil laws and sectarian laws in terms of legislation and the judicature regarding personal status[49]. Many sides objected to this law among them the Bar Association, which considered that the law effectively enshrined the jurisdiction of the Christian and Israelite clergy over legislation and the judiciary in the area of personal status. For the record, the Bar Association had prepared in 1951 a draft law consisting of 3 articles. Article 1 stipulated that "the jurisdiction of religious and sectarian courts is limited to looking into engagement contracts and their termination, marriage contracts and their annulment, divorce and desertion." But the government insisted on upholding the law of 2/4/1951, which in addition to the above includes the civil effects of marriage, such as filiation, custody, trusteeship and maintenance. As a result, the Bar Association announced an openended strike to protest the law, but the protests, disturbances and strikes that lasted for three months did not lead to the law being repealed or amended[50].

As per the law of 2/4/1951, non-Muslim denominations must submit their personal status codes to Parliament for discussion and verification of their compliance with the Constitution and the civil laws in force.

Article 33 of the law of 2/4/1951 stipulates: "The sects included in the present law shall submit the personal status code and the procedural law of their religious courts within a period of 1 year from the date on which this law is put into effect... provided that it conforms to the principles of public order and the basic laws of the State and the sects." Article 33 also stipulates: "The present

[48] Hani Fares, Sectarian Conflicts in Modern Lebanon, Al-Ahliyya Publishers and Distributers, p.144.

[49] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258197 [AR]

[50] Following the promulgation of the 1951 law that expanded the jurisdiction of Christian religious courts, on par with the jurisdiction of Sunni and Jaafari religious courts, which were sponsored by legislative decree 6 of 6/2/1930, the Bar Association objected as it considered that the law took away from the authority of the State. The Bar Association presented its draft law on personal status and it was approved by the Justice Ministry. It was then submitted to the Council of Ministers, but did not find its way into Parliament. The Bar Association then declared a general strike that lasted for almost three months, and ended when word came from the Prime Minister's Office that the draft law was placed on the parliamentary agenda. It has not been discussed to this day. For more information see: Ibrahim Traboulsi, Marriage and Its Effects in Communities Governed by the Law of April 2, 1951 in Lebanon, 2nd and Improved Edition, Sader Legal Publishers, Beirut, 2000, p.28. [AR]

law ceases to apply to any sect who fails to observe or exceeds the deadline to observe the provisions of this Article."[51]

The importance of this article lies in stipulating the legislator's obligation to monitor on a regular basis the laws promulgated by the sects, in order to preserve Parliament's legislative role, which preserves the legislative system and individual rights. In line with this obligation, non-Islamic sectarian authorities must compile and organize their various legal texts on personal status to ensure easy access and to avoid scattering them among several sources. This provides people with a guarantee and greater ease to access information pertaining to their personal lives, in anticipation of their submission to Parliament for review. This concerns primarily the Catholic denominations, who mostly rely on foreign sources of legislation[52].

In regards to Islamic sects, when they ceased to be governed by Decree 60/LR as a result of Decree 53 of 30/3/1939, the Lebanese Parliament waived its responsibility to guarantee the compliance of Islamic personal status laws with the Constitution. Muslims belonging to the Sunni sect, as per the provisions of legislative decree 18/1955[53], amended pursuant to Decree 5 issued on 2/3/1967[54], especially Article 1 thereof, are entirely independent in legislating and managing their religious affairs and endowments, in compliance with Sharia and its regulations.

The Islamic Shiite sect is in turn independent in regulating its religious affairs, institutions and endowments, and has representatives among its members who speak and act in its name, in compliance with Sharia and the Jaafari school of jurisprudence, within the bounds of the fatwas issued by the sect's highest authority worldwide[55].

The same applies to the Druze sect as per the law of 12/6/2006[56], whereby it became entirely independent in legislating its religious affairs and endowments.

Lebanese Parliament subsequently promulgated laws regulating court procedures for the Jaafari, Sunni and Druze courts, which remain in force. However, when it came to determining the core laws of the personal status codes for Sunnis and Shiites, Parliament contented itself with referring to the jurisprudence schools followed by the two sects (Hanafi and Jaafari) and the provisions of the Ottoman Family Law in agreement with these schools, rather

[51] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258197 [AR]
[52] Catholic sects abide by all the laws, decrees and decisions issued by the Supreme Pontiff represented by Apostolic letters, the most recent being "The Gentle Judge, our Lord Jesus" that has come into effect and by which the canons of the Code of Canon Law pertaining to cases regarding the nullity of marriage (1983) are reformed, in order to ease some of the court procedures for litigants.
[53] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244319 [AR]
[54] See http://77.42.251.205/Law.aspx?lawId=194571 [AR]
[55] See http://www.legallaw.ul.edu.lb/LawView.aspx?opt&LawID=166931&TYPE=PRINT&language=ar [AR]
[56] See http://77.42.251.205/Law.aspx?lawId=246052 [AR]

than codifying or reviewing their content (Article 242 of the Law Regulating the Sunni and Jaafari Sharia Judiciary[57]). Given the plurality of sources for Sunni and Shiite law, this was widely left to the discretion of the religious judges, resulting in discrepancies in the application of the rules.

It should be noted that the 2011 Code of Family Provisions that governs the Sunni sect in Lebanon[58] retriggered questions about Parliament's authority to legislate the personal status laws applied in the religious courts. The Council of Ministers submitted to Parliament a draft law on amending a number of provisions related to *mahr*[59] (dowry), maintenance and raising the cut-off age of maternal custody in the Sunni sect. But a Sunni MP objected, saying that it is not permissible for non-Sunni MPs to discuss the draft law in Parliament, considering the move an infringement on the legislative jurisdiction of the sect. This position prevailed, and Article 242 of the Law Regulating the Sunni and Jaafari Judiciary was amended so that the decisions of the Supreme Islamic Sharia Council, which is under the mandate of the Council of Ministers, became the essential reference for judges in Sunni religious courts.

This trajectory shows how the Lebanese Parliament relinquished its legislative rights and granted religious authorities the power to legislate unsupervised, in breach of public order and basic laws, including the Constitution and Lebanon's international obligations. This legal authority given to the sects crystallized Parliament's waiver based on Article 9 of the Constitution. There were no serious efforts to consider the opposite reading, namely that the powers granted to the sects are legislative, not constitutional powers, and that they are not absolute powers in light of Parliament being the Constitutional body responsible for legislation.

Playing the role of legislator brings the sects closer to the rank of Constitutional powers, which is not explicitly stipulated by the Lebanese Constitution. Rather the Constitution, amended post-Taif in 1990, states in Article 9 that the State "....shall guarantee, under its protection the free exercise of all religious rites provided that public order is not disturbed. It shall also guarantee that the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected." This means that the Constitution as amended after the Taif agreement confines regulation and monitoring to the Lebanese State,

[57] See http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244292 [AR]
[58] See http://77.42.251.205/LawView.aspx?opt=view&LawID=230626 [AR]
[59] A sum of moveable or non-moveable property payable by the husband to the wife prior to marriage and cohabitation; the value of which is determined in the marriage contract

represented by the legitimate powers within it, namely Parliament, the sole legislative authority to date[60].

Legislation is under the exclusive jurisdiction of the State via Parliament. The Constitution neither establishes sectarian institutions nor grants them legislative powers. What it does, through Article 9, is impose on the sole legislative authority the obligation to respect the content of sectarian personal status codes and grant them enough authority to guarantee their autonomy.

However, the Lebanese Parliament went further by granting the sects legislative mandate based on different formulations of legislation. Nothing prevents Parliament from withdrawing this legislative mandate, and from taking it upon itself to ratify the texts it deems appropriate, provided that Article 9 of the Constitution is respected. The State in Lebanon is a secular State, a unified legal apparatus that does not include multiple legislative powers; the secular nature of the State is the basic rule, and sectarian legislation is the exception[61].

To consolidate this point, the Lebanese Constitutional Council has asserted through its Decision 2/2000 that Article 9 of the Constitution, while allowing sects the autonomy to manage their religious affairs and interests, by no means precludes the State from enacting various legislations related to organizing these sects in accordance with the provisions of the Constitution[62].

It is therefore clear that Parliament is adopting a non-interventionist stance, as religious institutions are considered entitled to exclusive jurisdiction over

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[60] For example, in regards to the affairs of the Sunni sect: As per the law of 28 May 1956, the decisions of the Su-preme Islamic Sharia Council on everything related to fatwas and the regulation of the sect's affairs and administra-tion of its endowments are self-executing, provided they do not conflict with the provisions of public order. This means that the law has granted the body authorized to administer the affairs of the Sunni sect the power to amend the legislative decree without referring to Parliament, that is it granted it legislative mandate. Indeed, the Supreme Islamic Sharia Council has amended this legislative decree more than once, through promulgating decrees that were published in the Official Gazette. The State Council considered these amendments to have the status of legislative texts that cannot be appealed (Decree 16 of 12/10/2006). This Decree can be criticized for considering these decrees not subject to appeal, however the State Council considered that the legislative decrees issued by the government in accordance with a mandate from Parliament remain, up until they are ratified by the latter, administrative acts sub-ject to appeal, which should also have applied to the decrees of the Supreme Islamic Sharia Council. We note that the source of the authority of the Supreme Islamic Sharia Council is a law that Parliament has the right to amend, as it has the right to withdraw the mandate if it so decides. Another example is the Law of 2017, which amended the Druze denomination's Personal Status Code of 1948.

[61] "Do Sects Have Legislative Authority?" by Wissam Lahham, Professor of Constitutional Law in the Jesuit University in Al-Akhbar Newspaper. See https://al-akhbar.com/Opinion/273972 [AR]

[62] "While this text [Article 9] gives the sects autonomy in managing its religious affairs and interests, it does not preclude the State from enacting various legislations related to regulating these sects in accordance with the provisions of the Constitution." Lebanese Constitutional Council Decision 02/2000 dated 8/6/2000 – Constitutional Council Decisions, Part 1. This interpretation was reconfirmed by Constitutional Decisions 01/1999 and 02/2000 in the context of the two appeals submitted by the Druze sect against the laws on regulating and managing its interests:
- The first law is on realizing the sects' autonomy in the areas specified in the Constitution.
- The second law is on safeguarding the State's legislative role as per Article 16 of the Constitution.
See https://bit.ly/3RJjJTP and https://bit.ly/3aUPtok [AR]

legislation of personal status matters: whether in the case of Islamic sects, where no legal text exists that obligates them to submit their legislations to Parliament before enacting them, or in the case of Christian sects, which – although such legal texts do exist – rarely comply with this obligation. The Lebanese Parliament's non-intervention regarding these legislative powers is expressed in two ways: by allowing sectarian institutions legislative authority, and by failing to pass a civil law on personal status to this day.

The original intention behind the State granting the mandate to the sects was to strengthen diversity and inter-denominational equality. It in no way indicates the withdrawal of the State – with its legislative, executive and judiciary institutions – from fulfilling its legislative role in these cases, or from monitoring the compliance of religious legislation with public order and constitutional and legal principles, and primarily with the rights of individuals, women especially, in accordance with the Lebanese government's international obligations as enshrined in the Preamble to the Lebanese Constitution.

To conclude, the constitutionally guaranteed right of the different religious sects to legislate their personal status codes is not an absolute or exclusive right. It is true that the right of sects to regulate their affairs is unequivocally set in the Constitution, but it must intersect with the legislative sovereignty of the State. This means that the personal status codes and laws of these sects must remain outside the State's framework until they are adopted in Parliament following constitutional and legal procedures, and are put into effect[63].

The Lebanese Parliament members we met for the purpose of preparing the present report reacted in two different ways to the above conclusion:

A number of Representatives consider that Parliament never relinquished its legislative role to the sects, and that Article 9 of the Constitution gives the sects absolute rights over personal status matters. They also consider that any intervention on the part of Parliament will negatively impact 'national principles' and the rights of communities.

The other group holds that Parliament has the right of oversight on all legislation, and that the relationship between Parliament and the sects is not a competitive one, because the latter's jurisdiction over legislating personal status affairs is not exclusive: "for the Constitution has recognized the right of sects to legislate in the personal status field but not as their exclusive right. It can be said that the Constitution gave sects the right to participate in legislation, but the fact

[63] See: Pierre Gannagé: "The Access of Legally Recognized Sects to the Constitutional Council", a study published in the Yearbook of the Constitutional Council, 2013, Volume 7, Section 3: "Studies in Constitutional Justice", pp. 145-154. [AR]

remains that the International Bill of Human Rights takes precedence over any domestic law[64]".

In recent years, Parliament has started responding to some special efforts in support of women's rights, by adopting a number of laws for the protection of women and individuals belonging to the most vulnerable groups. These laws intersect largely with personal status legal systems. The first law that was promulgated sparked a national debate about the role of the State in protecting women from domestic violence and the reservations of the sects that saw these efforts as infringing on their jurisdiction over personal status matters. On April 1, 2014, after 7 years of official and non-official efforts, the Lebanese Parliament promulgated Law 293 on the Protection of Women and Family Members from Domestic Violence, which was published in the Official Gazette on 7/5/2015[65].

And on December 30, 2020, Parliament approved a number of amendments to Law 293, aiming to provide effective protection for victims of domestic abuse and their children[66]. However, Article 22 of the amending law took into account personal status laws by keeping in place the jurisdiction of personal status courts, even though the UN Handbook for Legislation on Violence Against Women requires prioritizing human rights criteria in the event that religious or customary law should conflict with the formal justice system. Still, Law 293 constitutes the first step in the Lebanese Parliament's engagement with women's issues and its adoption of a law for the protection of women inside the family unit.

2- The Non-Interventionism of the Court of Cassation

The Court of Cassation – in its capacity to resolve disputes – is the competent authority to verify whether the rulings issued by the different religious courts respect the fundamental laws of the State.

As per Article 95 of legislative decree 90 of September 16, 1983, Section 4 of the Lebanese Code of Civil Procedure[67], the Plenary Assembly of the Civil Court of Cassation monitors the decisions and rulings issued by the Christian and Muslim courts, focusing on two main points:

- Verifying the legitimacy of the source issuing these provisions or rulings in terms of its jurisdiction and authority.

[64] Deputy Georges Okais during a meeting held with a number of deputies on January 11, 2021.
[65] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246505 [AR]
[66] See Law 204 of 30/12/2020 amending Law 293/2014 at http://77.42.251.205/LawView.aspx?opt=view&LawID=286768 [AR]
[67] Section 4 of Article 95 of Lebanese Civil Procedure Law issued per legislative decree N.90 of 16/9/1983, amended by Law N.4/1989 at http://77.42.251.205/LawView.aspx?opt=view&LawID=244565 [AR]

- Checking if the appealed rulings violate the fundamental principles of public order[68].

Therefore, the framework whereby the Plenary Assembly of the Court of Cassation monitors the final rulings of sectarian religious courts is defined by the following:

- Deciding on the appeals lodged against these rulings on grounds of lack of jurisdiction or authority[69].
- Deciding on the appeals lodged against these rulings on grounds of their violating the fundamental principles of public order, that is formal violations of the Code of Court Procedure.
- Limiting challenges to final rulings (that is rulings or decisions that cannot be subject to either ordinary or extraordinary appeal procedures). If a decision or ruling has not acquired a permanent status, it cannot be challenged. (For instance, one cannot appeal against a travel ban because it is a temporary and not a permanent measure, and so would count among the decisions referred to in Article 95 of the Code of Civil Procedure.)

Basing itself on Article 95, the Plenary Assembly of the Court of Cassation limited its oversight to the formalities, without addressing the content of rulings. Its oversight thus included the rules of due process guaranteeing the right to a defense, without addressing the content of the rulings and whether they are compatible with basic individual rights.

Seeing that not all draft laws issued by sectarian authorities were being submitted to Parliament for discussion and ratification, the Court of Cassation had considered through its jurisprudence that "Draft laws are considered in force with all the provisions thereof provided they do not violate the Lebanese public order and the basic laws of the State and sects, and these draft laws are considered but a codification of the customs and traditional rulings practiced by sects[70]."

The Court of Cassation therefore gradually retreated from its role, while adopting jurisprudence that enshrines the ability of the Judiciary to issue rulings

[68] The fundamental principles of public order include for example the right to self-defense (of one's person or interests), which includes the right to attend trial sessions, the right to submit documents and to respond to the litigant's testimonies, the right to appeal in the different ways decreed in the Procedural code; an example of violating these principles would be the formation of a court in violation of the procedural code.

[69] 'Jurisdiction' includes the matter that it falls to sectarian or religious authorities to rule on; 'authority' indicates the litigants being subject to the authority of the sectarian or religious court.

[70] "The Lawyer and the Lebanese Judicial Gazette, 1955 - 1962", in Ibrahim Traboulsi, Marriage and its Effects in Communities Governed by the Law of April 2, 1951 in Lebanon, 2nd and Improved Edition, Sader Legal Publishers, Beirut, 2000, p.31.

that in one way or another touch upon personal status matters, especially when it comes to the protection of juvenile offenders or juveniles at risk. However starting in 2007, the Court of Cassation's jurisprudence took a positive turn, as it resorted to the notion of "minors at risk" to reject the challenge lodged by religious courts against the rulings of the Juvenile Court Judge[71]. There were also several attempts on the part of the Plenary Assembly of the Court of Cassation to maintain the authority of the civil judiciary in some cases pertaining to personal status. In one of its decisions, it adopted the general principle that civil courts are essentially the ones with universal jurisdiction to put people on trial, whereas religious courts have a narrow and limited jurisdiction[72].

For instance, in 2007 the Juvenile Court Judge in Beirut issued a ruling halting the execution of a ruling by the Sunni Sharia Court. In his ruling, the judge considered that Law 422/2002 on the Protection of Children in Conflict with the Law or at Risk is a special law that requires observance of all its provisions and that takes precedence over any other public document should they conflict[73]. The judge based his ruling on the best interests of the minor and considered that a final and definitive verdict by religious courts is in no way binding to the Juvenile Court, the competent authority to take the necessary measures pertinent to the case of the minor at risk. This ruling sparked a media frenzy alongside objections by the religious authorities concerned, who considered it a violation of their legal and judicial authority. This prompted the Ministry of Justice to issue a statement, which was then ratified by the Plenary Assembly of the Court of Cassation. On 23/4/2007, Decree 22 was issued by the Plenary Assembly of the Court of Cassation, authorizing the Juvenile Court Judge to take measures for the protection of juveniles even if they have committed no offense. Among these measures was included the right to hand over the child to their father, mother or to a social institution. According to this jurisprudence, such measures are not counted as infringing upon the authority of the religious court in matters of custody, because they are taken by the judge for the protection of the minor, and their decision in this regard is not an interference with the jurisdiction of

[71] The Court of Cassation considered that "based on Law N.422, the First Instance Criminal Court Judge has the right to take measures to hand the minor over to their mother or father or even to a social institution, without the Single Judge's decision being considered an infringement upon the authority of the religious/Sharia court over matters of custody. For the measure taken is for the protection of the juvenile and does not affect the powers of the Sharia court, as it is limited to protection measures and does not exceed them towards the legal authority of the minor's guardian. If the father is the minor's legal guardian by virtue of a legal decision, he remains so. As for the measure taken by the Single Judge, it is limited to protecting the minor from the effects of a specific environment that may endanger them in the future, according to the assessment of the competent Single Judge." (Court of Cassation, decision issued on 7/7/2009).

[72] See http://7xb.7d4.myftpupload.com/wp-content/uploads/2018/03/LEBANON-The-Independence-and-Impartiality-of-the-Judiciary-EN.pdf

[73] Ruling dated 24/10/2007, which decreed that the ruling by the Sharia Court in this case, namely to grant a father custody of his daughter who is a minor and suffers from an acute psychological reaction against him, puts her at grave risk.

the religious court because it is limited to protecting the minor from a particular environment, which should they continue to live in, might cause them harm in the future[74].

Also, on 7/7/2009, the Plenary Assembly of the Court of Cassation issued a decision to reject the challenges lodged by the sects against the rulings of the Civil Juvenile Court to take measures for the protection of any child, despite their occasional contradiction with the rulings of religious courts. For instance, the decision to keep a child in their mother's custody, despite the transfer of the right of guardianship to the father by virtue of a Sharia ruling. The decision was based on the notion of "child at risk", with the readings and jurisprudence the notion supports. This decision enshrined for the first time a new public regime of monitoring religious rulings, after the Court of Cassation had been consistently rejecting calls for them to implement this oversight[75].

This evolution in jurisprudence raises the issue of the problematic nature of the relationship between the religious and the civil judiciaries, a fundamental problem posed by the prevalent legal regime in Lebanon. We have tried, through the meetings we held for the purpose of this report, to survey the positions of both religious and civil court judges on the course taken by the Court of Cassation. We identified two main trends:

- The holders of the first position – among them civil court judges – ascertain that the relationship between the two judiciaries is a complementary rather than a competitive one. A number of judges of urgent matters who handled the domestic violence files and issued protection orders consider that the Law authorizes, even requires, the judge to issue their decision in a short amount of time, as an order on petition[76], meaning that the decision is issued without the need to hear both sides. These judges maintain that the protection orders are temporary and do not exclude the religious court from examining the marital relationship in question.

  Some of these judges go further, by maintaining that the religious judiciary – even though a part of the structure of the Lebanese State - remains a 'judiciary of exception', while the civil judiciary is the 'natural' judiciary, being the Protector of Rights, independent from any external authority. This allows the judiciary to overcome the loopholes that protection laws still suffer from

[74] From a working paper presented by presiding judge Fawzi Khamis on "The Mechanisms for the Protection of Minors at Risk in Light of Lebanese Law and Jurisprudence", within the framework of the National Convention on the Priority of the Child, Sagesse University, Beirut.

[75] See https://www.hrw.org/report/2015/01/19/unequal-and-unprotected/womens-rights-under-lebanese-personal-status-laws [ENG]

[76] Orders on petitions are temporary decisions issued without litigation in the cases where it is valid to issue the order without summoning the litigant and hearing them. Most of the time the petition is submitted to the Judge of Urgent Matters provided the Law does not decree otherwise, in which case the petition is submitted to the competent presiding judge.

through the judges' power of jurisprudence, which is based on the principle of "natural right", and also through the recourse to international conventions in the rulings and jurisprudence that they issue. In their opinion, the judiciary must perform this role because of the weak oversight over religious courts. It is true that religious courts are independent, that there are supervision mechanisms in place and that it is up to the Lebanese Court of Cassation to look into whether personal status rulings are respecting public order and the basic laws of the State. However, oversight has been limited to formal procedures, without addressing the content of these rulings, and this is insufficient.

- The second position is shared by some Sharia and other religious judges as well as a number of civil judges, who do not support resorting to the civil judiciary to resolve any family case, as these should fall under the jurisdiction of the religious judiciary. The holders of this position refer especially to the Law for the Protection of Women and Family Members from Domestic Violence (Law N. 293) dated 7/5/2014. Under this Law, a Judge of Urgent Matters may issue protection orders that include rulings on maintenance, handing over children, or removing a husband from home, which are non-litigious rulings. According to them, these decisions are hasty. More than one religious judge considers that pressure from civil society and the media push the Judge of Urgent Matters to issue expedited and rushed rulings, such as determining maintenance without looking into and verifying the husband's income. Also in many cases, they fail to seek assistance from social and mental health experts, such as agents from the Union for the Protection of Juveniles in Lebanon. Additionally, they consider that protection orders may complicate matters between spouses, which could otherwise be easily resolved. The holders of this position consider that the civil court judges cannot perform this role because the laws themselves essentially restrict their role, and they believe that the notion of "child at risk" cannot be subject to a wider interpretation, and that the rulings of the civil court are not binding to the religious court.

3- The Problems Arising from the Current Model

1. Conflict between Individual and Sectarian Rights

The regulation of personal status in Lebanon has had a direct impact on the way in which Article 9 of the Constitution is understood. This Article stipulates that freedom of belief is absolute, hence it acknowledges freedom of religion and belief, which safeguards the rights of individuals regardless of their religious or

non-religious affiliation. And yet it was applied solely to guarantee the rights of religious groups that are recognized as historical sects, since the Lebanese State failed to regulate the community under ordinary law acknowledged in Decree 60/LR of 1936, which is supposed to include individuals and religious groups regulated by civil law, with its members subject to a civil personal status law[77].

According to the President of the Constitutional Council Judge Issam Sleiman: "A conflict between public interest represented by personal freedom and individual interest represented by the rights of the sects necessitates the intervention of the legislator in favor of public interest, to safeguard the basic rule and to impose its respect in the various legal rules, especially that it has constitutional value, even if not mentioned directly by Constitutional provisions.[78]"

The individual freedom referred to in Article 8 of the Constitution[79], in conjunction with the one referred to in Article 9, guarantee individuals the freedom to exercise their rights in all matters related to personal status: the freedom to leave one's original sect, the freedom to practice religious rituals, to marry, to determine the legal age for marriage, to divorce, to desert a spouse, to obtain a marriage dissolution, to re-marry, to adopt, to inherit, etc...

Hence, it is important to recall that the rights granted to the sects should not cancel out the rights of individuals who under the Constitution, enjoy full freedom in their relationship to these sects. Also, the secular identity of the Lebanese State cannot be ignored; personal status codes represent an exception, albeit one that has 'swelled' over time. The sovereign power in Lebanon is embodied in the Lebanese people whose existence precedes that of the State, not the Lebanese people as religious groups where the sect precedes the individual, and this is in accordance with what is stated in the decisions of the Constitutional Council[80].

2. The Failure to Adopt a Civil Personal Status Code

We have previously mentioned that Decree 60/LR issued in 1936[81] distinguishes between individuals belonging to sects with personal status codes and individuals belonging to "a community under ordinary law". The Decree enshrines the right of individuals to choose to not be subject to a sectarian personal status law, since it decrees that groups subject to ordinary

[77] Article 14 of the legislation on the adoption of the law regulating the sects : "Communities under ordinary law regulate their affairs and manage them freely within the limits of civil laws."

[78] Issam Sleiman, "The Role of Constitutional Justice in the Field of Rights and Freedoms", 2013, Yearbook of the Constitutional Council, p.102. [AR]

[79] Article 8 of the Constitution: "Individual liberty is guaranteed and protected by law. No one may be arrested, imprisoned, or kept in custody except according to the provisions of the law. No offense may be established or penalty imposed except by law."

[80] See Lebanese Constitutional Council Decision 1999/01 of 23/11/1999; and Decree 200/02 dated 8/6/2000.

[81] See http://legallaw.ul.edu.lb/LawView.aspx?opt&LawID=183853&TYPE=PRINT&language=ar [AR]

law regulate and manage their affairs freely within the limits of civil laws, and that the personal status affairs of individuals under ordinary law, as well as individuals who do not belong to a particular sect, are subject to civil law.

For although Decree 60/LR acknowledges the power of every religious sect to codify its personal status laws and apply them to its members, it did not render such an affiliation mandatory. Based on Article 25 of the Decree, a civil marriage contracted outside Lebanon in accordance with the legal formalities in force in the country in question is considered valid, as is a civil marriage contracted in Lebanon, if any. Marriages concluded outside Lebanon are recognized, as they are subject to the laws of the State under whose provisions they were contracted (the place of the contract) and are executed in Lebanon as civil contracts subject to civil courts. The persons who contract a civil marriage abroad are not required to delete the reference to their sect from their civil registry, as it is asked from those who contract a civil marriage inside Lebanon.

The goal of the Decree was to regulate the affairs of sects without infringing upon individual freedom, with a focus on the secular identity of the State and the sovereignty of the civil authority over the sects, in line with the foundational principles of the French Republic. Civil law is therefore ordinary law, whereas sectarian laws are exceptional laws, and their application requires that they respect public order, good morals, the State Constitution and the basic laws of the different sects. And although Decree 60/LR mentions a "community under ordinary law", it does not regulate it in terms of privileges, such as eligibility to acquire "the necessary real-estate and properties to practice its religious rites or to house its service."

A number of judges and jurists we have met with assert that subjecting the Lebanese to civil law in matters of personal status requires a special law to be decreed, and this has yet to happen.

Others among them consider that the Lebanese State cannot justify denying the Lebanese people this right, with the excuse that whoever wishes to may travel abroad to contract a civil marriage according to the civil law of the country of their choice.

We would like to point out the fact that many proposals and personal status draft laws have been advanced, such as "The Unified Personal Status Law" submitted by the Lebanese Democratic Party in 1971, "The Optional Unified Personal Status Law" submitted by the Lebanese Democratic Secular Party in 1981, "the Optional Personal Status Law" submitted by the Syrian Social Nationalist Party in 1997, the "Optional Personal Status Law" attributed to the late President Elias Hrawi submitted in 1998, the "Optional Civil Personal Status Law" submitted by The Lebanese Gathering (75 parties and organizations from all over Lebanon) in 1999, "The Lebanese Personal Status Law" of Dr. Ogarit

Younan (President of the Academic University for Non-Violence and Human Rights) and non-violent activist Walid Slaybi in 2009, and "the Optional Personal Status Law" of lawyer and ex-minister Youssef Takla in 2010[82].

In 2013 a new horizon opened for contracting civil marriage inside Lebanon. In spite of the absence of a civil law, the Supreme Advisory Committee, headed by the Justice Minister, agreed to register a civil marriage contracted inside Lebanon between two spouses who struck the reference to their sectarian affiliation from their civil records. In view of the absence of civil legislation, the couple documented their marriage in 2013 before the notary and chose to subject it to the French civil law in effect during the French Mandate in Lebanon at the time Decree 60/LR was issued, in 1936. This contract was the first civil marriage contracted on Lebanese soil to be officially registered in the Lebanese Interior Ministry's records. The discussion that followed resulted in the assertion that general Lebanese texts (the Constitution) or specific ones (the law of registration of personal status and its provisions), clearly allow the approval of civil marriage between those who choose it, and that this contract represents a clear and explicit waiver of commitment to sectarian personal status laws. Hence, the State is obligated to regulate this right[83].

The holders of this position base their interpretation on a number of arguments, such as:

Argument 1:

The Lebanese Constitution considers freedom of belief as absolute, and any Lebanese citizen may declare or refrain from declaring their belief, whether in terms of binding themselves to a sect or leaving it.

Argument 2:

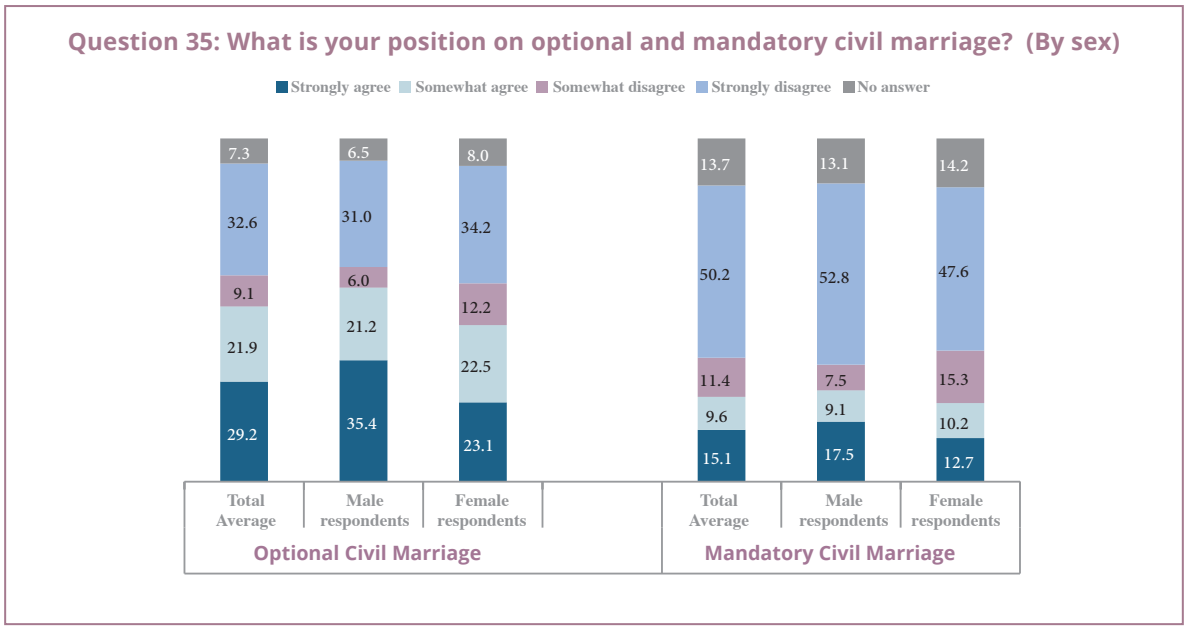
The law permits every Lebanese citizen to change one's sect or religion by virtue of their own will and the agreement of the relevant sectarian or religious authority whose sect, religion or doctrine they wish to affiliate themselves to. In personal status records, there are fields for those who are not affiliated with the recognized sects, and those are subject to ordinary or civil law.

Argument 3:

It is legally acknowledged that contracts that are being executed abroad will be executed in Lebanon under civil law.

[82] See https://maharat-news.com/personalstatuslaw2252019 [AR]
[83] See https://www.bidayatmag.com/node/344 [AR]

CHART 42
Respondents' Positions on Optional and Mandatory Civil Marriage (by sex)



These numbers show that around half of the Lebanese population, men and women, are open to an optional personal status law. What is important to us here is that this law should treat women and men as equals and that the civil laws still in force that are prejudicial to women be amended. In parallel, we believe that it is possible to work with the religious courts to complete the process of amendments that they started – with varying speed and scope - in order to guarantee greater rights for women, in the hope of one day reaching equal rights between women and men in both civil and religious laws[84].

3. Discrimination against Women's Rights in the Law

Discrimination against women is not limited to the scope of religious personal status laws, as bias against women's rights is also found in civil law. The Lebanese legislative system is generally characterized by rigid legislation when it comes to protecting human rights, and this is one of the main causes behind the discrimination between women and men in the law. The rigidity of civil laws has a critical impact on the rights of individuals, especially women. Continuing to resort to traditional legal notions, enshrined in civil law, which endorse men's authority over women, contributes to strengthening the imbalance in the relationship between the sexes, negatively affects family conditions in general, and makes it so that women are not considered on equal footing with men.

[84] See *The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon*, a study prepared by ARA Research and Consultancy Firm at the request of Adyan Foundation, Beirut 2020 at https://bit.ly/3O8Nydq [AR]

For example, discrimination between women and men appears in legislation at the following levels:

At the level of civil rights:

- A Lebanese woman married to a foreigner may not transfer her nationality to her husband or children.
- Women may not open a bank account for their underage children.
- Women cannot obtain identification papers related to the civil status of minors, since the father is their peremptory guardian. There was a slight modification in that regard when the Director General of Personal Status at the Interior Ministry, Brigadier Elias Khoury, issued Circular N. 60 on 29/8/2018 allowing divorced Lebanese women to include the names of their children in their registry. As per the circular, when a divorced woman who has been re-registered under her parents' records requests a family registry record, the registrars must mention the names of her children and their registration number in the notes section after communicating with the relevant registry office[85].
- The father's guardianship of the children is peremptory as enshrined by civil law as per Article 974 of the Islamic Civil Law Code[86].

At the level of the protection of women and girls against gender-based violence:

- Loopholes remain in the Law on the Protection of Women and Family Members against Domestic Violence, in spite of the recent amendments to Law 293 approved by Parliament.
- Lebanese Law does not criminalize marital rape. Article 503 of the Penal Code decrees that "whoever forces someone who is not his wife to have intercourse against their will is punishable by a minimum of 5 years of hard labor and no less than 7 years if the victim has not completed their fifteenth year.[87]" Article 7 of Law 293 in turn stipulates that "Anyone who, with or due to the intent of obtaining their conjugal rights to intercourse, hits or harms their spouse shall be punishable by one of the penalties set out in Articles 554 to 559 of the Penal Code. In the event of recurrent beatings and harm, the

[85] See: https://www.maharat-news.com/discriminationagainstwomen2252109 [AR]

[86] The Islamic Civil Law Code (*majallat al-ahkam al 'adliyya*) is a kind of civil law sourced from Hanafi jurisprudence, constituted by a collection of rulings on transactions and lawsuits numbering 1851 entries, organized according to the known jurisprudence texts and topics. https://maqam.najah.edu/legislation/158 [AR]

[87] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244611#Section_264890 [AR]

penalty shall be increased in accordance with Article 257 of the Penal Code[88]". This means that the Lebanese legislature did not criminalize marital rape, but rather criminalized the harm resulting from it. This is but one example of the truncated approach to legislation in Lebanon. In spite of recent efforts, an integrative legislative agenda related to human rights issues and specifically women's issues remains absent. Efforts are limited to amending specific legal provisions rather than amending the spirit of the legal text itself and taking into account the connection between the different laws.

- Lebanese laws do not define sexual violence.
- The Penal Code still exempts a rapist from punishment should he marry his underage victim: Despite abolishing the effect of Article 522 in 2017, the exception adopted kept the effect of Articles 505 and 518 in force. Article 505 of the Penal Code sentences the rapist of a minor to "imprisonment from two months to two years for whoever engages in sexual intercourse with a minor between 15 and 18 years of age, and in this case, should a valid marriage be contracted between them, the prosecution or trial will be put to an end". Article 518, in turn, stipulates that "whoever seduces a girl with a promise of marriage and deflowers her will be penalized – if the act does not call for a harsher sentence – with imprisonment for a minimum of 6 months and a fine between 3 million and 6 million Lebanese Pounds, or with one of the two penalties. Should a valid marriage be contracted between the perpetrator and the assault victim, the prosecution shall be put to a stop[89]."
- There is no law regulating cybercrime to ensure greater protection against online harassment for girls and women, although the law criminalizing sexual harassment addresses the issue of online sexual violence.

At the level of political rights:

- The electoral law of June 2017 did not consider a quota for women[90] in Parliament. Numerous promises were made to women by Lebanese political parties to adopt a quota for women's representation in the parliamentary elections of 2022, but they were not taken up by the Parliamentary Committees tasked with discussing the amendments to the electoral law in force. The proposed laws in this direction were faced with rejection by the majority of political forces, and MP Inaya Izzeddine, who proposed a quota law in October 2021 was subjected to political violence.
- There is no legal protection in place against political violence directed at

[88] See https://www.justice.gov.lb/public/uploads/Law%20On%20the%20Protection%20of%20Women_EN.PDF [ENG]
[89] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244611#Section_264890 [AR]
[90] See https://bit.ly/3cylimi [AR]

women in Lebanon. In recent years, the United Nations has attached great importance to protecting women against political violence, since it represents a violation of human rights; obstructing women's political participation is also a violation of political rights.

At the level of economic rights:

- The Lebanese Labor Law does not prohibit discrimination, with the result that women's access to the economic sphere is not equal to men's. In fact, the Law prevents women from working certain jobs and provides only for maternal leave without addressing parental leave[91], which would encourage a more equal distribution of parental care roles[92].

Therefore, there is a need for amending civil laws as well as personal status laws.

Also, the system of multiple personal status codes constitutes grounds to discriminate between groups, and between women who belong to different religious sects, in terms of the following:

1- The existence of unfair laws and legislation.

2- Differences in women's rights from one sect to another.

3- In some instances, such as when the woman is of another religion than her husband, there is double violation: against women's rights and against freedom of religion and belief.

The third chapter of this study will focus on the loci of discrimination against women in religious personal status codes and will attempt to work out the possibilities of improving this situation.

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[91] See amended Article 38 of General Statute on Functionaries at http://77.42.251.205/LawArticles.aspx? ; LawTreeSectionID=261523&lawId=179571#
A draft law was submitted by the Office of the Ministry of State for Women's Affairs and was approved by the Council of Ministers who submitted it to Parliament, but it is still pending. The draft law stipulates granting the employee and wage earner, in addition to their annual vacation, a parental leave of three days with a full salary should they have a child, within a maximum period of two months after the child's birth. A proposed law was also penned by the Arab Institute for Women at the Lebanese American University in Beirut (LAU) and the National Commission for Lebanese Women, was signed by 7 MPs and submitted to Parliament in June 2021. The proposed law provides for a 15 week maternal leave and a 10 day paternal leave within the first three months after the baby's birth. It also provides for children's sick leave for 7 sequential or non-sequential days per year, which the parents can use upon submitting a medical report proving that their child – provided they are not older than 7 - is sick, The proposed law also requires companies with 50 employees and more to provide daycare for 10 children below 3 years of age.

[92] At the level of personal freedoms: Abortion is criminalized under the Penal Code, while it should be considered a private affair that the family or the woman concerned should decide on. On the same basis, adultery is a punishable offence under the Penal Code, and although Law 293 equates between women and men in terms of the penalty and the conditions of verification of the offence, the human rights trend today calls for decriminalizing adultery, and for its effects to be confined to marriage cases, not criminal law.

4. Lebanon's Violation of its International Obligations

Any law reform process needs to take into consideration the international context as well as international and regional conventions. International conventions enter into force as soon as they are ratified by Parliament. Accordingly, local courts may also apply their rulings. Article 2 of the Lebanese Code of Civil Procedure stipulates the precedence of international treaties over the rulings of ordinary law: "The courts shall comply with the principle of the rules of hierarchy. In the event of a conflict between the provisions of international treaties and those of ordinary law, the former shall take precedence over the latter. Courts shall not declare null the legislative authority's activities on the grounds of the inconsistency of ordinary laws with the Constitution or international treaties.[93]"

Lebanon has participated in many international efforts related to civil, political, economic, cultural and social human rights[94], some of which intersect with personal status laws. This requires the Lebanese government to amend many laws in line with the principles of equality and non-discrimination.

In 1996, the Lebanese State signed the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[95] under Law N. 592 that came into effect on 1/8/1996. However, Lebanon did not accede to its Optional Protocol, and its ratification of the Convention included reservations on the following key topics:

- Section 2 of Article 9 related to the right of women to grant their citizenship to their children.
- Clauses c,d,f,g of Article 16 related to equality within the family unit.
- Article 29, which stipulates that "any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration".

The Lebanese State has, to this day, not shown a real intention to withdraw these reservations, although they are inconsistent with the spirit and purpose of this Convention.

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[93] See https://www.stl-tsl.org/sites/default/files/documents/legal-documents/relevant-lebanese-law/20130412_Selected_Articles_of_the_Lebanese_Code_of_Civil_Procedure_EN_1.pdf [ENG]

[94] In 1948 Lebanon contributed to drafting the Universal Declaration of Human Rights and in 1971 joined the International Convention on the Elimination of All Forms of Racial Discrimination. In 1972, Lebanon ratified the International Covenant on Civil and Political Rights, and in the same year also adopted the International Covenant on Economic, Social, and Cultural Rights. In 1991 it adopted the Convention on the Rights of the Child, in 2000 it ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and in 2008 it acceded to the Optional Protocol thereof. In addition to the basic human rights conventions, Lebanon has adopted a number of International Labor Organization conventions, and the Geneva Conventions and their Protocols, with the exception of the Third Protocol issued in 2005.

[95] See https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf [ENG]

According to a survey commissioned by Adyan Foundation, the majority of Lebanese citizens (Muslims and Christians) completely agree with the articles of CEDAW. This should push the Lebanese government to reconsider its reservations, because the contents and articles of the Convention are culturally acceptable to the Lebanese[96].

CHART 27
The extent of knowledge about CEDAW

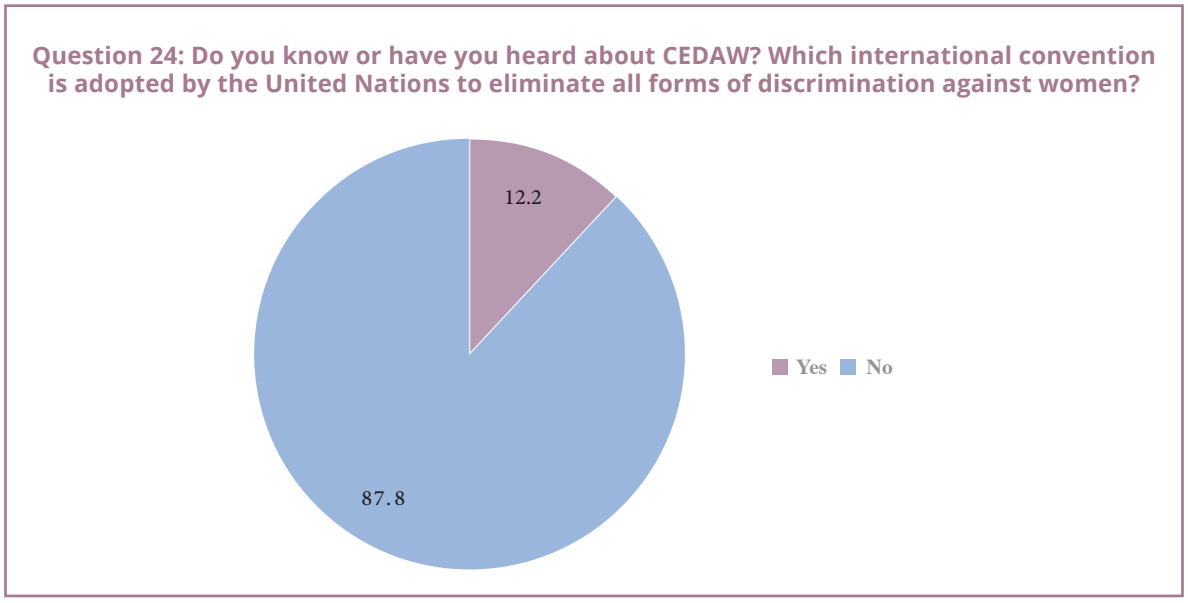
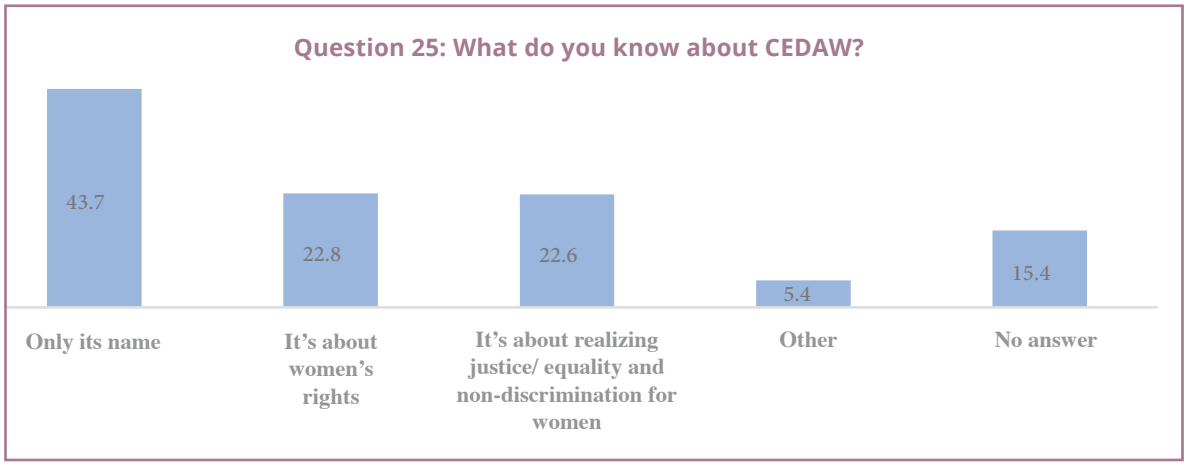


CHART 28
The extent of knowledge that CEDAW is a convention on women's rights. For instance, that it concerns realizing justice, equality and non-discrimination for women.



[96] See *The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon*, a study prepared by ARA Research and Consultancy Firm at the request of Adyan Foundation, Beirut 2020, https://bit.ly/3O8Nydq [AR]

TABLE 10:
Cross-sectarian approval rates for a number of articles included in CEDAW and which equate between men and women.

Question 27: Do you fully agree with the following articles of CEDAW, which equate between men and women?	Catholic sects	Orthodox sects	Evangelicals/ Protestants	Sunni	Shiite	Alawite	Druze	No religious affiliation	Refused to answer	TOTAL
The same right to enter into marriage	89	79	100	56	65	-	79	57	65	71
The same right to freely choose a spouse and to enter into marriage only with their free and full consent	98	100	100	96	95	100	94	100	91	96
The same rights and responsibilities during marriage and at its dissolution	92	84	71	75	76	34	89	57	71	80
The same rights and responsibilities as parents	90	79	71	75	72	100	74	57	75	79
The same rights to decide freely and responsibly on the number and spacing of their children	77	82	100	82	86	100	88	76	75	81
The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children	85	83	61	75	74	100	81	76	69	78
The same rights for the husband and wife, including the right to choose a family name, a profession and an occupation	80	73	84	64	71	34	80	100	69	72
The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property	78	76	71	68	76	-	77	58	69	73

Lebanon has also committed to the United Nations' 17 Sustainable Development Goals for 2030 adopted by the United Nations General Assembly in 2015[97]. Goal 5 calls for ending discrimination and violence as well as all harmful practices (such as child marriage, early marriage and forced marriage) against women. It also calls for ensuring women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life, and for ensuring universal access to sexual and reproductive health as well as reproductive rights.

A few years ago, Lebanon began to partially respond to the international mechanisms for protecting human rights, through submitting national reports to treaty bodies and to the United Nations Human Rights Council. The Lebanese government also formed the National Committee tasked with leading and coordinating national efforts to implement the development agenda[98]. Lebanon submitted its Voluntary National Review on Sustainable Development Goals in 2018.

In response to the periodic reports submitted, Lebanon received a number of recommendations urging the amendment of personal status laws to ensure equality and compliance with its international commitments, in particular the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child.

At the level of the Arab world, Lebanon adopted the Arab Charter on Human Rights, which affirms in Article 11 that "all persons are equal before the law and have the right to enjoy its protection without discrimination". According to Article 13, "The State and society shall ensure the protection of the family, the strengthening of family ties, the protection of its members and the prohibition of all forms of violence or abuse in the relations among its members, and particularly against women and children.[99]" In addition to the Charter on Human Rights, Lebanon has ratified a number of regional charters, among which are the following:

- The Cairo Declaration on Human Rights in Islam (1990)[100].
- The Sanaa Declaration on the Rights of Arab Women (2005)[101].
- The Cairo Declaration of the Organization of Islamic Cooperation on Human Rights (2021)[102], which replaces the 1990 Cairo Declaration on Human Rights in Islam.

[97] See https://www.undp.org/sustainable-development-goals [ENG]
[98] See http://sdglebanon.pcm.gov.lb/# [ENG]
[99] See https://digitallibrary.un.org/record/551368 [ENG] The Charter was signed under Law N.1 of 5/9/2008 and was published in the Official Gazette issued on September 9, 2008.
[100] See https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/Human-Rights/cairo.pdf [ENG]
[101] See http://hrlibrary.umn.edu/arab/a004.html [AR]
[102] See https://www.oic-oci.org/upload/pages/conventions/en/CDHRI_2021_ENG.pdf [ENG]

In conclusion, the State's responsibility lies in cementing its international obligations and taking a clear stance on prioritizing international legal standards regarding equality between the sexes over national legal standards. The essence of Lebanon's international obligations – according to CEDAW – requires the Lebanese State to implement a series of measures, the most prominent of which are:

- Denouncing all forms of discrimination against women and girls, and pledging to incorporate the principle of equality between men and women in its national Constitution or other appropriate legislations.
- Taking the appropriate legislative and non-legislative measures and imposing the appropriate penalties to prohibit all discrimination against women and girls.
- Taking the appropriate measures, including legislative measures, to change/revoke the existing laws, codes, customs and practices that discriminate against women and girls, and repealing all national penal provisions that discriminate against women.
- Eliminating discriminatory, oppressive and violent practices against women whatever their origin, including cultural and religious origins[103].
- Repealing all laws, including religious and customary laws[104] that discriminate against women, or any discriminatory measure taken by State authorities. Committing to non-discrimination against women is a direct and absolute commitment, and the State is in violation of this commitment as long as discriminatory laws against women are in force.
- Objecting to all discourse and social norms that discriminate against women and perpetuate structural discrimination or gender-based taboos and stereotypes.
- Conducting a comprehensive revision of current laws and examining the different regimes, both official and customary, as well as the hierarchy of laws on the national and international levels, in order to assess which provisions or elements of these laws should be preserved and which ones should be struck out or reformed. The revision should also verify if the current laws are in line with international and human rights standards and other obligations arising from the different treaties.

[103] The Committee on Economic, Social and Cultural Rights (CESCR), General comment n.21, Article 19.
[104] The Committee on Economic, Social and Cultural Rights (CESCR), General comment n. 21, article 44.

Conclusion

Based on what we have expounded, we can conclude that the main objective of the Lebanese parliamentary system since the 1926 Constitution, which has continued with the Constitution of the current Republic, has been to respect and protect the rights of the different sectarian groups. However this system has over time turned into a regime of privileges for these groups, at the expense of respecting and protecting the rights of individuals and especially women who already suffer from a civil legislative and legal system that discriminates against them.

The Constitutional amendments of 1990, whereby the Preamble to the Constitution asserts Lebanon's commitment to the Universal Declaration of Human Rights and the treaties ratified by the Lebanese State in the framework of the United Nations, did not translate into greater protection for the rights of individuals.

In fact, the legislative and judicial mandate granted to the sects over personal status has led to the State waiving its basic obligations, in accordance with the stipulations of the various international conventions and most notably CEDAW, to establish equality between the sexes.

This non-interventionism, as we have seen, was embodied in Parliament abandoning its most basic obligation in any parliamentary system, which is to legislate in a manner that respects human rights; it was manifested at the level of the Court of Cassation by the latter's failure to fulfill its role of monitoring the compliance of the rulings of religious courts with human rights standards.

We have also seen that discrimination against women is not exclusive to religious laws, but is also ingrained in civil laws. Accordingly, and emphasizing the Lebanese State's obligation to protect all its citizens and all those residing on its soil, it is necessary to initiate a legislative workshop addressing all the laws that discriminate against women at different levels, such as economic rights, social rights, political rights, and personal status rights, as well as the laws on the protection of women and girls from gender-based violence, in order to establish an integrated legislative system that guarantees full equality between women and men.

On the one hand, it is necessary to apply and implement existing legislation concerned with individual rights, such as recognizing civil marriage concluded inside Lebanon and regulating it in the framework of new legislation. And on the other hand, it is necessary to amend or to create new legislation that guarantees the respect of human rights and endeavors to bridge the equality gap between women and men.

The Lebanese State must therefore:

- Reconsider its reservations on CEDAW.
- Reconsider the laws that are unjust to women (which reduce their rights or do not guarantee them equality).
- Reconsider the role of Parliament and the Court of Cassation in monitoring religious personal status laws in line with international treaties and the general standards of a just, democratic, modern secular State.
- Comply with Article 9 of Decree 60/LR to establish a civil personal status court for all individuals not affiliated with officially recognized sects.

Chapter 2

Religious Courts and the Status of Women

Chapter 2

Religious Courts and the Status of Women

I- Islamic Sects in Lebanon: Their Courts, their Judiciary and their Relationship with the State.

a- The Judicial System of Islamic Sects in Lebanon and its Relation to the State

The Islamic sects recognized in Lebanon are the Sunni[1], the Shiite[2], the Druze[3], the Alawite[4] and the Ismaili[5]. In the following paragraphs, we will present the judiciary of these sects and the laws that it relies on.

• The Sunni sect:

Based on the provisions of amended Legislative Decree 18/1955, particularly Article 1 thereof, Sunni Muslims are completely independent in their religious affairs and charitable endowments, and are in charge of legislating and administrating them in accordance with the provisions of Sharia and the laws and codes derived from it. According to the law of 28/5/1956 published in the Official Gazette 22 on May 30, 1956, the Supreme Islamic Sharia Council is entrusted with the right to amend this legislative decree. According to Article 242 of the Law Regulating the Sunni and Jaafari Judiciary, issued on July 16, 1962 and amended as per law 177/2011, Sunni judges make their rulings based on the provisions stipulated in the decisions issued by the Supreme Islamic Sharia Council on the personal status of Sunni Muslims. In cases where related texts are absent, the judges shall refer to The Ottoman Family Rights Law of 25/10/1917. Otherwise, they shall rule according to the most pertinent citations from the doctrine of Imam Abu Hanifa[6].

[1] See http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=194571 [AR]
[2] See the Law Regulating the Islamic Shiite Sect in Lebanon: http://legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=166931 [AR]
[3] See http://www.legallaw.ul.edu.lb/Law.aspx?lawId=246052 [AR]
[4] See http://www.legallaw.ul.edu.lb/Law.aspx?lawId=185017 [AR]
[5] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244319 [AR]
[6] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244292 [AR]

In recent years, several amendments were made to personal status laws for women in the Sunni sect. These amendments addressed *mahr*[7] and the age of custody in 2012, and the age of marriage in 2020[8].

• The Shiite Sect:

The Shiite sect in Lebanon was not considered an independent legal entity until the establishment of the Supreme Islamic Shiite Council in 1967 at the initiative of Musa Al Sadr. Before then and under Ottoman rule, all Lebanese Muslims followed the Hanafi school of jurisprudence. The Shiite sect has enjoyed independence since 1967, and Article 1 of the 1967 Law stipulates that "the Islamic Shiite community is independent in regulating its religious affairs, its endowments and institutions, and has representatives among its members who speak and act in its name, in compliance with the honorable Sharia and the Jaafari school of jurisprudence, within the bounds of the fatwas issued by the denomination's supreme religious authority worldwide". Under this law, the "Supreme Islamic Shiite Council" was established for the Shiite community to handle its affairs, to defend its rights and preserve its interests, to watch over its institutions and work on improving them. The Council president, after conferring with the Executive and Legislative Committees, organizes the sect's endowments and endeavors to maintain and revitalize them; he also coordinates between the different social and cultural institutions and charitable organizations, resolves conflicts arising among them, and promotes existing social, cultural and religious projects. In accordance with the Law, it is mandatory to consult with both the Executive and Legislative Committees about the draft laws and general regulations on the religious matters of the Shiite sect, such as personal status among others[9].

In 1975, a number of provisions in the Law Regulating the Shiite Sect in Lebanon pertaining to the term of office of the Council's president were amended[10]. The personal status laws of the Shiite sect in Lebanon remain non-codified, a situation that elicited complaints presented by lawyers. In response,

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[7] A sum of moveable or non-moveable property payable by the husband to the wife prior to marriage and cohabitation; the value of which is determined in the marriage contract. [Note by translator]

[8] Based on Law 177 of August 29, 2011, Article 242 of the 16/7/1962 Law Regulating the Sunni and Jaafari Judiciary and its amendments was amended.

[9] See http://legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=166931

[10] Article 1 of Law 72/67 of 19/2/1967, amendment of 1975: "Articles 12, 15, and 19 of Law 72/67 are amended as follows: "New Article 12": "The term of office of the president of the Supreme Islamic Shia Council continues until he is 65 years old, he shall not be relieved of his position except for an urgent medical reason or critical cause assessed by the Legislative Committee and the Executive Committee in a special joint session to which they are summoned by the Council's Secretary General through a written request signed by at least 10 members, within 10 days at most from its submission. The two Committees can take the decision to relieve the president from his post with a two-third majority of the Committees, and their decision is final and binding. This provision applies to the current president of the Council." http://www.legallaw.ul.edu.lb/Law.aspx?lawId=244231

the President of the Supreme Jaafari Court, Sheikh Abdallah Nehme, penned the "Jaafari Judiciary Guide[11]" in 1982. The Guide, reprinted in 1996 and 2010, compiles and interprets material pertaining to marriage, divorce, parentage, child custody and other personal status cases. Yet, it is not binding to Jaafari judges, who may refer to multiple interpretations and references, mainly the interpretations of Iraq's religious jurisprudence authority al-Sayyid Ali Sistani.

• The Unitarian Druze Sect

On July 13, 1962, the first law was issued regulating the election of the sect's religious leader known as Sheikh Al-Aql, and on establishing a Council for the Druze community (Initiates Council). In accordance with this law, Sheikh Al-Aql enjoys the same inviolable status, privileges and rights that other Lebanese religious leaders enjoy, without exception or differentiation[12]. The first section of the law on establishing the sectarian Council stipulates that the latter has the authority to manage the temporal and financial affairs of the sect, represents the community as a social entity and institution, and endeavors to improve it and to preserve its rights. The Council's main prerogative is to supervise Druze endowments, institutions and associations. A law was subsequently issued and implemented by Legislative Decree 3122 of April 13, 1978, establishing an employee cadre for the seat of the sheikhdom and for the religious Council, followed by the Law Regulating the Unitarian Druze Sect's Affairs on 12/6/2006[13]. Under the aforementioned law, the Unitarian Druze sect is completely autonomous in managing its religious affairs and endowments; it is independently in charge – through its competent members - of legislation and the management of its institutions in accordance with its religious provisions, sect-related privileges, and the laws and regulations derived therefrom. The Druze Personal Status Code was issued on February 24, 1948, and regulates the different personal status cases such as maintenance, mahr, age of marriage and age of custody, inheritance, will, and other related subjects. In 2007, a number of amendments were introduced to it[14].

• The Alawite Sect

The affairs of the Islamic Alawite sect in Lebanon are regulated by Law 449 issued in 1995[15]. This law made the Alawite sect independent in its religious affairs

[11] See Abdallah Nehme: The Jaafari Judiciary Guide, Beirut, Dar Al-Fikr for Printing, Publishing and Distribution, 1982 and Dar Al Balagha for Printing, Publishing & Distribution, 1996 & 2001

[12] See http://www.legallaw.ul.edu.lb/Law.aspx?lawId=246052 [AR]

[13] See https://bit.ly/3PNsdHL [AR]

[14] See http://www.legallaw.ul.edu.lb/Law.aspx?lawId=274009 [AR]

[15] See http://77.42.251.205/LawView.aspx?opt=view&LawID=185017 Amendments to the law were made on 7/6/2002 regarding the election of the Islamic Alawite Council.

and endowments, in charge of organizing and managing them in accordance with the rulings of Sharia and the Jaafari school of jurisprudence. Under this law, an "Islamic Alawite Council" was established for the sect with its seat in the city of Tripoli in North Lebanon, to handle the sect's affairs, defend its rights, preserve its interests, watch over the charitable institutions and associations affiliated with it. And as is the case with the other Islamic sects, the Legislative and Executive Committees of the Council must be consulted jointly when it comes to drafting laws and general codes on the religious affairs of the sect, such as personal status matters. In everything related to their legal rulings on marriage, divorce, alimony, mahr, inheritance and all things related to their personal status, the Lebanese Alawites are subject to Jaafari law, provided that they have their own Sharia courts composed of Alawite competent experts, and that these courts are established and regulated under a special law. Until this day, no Alawite courts have been set up, and consequently, a Jaafari Sharia Court in Tripoli hears their personal status cases.

• The Ismaili Sect

There is no official data on the number of Ismailis in Lebanon, and they currently have no representation in jobs at State level[16]. They also have no representative religious authority in Lebanon to manage their affairs, however there is such a reference that they rely on for personal status matters in Syria. When this proves not feasible, the Sunni Sharia Courts hears their cases, given that they follow the Hanafi school of jurisprudence.

b-The Islamic Judiciary in Lebanon

• The Sunni and Jaafari Sharia Judiciary

Looking to personal status in the Sunni and Shiite sects, the Law Regulating the Sharia Courts defined the personal status issues that fall within their jurisdiction and authority. The law regulates the Sunni and Jaafari judiciaries, and the draft for the expeditious law included in Decree 8457 of 8/1/1962 that regulates the Sunni and Jaafari judiciaries was ratified as amended by the Parliamentary Administration and Justice Committee[17].

According to the law, specific cases and procedures fall within the jurisdiction of the Sunni and Jaafari Courts, among them the following:

[16] See https://fouadchehab.org/communities-2/?lang=ar [AR]
[17] See http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244292#Section_282121 [AR]

1- Engagement and its appropriate gift[18].

2- The Marriage contract (*nikah*)

3- Divorce and separation.

4- *Mahr* and trousseau

5- Spousal maintenance, custody, and uniting the children with their guardians.

6- Lineage (Parentage and Filiation: *nasab*)

7- Guardianship, trusteeship and wardship.

8- Proof of puberty and maturity.

9- Legal incompetence (*Hajr*)[19]

10- Missing Persons[20]

11- Final will and testament[21]

12- Proof of death, estate inventory, and determining heirs and their specific shares of the inheritance.

13- Releasing non-real estate assets, selling and distributing them, and supervising the management of orphans' funds according to the orphan fund management system.

14- *Waqfs* (Endowments): their legal status and conditions.

15- Regulations and appointments of key staff positions regarding waqf

16- Regulating accountability and penalties for key position holders regarding *waqf*

17- Regulating legal representation in legal cases and matters within the purview of Sharia Courts.

Sunni legal courts are composed of Sunni Sharia judges, and Jaafari courts are composed of Jaafari Sharia judges. The Sharia Judiciary is composed of First Instance Courts formed by a Single Sharia judge and a Sharia Supreme Court for each of the two denominations. The jurisdiction of these courts is restricted to cases and legal procedures of claimants that are members of their sects and related to the cases listed above, taking into account exceptional circumstances as stipulated in the Law Regulating the Sharia Judiciary.

[18] Engagement is the legal arrangement that allows a couple to ascertain their wish to commit to one another, and to test the extent of their compatibility and conviction.

[19] Issuing a court order that prevents a person from exercising their legal capacity based on proof of legal incompetence.

[20] An absentee who cannot be contacted, whose whereabouts are unknown and whose life or death cannot be verified.

[21] A donation of possession or property made during the doner's lifetime provided the donation is executed after their death.

The Law Regulating the Sharia Judiciary approved in Parliament on 16/7/1962 specifies the functions, competence and jurisdiction of these courts, and defines court procedures and the procedures for settling disputes in the cases that fall within the jurisdiction of these Sharia courts located in different Lebanese governorates. Article 242 of the aforementioned law clearly states that the Sunni Sharia judge shall make his ruling in accordance with the most appropriate citations from Abu Hanifa's doctrine, except in matters stipulated in The Ottoman Family Rights Law promulgated on 8 Muharram, 1336 Hijri (October 25, 1917), in which case the judge will apply the latter's provisions. Articles 337 to 347 lay out the rules for due process, appropriate procedures, and arbitration in cases of separation leading to marriage termination[22].

Both sects require the judge to be Lebanese and to have completed 25 years of age before being admitted to the Sharia judiciary cadre, with the maximum age for entry set at 40. While the law does not directly specify that the judge has to be a male, the conditions and criteria it sets are grammatically formulated in a way that implies it.

Sunni courts require the judge to have a law degree from colleges that teach the provisions of Sharia Law or a higher degree in religious studies, or a Sharia Judiciary license from Al-Azhar. These requirements also apply to the Shiite sect, which prioritizes the holders of the title of mujtahid mutlaq (he who has attained the rank of ijtihad – the interpretation of Islamic legal sources – in all the provisions of Islamic Law). Article 450 of the Law Regulating the Jaafari Sharia Judiciary requires the judge to hold a law degree from colleges that teach the provisions of Sharia Law, or a higher degree in religious studies from the religious Seminary of Najaf in Iraq. This Article is however not applied to the letter, as it is possible to appoint a judge who has studied in the religious Seminaries of the city of Qom in Iran.

Litigation in Sunni and Shiite Sharia Courts happens in 2 degrees:

- The first degree: Sharia Courts of First Instance.
- The second degree: A Supreme Court of Appeals based in Beirut.

The role of Public Prosecution in both the Sunni and Shiite Supreme Courts is filled by a civil or administrative judge of the same sect, appointed by decree and compensated also by a decree.

The rulings of the Supreme Sunni and Jaafari Courts may be challenged before the Plenary Assembly of the Civil Court of Cassation, the competence of which is restricted to two le-gal grounds for objections stipulated in Article 95/4 of the

[22] See https://bit.ly/3yVTFw1 [AR]

Lebanese Code of Civil Procedure: the lack of jurisdiction of the sectarian Court, and its violation of a fundamental principle of the public order[23].

In addition to the Supreme Islamic Sharia Council of the Sunni sect, there exists a Supreme Sharia Judicial Council that includes both the Shiite and Sunni sects, and whose jurisdiction is very similar to that of the Supreme Judicial Council. The Supreme Sharia Judicial Council is composed of the Mufti of the Lebanese Republic as president, the presidents of the Sunni and Jaafari Supreme Sharia Courts, the two civil judges assigned to Public Prosecution and the inspectors in the Sunni and Jaafari Courts. If we examine the structure of the Council, we find that the majority of its members are appointed by the executive power. With the exception of the Mufti, who is elected by the Islam-ic Electoral Council, each of the two presidents of the Supreme Courts are appointed by a decree issued by the Council of Ministers, and the inspectors and prosecutors are also assigned by its de-cree. Hence, it seems that the executive power has the largest role in forming the Supreme Sharia Council, which raises serious questions about the Council's independence. The Supreme Sharia Council oversees the Sharia judiciary and its independence, as well as the proper functioning of the Sunni and Jaafari Courts. It is also involved in disciplining judges and Sharia Court employees, and approves the transfer, dismissal and referral of judges to the Disciplinary Council, measures that cannot be taken without its approval.

• The Druze Judiciary

According to the law implemented by Decree 3473 of 1960[24], the Druze religious judiciary is com-posed of First Instance Courts and a Supreme Appellate Court based in Beirut whose jurisdiction extends to all the Lebanese territories. It is composed of two Chambers, each of which is composed of two advisors, with one president for both Chambers. The judge is required to have a law degree.

The jurisdiction of Druze sectarian courts includes looking into cases and procedures covered by the provisions of Sharia and Druze tradition, and the Personal Status Code of the Unitarian Druze sect (Law of 1848 and its amendments). In the absence of a relevant legal text (in the Law Regulating the Druze Judiciary), the Druze Courts still exercise their authority by applying the Procedural Law of the Sharia Courts (Sunni and Jaafari). If a relevant stipulation is absent from the latter also, the general regulations stipulated in the Code of Civil Procedure is applied, to the extent that they suit the Druze sectarian courts and Druze traditions, and do not violate Druze religious law.

[23] Article 95 of the Code of Civil Procedure: "The Court of Cassation with its Plenary Assembly convened with the quorum specified in the law regulating the judiciary hears: (clause 4) ...the objection to a final ruling issued by a Druze or Sharia Court on the grounds of lack of jurisdiction of this Court or the ruling's violation of a fundamental principle of the public order."

[24] See http://legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=243879 [AR]

Judges of the Druze courts are assigned and transferred by decree based on the recommendation of the Justice Minister after consultation with Sheikh al-Aql.

Druze religious courts do not have a Council similar to the Supreme Sharia Council. Rather, a num-ber of bodies take on that role, particularly the seat of the Sheikh al-Aql, the Druze High Appellate Court, and the Justice Ministry.

Finally, we point out that the legal texts in force for the judges of Islamic Sharia Courts are the same ones applied to the judges of the Druze Courts, with regard to determining salaries, ranks and grades, and the conditions for promotion, disciplinary measures, dismissal and retirement.

c- The Relation of Islamic Religious Courts to the State

The Sharia Judiciary in Lebanon is considered part of the Lebanese State's judicial apparatus[25]. It is bound to the highest Muslim reference within the executive power, namely the Prime Minister. The Prime Minister's Office manages its personnel, its administrative and financial affairs. The presidents of the two Supreme Courts, Sunni and Shiite, have the role and competency of a director general, to assist the Prime Minister's Office in their respective courts and in all matters within their jurisdiction. The courts of the Druze sect on the other hand are directly linked to the Justice Ministry.

The nature of the Sharia judiciary's relation to the State can be deduced through several threads. It is a dialectical relationship at times characterized by close association, and at others by complete independence.

It is true that the Sharia court judges are clerics who are jurists. However, unlike their colleagues in the Christian religious courts, they do not receive their salaries from their sects, but from the State. They are employees of the Lebanese State, but despite the fact that they are appointed by decree of the Council of Ministers, they are not subject to Judicial Law or to the authority of the Supreme Judicial Council. Still, they are promoted in their cadre in accordance with the provisions stipulated in the General Statute of Functionaries, and in regards to them the Sharia Judicial Council has the equivalent status of the Civil Service Council. The judges of the Sunni and Jaafari Sharia courts also benefit from all compensations and salary raises decided for all other judges.

Regarding disciplinary measures within the Sunni and Shiite Sharia courts, the respective presidents of these courts may issue a warning to their court judges without referring them to the Disciplinary Council. The proper functioning of the

[25] See http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244292 [AR]

Sunni and Jaafari judiciaries, the conduct of the judges and employees thereof are monitored by an inspector assigned by decree issued by a civil judiciary judge belonging to the sect of the court in question, after consultation with the Supreme Sharia Judicial Council. As soon as the inspector in appointed, he becomes a member of the aforementioned Council. This formula confirms the weakness of the State's oversight over the functioning of the Sharia Judiciary.

In the Druze religious Court, the High Appellate Court assumes the function of the Disciplinary Council for Druze judges and judicial assistants. As for disciplinary measures for the judges of the High Appellate Court, these are taken by a Disciplinary Board composed of three civil judges belonging to the Druze faith, appointed by decree based on the recommendation of the Justice Minister after consulting with the seat of Sheikh al-Aql. The inspector's function is handled by a Druze civil judge[26].

Concerning the cadre of judicial assistants in Sharia courts, it is subject to the rules specified for civil judicial assistants when it comes to salaries and promotions[27].

One of the elements of the relationship between the courts and the State is that the Islamic (Sunni, Shiite and Druze) courts are obligated to implement parliamentary legislations. These courts must also respect civil procedures, especially the right to a defense. Lawyers for example have the right to represent their clients and to be present with them in the religious courts; limiting this right or preventing them from exercising is exceptional and can only happen in extremely limited cases. Also, religious courts have no procedural authority. The rulings and decisions they issue are entrusted to Enforcement Departments in accordance with the civil laws in force. Regarding the confidentiality of trials, the principle is that they should be public according to the Code of Civil Procedure applied in these courts; however, the judge may conduct closed trial sessions.

d- Flaws in the Practices of Sharia Courts

• Loopholes in Oversight and Inspection

There are question marks around oversight and inspection when it comes to Islamic courts. The civil judiciary judge tasked with inspection is already burdened by the numerous responsibilities of his main post in the Civil Judiciary. This

[26] See the Judicial Organization Code at http://77.42.251.205/LawArticles.aspx?LawTreeSectionID=272486&lawId=194133 [AR]; for the Law Regulating the Druze Sectarian Judiciary Article 11, see: http://77.42.251.205/LawArticles.aspx?LawArticleID=964237&LawId=243879&language=ar

[27] You may review the General Statute on Functionaries at http://77.42.251.205/LawView.aspx?opt=view&LawID=179571 [AR] and the Law Regulating the Sunni and Jaafari Judiciary at http://77.42.251.205/LawView.aspx?opt=view&LawID=244292 [AR]

renders him unable to dedicate enough time to the inspection mission entrusted to him in the religious courts. Also, it is difficult for a civil judge to conduct an effective and transparent inspection of the conduct of clerics or judges of the same sect they themselves belong to. In the same context, it is unclear whether the inspection includes the content of judicial rulings or whether it is limited to the administrative organization of the courts.

There are no sufficient guarantees in place for the independence of the disciplinary councils of the three Islamic sects. In fact, there are no explicit criteria to ensure the independence of their members. Perhaps the main problem lies in the fact that the prerogatives of inspection, prosecution and discipline are grouped under one body. In the Shiite and Sunni sects, the civil judge conducts the inspection, writes the report, and recommends referral to the Disciplinary Council. If the Supreme Judicial Council approves the referral, the same inspector will be on the Disciplinary Council. In other words, the inspector participates in the three phases of the disciplinary action: investigation (inspection), prosecution (referral), and ruling (as part of the Disciplinary Council). This is a clear breach of the principles of transparency and fair trial. As for the Unitarian Druze sect, the three phases are quasi-separate: the legal inspector is in charge of the investigation (inspection), the Justice Minister handles the prosecution (referral), and the Court of Appeals handles the ruling in its capacity as the Disciplinary Council for Single Judges.

• Stagnation at the Level of Improving Court Practices

The process of improvement and reform at the level of Druze and Sharia courts is inadequate and weak, particularly in terms of reducing the challenges faced by women. Many factors contribute to this stagnation. According to a number of legal experts that we have met with, this is due to the sway of political powers in Lebanon over the Sharia and Druze judiciaries. It is true that religious courts are mostly considered courts of exception, in the sense that their jurisprudence is only valid for the members of their own respective sects; but this does not exempt these courts from the duty to uphold their independence and transparency, and to guarantee the conditions of fair trial. The mechanisms in place affect people's trust in the religious judiciary, but so do the positions and values held by the judges in charge of these courts. However, the majority of the Muslim clerics we have met with consider that these values are themselves dependent on social values and practices, on the power dynamics between men and women, and on the traditional ideas around marriage; not to mention that women litigants tend to weakly adhere to their rights and on certain occasions to give them up altogether.

One of these judges stated that "One cannot blame the religious judges who try their best to offer advice, support and solidarity to all parties to the case, and

they do try to advise women." The holders of this position are ignoring the social and cultural pressure and coercion that women endure, and which limits their capacity to confront and reject discrimination, driving them to make concessions so they may obtain a divorce and be free of deleterious conjugal relationships.

• Insufficient Follow-up

Some religious court judges consider that there are external factors they cannot control. When a religious court issues its final ruling, it relinquishes control of the case and no longer has the authority to intervene in the implementation of said ruling, except if a party to the case submits a request to change the custody agreement in the context of visitation disputes (exclusively), since such decisions can be amended depending on changing circumstances. Religious court judges are not always aware of the negative repercussions of their rulings on women, especially when it comes to visitation rights. When a child refuses to see their mother at the instigation of their father or the interference of a member of the father's family or another party, visitation stops there. In reality, there are no legal texts or memos issued by the Justice Ministry or the Court of Cassation to urge the enforcement judge, or to widen his jurisdiction and entitle him to appoint a psychologist or social worker who can determine the reason behind the child's refusal and treat the problem in a way that satisfies both parties.

Concerning reforms, they are missing from the structure and working mechanism of the Sharia and Druze judiciaries. However, they do exist at the level of the amendment of laws, as we will see in detail in Chapter 3.

II- Christian Sects in Lebanon: Their Judicial System and Relation to the State

a- Laws Governing Personal Status in the Christian Sects

The Christian sects officially recognized in Lebanon are the Maronite, the Greek Orthodox, the Melkite Catholic, the Armenian Gregorian (Orthodox), the Armenian Catholic, the Syriac Orthodox, the Syriac Catholic, the Assyrian Eastern Orthodox, the Chaldean, the Latin, the Coptic Orthodox, and the Evangelical sect.

The Catholic denomination includes 6 sects[28] that apply a unified Personal Status Code[29], in addition to the Code of Canons of the Eastern Churches[30], and a unified Code of Procedure for Tribunals of the Eastern Catholic Churches[31]. As for the sects belonging to the Orthodox and Evangelical denominations, each of them has its own personal status code, its own courts and procedural law.

On April 2, 1951, the "Law Defining the Privileges of the Congregational Authorities of the Christian and the Israelite Communities" in legislation and the judiciary was issued. Their jurisdiction covers all personal status matters related to marriage and its civil effects[32], as stipulated in Articles 2 – 6 of the law in question:

- **Engagement:** Ruling on its validity, breaking or annulling it, and on the "pledge gift".
- **Marriage**: The marriage contract, its provisions and marital duties; the validity of a marriage and its annulment; the dissolution of the marriage or the termination of its bonds (divorce and separation); settling the question of the trousseau and dowry (the marriage portion[33]).
- **Filiation**: Filiation and the legitimacy of children and its effects; adoption; parental authority over children; protecting and raising children until they reach the age of majority, which is 18 years.
- **Maintenance and compensation**: Evaluating and imposing maintenance on one of the spouses in the course of the separation, annulment or divorce case; evaluating and imposing maintenance in favor of the parents

[28] The six Catholic sects are the Maronite sect, the Melkite Catholic sect, the Armenian Catholic sect, the Syriac Catholic sect, the Chaldean sect and the Latin sect.

[29] The Personal Status Code and Code of Trial Procedure for Catholic sects was issued on February 22, 1949. In 1929, Pope Pius XI formed a Commission tasked with conducting preliminary studies towards codifying the canons of Eastern Catholic Churches, then in 1935 the Supreme Pontiff formed a new Commission tasked with supervising the work on the collection of canons and with formulating entries after hearing the comments of Eastern Bishops. The Commission completed its work and printed its collection of canons in 1944, however the collection was published in increments, starting with the most urgent topics to the least urgent ones. It published 4 collections of canons, the first of which was related to personal status. On February 22,1949, the Discipline on the Sacrament of Marriage was published, and came into force on May 2, 1949. On March 6, 1950, the canons on Ecclesiastical Court Procedures ("Of Tribunals in the Eastern Church") were published, and came into force on January 6, 1951. See Commentary on the Code of Canons for Eastern Churches coordinated by Father Antoine Rajeh, Pauline Library Publications, April 2005, p.19); and: http://www.legallaw.ul.edu.lb/LawView.aspx?LawID=258198

[30] On October 18, 1990, this Holiness Pope John Paul II issued The Code of Canons of the Eastern Churches, a collection of old and new common laws to 21 Churches, and which includes papal documents codifying in different fields, with the provision that each of these Churches sui juris will complete this collection with legislations of its own. The Code includes laws pertaining to different fields, including marriage and ecclesiastical court procedures (See Commentary on the Code of Canons for Eastern Churches coordinated by Father Antoine Rajeh, Pauline Library Publications, April 2005, p.19). Also see: https://www.jgray.org/codes/cceo90eng.html for the Code of Canons of the Eastern Churches. [ENG]

[31] See http://77.42.251.205/Law.aspx?lawId=243792 [AR]

[32] The civil effects of marriage is the sum of legal effects produced by the marriage contract after it is concluded, and which are stipulated in Law 2 of April 1951.

[33] The marriage portion, "also called dowry, involves any movable or immovable goods brought by the wife to her husband, or gifted to the husband by the bride's family or others for the purpose of marriage and of lessening its burden" (Article 58 of the Personal Status Code and Code of Procedure for Catholic sects issued on February 22, 1949.

and the children (ascendants and descendants); evaluating and imposing compensation upon an annulment or dissolution ruling.

- **Trusteeship**: Trusteeship of minors, appointing a trustee, holding them accountable and removing them if need be.

On the other hand, Article 33 of the Law of April 2 stipulates that each concerned sect is obligated to submit its legislative texts on personal status[34]. The content of this Article is similar to that of Article 4 of Decree 60/LR, which obligated the religious sects to present to government the legislative laws according to which the sects are administrated.

In the span of time since, many Christian sects have developed their laws and adopted new legislations. A number of them have submitted these legal texts to Parliament for discussion and approval, and for publication in the Official Gazette in compliance with the aforementioned stipulations.

The following personal status and ecclesiastical court procedure codes were submitted to Parliament, and published in the Official Gazette: the Personal Status Code and Code of Procedure for Tribunals of the Coptic Orthodox Church in Lebanon, issued on September 11, 2010[35], the Personal Status Code and Code of Procedure of the Evangelical Community in Syria and Lebanon, issued on April 1, 2005[36], the Personal Status Code and Code of Procedure for Tribunals of the Patriarchate of Antioch and All the East of the Greek Orthodox church, issued on October 16, 2003[37]. As for the Personal Status Code of the Syriac Orthodox sect, which was issued on 10/9/2003, it still has not been published in the Official Gazette.

In his book Marriage and its Effects in Communities Governed by the Law of April 2, 1951, Dr. Ibrahim Traboulsi[38] notes that the Catholic Church "presented to the Justice Minister a translated version of the Code of Canons of the Eastern Churches which came into effect starting 1/10/1991", but they have not yet been presented to the legislative authority "to be considered submitted as per due process."

In addition to the Code of Canons of the Eastern Churches, the six Catholic sects are working on amending their Personal Status Code in the framework of

[34] Article 33 of the law defining the privileges of congregational authorities of the Christian and Israelite sects: "The denominations covered by this law shall present to government their personal status code and religious court procedure code within a period of one year from the date the present law is put into effect, to be recognized within a period of 6 months, provided they are compatible with the principles of public order and the basic laws of the State and the sects. The implementation of the present law shall be suspended with respect to any sect that is late or fails to comply with the provisions of the present Article." See http://77.42.251.205/LawView.aspx?opt=view&LawID=258197 [AR]

[35] See http://77.42.251.205/LawView.aspx?opt=view&LawID=246386 ; http://77.42.251.205/LawView.aspx?opt=view&LawID=246399 [AR]

[36] See http://77.42.251.205/LawView.aspx?opt=view&LawID=246065 & http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR]

[37] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]

[38] Ibrahim Traboulsi, *Marriage and Its Effects in Communities Governed by the Law of April 2, 1951 in Lebanon*, 2nd and Improved Edition, Sader Legal Publishers, Beirut, 2000, p.31.

the Episcopal Statutory Commission[39]. Although the work is still ongoing, judges in Catholic courts have begun to apply many amendments that were discussed and approved by the Commission, for example the provisions on the age of custody (set by the Commission at 14 for girls and boys alike[40]).

b- The Christian Religious Judiciary

In line with the principle that guided the Lebanese State to declare the independence of Christian religious courts, and in light of the absence of a unified legislation regulating them, these courts developed independently in ways that differed from one sect to another. Many factors contributed to these differences, such as the human and financial resources available to the different sects in varying degrees. In terms of the Catholic sects, one should also consider their connection to a foreign authority and the fact that they are affected by the legislations and decisions of the Supreme Pontiff in Rome.

The different Christian sects have adopted their own procedural laws to regulate their courts, trial procedures, notification procedures and delays. These sects have organized their courts into different degrees, and stipulated their formation process, their jurisdiction, and the stages of a case in court. On the other hand, in cases that are not covered by their own legislations, they resort to the Code of Civil Procedure[41].

We shall present the main elements of Christian religious courts, their

[39] The Episcopal Statutory Commission is elected by the Council of Bishops and composed of priests and lay experts on matters related to civil status.

[40] The Personal Status Code of the Catholic sects did not define the custody age for minor children in case of parental separation, but Article 123 states that "Breastfeeding is the mother's area" and Article 124 states that "The duration of breastfeeding is 2 years." See http://www.legallaw.ul.edu.lb/LawView.aspx?LawID=258198 [AR]

[41] It is stipulated in Article 2 of the Personal Status and Procedural Code of the Coptic Orthodox sect in Lebanon that justice shall be served according to the ecclesiastical and civil laws in effect, to the sect's personal status code, to the religious law and tradition proper to the sect and to the April 2, 1951 law as well as the Code of Civil Procedure in cases not covered by the Coptic Orthodox Code and not in conflict with it. Article 68 of the Procedural Code for the Coptic Orthodox sects also stipulates that in all cases not covered by this law, the ecclesiastical courts shall adopt the rulings of the Code of Civil Procedure, provided they do not conflict with the sect's Code of procedure and their rules. See: http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=24638 and http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246399 [AR] Article 30 of the Code of Procedure in the Evangelical sect stipulates that "The Evangelical religious courts in their two degrees shall exercise all the powers derived from civil laws and procedural and personal status laws and the Code of the Supreme Council, among which are issuing interlocutory judgments of all kinds, such as travel bans, appointing experts and determining their tasks and remuneration, summoning the necessary persons and witnesses to court with the help of the police force if necessary, imposing fees, wages and compensations on litigants, setting trial dates via the president, and communicating with the public or private authorities to complete their aforementioned tasks." See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246065#Section_294045.[AR] Article 122 of the Procedural law of the Armenian Orthodox sect stipulates that "If the courts of the Armenian Orthodox denomination find themselves in the course of applying this law before a case that is not covered in said law, they shall refer to the Code of Civil Procedure (of the state) and rule on this case as inspired by the provisions of the Civil Code." See http://77.42.251.205/Law.aspx?lawId=258205 [AR]

formation process and degrees, which we derived from reviewing the relevant literature as well as from the individual meetings we conducted with religious judges and legal experts with experience in religious courts. Afterwards, we shall address the main reform initiatives that were taken in this regard.

A Brief Overview of the Formation Process of Religious Courts According to the Personal Status Code of Each Christian Sect:

• Catholic sects

In general, the courts of the Catholic sects consist of a Tribunal of First Instance (Canon 1066, clause 1) established by the Diocesan Bishop who is also its First Instance Judge. He may however appoint a Judicial Vicar who judges in his name, as well as other judges, a Promoter of Justice[42], a Defender of the Bond[43] and other staff members such as a Registrar and Notary[44].

It should be noted that the Patriarch may establish a single unified tribunal of first instance (Can. 1067) for several dioceses with the approval of the Bishops of the dioceses in question. This Tribunal is supervised by the bishops who agreed to forming it, in the person of a bishop elected by them, and who enjoys the same rights as those of the Diocesan Bishop towards his Tribunal, according to the Tribunal procedure laws that they set up. The Maronite Patriarchate has established its single tribunals based on this model.

Concerning the Patriarchal Court of Appeal (Can.1063), it is established by the Patriarch with the approval of the Permanent Synod, who designates its president, judges, Promoter of Justice and Defender of the Bond. It rules in the Second Instance and the following Instances on cases tried by the Tribunal of First Instance (Can. 1063,3[45]).

In some cases, the Tribunal consists of a Single Judge and a Promoter of Justice; while the ruling body consists of three judges, the Defender of the Bond (who defends the validity of a marriage) and the Promoter of Justice (who defends the good of the Church).

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[42] Promoter of Justice: "A Promoter of Justice in ecclesiastical lawsuits is like the Public Prosecutor in civil lawsuits, in that he has the public function of defending public law in penal and civil rights cases that touch upon the public good or the rights of the Church. Among his main duties is to preserve the rights of the Church and its community of believers, and to uphold the proper course of justice and the implementation of Church laws." (Canon 1094, Commentary on the Code of Canons of the Eastern Churches).

[43] Defender of the Bond "is a public office like the Promoter of Justice, who only handles nullity or dissolution of a marriage and ordination." (Canon 1096: http://www.intratext.com/IXT/ENG1199/_PUG.HTM/ ENG) in Commentary on the Code of Canons of the Eastern Churches). According to the law, the Promoter and Defender can be chosen among lay persons provided they have the necessary qualifications.

[44] The Notary may be a cleric or a lay person, whose task is limited to recording declarations and testimonies and other documents and signing them.

[45] See: http://www.intratext.com/IXT/ENG1199/_INDEX.HTM (Under 'Trials in General) [ENG]

Catholic tribunals are distinguished by the possibility to appeal to the Holy See, that is to the Roman Rota[46]. Any Catholic person in the world can appeal a ruling concerning marriage dissolution before the Rota.

• The Greek Orthodox sect

According to the Patriarchate of Antioch and All the East's Personal Status Code and Code of Procedure[47], the religious judiciary consists of First Instance Courts and a Court of Appeal. The First Instance Courts are either District Courts presided by a Single Judge (the Eparchies of Akkar, the South and Zahle), or First Instance Chambers consisting of a President and two members (the Eparchies of Beirut, Tripoli, Byblos and Batroun). The Court of Appeal is composed of a President and two advisors. According to a religious judge, the criteria according to which First Instance Courts were divided into District Courts and Chambers was the number of sect members in the two Dioceses in question: when the number is higher, a Chamber is adopted.

Regarding the Court of Appeal, it is – in principle – a Patriarchal Appellate Court, in that it is established in a monastery affiliated to a Patriarchate (in Lebanon, the Monastery of Mar Elias Shwayya, or the Balamand Monastery). "However, for practical reasons, it was agreed with the Bishop of Beirut to establish a Court of Appeal in the Diocese's seat[48]."

• The Armenian Orthodox sect

The First Instance and Appellate Courts are composed of six members, three ordained and three lay persons. The law stipulates that the Diocesan Bishop is by virtue of his position the "spiritual head" of the First Instance and Appellate Courts, and he exercises this function either personally or through a deputy. "Each court shall elect one of its lay members to preside over the trial sessions, and this "lay president" shall manage the sessions and keep the order…" The law also stipulates the necessity of consensus between the two presidents over many matters, among them taking temporary measures (urgent matters) related to "the wife's residence and her maintenance and the financial relations between the spouses, keeping the children, travel bans…" (Article 29)

[46] "The Roma Rota is the ordinary tribunal for the entire Church, it defends Church rights, provides unified jurisprudence and assists lesser degree tribunals through its rulings. It rules in the second instance on cases ruled upon by the ordinary first instance courts, and legally appealed to the Holy See; and it rules in the third and following instances on the cases which the Roman Rota or any other tribunals have already adjudicated unless the matter is a res iudicata." See Bechara Al-Rai: Practical Case Procedures before Ecclesiastical Tribunals, Sagesse University Publications, 2010, p.18 [AR]

[47] The second part of the Law focuses on "the formation and procedural law of tribunals", and includes Articles on establishing the courts, the jurisdiction of the confessional courts, due process laws, execution and amendment of the Law. See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]

[48] From an interview with a judge conducted on June 29, 2020.

Article 2 clause 'c' of the Code of Procedure of the Orthodox Armenian sect also stipulates that "the authority of the Supreme Court of Appeal belongs to the Catholicosate (Patriarchate) of Cilicia in cases related to the annulment and dissolution of marriages only[49]", and does not extend to the material effects of marriage.

• The Assyrian Eastern Orthodox sect

The Personal Status Code stipulates in "Part 11: On the Formation of Tribunals and Their Procedures" that the sect tribunals are First Instance and Appeal Courts located in the seats of the Archdioceses. The Tribunal of First Instance is presided by the Diocesan Bishop as a Single Judge, who constitutes a First Instance Court and chooses its two members among the Diocese priesthood. He constitutes the Appellate Court from two other members. The Bishop and Single Judge appoints a deputy judge to preside over the trial sessions in case the Bishop is absent or unable to fulfill his duties[50].

It is noteworthy that the law stipulates that "the trial shall be public unless it would cause public shame or make mention of what is prohibited, in which case the trial shall be closed by court decision." (Article 183)[51]

• The Coptic Orthodox sect

The Coptic sect has a Court of First Instance and a Court of Appeal, which are unified for all members of the Coptic Orthodox Community regardless of their location or nationality[52].

As for the formation of the courts, it is as follows: The Diocesan Bishop presides over the First Instance Tribunal, or his ecclesiastical deputy, or the head of the local Church, along with two advisory members and an alternate member. The Bishop shall preside over the First Instance Tribunal in his capacity as a Single Judge in the cases and lawsuits he keeps for himself (Articles 49 & 50). The Court of Appeal in the first degree is composed of the Diocesan Bishop as president or his ecclesiastical deputy or whoever he chooses or appoints, and of two advisory members and an alternate member from the clergy or the laity (Article 55)[53].

Similar to the Catholic law, the Coptic Orthodox law stipulates that the Diocesan Bishop may appoint a judicial deputy in the rank of judge to perform the task of defending the public good and rights of the Church as a Promoter

[49] See http://77.42.251.205/Law.aspx?lawId=258205 [AR]
[50] Law issued on February 22, 1949 and approved by the Council of Ministers by Decree 39 of 9/7/1997, published in Sader electronic magazine: https://lebanon.saderlex.com/
[51] See http://77.42.251.205/Law.aspx?lawId=255320 [AR]
[52] Article 1 of Book III: "Trial Procedures and the Formation of Tribunals" of the Personal Status Procedural Code of the Coptic Orthodox sect in Lebanon, issued on September 11, 2010.
[53] The laity: We will address the definition of the term in detail later in this chapter.

of Justice (Article 26) as he may appoint a Defender of the Bond among the priesthood or the laity (Article 29).

It is also noteworthy here, similarly to what is stipulated in the Procedural Code of the Assyrian Eastern Orthodox sect, that the Coptic Orthodox Code of Procedure states that trials are conducted publicly unless it would cause public shame or make mention of what is prohibited, in which case the trial shall be closed by court decision. (Article 22)[54]

• The Evangelical sect

The confessional Evangelical Court of First Instance and the Court of Appeal are composed of "three primarily assigned judges among who one is presiding judge, preferably a pastor, and it is preferable that at least one of them be licensed in law; and 2 alternate judges appointed by the Executive Committee of the Supreme Council for a period of 4 years." As such, these two courts are composed of 2 Chambers, and their jurisdiction extends to all Lebanese soil.

Regarding the mechanisms in place for monitoring judges and holding them accountable, Article 16 of the Code of Procedure for the Evangelical Community in Syria and Lebanon stipulates the establishment of an oversight body to monitor Evangelical tribunals, called "the Court Oversight Commission". Among its tasks is "receiving complaints about a judge or how work is conducted in the courts, studying these complaints and investigating their truth, then taking the appropriate measures; reports are submitted to the Executive Committee with the appropriate recommendations; the Committee tests the heads and members of the courts; it monitors the setting of fees to be settled and the expenses of all the courts and their modifications...."[55]

In conclusion, there is a clear similarity between the different Christian religious courts in terms of adopting the principle of Tribunals in Two Instances, which ensures justice for the litigants, and also in terms of adopting Chambers when it comes to Courts of Appeal. There is a slight difference when it comes to opting for a Chamber or a Single Judge at the level of First Instance Courts.

[54] See: http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246399 [AR]
[55] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246065#Section_294045

c- The Relation of Christian Religious Courts to the State: Courts that are Independent of the Official State Apparatus

Historically, while the Sharia courts (Sunni and Jaafari) are administratively and functionally affiliated to the Prime Minister's Office, and the Druze courts are affiliated to the Justice Ministry, the Christian religious courts have been distinguished by their administrative and financial independence, whereby the religious authorities handle the appointment of judges and judicial and non-judicial assistants in these courts. Accordingly, these courts exist outside the system of oversight and accountability, a system that would otherwise ensure the rights of individuals to fair trial. In this context, we point out that the Lebanese government has in recent years been allocating annual financial contributions to some Christian denominations from the State's general budget. In some Christian denominations, the salaries of the judges are covered by court procedure fees and the contributions of the Lebanese State[56].

Due to the administrative and financial independence enjoyed by the Christian confessional courts, setting the mechanisms of oversight and accountability for judges remains within the jurisdiction of the sects themselves; the official judicial system has no authority to monitor the work of judges in cases of breach of office. Therefore, any oversight mechanism – if it exists – remains within the jurisdiction of these sects that handle these issues internally. Some sectarian laws did stipulate oversight and accountability mechanisms, where judges are held accountable by councils and committees affiliated to the sect.

• Catholic denominations:

Regarding the mechanisms of oversight and accountability of judges, the Code of Procedure regulates cases of suspicion of judicial misconduct, to recuse a judge or judges accused of a specific offense. The case is ruled by the authority to which the court is directly subordinate[57].

In the course of the interviews we conducted, it became clear to us that the Maronite Church has established, in addition to the previously mentioned procedure, an unwritten mechanism to supervise the exercise of the judges' function at the level of the Court of First Instance: A bishop was assigned to monitor the judges' work, especially the newly appointed ones. However, as it is an uncodified practice, it depends on the bishop tasked with supervising the First Instance Courts.

[56] A Maronite judge we interviewed pointed out that the State provides some Christian sects with "an annual grant in addition to contributions to pay salaries."

[57] Canon1107, Code of Canons of the Eastern Churches.
See http://www.intratext.com/IXT/ENG1199/_INDEX.HTM [ENG]

With regard to the Greek Orthodox sect, Article 32 of its Code of Procedure states that requests for the recusal or withdrawal of a judge are considered by the hierarchically superior religious leader.

For the Armenian Orthodox sect, the law does not indicate a clear mechanism for monitoring and holding judges accountable in case of breach of office. Article 23 of the Code of Procedure, which otherwise indicates the cases in which a court member is to be recused, does not touch upon cases of breach of office[58]. The same applies to the Assyrian Eastern Orthodox sect and the Coptic Orthodox sect.

d. Institutional Loopholes

- **Administrative and Financial Independence and the Absence of Official Oversight**

The administrative and financial independence historically enjoyed by the Christian sects has led to an institutional weakness embodied by the absence of oversight and inspection of religious courts by government institutions. Some religious judges consider that what guarantees a fair trial for litigants, men and women, is already provided by the two-degree litigation system, or by the litigants' ability to file a complaint with the president/authority that the court is directly subordinate to (like cases of suspicion of judicial misconduct in Catholic sects). None of these judges believe that the predominant societal culture or the imbalance of power between women and men has any significant impact on anchoring and deepening discrimination against women. In reality, the multiplicity of legal texts and sources used by some sects like the Catholic sect, the wide discretionary power enjoyed by judges in different cases (particularly custody and guardianship), and the influence of prevalent stereotypes on a judge's perspective and his rulings, are all factors that may widen the inequality gap between women and men.

In terms of bolstering institutions, we have found that there are clear discrepancies between the larger and the smaller sects in their organizational and institution-building capacities at the level of the courts. The larger sects have resorted to organizing their courts through a clear distribution of roles between the administrative and judicial bodies, whereby a registry is established in each court to receive lawsuits and handle matters of notifications, summons and fees. This level of organization is lacking in the courts of the smaller sects (Catholic and Orthodox), where in some cases the judges handle administrative and financial matters (direct fee payment or fee discounts) inside the court.

[58] See http://77.42.251.205/Law.aspx?lawId=258205 [AR]

Many judges have complained about their unequal treatment in comparison with the Islamic sects, who have the official means of support to ensure their continuity and sustainability.

• A Shortage of Human Resources

The shortage of human resources in the Catholic courts has led to the practice whereby one judge may sit in several courts belonging to different Catholic sects. For example, a judge may hear cases in Armenian Catholic courts, or in Chaldean, Syriac, and Latin Catholic courts among others.

In principle, this measure can be an adequate solution to the problem of the shortage of religious judges, but it should be noted that people's – particularly women's - insufficient legal knowledge about personal status can give rise to confusion. A woman may be shocked upon realizing that the judge who is deciding her case belongs to a different sect than her own or her husband's, and this creates in her the fear that she will not get a fair trial.

This issue does not apply in Orthodox or Evangelical sects, in whose courts only judges from the same sect handle cases.

• Judges Do Not Work Full-Time

Opinions differ around the necessity for full-time commitment on the part religious judges. Some judges consider that the many responsibilities and tasks handled by these religious judges, from being a court judge to being a guide and parish priest make that commitment difficult. Others consider that a full-time commitment is crucial to guarantee greater justice for individuals. One particular judge declared that he only accepts to "work with monks (who are not in charge of a parish), and then they need to have a specialization (in Canon Law) and have sufficient time to perform their tasks[59]."

This view was not shared by other judges and legal experts, who pointed out that "this rule should not be generalized, as some parish priests and ministers are able to perform their judicial duties without delay in addition to fulfilling their pastoral and familial duties. Some experts pointed out that "we sometimes find that judges who are married parish priests or ministers show more understanding when it comes to issues of maintenance and custody for example[60]".

The issue of full-time commitment is tied to the availability of the proper resources required to secure judges' fees. Many judges among those we met with pointed out that some dioceses lack the appropriate resources to support their judicial systems, and even when these resources are available to some

[59] From an interview with a religious judge on 26/6/2020
[60] From an interview with a legal expert on 18//6/2020

sects, the judge's fees remain symbolic. It is therefore necessary that the priest judge is able to secure his livelihood on his own.

The issue of full-time commitment is a main concern regarding the effectiveness of judicial work. It is difficult to imagine the weight of the responsibilities and burdens shouldered by the priest or the minister (be they married or not) in the context of conducting and organizing the affairs of their parish members, in guiding the individuals and parishes under their care. In addition to this, they are entrusted with their personal status cases. Working on judicial institution-building and ensuring that justice is accessible to individuals demand some sort of full-time dedication, or at least a rational distribution of responsibilities among the priest judges and minister judges, to guarantee the right of individuals to a fair trial.

• Closed Trials and the Problem of Publishing Court Rulings

A review of personal status laws and procedural laws has shown that the majority of Christian courts – unlike civil judicial hearings – rely on the principle of closed trials[61].

The right to a public trial is enshrined in the Universal Declaration of Human Rights[62], which the Preamble to the Constitution refers to. The aim of this principle is to guarantee that individuals are protected from the 'secret justice' conducted away from the public eye. Through the transparency provided by public court sessions, it contributes to establishing the citizens' trust in the courts, and to guaranteeing the rights of all persons, including legal case experts, to access information about the judges and to know the extent to which they are committed to respecting and implementing human rights when making their decisions and rulings.

On the other hand, given the private nature of personal status cases, the need arises to reconsider this principle, or at least approach it in a manner that guarantees the rights of individuals to the transparency provided by public trials while at the same time respecting their right to protect their private lives. Based on this premise, a closed trial and proceedings are deemed, when necessary, a way to protect women's right to privacy and their mental and physical health.

[61] The Assyrian Orthodox and the Coptic Orthodox sects have gone against this principle, as Article 183 of the Personal Status Code of the Assyrian Orthodox sect stipulates that "the trial shall be public unless it would cause public shame or make mention of what is prohibited, in which case the trial shall be closed by court decision." See: http://77.42.251.205/Law.aspx?lawId=255320 [AR] Article 22 of the Coptic Orthodox Code of Procedure adds the following: "and this falls to the discretion of the Court President." See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246399 [AR]

[62] Article 10 of the Universal Declaration of Human Rights: "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations…" See: https://www.un.org/en/about-us/universal-declaration-of-human-rights [ENG]

However, this could backfire on women who do not possess the financial means to appoint legal counsel. For example, religious courts do not allow a representative to accompany their client before the Court of First Instance if she fails to give them power of attorney[63].

In certain sects, it is allowed to forgo appointing a lawyer at the Court of First Instance, and this could be in the interest of women in terms of reducing cost (such as the lawyer's fee). But it could also backfire on the course and results of the case, if the women in question lack sufficient legal knowledge concerning their case.

The principle of trial confidentiality extends to the publication of rulings, since the majority of sects that practice closed trials agree that it is not permissible to publish these rulings. However, exceptions do exist. For example, a judge declared that he is not opposed to publishing decisions in principle, certainly without mentioning names: "The moment a decision is issued and is given writ of execution in order to be implemented by the Civil Registry, it becomes the property of the people.[64]" A collection of rulings was in fact published in 2016 and 2017 that included rulings and jurisprudence by the religious Court of First Instance of the Orthodox Archdiocese of Tripoli (ruling issued between 1990 and 2000[65]) and the Orthodox Court of Appeal (rulings issued between 2001 & 2016), without mentioning the names of the litigants. The publisher was thus able to reconcile between the principles of transparency and of respect for privacy. As for the Catholic sects, we would like to point out that the Roman Rota publishes its rulings after a specific time span has elapsed.

e- The Most Prominent Reform Initiatives and their Impact on Women

In recent years, there have been many initiatives that have led to amendments at the level of court procedures. We will present them here and analyze their impact on women. The majority of these measures concern the Catholic sects in particular, with a number of them being unique to the Maronite sect.

For all Catholic sects, these reforms take the form of apostolic letters issued by the Supreme Pontiff. They affect the procedures followed by local courts and aim at speeding up marriage annulment cases.

[63] From an interview conducted with a legal expert on 22/6/2020.
[64] From an interview with an Orthodox religious judge on 29/6/2020
[65] See the series entitled You and the Law by Father Ibrahim Chahine volumes 4 & 5)

• Non-Compulsory Appeal

Litigation before a Catholic court happens in two degrees: at a First-Instance Court and a Court of Appeal. Previously, two identical rulings were required for the annulment of a marriage. When an enforceable judgment of annulment used to be issued by the Court of First Instance, the two parties were obligated to appeal the case to the Court of Appeal in order to obtain two identical rulings of marriage annulment, for the ruling to be executed.

But as a result of the amendments stipulated in the Apostolic Letter of 2015, an annulment ruling issued by the Court of First Instance enters into force after the legally stipulated deadline passes (that is as soon as it is issued), if it isn't appealed by one of the spouses, by the Promoter of Justice or the Defender of the Bond.

The amendments also make it so that if the aggrieved party appeals the judgment, and the Court of Appeal finds that the appeal is a means of stalling the implementation of the ruling, then it ratifies the judgment issued by the Court of First Instance as a final ruling.

This reform is very significant in terms of improving women's conditions. On the one hand, a woman is no longer forced to remain in a marital relationship that could be harmful or pose a danger to her life (in cases of domestic violence for example). On the other hand, it exempts her from having to shoulder additional costs or legal fees involved in appealing a case.

• The Shorter Matrimonial Trials Scheme before the Bishop

The new reforms entitle diocesan bishops to rule on marriage annulment cases through the Shorter Trial Scheme. This applies when evidence supported by testimonies or documents that do not require further investigation or more precise inspection is available that clearly demonstrates the nullity of a marriage. This trial takes place upon a request submitted by both spouses or by one of them with the approval of the other.

When the request is made (the petition for a Shorter Trial Scheme[66]), the court is brought together, composed of an investigative judge and an assistant. The persons required to participate are summoned, and the trial should be held within a period of time that does not exceed thirty days. These reforms require the judge to hear the case speedily and within short deadlines, whereby he collects the evidence in the course of one trial session and gives fifteen days for the remarks and defense of both parties to be presented. After the ruling is issued,

[66] The application form for opening a shorter trial scheme includes the following entries:
- A comprehensive, concise and clear exposition of the facts on which the request is based.
- A statement of the evidence that the judge can promptly collect
- The documents on which the application is based to be attached to the application form.

it may be appealed, and if the appeal is seen as aiming to stall proceedings, then it is promptly rejected.

Resorting to shorter trials definitely saves time and money for both parties, especially women, as the diocesan center would be closer to their place of residence, especially when they live in peripheral and rural areas; this saves the wife the trouble of commuting to the courthouse. However, this new mechanism increases the amount of information and procedures required, which might not be accessible to all women. Rationalizing court procedures, lowering costs, providing means of legal assistance and bringing the courts closer to individuals remain the best ways of providing the circumstances and conditions for justice to women.

• The Maronite Church's Reform Initiatives

In recent years, the Maronite Church has taken the following measures:

1. At the level of filing a case before the Rota Court:

The Rota Court is considered a Court of Appeal of the Catholic Church in Rome, with the authority to look into the rulings issued by local appellate courts. Previously, both spouses had the right to appeal the judgment of their local appellate court before the Rota Court. The majority of the persons we interviewed were of the opinion that the aim of resorting to the Rota Court is stalling, and that it is mostly the husbands who do so in order to freeze the implementation of the local appellate court's rulings, particularly on maintenance and compensation; it is a means to avoid paying the maintenance or compensation ordered in favor of the wife.

The second issue that arises from resorting to the Rota Court is the long duration of trials since their proceedings can be lengthy:

- Firstly, in terms of hiring a case lawyer: No lawyer can plead before the Rota Court unless they have a PhD in Civil Law and Theology, have studied at the Rota Institute and know Latin.
- Secondly, all the files that will be presented to the Court must be translated to Latin. There is no specific deadline set for completing the translation by the party who files the case. Procrastination may lead to a delay of proceedings and of the issuance of the final ruling, which keeps women in a state of psychological and financial instability. Many legal experts and judges have mentioned that usually the main purpose of resorting to this Court is to freeze the implementation of a maintenance or compensation ruling in favor of the wife. This delay affects women's mental health and financial conditions, and undermines their right to access justice; delayed justice is not the justice desired by its seekers.

Faced with this reality, the Maronite Patriarchate finally made the decision to address the matter by taking the following steps[67]:

- Concerning the cases being filed: The Maronite Patriarchate and the Supreme Pontiff came to the agreement that the cases filed with the Rota Court will be restricted to the question of the validity of marriage, without its civil effects. The Rota Court no longer considers other matters such as maintenance and compensation, to avoid delays in the implementation of rulings and to uphold the rights of the spouses, especially the women.
- Concerning the internal organization of Maronite courts:

Before filing a case before the Rota Court:

- The appellant must inform the Maronite Court of his/her decision to file a lawsuit before the Rota Court.
- The supervising judge will conduct an investigation with the appellant to determine the reasons for the appeal.
- The request for an appeal before the Rota Court is approved or rejected based on the decision of the supervising judge[68].

The Supervising Judge of the Unified Maronite Court of First Instance pointed out that an office was opened at the Maronite Court to assist litigants who desire to submit their case to the Rota Court, by providing a case files translation service by a select group of sworn translators. The deadline for preparing and translating the file is set, and it is then sent to the Rota Court.

As a result of these measures, the number of appeals to the Rota Court has decreased in recent years.

2. At the level of judge appointment mechanisms

The Maronite sect has recently adopted a mechanism for appointing judges based on two conditions: having a PhD in Theology and conducting internships in court through taking on several assignments in preparation for being appointed as judge and entrusted with case files. The current Supervisor of the Maronite First Instance Courts, Bishop Hanna Alwan, was in charge of developing this system.

Based on the recent measures taken by the Maronite authorities, the mechanism in question may be summarized as follows:

- Each judge must have a degree in Canon Law.
- "The judge must train for a specified period as a court registrar, then train

[67] From the interview conducted with the Supervisor of Maronite Courts on 14/6/2020.
[68] See http://bkerki.org/tribunalmaronite.html [AR]

under a practicing judge. He will be assigned with preparing files and will work under the supervision of the Promoter of Justice who will evaluate his work after one year. Should his work prove satisfactory, he will be appointed as Promoter of Justice for three years during which the case files he prepares will be supervized. At the same time, he will be assigned cases to review and to train in judgment drafting, after which he will be appointed judge.

- Later, he will be appointed investigative judge, then judge-rapporteur, and then presiding judge."[69]

We point out here that "among the rapporteurs we find the president of the court (judicial vicar) and his assistants (the judicial vicar's deputies), and they in turn must sit for internship exams."[70]

Establishing a clear mechanism for appointing judges following competence-based criteria contributes to the rationalization of judicial work, and provides guarantees for everyone concerned, especially women. As for the conditions laid down by the Maronite Church, they need to be codified (they are currently not), with the aim of building the religious judicial institution and ensuring the permanence of this mechanism.

3. Working to Establish Family listening, Accompaniment and Mediation Centres

The starting point of the different Christian Churches is that the judge in a religious court is both adjudicator and shepherd. He must therefore seek, at all stages of a trial and whenever possible, to reconcile the feuding spouses[71]. Various religious laws have stipulated the pivotal role played by the Diocesan Bishop in the judicial system when it comes to personal status cases, by directly examining cases as president of the court, or mandating judges to hear them.

According to the different laws, reconciliation must be attempted prior to resorting to court. The reconciliation can be undertaken by the Bishop himself, or he may ask the priest of the parish to which the spouses belong, or which is in their area of residence, to handle it.

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[69] From an interview with a religious judge and with the Maronite First Instance Courts Supervisor on 14/7/2020, and an interview with a legal expert on 22/6/2020.

[70] From an interview with a religious judge and with the Maronite First Instance Courts Supervisor on 14/7/2020, and an interview with a legal expert on 22/6/2020.

[71] See for example Article 182 of the Personal Status Code of the Assyrian Eastern Orthodox sect: http://77.42.251.205/Law.aspx?lawId=255320 [AR] and Article 22 of the Personal Status Code and Code of Procedure of the Greek Orthodox Patriarchate of Antioch and All the East: http://77.42.251.205/LawView.aspx?opt=view&LawID=244776.[AR] See also canon 1362 of the Code of Canons of the Eastern Churches at http://www.intratext.com/IXT/ENG1199/_P11U.HTM [ENG]

In recent years, the Maronite sect has taken two initiatives to enable the spouses to try for a reconciliation before initiating desertion or annulment procedures:

- **At the level of the Maronite religious court:** A marital mediation center was established. Trial procedures are halted and the case is transferred to 'mediation', where both parties are heard and there is an attempt to resolve the dispute. If a resolution is reached between the spouses, it is documented in writing, and submitted to the judge to give it writ of execution.
- **At the level of the dioceses:** Since 2011, the Pastoral Office for Marriage and Family at the Maronite Patriarchal seat in Bkerki[72] has worked on "establishing five family centers for listening, accompaniment and mediation in the following Dioceses: Beirut, Byblos, Tripoli, Zgharta and Zahle", in preparation for extending them to all the dioceses. The mission of these centers[73] is "to accompany the spouses, to try to reconcile them, to help them resolve their marital problems and find amicable solutions in order to avert the negative impact of the disputes on the children; also to work with them on drafting an amicable Agreement on the civil effects of the marriage such as maintenance, guardianship, custody and visitation of minors and other matters[74]." But to this day, resorting to these centers remains optional. The Office is working to make this process mandatory for spouses before they file an annulment or desertion suit before the court[75].

4- Resorting to Psychological Expertise

The majority of laws in the Christian sects refer to the possibility of resorting to psychologists[76], with the exception of the Assyrian Eastern Orthodox sect and the Coptic Orthodox sect[77].

In the Catholic sects, the reliance on psychology experts increased after the adoption of the Code of Canons for the Eastern Churches in 1990 and the addition

[72] Among the purposes of this Office is working on "educating spouses and families about the Sacrament of Marriage and seeking familial reconciliations…". See: https://www.bkerke.org.lb/curia.php?p4=26&p=7 [AR]

[73] The center is composed of the concerned parish priest, clerics, men and women of faith with special qualifications or experts in certain fields, psychiatrists, social experts and lawyers.

[74] See http://bkerki.org/tribunalmaronite.html [AR]

[75] From an interview with Father Semaan Abou Abdo, a marriage and family specialist at the Pontifical John Paul II Institute for Studies on Marriage and Family, and a professor at Sagesse University.

[76] See for example Articles 46, 47 & 48 of the Armenian Orthodox sect's Code of Procedure: http://77.42.251.205/Law.aspx?lawId=258205 [AR]. Article 48 of the Evangelical sect's Code of Procedure at http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246065#Section_294045 [AR], and Article 23 of the Personal Status Code and Code of Procedure the Greek Orthodox sect at http://77.42.251.205/LawView.aspx?_opt=view&LawID=244776 [AR] which refers to a judge's option to consult with experts to assist him in his investigations.

[77] The Public Prosecutor for the religious Coptic Orthodox courts confirmed that psychological experts can be sought when necessary.

of clause 3 to canon 818, which permits the annulment of the marital bond[78] for "those who are not able to assume the essential obligations of marriage for causes of a psychological nature[79]." Consulting with psychologists can help figure out if the cause of the annulment was concurrent to the marriage contract, in which case marital consent is considered invalidated, or if it arose after the marriage was concluded.

The experts we interviewed pointed out that psychological expertise and social assistance are sought when looking into custody cases, but as a general rule, resorting to psychologists is not systematic and depends on the judge's assessment of the case before him.. It is important to make use of the knowledge that modern sciences offer to consolidate the judge's decisions.

III – The Practices of Religious Courts and their Impact on Women

1. General Principles that Ensure the Right to Access Justice

Access to justice is a right stipulated by all international human rights standards and means – in the narrow sense – the possibility to access courts and judicial bodies. In its broadest sense, it means the achievement of justice. It is a right for all (males and females), citizens and non-citizens. It is the basic foundation for protecting human rights and a practical means of upholding the rule of Law.

"While both men and women face obstacles in accessing justice, women face different challenges and experience such challenges differently[80]." Hence, international human rights standards recommend that State parties endeavor to achieve the following:

- Guarantee the high standard of judicial systems, and comply with international standards of competence, effectiveness, independence and

[78] Marriage annulment: "The marriage contract is considered null if contracted with the existence of an undisclosed diriment impediment, or for reasons concurrent with its celebration within a specific context and circumstances existing prior to the marriage and which render it null as if it never existed." However, "Declaring a marriage null does not preclude its effects, the most important of which being the legitimacy of the children resulting from it, and hence grants them all the rights of a legitimate child." (Ibrahim Traboulsi, p.95)x

[79] Fore a detailed explanation of these "causes of a psychological nature", See Commentary on the *Code of Canons for Eastern Churches* coordinated by Father Antoine Rajeh, Pauline Library Publications, April 2005, p 816 onwards.

[80] See https://archive.unescwa.org/sites/www.unescwa.org/files/publications/files/e_escwa_ecw_15_1_e.pdf [ENG]

impartiality, as well as with international jurisprudence (providing the adequate environment for individuals – especially women and children – during interrogation and trial, ensuring that they have the required legal protection, making use of professional expertise (social and psychological) and enshrining the principle of public trials within the limits of respect for the private lives of individuals).

- Guarantee that all the components of the judicial system are committed to international standards of competence, effectiveness, independence and impartiality, and provide the means for fair, adequate and effective measures that are enforceable and that lead to sustainable, gender-sensitive dispute settlement.
- Rely on indicators to measure the extent of women's recourse to the judiciary.
- Guarantee women's equal representation in judicial and law enforcement machineries.
- Ensure an innovative and transformative approach and framework for achieving justice, including, when necessary, investing in broader institutional reforms.
- Provide adequate, effective and enforceable rulings that lead – for all women – to sustainable and gender-sensitive dispute settlements.
- Implement mechanisms that guarantee the impartiality of evidentiary rules, of investigation and all legal and quasi-judicial processes, and ensure that they are not affected by gender stereotyping and prejudice.
- Establish institutional systems that provide accessible and sustainable legal aid and public defense services that are responsive to women's needs, and ensure that these services are provided in a timely, continuous and effective manner during all the stages of judicial and quasi-judicial proceedings.
- Institute an oversight mechanism to be implemented by independent inspectors to guarantee the good performance of the justice system and to address any discrimination practiced by professionals in the justice system against women[81].
- Have coordination mechanisms between the different existing justice systems (the civil and religious judiciaries) to ensure fair outcomes for women.

According to these standards, women should be able to depend on a judicial system free of discrimination and stereotyping. Eliminating judicial stereotyping within the justice system is crucial for realizing equality and justice for women. "Unfortunately, a technical response is not always adequate or even necessary to fix a justice system. Why? Because a justice system is made up of people,

[81] See https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang [ENG]

and in order to create a well-functioning justice system, we need more than just buildings and laws and internal processes. We also need to understand the people engaging with the system—their interests, their desires, and most importantly, their motivations[82]."

Based on these principles, and taking into account that religious courts have the standing of exceptional courts, it is indispensable to institutionalize their internal functioning and to reform their proceedings, given their great impact on the individual freedoms and basic rights of individuals – women and children especially.

2. Challenges Faced by Women in Religious Courts

In 2015, the Lebanese State received from the Committee on the Elimination of All Forms of Discrimination Against Women (the body of independent experts that monitors implementation of CEDAW) numerous 'Concluding Observations' related to facilitating women's access to justice, where the Committee expressed concern about the obstacles women in Lebanon face when trying to turn to the courts. Their apprehensions concerned the following points:

- The still-existing issues in the religious and civil legal texts in force, and their inclusion of discriminatory material against women.
- The inadequacy of these legal texts to protect women from different forms of discrimination and gender-based violence.
- The complications related to legal rulings and to the systems of legal aid and services.

These concerns were noted in the 'Concluding Observations' addressed to the Lebanese State in 2015 after reviewing the combined 4th and 5th periodic national reports[83]. The CEDAW Committee also confirmed them in its "List of issues and questions in relation to the sixth periodic report of Lebanon" in 2020, and which shall be discussed in 2022[84].

The observations addressed to the Lebanese State coincide with the point of view of the Lebanese men and women respondents to the survey on the obstacles and shortcomings that limit the religious courts' power to achieve justice for women.

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[82] *Towards a Rule of Law Culture: Exploring Effective Responses to Justice and Security Challenges, A Practical Guide*, United States Institute of Peace, Washington D.C., 2015, p 165.

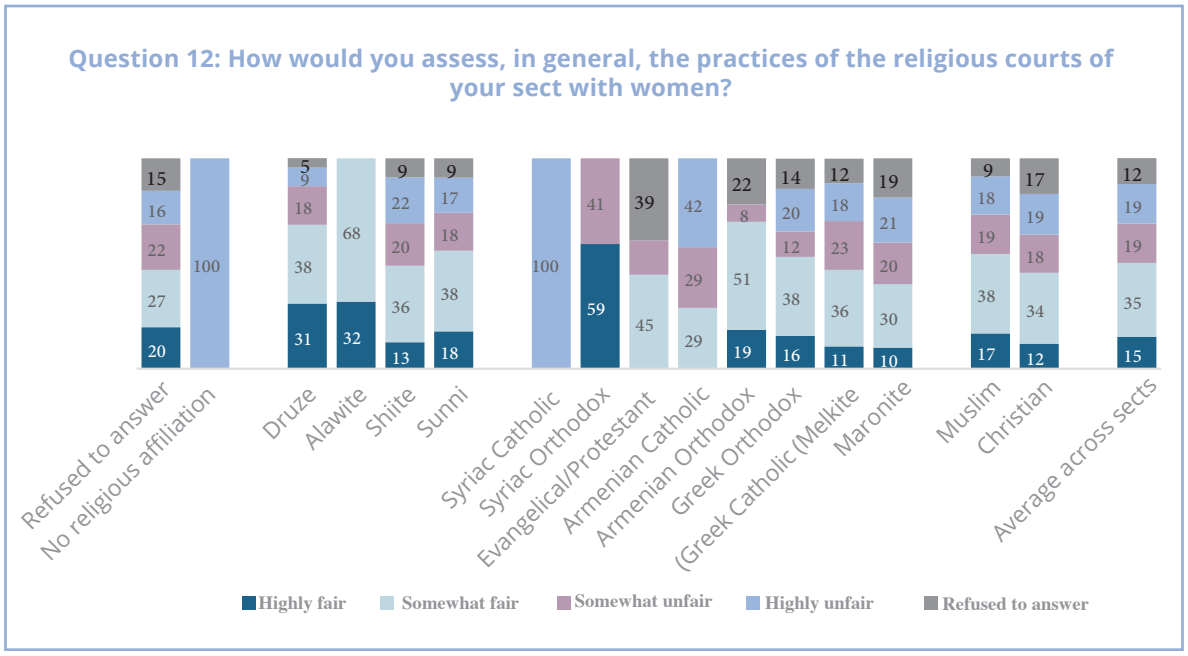
[83] https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLBN%2fCO%2f4-5&Lang [ENG]

84 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLBN%2fQ%2f6&Lang

45% of the survey respondents believe that the practices of the religious courts have a negative effect on how religion is viewed in general in society, and that this applies to all the different sects. The percentage was 50% for male respondents compared to 39% for female respondents. However, 17% of Muslim respondents of both sexes expressed satisfaction with the performance of religious courts and considered them completely fair, while 38% considered them somewhat fair, and 37% considered them unfair.

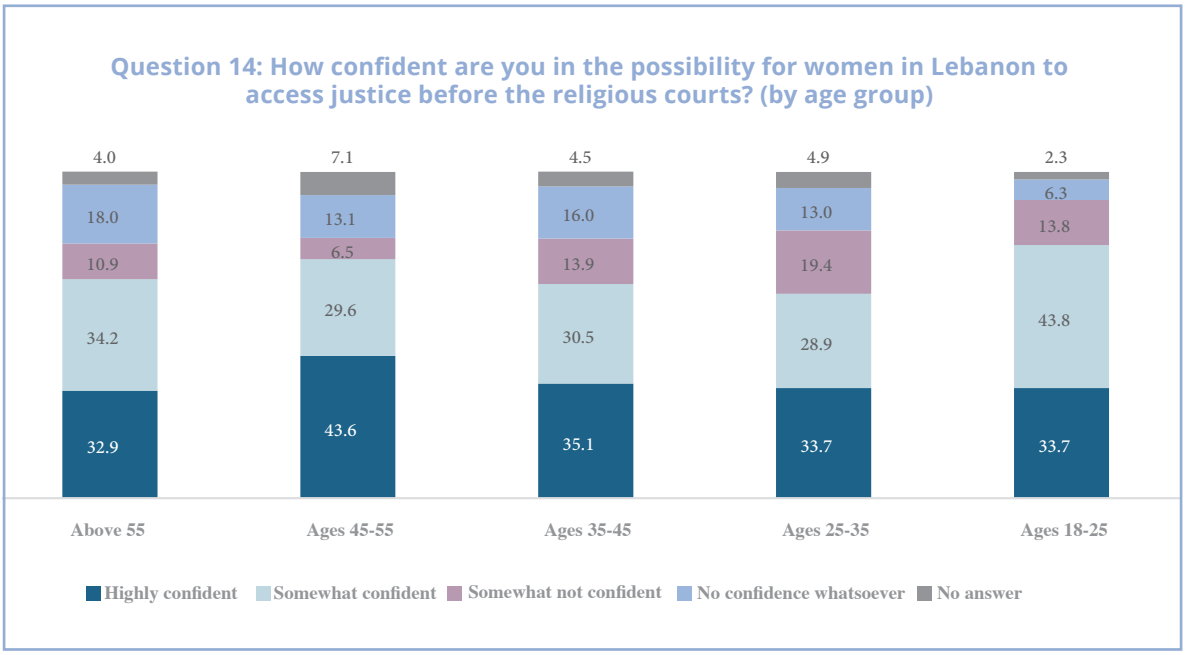
In the Christian sects, 12% of the respondents of both sexes considered trials before the religious courts to be highly fair, 34% considered them to be somewhat fair, and 37% considered the court practices to be unfair.

CHART 22:
Assessment of the practices of religious courts related to women (by sect)



The age group that was most optimistic about women's possibility to access justice was the group that included respondents aged 45 to 55.

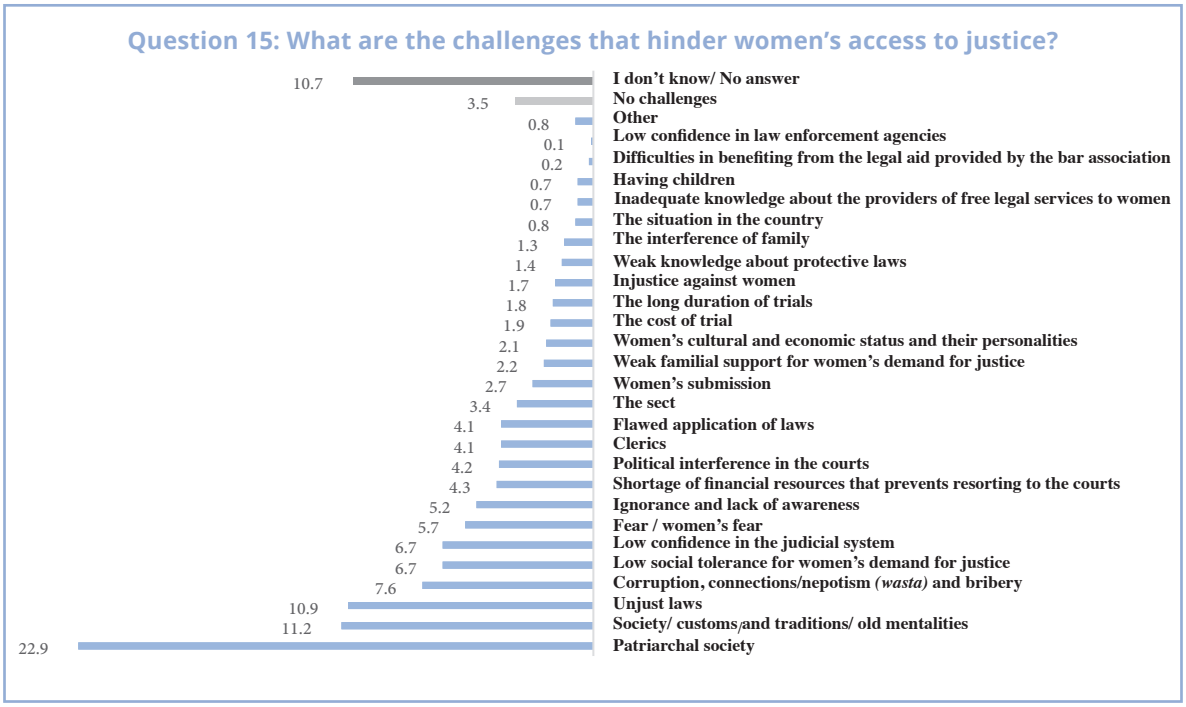
CHART 23:
The extent of confidence in the possibility for women in Lebanon to access justice before the religious courts (by age group)



When asked about the practices of religious courts, respondents based their answers on various criteria.

Chart 24:
Challenges that restrict women's access to justice

(To note that these challenges came from the respondents themselves)



Based on all the above, what follows is a presentation of the challenges that restrict women's access to justice before the religious courts:

• A Technical and Patriarchal Approach

Among the Sunni, Shiite and Druze clerics we met with, some criticize the predominantly abstract, technical approach to handling personal status cases. They believe that the role of the religious court exceeds the technical framework and does not end with the issuing of a ruling. They therefore demand that the role of religious institutions be reconsidered, taking into account the change in the quality and nature of social relationships. For those who hold this view, there is a need to keep up with the evolution of social perceptions, to update the institutions and adapt them to the reality on the ground.

We find the same problem in some Christian religious courts where stereotypical images of gender roles are the norm and greater responsibilities are assigned to women, in line with cultural perceptions.

For example, when it comes to custody cases in particular, there are no clear and explicit criteria for assessing a party's ability to provide a moral and religious upbringing to the child; assessments by judges most often rely on stereotypical or discriminatory criteria against women, framed by cultural norms and societal custom and traditions. This bias restricts women's access to justice in all legal areas, as it distorts the principles and outcomes of the decision-making process, which relies on preconceived notions rather than facts. Judges very often adopt strict criteria that define for them a woman's appropriate behavior, and they punish those who do not conform to these stereotypes.

This is echoed in a 2015 report by Human Rights Watch which states, based on a review of 101 custody rulings by religious courts: "The religious courts rarely looked at the father's behavior in deciding custody issues, while scrutinizing the woman's conduct in ways that reflect social prejudice or stereotypes. The result was a greater likelihood that the mother would be stripped of custody than the father[85]."

For the Lebanese men and women who took the survey, the issue of patriarchy counts among the predominant challenges to women's access to justice in the courts at 23%, above any other consideration. In second place by a large margin comes the issue of societal customs and traditions with 11%. In third place are the unjust laws, with 11% seeing them as standing in the way of women accessing justice in the religious courts.

[85] See: https://www.hrw.org/news/2015/01/19/lebanon-laws-discriminate-against-women [ENG]

• Judicial Specialization

Muslim Sharia judges study Islamic Law extensively, but this is not enough. For instance, how can a 60-year-old judge who never studied psychology handle cases related to adolescent children and understand their mental states, their needs, and their contemporary upbringing?! There is an urgent need to educate judges in these matters, to build their capacities and to motivate them to do scientific research and develop their approach in line with human rights standards.

In Christian religious courts, judicial specialization is limited to ecclesiastical law; yet it is not mandatory for Greek Orthodox First Instance Court judges.

As for specializing in Law, very few judges hold a Law degree. However, it is mandatory for non-clerical judges, men and women, to hold a Law degree, to have practiced Law or worked in the judicial system for at least five years (Article 8 of the Orthodox Code of Procedure)[86]. The Evangelical/Protestant sect's Code of Procedure stipulates in Article 12 that "the assigned judge must be a member of the Evangelical Church … the presidents and members of the religious courts who are not licensed in Law must take an exam in the Statute of the Supreme Council and in the Code of Procedure and Personal Status Code of the Evangelical Community.[87]"

Judges and legal experts from the different sects had differing opinions on this subject. Some considered that judges need to specialize in civil law, pointing out how improper knowledge about certain legal principles that govern for example the conflict between national and foreign laws, due process or notification procedures becomes problematic during case proceedings[88]. On the other hand, many judges esteemed that there is no need for religious judges to hold a civil law degree because their jurisdiction covers personal status cases only.

• Delayed Adjudication of Cases

Rulings are subject to delays, in disregard to women's economic conditions and the difficulties they face while waiting for their various judicial cases to be

[86] A judge indicated that "during discussions about adopting the new law, it was proposed that the judge should hold a Law degree or a degree in Theology, and preferably both, but it was not approved."

[87] A legal expert noted during our interview that "In the course of deciding the most recent legal amendments, there was a discussion about the need for specialization in personal status laws and civil law. It was proposed that the president of the court should have a law degree, and the need for acquiring experience through practice was stressed. It was also proposed that the judges who act as advisors should have a law degree and study theology in one of the community's institutes, in addition to following courses on legal principles and procedures, including due process. But these proposals did not find their way into the final text." (From an interview we conducted on 18/6/2020)

[88] A legal expert recounted that "for example in one of the cases where I acted as attorney, a client was a member of Internal Security Forces. The judge was surprised that I had notified the Ministry of Interior, but according to the Law, I am obligated to notify his administration, otherwise he would have the right to challenge my report." (From an interview conducted on 22/6/2020)

adjudicated. For example, a maintenance claim submitted by the wife might take up to two or three years at least before the Sharia judge makes his decision.

The same applies to the other religious courts, since annulment, dissolution and the civil effects of marriage involve lengthy proceedings, especially in cases of acrimonious conflict. The number of cases in some of the courts affiliated with the larger sects may reach 700 cases of annulment per year, whereas the number would not exceed 10 cases in some smaller sects. Faced with this slow and lengthy trial process, women's distress increases, especially when their situation is unstable or when they are exposed to violence...

• Legal Aid

Another matter that needs to be pointed out is that women are in many cases economically vulnerable. In principle, access to justice should be free of charge, yet in Lebanon the economic and financial factors are counted among the main challenges faced by women in their pursuit of justice. It is true that a litigating party unable to pay the legal costs involved in the case may seek legal aid, but there are real impediments to this process, which include women's poor knowledge of these mechanisms and the absence of any allocations dedicated to women's support.

Moreover, the legal aid provided by the bar associations of Beirut and Tripoli is gender-neutral and the financial resources available are limited and insufficient for settling the entire costs of legal cases or seeing them through until their resolution. There is also a deficiency of human resources, and legal aid cases are always handled by lawyers in training. This raises the question of whether these trainees have the adequate legal experience, not to mention that they receive a very low fee for handling these cases. Also, not all women are aware of these applications or of the procedures required to secure them. Women, especially those who do not engage in economic activity outside the home and are therefore unable to cover the cost of a trial, are adversely affected and unable to secure a decent life for themselves and their children while the lawsuit is ongoing.

The issue of legal aid raises additional problems for women litigating before religious courts, in terms of legal costs but also because of the wide discretionary power of the judge to reduce the costs or not. There is a specific fee attached to every reason for annulment submitted to court, which differs from one sect to another. A study by Human Rights Watch found that the average cost of submitting a marriage annulment request in the Catholic courts is 1 million Lebanese pounds, with an additional fee of 325,000 pounds for each additional reason listed[89].

[89] See Unequal and Unprotected: Women's Rights Under Lebanon's Religious Personal Status Laws, a report by Human Rights Watch, January 2015, p.37 at: https://www.hrw.org/sites/default/files/reports/lebanon0115_ForUpload.pdf [ENG]

However, the majority of judges we interviewed believe that the problem does not lie in the court fees, especially in light of the current economic crisis, but rather in the lawyers' fees, over which the courts have no control. In any case, both of these costs gravely affect women's capabilities in the context of the current crisis and the decline of the purchasing power of citizens.

Women must also shoulder indirect costs, for example transportation, especially if the court in question has a centralized judicial system (for instance the Unified Maronite Court), and they have to pay for long commutes to pursue their case, while in general financial resources are less accessible to women than to men, and they can barely afford the costs of legal procedures.

• Women's participation in the religious judiciary

The religious judiciary remains out of bounds for women judges, in contrast to the civil judiciary where women are well represented. A small number of judges from the three Islamic sects welcome the presence of women in the religious justice system, basing themselves on the absence of impeding legal prohibitions and on some examples from countries in the region. Sharia judge Kholoud Al-Faqih broke the glass ceiling and became, by Presidential decree, the first Palestinian woman to hold this position in 2009 at the Ramallah and Al-Bireh Sharia Court. The number has increased to four women Sharia judges according to the Palestinian Central Bureau of Statistics in 2020[90].

Regarding the Christian sects, the debate around the appointment of women to religious tribunals is related to the issue of accepting the presence of members of the laity[91] in these courts, as the majority of procedural laws refer to the possibility of resorting to laypersons, and different religious courts have appointed them as judges.

For Catholic sects, the Apostolic Letter "The Gentle Judge, our Lord Jesus" issued in 2015 states: "Cases of nullity of marriage are reserved to a college of three judges. A judge who is a cleric must preside over the college, but the other judges may be laypersons.[92]" The appointment of laypersons, men or women, to

[90] See: https://www.mowa.pna.ps/cached_uploads/download/2020/10/08/%D8%AA%D9%82%D8%B1%D9%8A%D8%B1-%D8%A7%D9%84%D9%86%D8%B3%D8%A7%D8%A1-%D9%81%D9%8A-%D9%85%D9%88%D8%A7%D9%82%D8%B9-%D8%B5%D9%86%D8%B9-%D8%A7%D9%84%D9%82%D8%B1%D8%A7%D8%B1-1602149607.pdf [AR]

[91] The laity: The Christian believers who are not ordained priests, monks or nuns. The Second Vatican Council defines the laity as follows: "The term laity is here understood to mean all the faithful except those in holy orders and those in the state of religious life specially approved by the Church." See: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html [ENG]

[92] Apostolic Letter of the Supreme Pontiff Francis, "The Gentle Judge, our Lord Jesus" on reforming the procedural laws pertaining to cases of nullity of marriage in the Western Code of Canons of of 1983, issued in 2015, Canon 1673 Clause 3. See: https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20150815_mitis-iudex-dominus-iesus.html [ENG]

the collegial courts it tied to specific conditions[93]. As for the Promoter of Justice, the Defender of the Bond and the other judges, they may be laypersons.

The same applies to the Coptic sect, whose laws allow the Diocesan Bishop to appoint a judicial vicar in the rank of judge as a Promoter of Justice or a Defender of the Bond from among the clerics or the laity. As for the Evangelical sect, Articles 7 and 10 of its Code of Procedure stipulate that when a First Instance and Appellate Court is formed, three primarily appointed judges, one of whom is the president (preferably a minister). The Armenian Orthodox sect has explicitly mentioned the role of the lay president in court.

The Law on the Formation of Courts and the Code of Trial Procedure of the Greek Orthodox sect[94] permits the appointment of laymen and laywomen in the courts as judges. It is important to highlight the Greek Orthodox experience in this area, where laymen were appointed presidents of the court in the Dioceses of Zahle and the South (in Zahle a judge was appointed, in the South a lawyer). This particular experience was beset by many difficulties and challenges, and yet it is important to study these two cases in depth.

A legal expert we interviewed said that the Catholic Church considers this issue based on the idea that "the one who confers the sacrament is the one who examines it", meaning that the priest is the one who is qualified to hear cases related to the marriage sacrament. Some Greek Orthodox judges pointed out that the position of judge should be kept for clerics "since they are entrusted with the sacrament, that is the sacrament of confession." This notion is usually advanced in the context of the exclusion of women from priesthood and from the conferment of the sacraments in the Orthodox and Catholic Churches, in contrast to the Evangelical/Protestant Churches that have recognized women's role as ministers and pastors.

Currently however, the Maronite Court has two women in its ranks: an investigative judge, and a trainee judge (currently a court clerk). Women also play a role in the Episcopal Commission on Canon Law that worked on amending the Catholic Personal Status Code, where they participated in formulating legal material according to their area of expertise. In the Maronite Church, women

[93] In *The Commentary on the Code of Canons of the Eastern Churches*, the explanation of canon 1087 clarifies that laypersons among the faithful may share in the Bishop's judicial power given the following conditions: That the bishop has urgent need for assistance because of a shortage of qualified clerics; that the layperson possess all the necessary qualities legally required from the cleric for this position; that they be a baptized believer; that the Patriarch allows it in his patriarchate and the Bishop in his archdiocese; that there be no more than one layperson in every collegial tribunal, and it matters not if they be male or female, for the law does not discriminate between the sexes in this context.

[94] Article 7 of the Law on the Formation of Courts and the Code of Trial Procedure of the Greek Orthodox sect stipulates: "If quorum is not present in a given court…the Patriarch completes the quorum with whoever he chooses among the clerics or the laity, and civil authorities are notified of this appointment." Article 8 stipulates that "judges who are not members of the clergy, without distinction of gender, must hold a law degree and have practiced law or worked in the court system for at least 5 years…" See: http://77.42.251.205/LawView.aspx?opt=view&LawID=280468 [AR]

are working in the field of mediation in listening centers. The Evangelical sect has not appointed a woman judge to this day, knowing that it had previously appointed a legal advisor. However, in recent years, four women ministers were appointed, making the Evangelical Church the only Church to appoint both men and women priests[95].

So, women are generally absent from judicial positions, and their presence is concentrated in administrative positions (as registrars for example), or as legal court advisors. The importance of women's participation as judges in the religious courts is evident, given the sensitive nature of some personal status cases. Let us not forget that men clerics wield great moral authority over individuals and over women especially. On the other hand, talking about marital and family relationships before men might prove difficult and embarrassing, and it would be preferable for women to handle these issues.

[95] Two women ministers were appointed in the Evangelical Church of Syria and Lebanon in 2017: Rula Suleiman and Najla Kassab, and in 2018 the National Evangelical Church in Beirut appointed Rima Nasr, and Linda Maktabi in 2022. It should be noted that in the 1920s, there were also women pastors and ministers, but the appointment of women stopped until 2017.

Conclusion

Justice is a basic right for individuals, and constitutes – as we have mentioned – the basic foundation for the protection of human rights, and the practical means for upholding the rule of Law. As for considering religious courts exceptional courts, this does not preclude the necessity to institutionalize their functioning and to reform their proceedings, given their great impact on the basic rights of individuals, particularly women.

Historically, the different Christian and Islamic sects have developed differently at the level of judicial organization. While the judicial system of Islamic sects is integrated into the State judicial apparatus, that of the Christian sects has developed independently from official State institutions.

This difference has given rise to discrepancies on many levels, such as the existence of several codes of procedures that differ from one Christian sect to another, whilst the different Islamic sects are subject to a unified legislation. Another issue would be the absence of State funding for the Christian sects, which is reflected in a shortage of human resources. Other issues include the lack of full-time commitment by Christian religious judges, and the principle of confidential or closed trials contrary to the Sharia and Druze courts.

The religious judiciary suffers many shortcomings in general, and is not in compliance with Lebanon's international obligations: oversight mechanisms in case of breach of office are non-existent, and if they do exist in the Islamic sects, they are ineffective. Also absent is the possibility of systematic recourse to technical expertise, social and psychological, in view of ensuring a fair trial, and the obligation for judges to be specialized in Law in addition to the traditional scientific specializations that religious judges acquire. Add to this the prevailing culture in religious judicial institutions that reproduces a societal culture based on an imbalance of power between women and men, and on a stereotypical approach to women and their role.

At the level of women's participation, judicial positions remain restricted to men, with a timid progress on the part of the Christian sects.

Chapter 3

The Main Personal Status Issues Governed by Religious Personal Status Laws

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The Main Personal Status Issues Governed by Religious Personal Status Laws

After reviewing the general features of the constitutional and political system that frame personal status issues in Lebanon in Chapter 1, and after addressing the judicial system, the structure of religious courts and women's access to justice in Chapter 2, we will now review the main personal status issues that concern women and girls in Lebanon.

Before addressing these issues, we will briefly introduce the personal status laws of the Islamic and Christian sects in Lebanon, and the potentialities for reform that can constitute the basis for formulating amendments. Next, we will preface each issue within its national and international frameworks and pinpoint the relevant standards to be relied on in drafting reforms, in light of Lebanon's international obligations as well as its various civil legislations.

1. Personal Status Laws of the Islamic Sects in Lebanon and the Potentialities for Reform

All the Islamic personal status codes in Arab countries and countries with a majority Muslim population derive their spirit from Islamic jurisprudence. However, the code adopted in each country has its proper orientation and particularities, and the sectarian structures differ from one country to another. This results in major discrepancies between the rules of jurisprudence that are followed, between the different opinions of legislators, and between the different interpretations of personal status texts.

The trajectories of personal status codes thus vary according to the nature of social formations in the Arab world and the modes of religiosity therein. Each state has its own particular way of harmonizing heritage with modernity.

Ottoman personal status laws affected many countries that were under Ottoman rule. In 1917, the Ottoman state issued the Law of Family Rights; in countries where it was adopted, personal status codes followed, which introduced a number of amendments to the articles of the Law. These codes relied on innovative jurisprudence projects aimed at keeping up with social and economic developments and the requirements of Arab modernism.

In Lebanon, the Islamic sects adopt the following laws:

- The Code of Family Provisions of the Sunni sect[1].
- The Ottoman Law of Family Rights[2].
- The Personal Status Code of the Unitarian Druze sect[3] and its amendments[4].
- The Personal Status Code of the Shiite sect (it remains uncodified in Lebanon)
- The Alawites are subject in their Sharia provisions, in terms of marriage, divorce, maintenance, inheritance and everything related to their personal status, to Jaafari jurisprudence (Twelver-Shiite), provided they have their own Sharia courts composed of Alawites with the relevant competencies, established and regulated according to a specific law (which law remains dormant in the offices of Parliament and has not been issued to this day).

Historically, the institutions concerned with amending the personal status laws of the Islamic sects in Lebanon have shown a strong reluctance to doing so. However, in recent years, some amendments were introduced, including the following:

• In the Sunni sect

The age of marriage was raised and the amount of the mahr was tied to the value of gold, based on the Supreme Islamic Sharia Council's decree 296 issued on 12/1/2011, ratifying the amendment to Article 242 of the Law Regulating the Sunni and Jaafari Judiciary promulgated on 16/7/1962[5].

In 2012, the Supreme Islamic Sharia Council[6] issued the Code of Family Provisions which addresses issues of custody, spousal maintenance and *mahr*. The New Code of Family Provisions is the first and only Sunni codification[7] of personal status laws in Lebanon since the Ottoman Family Rights Law of 1917 which remains in effect until this day. However, the New Code of Family Provisions did not address divorce, which remains subject to the few articles included in the Ottoman Family Rights Law.

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[1] See http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=230626#Section_281640 [AR]

[2] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=258195 [AR]

[3] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258196 [AR]

[4] See http://www.legallaw.ul.edu.lb/Law.aspx?lawId =274009 [AR]

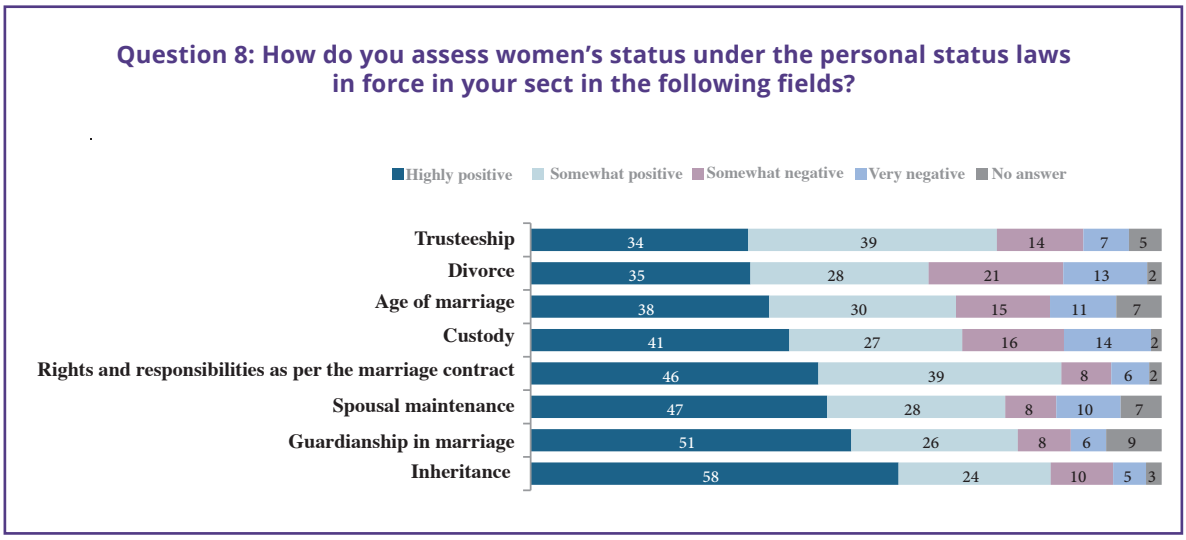
[5] Pursuant to the amendment of Article 242 of the Law Regulating the Sunni and Jaafari Judiciary, the resolutions of the Supreme Islamic Sharia Council, which is under the mandate of the Prime Minister, are the principal source of reference for Sunni court judges, instead of Parliament being the principal reference as per the Constitution. See: http://77.42.251.205/LawView.aspx?opt=view&LawID=229134 [AR]

[6] In the Sunni sect, the Supreme Islamic Sharia Council is the body vested with the power to issue regulations, resolutions and instructions for regulating the religious affairs of Muslims, to administrate its charitable endowments, monitor the implementation of these regulations, oversee the work of the General Directorate of Islamic Endowments and the different endowment departments in the different regions, their administrative councils and committees.

[7] Codification is the drafting of provisions as ordered and numbered legal articles, making them applicable laws in the judicial sphere.

In 2021, a decision was issued by the Supreme Islamic Sharia Council unifying the age of marriage at 18 for both sexes. Before the amendment, the age of marriage was set at 18 for males, and 17 for females. The decision also allows the judge to allow the marriage of 15-year-old minors exceptionally, while previously he could allow it for boys aged 12 and girls aged 9 who have reached puberty, provided the approval of their legal guardian. The decision sets conditions for granting a marriage permit for the age group between 15 and 18 years of age. One of these conditions is that the underaged girl or boy is examined by a medical doctor and a psychologist to ensure that they are physically and psychologically ready for marriage, and to ensure that the girl is not being forced into it. In case the reports indicate physical or psychological unfitness for marriage, the judge must refuse to grant the marriage permit. The decision to amend the Code of Family Provisions 2011/46 to include a new clause on the marriage of female and male minors was issued with the approval of the majority of members of the Supreme Sharia Council and it was published in the Official Gazette on April 22, 2021[8].

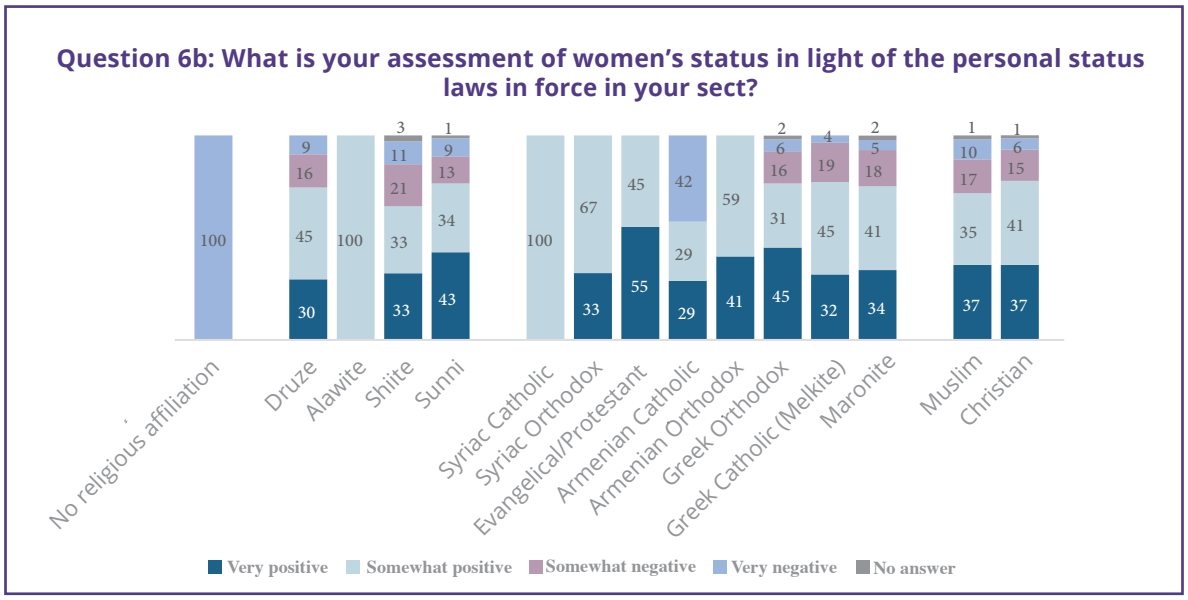
CHART 14:
An Evaluation of Women's Status in Some Fields Under Personal Status Laws (In the Sunni Sect)



In terms of the general attitude towards these laws, the survey showed that Sunni Muslims are the most satisfied with the status of women under the personal status laws of their sect, with 43% fully satisfied. The percentage decreases among the Shiite respondents to 33%, and among the Druze to 30%[9].

[8] http://77.42.251.205/LawView.aspx?opt=view&LawID=287620
[9] See *The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon*, p19, in Arabic on the following link: https://bit.ly/3O8Nydq

CHART 9:
Women's Status under Personal Status Laws (by sect)



• In the Shiite Sect

In the Shiite sect, the provisions regulating personal status cases were not updated, but there was a slight development in the process of responding to these issues. In 2019, Jaafari courts adopted a term sheet that requires both spouses to be made aware of their rights and to sign it. These terms include the following:

1- The wife may stipulate in the text of the marriage contract that she is to be her husband's legal representative in divorcing herself from him any time she wishes, in the following cases:

- If he is incarcerated for more than 2 years.
- If he mistreats her.
- If he uses drugs.
- If he travels abroad for more than two years.
- If there is no news of him for a whole year.
- If he is imprisoned for a disgraceful offence for more than a year.

2- The wife may stipulate that she will have custody of her children until they reach adulthood.

3- The wife can stipulate that the maintenance for her children will not be inferior to a specific amount.

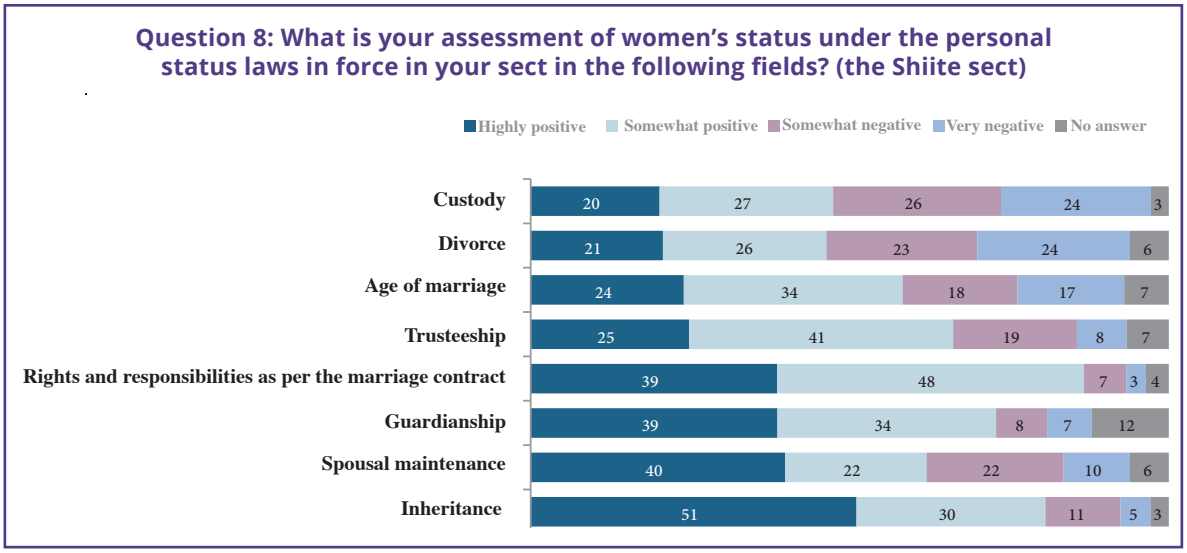
4- The husband may stipulate that he will have custody of the children at any age[10].

Despite the importance of the term sheet, it is not mandatory, which raises the question of its effectiveness for women and girls who are about to get married in the Shiite sect.

With regard to the survey respondents, we find that the dissatisfaction with personal status laws and their negative evaluation was highest among Shiite respondents, compared with respondents from both the other Islamic sects and the Christian sects[11].

CHART 10:

An Evaluation of Women's Status in Some Fields Under Personal Status Laws (the Shiite Sect)



• In the Druze Sect

On October 1, 2017 Parliament approved Law 58 amending Article 16 of the Druze Personal Status Code issued on February 24, 1948. The most prominent amendments concerned raising the maternal custody cap from 7 to 12 years of age for boys and from 9 to 14 years of age for girls. Other important amendments addressed the following:

1- Article 24 related to calculating the value of *mahr*.

[10] See https://lebanon.shafaqna.com/news/171536 [AR]

[11] See *The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon*, p 27, in Arabic at the following link: https://bit.ly/3O8Nydq

2- Article 47 related to divorce (the possibility to resort to a social worker or a psychologist in cases of spousal conflict)
3- A clause was added to Article 43 allowing to award punitive damages to the wife of a husband found guilty of adultery.
4- Entitling the female child to receive the entire inheritance if the deceased has no male offspring[12].

These developments undoubtedly show a movement within the Islamic sects in Lebanon towards enacting amendments that improve the situation of women in terms of their personal status affairs, and the majority of the clerics and judges belonging to Islamic sects whom we met with in the course of developing this report support this trend. However, they see that there is an urgent need for deeper structural reforms, because the mentality that shaped the laws seems impervious to contemporary realities and developments.

Therefore, they believe that these changes need to be represented through adopting new jurisprudence that integrates contemporary notions of gender and marital relationships. Legal reform is considered one of the means of dealing with economic and social changes, so that legal regimes are compatible with the actual needs of individuals and families. In their view, reform usually encounters resistance on the basis that Muslim family laws are of divine origin and hence unchangeable. But Islamic history tells us that change and reform have been among the well-established features of the history of Islamic jurisprudence. Accordingly, a distinction is to be made between Sharia and jurisprudence (fiqh). Sharia is the set of religious values and principles that guide Muslims in their lives, and it is of divine origin and eternal. As for *fiqh*, it is a human operation that seeks to derive legal provisions inspired by Sharia. *Fiqh*, like any other system of jurisprudence, is man-made, circumstantially based, subject to its time and to change. Muslim jurisprudence scholars have divided the provisions of *fiqh* into two main categories:

1- *'Ibadat* (acts of ritual worship), which regulate the relationship of believers to God. Thus, their scope of change is limited.
2- *Mu'amalat* (acts involving social and transactional interactions), the provisions of which regulate people's relationships to each other. As such, they are subject to changing times, contexts and circumstances. Family laws, which need to change according to justice and its requirements, fall within this category.

[12] See http://77.42.251.205/LawView.aspx?opt=view&LawID=274009 [AR]

The problem does not lie in the spiritual and textual sides of religion, but in human interpretations influenced by the prevailing culture that produced a jurisprudential and exegetical system during times where women were quasi excluded from political life and knowledge production. Any resistance to reform today is heir to this mentality imbued with a politicized cultural patriarchy. The process of reform and modernization in fiqh today is built on three main concepts: maslaha (public interest), *istihsan* (juristic preference), and *ijtihad* (independent legal reasoning).

1- *Maslaha* is a jurisprudential concept used to derive provisions based on the interest of an individual or a group. The concept may be used to reform standing provisions and laws, and to draft new ones.

2- *Istihsan* is a jurisprudential instrument that may be relied on in the absence of a textual reference, with the purpose of expanding the formulation of rulings and laws and adopting the best resolutions for individuals and society.

3- *Ijtihad* refers to exerting the utmost effort to derive new laws or new jurisprudential solutions to unprecedented cases. It means to interpret anew in light of the demands of the time and the place.

A number of our interviewees have asserted that family laws must be subject to the contemporary understanding of justice, and that equality between women and men has become an integral part of justice. They believe that it is crucial to activate *ijtihad* and adapt it to reality, since the *ijtihad* of Islamic jurists and their opinions are a result of a human endeavor that bears strengths and flaws and is governed by the temporal and geographical context. Inherited jurisprudential *ijtihad* is modifiable in light of social reality, public interest and the purposes of Sharia.

Other clerics and jurists seek to preserve the heritage of *fiqh* and the inherited social status quo for fear of chaos, without considering that what they are trying to uphold privileges men at the expense of women, and that they are confusing cultural heritage with religious heritage. Hence the importance of adopting legal reform so that *fiqh* may reflect contemporary understandings of gender and marital relationships, as well as a new, historically and critically based approach to Islamic jurisprudence that distinguishes between the patriarchal readings of Islamic jurisprudence texts on the one hand and Sharia with its ideals and aims on the other, particularly the principle of justice which is integral to it[13].

[13] See: *Wanted: Equality and Justice in the Muslim Family* edited by Zainah Anwar, Musawah, 2011 https://www.musawah.org/wp-content/uploads/2018/11/MusawahWanted_En.pdf [ENG]

In this context, overcoming this challenge requires the following:

a- Handling women's affairs through referring to the Qur'an's holistic conception of the human being. For when contemporary discourse limits women's affairs to a narrow field that only includes a woman's rights and obligations, it gives the impression that Muslim women are "a special case", distinct from men who are the standard. This contradicts the Qur'anic discourse that addresses itself to humanity as a whole, transcending sexual, racial and social differences.

b- Activating a new reading of the Qur'an while taking the following into consideration:

- The holistic nature of the Qur'an, that is the indivisibility of its reading.
- The intention of the Qur'an, which did not receive due attention in the traditional approach, whereas the primary concern ought to be the purpose of the Qur'anic decrees and their finality.
- The context of the Revelation: The social dimension of the Qur'anic text cannot be understood in isolation from the context in which the Revelation was received.
- The context of ijtihad: through understanding the different contexts where jurisprudential laws were developed, and conducting re-interpretation within contemporary contexts, as is happening today in the jurisprudence of the diaspora.

To conclude, according to one of the Sharia judges we interviewed[14] for the purpose of this report, working on reform in Sharia courts can happen on five levels:

- **First**, at the level of the individual performance of judges, which can be strengthened – according to Chapter 2 of the present report – through a new approach to the role of the religious judiciary and the role of oversight.
- **Second**, at the level of ijtihad and legal precedents that were positive towards women, and which need to be published, circulated and shared with the greatest possible number of legal actors (judges and lawyers).
- **Third**, at the level of legal procedural texts related to judicial proceedings. These are easy to amend in a way that ensures their flexibility and reduces the challenges faced by women in accessing justice.
- **Fourth**, at the level of jurisprudential options, where the more flexible or fairer provisions for women can be chosen from the different schools of

[14] Interview conducted on 24/12/2021

jurisprudence. In the Shiite and Alawite sect, the most equitable mujtahid (the person doing the ijtihad) can be chosen.

- **Fifth**, at the level of the Qur'anic text, a modern reading should be made that interprets it based on the intentional dimension of the religion and its provisions, as we indicated previously.

2. Personal Status Laws of the Christian Sects in Lebanon and the Potentialities for Reform

Historically, Christian sects in Lebanon were distinguished by their legislative and judicial autonomy in matters related to personal status. Each Church adopted a set of laws and provisions that govern marriage and its effects, around which the Christian personal status laws revolve, with the exception of inheritance, which for non-Muslims is subject to civil law. Accordingly, the process of amending personal status laws for Christian sects in Lebanon is the responsibility of each denomination separately. Religious authorities appoint committees or individuals to review the laws in force and propose the necessary amendments, then submit these amendments to their highest religious authority in Lebanon to discuss the amendment draft and approve it. Once the final draft is approved, each sectarian authority must submit the proposed draft law to Parliament for discussion and ratification, as per the Law of April 2, 1951.

The Evangelical Lutheran Church of Jordan and the Holy Land worked on drawing up a Personal Status Law after discussions were held between parishioners and the Church's Women's Committee. The Women's Committee had demanded that gender equality be applied in the personal status code, which was being developed by the committee appointed by the Synod. The Law was discussed in the sect's Synod and was adopted after the Palestinian Authority ratified it, shortly after ratifying the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

• The Christian View of Marriage

Christian personal status laws revolve around marriage.

According to the Catholic and Orthodox sects, marriage is a Church Sacrament[15]. Therefore, the valid marriage of the baptized in these sects is both a contract

[15] The Seven Sacraments of the Catholic Church are baptism, confirmation (holy anointing oil or Chrism), the Eucharist (holy communion), penance or reconciliation (confession), anointing the sick, holy orders, and marriage (matrimony).

and a sacrament. A number of Christian sects proclaim that the matrimonial sacrament is a covenant established by the Creator and ordered by His laws, by which a man and woman establish between themselves a partnership for life, its purpose being the good of the spouses and the generation and education of the offspring[16]. The Evangelical sect does not consider marriage to be a Church sacrament, but it is "a covenant established through the Church between a man and a woman with the aim of uniting in a spiritual communion and forming a continuous Christian family, and a natural sexual union[17]."

For the Catholic and Orthodox Churches, marriage is the covenant of salvation between God and humankind. The expression ""Biblical Covenant" is based, in every marriage concluded between two spouses, on the loving relationship between God and His chosen people, and in the sacramental marriage becomes a symbol of the union between Jesus and his Church. Since the 12th century, legal tradition considers marriage as a special, sui generis "contract". For the term "contract" neither adequately nor sufficiently describes the true legal character of marriage, and its use results from the absence of another term that is more indicative of its reality[18]."

And so the term contract "does not denote here a material agreement, but is a lifelong communion between a man and a woman based on an equal give and take of all marital rights and obligations[19]."

The marriage contract includes the following elements: the contracting parties (the woman and the man); the subject (the body of the contracting parties); the free and conscious consent of the spouses, which is necessary for spouses to exchange the right over the body; the reason for concluding the contract, which is the good of the spouses; their mutual collaboration in marital life, having children and caring for them; commitment to perpetual and exclusive faithfulness; commitment to the bond, which continues regardless of the will of the contracting parties, as the spouses have no right to terminate conjugal life neither by mutual agreement nor by a unilateral one.

[16] See canon 776 of the Code of Canons of the Eastern Churches at http://www.intratext.com/IXT/ENG1199/_PLK.HTM [ENG]; Article 11 of the Personal Status Code of the Coptic Orthodox sect in Lebanon at http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246386 [AR] and the Personal Status Code and Code of Procedure of the Greek Orthodox Patriarchate of Antioch and All the East at http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]

[17] Article 17 of the Personal Status Code of the Evangelical Church in Syria and Lebanon issued on April 1, 2005. See: http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR]

[18] See *Commentaries on the Code of Canons of the Eastern Churches* coordinated by Father Antoine Rajeh, Pauline Library Publications, April 2005, pp.767 & 768.

[19] See *Commentaries on the Code of Canons of the Eastern Churches* coordinated by Father Antoine Rajeh, Pauline Library Publications, April 2005, p. 768.

Christian marriage has two essential properties:

- **Unity:** Marriage is "a union between one man and one woman. This property in itself fundamentally points to the preservation of marital fidelity... This fidelity excludes and rejects polygamy for the man and the woman. Unity in marriage requires faithfulness in a marriage of union.
- **Indissolubility:** This means that a valid marital bond cannot be dissolved by the will of the contracting parties. Hence, the marital institution must be characterized by stability, constancy and permanence.[20]"

Christian personal status laws have witnessed new developments since the 1920s, which led to the adoption of new laws that generally indicate a new approach. For whereas previous laws considered the main purpose of marriage to be the begetting and raising of children, the new laws consider its purpose to be first and foremost the good of the spouses (for Catholic sects, canon 776[21]) or their mutual collaboration in marital life and in child raising. Article 12 of the Personal Status Code and Code of Procedure of the Greek Orthodox Patriarchate of Antioch and All the East stipulates that "procreation is one of the fruits of marriage and not its purpose[22]".

• The View of Women and of their Role in Marriage

a- Equality in Marriage Dissolution or Annulment Rights

It is important to first point out the absence of any discrimination between women and men in the Christian sects' legislations concerning resorting to courts for the purpose of marriage annulment or dissolution. All the personal status laws grant women and men equal rights in asking for marriage termination, provided the legal conditions are met. Most of the legislations use the gender-neutral term "spouse" to indicate both husband and wife.

b- The View of Women and Men and Their Roles in Personal Status Laws and their Reforms

The majority of earlier personal status codes adopted a traditional distribution of roles within the family unit, with the man as the head of the family and the

[20] See *Commentaries on the Code of Canons of the Eastern Churches* coordinated by Father Antoine Rajeh, Pauline Library Publications, April 2005, p. 769.
[21] See http://www.intratext.com/IXT/ENG1199/_PLK.HTM [ENG]
[22] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]

woman assigned with obedience and caring for home and family. The leadership of the man is based on ecclesiastical law, according to Paul the Apostle's Letter to the Ephesians[23].

In 1990, the Code of Canons of the Eastern Churches was issued, canon 777 of which stipulates: "From marriage each of the spouses has equal obligations and rights to those things which pertain to the partnership of conjugal life.[24]" This is a confirmation of spousal equality in terms of conjugal life, which wasn't included in the earlier Law on Marriage.

Also, expressions of the husband's authority are no longer included in the new Personal Status Code and Code of Procedure of the Greek Orthodox sect issued in 2003. Its article 11 stipulates that through marriage, "the union of man and woman is performed, in order that they cooperate in marital life and carry together the burden of the family and of raising children (...)" Article 25 stipulates that "the spouses cooperate in raising their children and spending on them.[25]"

On the other hand, the majority of these personal status codes contain expressions that indicate the husband's authority, and the wife's obligation to obey her husband:

- "Man is the head of the family and its natural and legal representative. The man must protect his wife and the woman must obey her husband." (Article 46 of the Personal Status Code of the Armenian Orthodox sect[26]).
- "Man is the head of the woman and the family and must provide for his wife as long as they are married, in proportion to his ability and what is customary, as long as she is not disobedient." (Article 38 of the Personal Status Code of the Assyrian Eastern Orthodox sect[27]).
- "Marriage obligates the wife to obey her husband in lawful matters, and to cohabit with him in their lawful home..."; "the husband is the legal and natural head of the family, he determines and designates the means and way of living in agreement with his wife..." (Articles 21 7 22 of the Personal Status Code of the Evangelical Church in Syria and Lebanon[28]).

[23] "Wives, submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the church: and he is the savior of the body. Therefore, as the church is subject unto Christ, so let the wives be to their own husbands in everything." Ephesians 5:22-24/ King James Bible

[24] See http://www.intratext.com/IXT/ENG1199/_PLL.HTM [ENG]

[25] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]

[26] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258204 [AR]

[27] See http://77.42.251.205/Law.aspx?lawId=255320 [AR]

[28] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR]

- "The wife is obligated to obey her husband after the marriage is contracted, and must accompany him wherever he is (...)." (Article 33 of the Personal Status Code of the Syriac Orthodox sect[29]).

A number of judges pointed out that the obedience in question is a spiritual obedience, and that the wife cannot be compelled to it. However, the concept of obedience creates subordination within the couple, not to mention that the reasons that justify disobedience are at the judge's discretionary power. This significantly impacts a woman's situation, her custody rights and even her maintenance and compensation rights in the event of an annulment case.

In any case, the reforms of some laws in terms of explicitly pointing out to the equal rights and obligations of both spouses were not translated at the level of amending all the provisions that discriminate between women and men.

According to what we will be seeing hereafter, personal status laws still give men preferential treatment in most matters that are under the civil effects of marriage and which are raised in annulment, dissolution and divorce cases. According to Bishop Emeritus of the Evangelical Lutheran Church in Palestine, theology "should be inclusive, not patriarchal", and must therefore include women and women, must take into consideration the needs of both sexes and treat them equally[30].

The survey conducted by ARA at the request of Adyan Foundation on the views of Lebanese men and women on personal status laws showed that Evangelists are the most content with the status of women in these laws with a rate of 55%, followed by the Greek Orthodox (45%) and the Armenian Orthodox (41%)[31].

[29] See https://dss-syriacpatriarchate.org/%d8%a7%d9%84%d9%82%d9%88%d8%a7%d9%86%d9%8a%d9%86-%d8%a7%d9%84%d9%83%d9%86%d8%b3%d9%8a%d8%a9/%d8%a7%d9%84%d8%a3%d8%ad%d9%88%d8%a7%d9%84-%d8%a7%d9%84%d8%b4%d8%ae%d8%b5%d9%8a%d8%a9/%d9%82%d8%a7%d9%86%d9%88%d9%86-%d8%a7%d9%84%d8%a3%d8%ad%d9%88%d8%a7%d9%84-%d8%a7%d9%84%d8%b4%d8%ae%d8%b5%d9%8a%d8%a9-%d9%84%d9%84%d8%b3%d8%b1%d9%8a%d8%a7%d9%86-%d8%a7%d9%84%d8%a3%d8%b1%d8%ab%d9%88/ [AR]

[30] From a Zoom call on 18/3/2022

[31] See *The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon*, p 20, in Arabic on the following link: https://bit.ly/3O8Nydq [AR]

3. Personal Status Matters, International Laws and the Positions Held by the Lebanese State

In this section of our report, we review some issues in the personal status laws of the Islamic and Christian sects and their courts in Lebanon, pointing out their flaws and the possibilities of amending them.

We will outline the international and national frameworks for every issue and the related legal provisions applied by the religious courts in Lebanon. Finally, we will review the possibilities for reform and the positions that support amending these provisions in a way that fosters equality and eliminates the discrimination faced by women in Lebanon.

1. Age of Marriage

• International Framework

International human rights standards, particularly the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1966) unanimously hold the family to be the natural and fundamental unit of society, entitled to benefit from the protection of society and the State[32].

In turn, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) insists on protecting children from harmful practices, particularly child marriage, through taking the necessary measures – including legislation – to determine a minimum age of marriage that prevents child marriage[33]. The Convention on the Rights of the Child, as per General Recommendation N.31 of the Committee on the Elimination of Discrimination Against Women[34] and General Comment N.18 of the Committee on the Rights of the Child[35] consider early marriage to be a harmful practice. Many other international resolutions and declarations have also called for raising the age of marriage, for example the Fifth Goal of the Sustainable Development Goals (2015)[36], the UN resolution on Accelerating efforts to eliminate all forms of

[32] See Article 16 of the Universal Declaration of Human Rights at https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf [ENG] and Article 10 of the International Covenant on Economic, Social and Cultural Rights at https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch_iv_03.pdf [ENG]

[33] See Article 16, item 2 of CEDAW at https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf [ENG]

[34] See https://www.ohchr.org/en/treaty-bodies/cedaw/general-recommendations [ENG]

[35] See https://www.ohchr.org/en/treaty-bodies/crc/general-comments [ENG]

[36] See https://www.un.org/en/chronicle/article/goal-5-achieving-gender-equality-and-empowering-women-and-girls-sdg-5-missing-something [ENG]

violence against women (2012)[37] and the Beijing Declaration and Platform for Action (1995)[38].

In its response to these international actions, Lebanon had no reservations on clause 2 of Article 16 of CEDAW related to the age of marriage, which asserts that "The betrothal and the marriage of a child shall have no legal effect…", nor did it express reservations on any article in the Convention on the Rights of the Child. The respective Committees of these agreements have repeatedly recommended that the relevant provisions be amended to protect children from early marriage. In its "Concluding observations on the combined fourth and fifth report of Lebanon"[39], the Committee on the Rights of the Child urged Lebanon "to adopt expeditiously legislation setting at 18 years the minimum age for girls and boys, and to engage with the religious authorities to prohibit child marriages.[40]"

• National Framework

Various countries around the world have set a legal minimum age for marriage. At the level of the Arab world, we notice that a number of countries have recently raised the age of marriage. In Algeria, the minimum age was set at 19 for girls and boys, while in Djibouti, Egypt, Jordan, Mauritania, Morocco, the Sultanate of Oman, the United Arab Emirates and Tunisia, it has been set at 18 for both sexes with a margin for exceptions, whereby the judge may grant permission. Also in Iraq, according to Article 7 of the Personal Status Law 188 of 1959, the legal age of marriage is set at 18 for both sexes, with the possibility of lowering it to 15 with the permission of the guardian and judicial authorization.

In non-Arab countries, for example in France, Article 144 of the Civil Code determines the legal minimum age of marriage at 18 for both sexes, however Article 145 allows the marriage of underage girls in some critical cases, provided the consent of the parents and a dispensation by the public prosecutor are secured[41]. Discussions are currently underway in France to abolish this exception.

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[37] See https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/153/53/PDF/G1215353.pdf?OpenElement [ENG]

[38] See https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA_E_Final_WEB.pdf [ENG]

[39] State parties – as per Article 44 of the Convention on the Rights of the Child – pledge to submit to the Committee periodical reports on the measures undertaken to implement the recognized rights in the Convention and the progress achieved in this regard every 5 years. The last report submitted by the Lebanese State was in 2017.

[40] See https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/172/63/PDF/G1717263.pdf?OpenElement [ENG]

[41] https://www.fd.ulisboa.pt/wp-content/uploads/2014/12/Codigo-Civil-Frances-French-Civil-Code-english-version.pdf [ENG]

There is no legal definition of childhood or of childhood age groups in Lebanese legislation. The Code of Obligations and Contracts (Civil Code) includes general provisions that do not define a child in specific and direct terms. Articles 215 to 218 define a child by specifying the age of eligibility for compliance to contracts (18 years of age), which is the age of majority. However, this determination is not final, as the Code of Obligations and Contracts distinguishes between the non-discerning minor and the discerning minor, without specifying the age where this distinction is made. The Code stipulates the discerning minor's eligibility to enter into contract within limits set by court[42]. Law 422 on the Protection of Minors in Conflict with the Law or at Risk of June 6, 2002 defines the 'juvenile' in Article 1 as any person who has not completed 18 years of age[43]. The Labor Code uses the category of "minor" in its Article 21, sets provisions to protect non-adults and allows them to work certain jobs depending on their age (Articles 22 and 23 for example[44]). The Penal Code (Legislative Decree 340 of March 1, 1943) stipulates in Article 240: "For the purposes of this Code, 'child' designates anyone from the age of 7 to the age of 12, 'adolescent' designates anyone from the age of 12 to the age of 15, 'youth' designates anyone from the age of 15 to the age of 18[45]".

On the other hand, the Lebanese Constitution stipulates that every Lebanese citizen has the right to vote when they reach 21 years of age (Article 21)[46]. This goes to show that Lebanese legislation distinguishes between the general civil age of majority set at 18, and the political age of majority set at 21.

The Penal Code also stipulates in Article 483 that if a cleric officiates the marriage of a minor who has not completed 18 years of age without written consent from their guardian or without the judge's permission, he will be penalized with a fee between 50,000LL and 500,000LL[47]. It is unfortunate that this clause does not constitute a deterrent against the marriage of minor girls, since the guardian's permission is usually available.

In the face of the absence of the required legal protection for minors, various parties have in recent years submitted draft laws to determine the minimum age of marriage. These legislations adopted the age of majority (18 years) as the minimum age; however, some of them included exceptions whereby it is possible -given specific parameters – to approve the marriage of sixteen-year-old teenagers, while the other drafts noted no such exception.

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[42] http://77.42.251.205/LawView.aspx?opt=view&LawID=244226 [AR]
[43] http://77.42.251.205/LawView.aspx?opt=view&LawID=244401 [AR]
[44] http://77.42.251.205/LawView.aspx?opt=view&LawID=190374 [AR]
[45] For the full text of the Lebanese Penal Code in Arabic: http://77.42.251.205/LawView.aspx?opt=view&LawID=244611; for selected articles in English, see https://www.legal-tools.org/doc/d0f1c2/pdf/
[46] https://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf [ENG]
[47] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244611 [AR]

The three submitted draft laws on child marriage are the following:

1) A proposed law on regulating the marriage of minors put forth by the National Commission for Lebanese Women, submitted by former MP Ghassan Mukhaiber in 2014.
2) A proposed law on the protection of children from early marriage put forth by the Lebanese Democratic Women's Gathering, endorsed by former MP Elie Keyrouz after he introduced a number of amendments, and which he submitted in 2017.
3) A proposed law presented by the organization KAFA (Enough) Violence and Exploitation through a draft law endorsed by the State Ministry of Human Rights.

The Parliamentary Administration and Justice Committee studied these three proposed laws and formed a sub-committee that merged them together. The version it produced introduced a mechanism for protecting minor girls from early marriage and permitted marriage for girls over sixteen in exceptional cases under the supervision of the Juvenile judge, provided the judge's decision takes into account the interest of the minor girl and is duly informed by hearing the concerned parties; s/he must also consult with medical, social and psychology experts. However, until this day, Lebanese Parliament has not approved this into a law.

The protection of minor girls from early marriage remains incomplete under a penal code that exempts a perpetrator of sexual assault from punishment if he marries the victim. Despite Parliament's abolition in 2017 of Article 522 (as per Law 53 of 14/9/2017), which stipulated ceasing prosecution and suspending the judgment in the event that a valid marriage is contracted between the perpetrator (of rape, kidnapping for the purpose of marriage, etc.) and the assaulted party, the effect of this Article remains in place, since Article 505 stipulates, after its amendment by this law, that a perpetrator who has intercourse with a minor who has completed 15 years of age is exempted from punishment if he marries her.

According to Article 505, a statutory rape perpetrator is penalized according to the type of his crime as follows:

- Hard labor for no less than 5 years for any person who has intercourse with a minor who is less than 15 years old.
- Hard labor for no less than 7 years if the minor has not completed 12 years of age.
- A prison term from 2 months to 2 years, for any person who has intercourse with a minor between 15 and 18 years of age. If a valid marriage is contracted between them, prosecution or trial proceedings will be halted. If a judgment was already issued, the perpetrator's penalty will be suspended, provided

that the judge's suspension order is issued based on a report made by a social assistant, which takes into consideration the minor's social and psychological conditions.

Article 518 includes the following text: "Any person who seduces a girl with the promise of marriage and deflowers her is penalized, if the act does not warrant a harsher sentence, with a prison term of at least 6 months and a fee between three million and five million Lebanese Pounds, or one of the penalties... If a valid marriage is contracted between them (the perpetrator and the victim) prosecution shall cease.[48]"

A law proposal was submitted to amend Article 505 as follows: "Any person who has intercourse with a minor below fifteen is sentenced to a prison term of at least five years. The sentence will not be less than seven years of imprisonment if the minor has not completed twelve years of age. Any person who has intercourse with a minor between fifteen and 18 shall be sentenced to a prison term of no less than three years.[49]" This proposed law has not been approved by Parliament to date.

• In the Islamic Sects

Personal status legislations in the Islamic sects still allow the marriage of boys and girls who are under 18, despite Lebanon's international obligations and the national legislative context we indicated above. Child marriage cases still occur – with simple procedures – inside and outside Sharia courts in Lebanon, given the great differences between the different sects when it comes to determining the age of marriage and the absence of unified oversight by any authority on this matter.[50]

The Islamic Sect	Age of Marriage for Girls	Age of Marriage for Boys
Sunni	18, exceptionally 15	18, exceptionally 15
Shiite and Alawite	There is no minimum age for marriage, the criteria being sexual maturity, which is the legal Islamic criteria. A girl is expected to reach puberty at 9 years of age.	There is no minimum age for marriage, the criteria being sexual maturity, which is the legal Islamic criteria. A boy is expected to reach puberty at 15 years of age.
Unitarian Druze	17, exceptionally 15	18, exceptionally 16

[48] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244611#Section_264890 [AR]

[49] On October 30, 2017, three Members of Parliament (Gilbert Zwein, Alain Aoun and Nabil Nicolas) submitted an amendment proposal to Articles 505 and 519 of the Penal Code, and a proposal to abolish Article 518. In February 2018, the State Minister for Women's Affairs (Jean Ogassabian) submitted a draft law to amend Article 505 of the Penal Code and abolish Article 518.

[50] See the study on child marriage by Dr. Zuhair Hatab in collaboration with The Lebanese Democratic Women's Gathering at https://www.rdflwomen.org/wp-content/uploads/2016/05/study-preview.pdf [AR]

Up until the most recent amendment in 2021, the Sunni sect held that a male's condition of eligibility for marriage[51] is to be at least 18 years old, and the female's condition of eligibility is to be at least 17 years old[52]. The judge also had the power to issue a permit for the marriage of a 12 year old male and of a 9 year old female if she reached sexual maturity, provided the consent of the guardian[53].

The decision to amend the Code of Family Provisions 46/2011 was taken by majority by the Supreme Sharia Council and published in the Official Gazette on 22/4/2021. The amendment included a new section on the marriage of minors:

- To be eligible for marriage, both engaged parties must be at least 18 years old.
- It is forbidden to conclude the marriage of a minor (boy or girl) if they are not at least 15 years old.
- It is permitted to marry a minor (boy or girl) who has completed 15 years of age with the permission of the Sharia judge, provided their physical and psychological states are conducive to this, with the permission of their respective guardians.

The new amendment requires the minors to submit to a medical and mental health examination by two experts accredited by the Sharia courts to verify that there is no mental or physical illness that would impede the marriage. If the judge subsequently finds that one of the married minors does not meet the requirements, he shall annul the marriage upon the request of the aggrieved party, issuing one ruling that both validates and annuls the marriage. According to this amendment, the judge must inform the engaged couple of their legal duties and rights before contracting the marriage by guiding them directly or by assigning this task to the marriage officiant. Should the trustee or guardian of a minor or someone unrelated to them marry them without the permission of a judge and without completing the required procedures, the court must obligate the concerned parties to complete the procedures, including the medical examinations, before validating the marriage[54].

In the Druze Unitarian sect, a male becomes eligible for marriage when he is 18 years old, and a female when she is 17 years old. However, the Sheikh al-Aql or the religious judge may allow a fifteen-year-old girl to marry if it is medically proven that she can handle it, and if her guardian consents to it[55]. In the Shiite

[51] The Islamic sects use the term *nikah* for marriage
[52] See Article 5 of the Ottoman Law of Family Rights at http://77.42.251.205/LawView.aspx?opt=view&LawID=258195 [AR]
[53] See Article 8 of the Ottoman Law of Family Rights at http://77.42.251.205/LawView.aspx?opt=view&LawID=258195 [AR]
[54] See http://77.42.251.205/LawView.aspx?opt=view&LawID=287620 [AR]
[55] Article 5 of the Ottoman Law of Family Rights, amended by decree 58/2017. See: http://77.42.251.205/LawView.aspx?opt=view&LawID=274009 [AR]

and the Alawite sects, following the Jaafari school of jurisprudence, there is no minimum age for marriage, the criteria adopted being sexual maturity, which is the Islamic legal criteria that sets a male's sexual maturity at 15 years of age and a female's at 9 years of age.

It is evident that the three Islamic sects, with their different provisions regulating the age of marriage, allow the marriage of female minors in a way that does not conform to human rights standards. And yet the interviews conducted for the purpose of this report have shown that amending these provisions is possible.

• On Reforms

Concerning the Sunni sect, the Supreme Islamic Sharia Council based its most recent amendment of 22/4/2021 on the opinion that the text of the law is subject to reform: that the minimum age of marriage for both engaged parties can be unified and set at 18, and that Articles 5[56] and 6[57] of the Ottoman Family Rights Law can be amended and the Sharia judge's discretionary power to marry someone below the legal age can be constrained on two fronts:

- First, by setting the absolute minimum age of marriage at 15 years of age for both engaged parties (instead of 9 and 12), which implies the implicit revocation of Article 7 of the Ottoman Family Rights Law[58].
- Second, by constricting the role of the religious judge and obligating him to consult with the Public Prosecutor at the Sharia Court, which requires amending Articles 298 and 299 of the Sharia Courts Law, in accordance with a non-litigious[59] or judicial marriage permit, depending on each case[60]. In all cases, it requires amending Article 33 concerning the intervention of the

[56] Article 5 of the Ottoman Law on Family Rights: "Eligibility for *nikah* is under the condition that the fiancé is at least 18 years old and the fiancée at least 17 years old." http://77.42.251.205/LawView.aspx?opt=view&LawID=258195 [AR]

[57] Article 6 of the Ottoman Law on Family Rights: "If the male adolescent who hasn't yet completed 18 years of age claims to have reached sexual maturity, the judge shall permit him to marry if he appears to be adequately physically mature.": http://77.42.251.205/LawView.aspx?opt=view&LawID=258195

[58] Article 7 of the Ottoman Law on Family Rights: If the female adolescent who hasn't yet completed 17 years of age claims to have reached sexual maturity, the judge shall permit her to marry if she appears to be adequately physically mature, with the consent of her guardian."

[59] Non-litigious rulings are issued in cases that are by law subject to judicial supervision, given their nature or the petitioner's status.

[60] Article 298 of the Law Regulating the Sunni and Jaafari Sharia Judiciary: "The decisions and documents issued by the Sharia courts upon request and without litigation in cases of inheritance, legal permission and others, cannot be appealed but may be challenged through an original claim. The Public Prosecutor of the Supreme Court is authorized to ask the court to repeal the aforementioned decisions if they contradict the Sharia or legal rulings."Article 299 : "Rulings against the young, the interdicted, the treasury and endowments, and rulings of marriage dissolution and separation against absentees shall not be enforceable until ratified on appeal. If the concerned parties do not appeal within the legal time limit, the court shall send within fifteen days after the time limit has expired the case documents to the Supreme Court for an expedited ruling, otherwise the responsible court clerk will be fined with a fee between fifteen thousand and twenty thousand Lebanese Pounds." See http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244292 [AR]

Public Prosecutor in giving his opinion on allowing the marriage of male and female minors within the limits of the permissible minimum age[61].

The 22/4/2021 amendment is undoubtedly a very important step towards standardizing the age of marriage and setting it at 18. It remains important to point out key loopholes:

- It is true that the amendment forbids marriage for girls below the age of fifteen, but it allows exceptions for fifteen-year-olds to marry, which practically opens the way for the continuation of marrying off girls who are still in their childhood phase.
- The law gives the judge full discretionary power to give permission without setting clear boundaries. It is not sufficient that the law should obligate the judge to verify if the potential married couple's physical and psychological condition can handle marriage in the event that their guardians give their consent, for these criteria are non-binding and are subject to the cultural and social representations that influence the judge's perspective on the capacity of individuals to enter into marriage.

The law allows for a significant loophole and thus permits the practice of child marriage to continue. This loophole is represented in the practice of recognizing marriages contracted without the judge's permission, and being content with requiring that the concerned parties complete the process before validating the marital union. This gap is a structural one, which cancels out the intended purpose of the amendment. Additionally, continuing to allow clerics to conduct marriages outside the framework of the courts is tantamount to providing a legal and legitimate means of contracting marriages without fulfilling the requirements introduced by the amendment.

Within the Shiite community, the religious leaders we met with and who support amending the age of marriage consider that one can argue by ijtihad (interpretation) that the age of majority – not that of sexual maturity – is the criterion for the age of marriage. Advocates of this opinion adhere to the sixth verse of Surat al-Nisa (The Women): "Test the orphans until they reach the marriageable age. Then, if you perceive in them proper understanding, hand their property over to them..." According to them, if handling financial issues requires one to be an adult, then what of matters of the body, which are greater than money? This is what they call 'the proof of priority'. They insist that it is possible to go by the interpretations of Jaafari jurists, which allow for codifying the age of marriage otherwise than by committing to the criteria of mere physical

[61] Article 33 of the Law regulating the Sunni and Jaafari Judiciary: See http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244292 [AR]

maturity. For them, being content with physical maturity as a sign of readiness for marriage is what is best known among scholars; however, they assert that this level of maturity is not sufficient for a girl to enter marital life, because of the potential health-related, psychological and social harm that may befall her. They base their position on scientific research and field studies that confirm the dangers of early marriage[62].

The members of the Druze community whom we met with also support amending the provisions regarding age of marriage. While they emphasize the possibilities to legally set a minimum age of marriage, they point out the rarity of marital unions contracted by persons below 18, excepting limited cases in some Lebanese social settings and regions. Therefore, they affirm that given the social acceptance for the idea of determining a minimum age of marriage, raising the issue is an easy matter[63].

The judges from the three Islamic sects whom we met with[64] insist that they try to limit early marriage contracts to the best of their ability. They however raise the issue of the restrictions placed on the judge due to the absence of a clear and explicit legal text that determines the minimum age of marriage or allows them to refuse concluding the marriage of a girl who is still a child. They also mention the ways whereby legal texts can be circumvented in Lebanon. In many cases, judges strictly refuse to marry a young girl, but she is married by clerics outside the framework of the courts. In such cases, the Sharia courts are forced to register the marriage in order to preserve the rights of the women and children, particularly for the protection of lineage[65]. Hence, these judges recommend a strict stance against allowing marriages for girls under 18 years of age, and the activation of State responsibility to penalize clerics who perform marriages outside the framework of the Sharia court. In their view, this matter needs to be regulated and the competency to conclude marriage contracts needs to be restricted to the courts.

This opinion is reinforced by the results of the survey conducted for the purpose of this report, since individual members of the Islamic communities confirmed that determining the minimum age of marriage should be prioritized on the State's agenda and the agenda of the various religious authorities[66].

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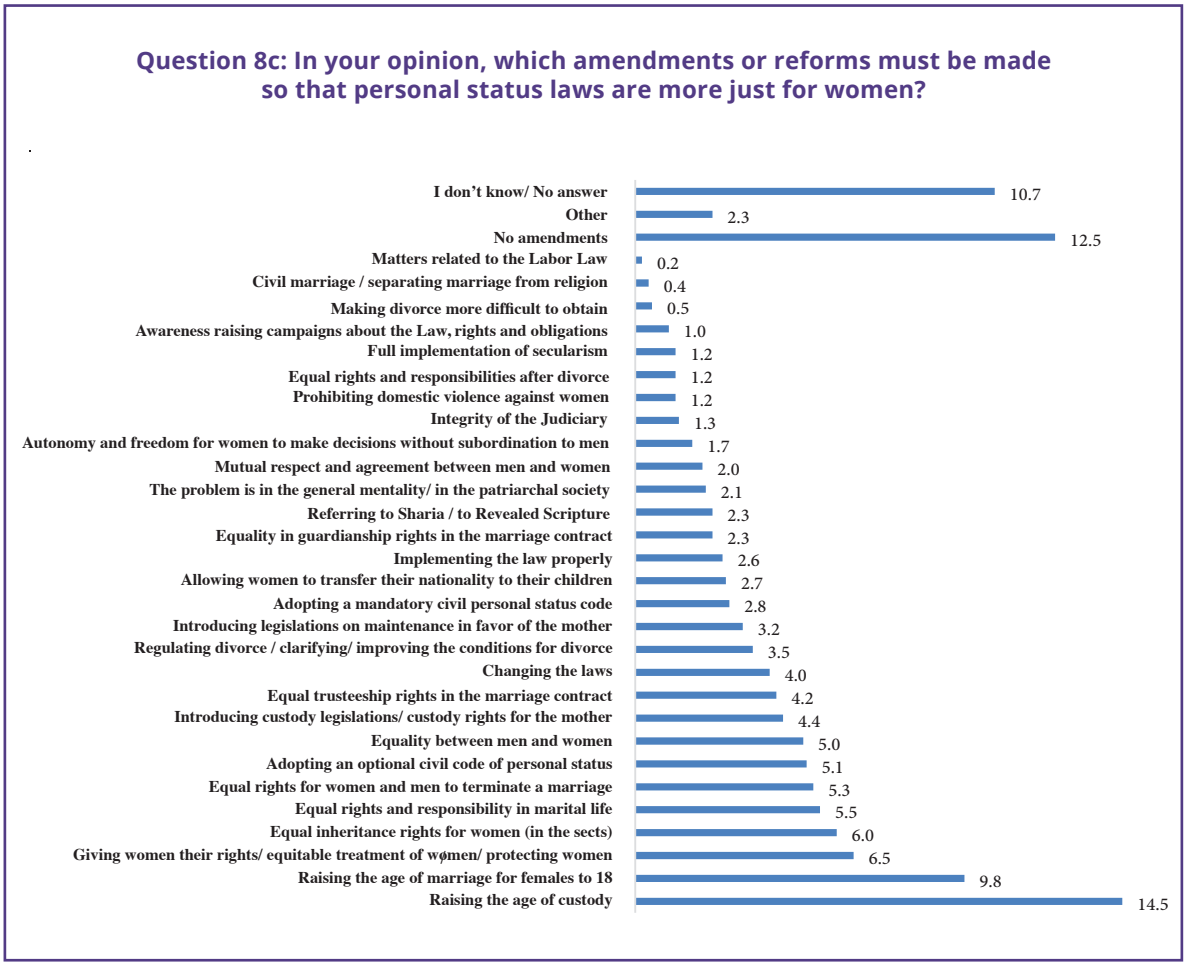
[62] From an interview conducted on October 16, 2020 for the purpose of developing the present report.
[63] From an interview conducted on June 15, 2020 for the purpose of developing the present report.
[64] Interviews we conducted for the purpose of this report on June 15 & 17, 2020
[65] A woman doesn't have the right to register her children in Lebanon outside the framework of legal marriage.
[66] See *The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon*, p 29, in Arabic on the following link: https://bit.ly/3O8Nydq [AR]

CHART 17:

Determining the Amendments Required to Make Personal Status Laws More Just for Women



In turn, a number of men and women lawyers and jurists whom we met and who are connected to Sharia courts[67] approach the issue of the age of marriage from the angle of the dangers that threaten the life of the girls concerned. They advance an argument related to the minors' protection law, specifically Article 25, which considers a minor to be at risk if they are in a context that makes them vulnerable to exploitation or that threatens their health, well-being, morals or the conditions of their upbringing. These lawyers and jurists consider that a minor girl who is married is to be counted as a minor at risk. They call for coordination between Sharia judges and Juvenile protection judges, and for the launching of a joint discussion to address the issue.

Also, many among the persons we met with find it useful to refer to the experience of Arab countries that codified the age of marriage to protect girls from early marriage. The majority of these countries refer to the Muslim

[67] An interview conducted on 17/6/2020 for the purpose of this report.

religion as a source of legislation. It is true that these countries all made room for exceptions where marriage is contracted for persons below 18, but they specified the minimum age of marriage.

• In the Christian Sects

In the Christian religious legislations, the minimum age of marriage varies from one sect to another. The table below shows the minimum age of marriage by Christian sect.

Sect	Age of Marriage for Girls	Age of Marriage for boys
Armenian Orthodox	15 years	18 years
	The Diocesan Bishop may allow, in agreement with the Lay President of the First Instance Court, the marriage of a 16-year-old male with a 14-year-old female in exceptional and critical circumstances.	
Assyrian Eastern Orthodox	15 years Allowed below this age when necessary and if her health and physical stage of development allow it.	18 years Allowed below this age when necessary and if his health and physical stage of development allow it.
Catholic	14 years	16 years
	Clause 2 of Canon 800 stipulates that "It is within the power of the particular law of any Church sui iuris to establish an older age for the licit celebration of marriage[68]."	
Latin	18 years	18 years
	With exceptions allowing the marriage of minors after consulting with the local hierarchy.	
Coptic Orthodox	16 years	18 years
Evangelical (in Syria and Lebanon)	16 years	18 years
	Exceptionally, a female minor who hasn't completed 16 years of age and a male minor who hasn't completed 18 years of age may be married by court order provided they are certified by medical report to be sexually mature, and provided that the female minor is at least 14 and the male minor is at least 16 (Article 14[69]).	

[68] See http://www.intratext.com/IXT/ENG1199/_PM8.HTM [ENG]
[69] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR]

Sect	Age of Marriage for Girls	Age of Marriage for boys
Greek Orthodox	15 years	17 years
	The principle being that the marriage applicants have reached the age of majority with exceptions when necessary and on the condition that they be qualified to marry.	
Syriac Orthodox	16 years	18 years

We note that with the exception of the Lebanese Latin sect and the Greek Orthodox sect, none of the Christian sects have determined the age of majority as the minimum age of marriage -while allowing some exceptions. We can also note the difference in the age set for boys and girls, with a tendency to adopt the civil age of majority for boys (excepting the Catholic sects), and a lower age for girls (between 14 and 16).

The Church allows, for example, marriage below the age of 18 in exceptional cases, because it considers the age impediment[70] to be an ecclesiastical impediment[71], not a divine impediment[72] like the impediment of ligamen[73]. For instance, it is subject to dispensation by the religious authority, meaning that it can be bypassed, and the marriage contract will be considered valid after the dispensation is secured. Canon 800 of the Code of Canons of the Eastern Churches stipulates that "A man before he has completed his sixteenth year of age and a woman before she has completed her fourteenth year of age, cannot

[70] An impediment is "a canonical prohibition based on the objective circumstance of a person, and is composed of two elements: the reality and objective situation of a person, and the explicit legal prohibition based on a specific circumstance." in Ibrahim Traboulsi, Marriage and Its Effects in Communities Governed by the Law of April 2, 1951 in Lebanon, 2nd and Improved Edition, Sader Legal Publishers, Beirut, 2000, p.55. Commentary on the Code of Canons for Eastern Churches explains that "Invalidating impediments must be from Divine or Ecclesiastical Law. They both render a marriage contracted in such circumstances illicit. These impediments must be present before marriage and until the marriage is contracted for the marriage to be illicit. And because these impediments imply a limit on the fundamental rights of a person, they must be subject to precise and exclusive interpretation." (p.787)

[71] The ecclesiastical impediment has its source in positive law that descends directly from Ecclesiastical Law and covers the members of the Church or sect exclusively, and is subject to dispensation, such as the dispensation to marry during fasting, or a dispensation from age-related impediment or other impediments issued by the ecclesiastical legislator." in Ibrahim Traboulsi, *Marriage and Its Effects in Communities Governed by the Law of April 2, 1951 in Lebanon*, 2nd and Improved Edition, Sader Legal Publishers, Beirut, 2000, p.55.

[72] A divine impediment has its source in Divine Law that "descends directly from the divine teachings that prohibit certain acts and includes all people and are not subject to dispensation. For example: the impediment of ligamen, consanguinity or blood relationship in the direct line, consanguinity in the collateral line, and impotence." in Ibrahim Traboulsi, *Marriage and Its Effects in Communities Governed by the Law of April 2, 1951 in Lebanon*, 2nd and Improved Edition, Sader Legal Publishers, Beirut, 2000, p.55.

[73] The impediment of ligamen (prior bond): "This impediment prohibits contracting a marriage before the dissolution of a prior marriage. The aim of this impediment is to preserve the unity of marriage, that is the union of one man with one woman only." in Ibrahim Traboulsi, *Marriage and Its Effects in Communities Governed by the Law of April 2, 1951 in Lebanon*, 2nd and Improved Edition, Sader Legal Publishers, Beirut, 2000, p.58.

validly celebrate a marriage.[74]" According to the *Commentary on the Code of Canons for Eastern Churches*: "This impediment is not only based on the physical maturity that allows the two parties to complete the sexual act, but goes beyond it to the mental maturity that allows both parties to give proper consent. This is what the local ecclesiastical hierarch should consider when granting a dispensation from the age-related impediment.[75]" This implies that in principle, the Catholic Church not only considers the age of the marriage applicants in order to grant a dispensation, but also their mental maturity. This was confirmed to us by many experts and religious judges who pointed out that certain sects require medical reports on physical and mental health to determine the couple's eligibility, otherwise the permission to marry is not granted if they have not reached the age of majority.

A Catholic judge justified the adoption of a minimum age for marriage that is below the civil age of majority by referring to the cultural diversity among the Catholic communities that exist in many countries worldwide, and the need to respect this diversity. The Code of Canons of the Eastern Churches is implemented in countries with various cultures where people belonging to the Catholic Church live, and which still rely on religious marriage and allow early marriage (Catholics in East Asia, Africa, etc...)

In this regard, some judges declared that "the Church has faced in the past and still at times faces cases where the marriage applicants are minors. In the event of a pregnancy outside marriage where the girl has not yet reached the age of majority, the Church considers itself obligated to accept to marry minors, or to marry a couple where only the boy has reached the age of majority[76]." Therefore, the Church has given the Bishop for example a large margin of freedom, if such cases are brought to him, to make a decision based on lengthy investigations he would conduct with the minor girl or boy, during which he would ascertain their physical, psychological and emotional maturity.

On the other hand, all the personal status laws of the Christian sects stipulate that a marriage between two minors cannot be valid without the permission or agreement of their guardian, even if the marriage seekers have reached the minimum age of marriage. The guardian is in principle the father, given that he alone enjoys parental authority, with the exception of cases where the law grants the mother guardianship, and in the Armenian Orthodox Church whose laws enshrine the mother and father's rights to exercise parental authority on equal footing[77].

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[74] See http://www.intratext.com/IXT/ENG1199/_PM8.HTM [ENG]

[75] *Commentary on the Code of Canons for Eastern Churches* by a number of authors, coordinated by Father Antoine Rajeh, Pauline Library Publications, April 2005, p.793. [AR]

[76] From an interview with a Catholic judge on 19/6/2020.

[77] See the section on guardianship later int his Chapter.

This leads to the conclusion that the issue of the marriage of minors is seldom raised in the Christian sects, especially that the amendment we mentioned previously has become a de facto reality, and the marriage of minors rarely occurs. According to our interviewees, economic, social and cultural progress has led to a higher average age of marriage for women and men, and to a rarity of marriages of underage girls. One judge pointed out that "In the past thirty years, not one marriage between minors has been contracted[78]." However, this development in social culture has not been reflected at the level of legislation, and the legal text has not been amended to date. The facts on the ground should not obscure the need to review and amend legislations, so they may conform with human rights standards and with the current reality.

Conclusion

For the Islamic sects, there is a certain consensus on the part of the persons we met with about the possibility of amending the age of marriage provisions, and adopting adulthood rather than physical maturity as a standard, based on a new approach to the best interests of the family and its social function, and to cease catering to short-term benefits under the banner of "chastity and virtue[79]". According to them, the age of marriage can be raised and codified, and also restricted, especially by penalizing clerics who conclude marriages outside the framework of Sharia courts.

Regarding the Christian sects, none of the persons we interviewed objected to the idea of amending the age of marriage, especially that the amendment is being implemented de facto. A number of judges insisted on the importance of the ecclesiastical authorities retaining a certain margin of freedom to address some urgent cases that would require a marriage contract after a dispensation from the age-related impediment.

[78] From an interview with a pastor on 1/7/2020

[79] *Ihsan* (virtue): The different schools of Islamic jurisprudence differ in their definition and conditions of *Ihsan*, be they Sunni or other. For example, the Hanafi school poses the following conditions for *Ihsan* to be fulfilled: reason, sexual maturity, freedom, Islam, valid marriage, with both spouses having these qualifications and entering into valid marriage.

2. Divorce, Annulment or Termination of Marriage

• International Framework

According to Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women, countries should take the necessary measures to eliminate discrimination against women in matters related to marriage and family relationships, including matters related to marriage dissolution or divorce. Lebanon has expressed reservations about this article, arguing that it violates national personal status laws.

• The National Framework

There is no national legislation to rely on, but it is possible to refer to the principle of equality enshrined by Article 7 of the Lebanese Constitution[80]. Lebanese citizens, men and women, are equal before the Law, and this should include all transactions, contracts and procedures.

• In the Islamic Sects

Provisions for divorce differ among the three Islamic sects in Lebanon, but they are unanimous in considering divorce as the man's absolute and exclusive right. There is no argument among the Islamic schools of jurisprudence about whether or not divorce is a man's right, and whether or not this right is absolute. This does not imply that women do not have the right to divorce, but it is not an absolute right and is always conditional. In the Druze sect, divorce can only be concluded by a judge's ruling.

In the Sunni sect, if a husband consummates marriage with his wife, he has three divorces over her. According to the Ottoman Law of Family Rights in force in the Sunni community, divorce does not require witnesses, and occurs orally between the husband and wife in explicit or customary terms, and the husband's intention for divorcing is taken into account[81]. There are two types of legal Islamic divorce:

- **Irrevocable Divorce, whereby the divorcing party does not have the right to revoke the divorce, and it is of two kinds:**

  1- Minor irrevocable divorce *(ba'in baynuna sughra)***:** it instantly dissolves the marital bond, and happens under three divorce pronouncements. In it, the divorcing party cannot revoke the divorce during the waiting period

[80] Article 7 of the Lebanese Constitution: "All Lebanese shall be equal before the law. They shall equally enjoy civil and political rights and shall equally be bound by public obligations and duties without any distinction." See https://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf [ENG]

[81] See Articles 108 &109 of the Ottoman Family Rights Law on http://77.42.251.205/LawView.aspx?opt=view&LawID=258195 [AR]

(*iddah*[82]), and cannot bring his wife back after the waiting period has ended except with a new marriage contract and *mahr*. A divorce is considered a minor irrevocable divorce in many cases, such as: divorcing a woman with whom the husband has not had intercourse after the marriage was concluded, with one divorce pronouncement; or when the waiting period of a woman whose husband had intercourse with her after the marriage has expired, after the first or second revocable divorce pronouncement; quittance (known as *khul'* or *ibraa'*)[83] whereby the woman 'redeems' herself or absolves the husband from her rights over him such as spousal maintenance, deferred *mahr* (*mu'akhar*) or a specific debt he owes. In all the previous cases, the marriage contract can be renewed[84].

2- **Major irrevocable divorce** *(ba'in baynuna kubra)*: it dissolves the marital bond like the minor irrevocable divorce, and happens after the third divorce pronouncement. The divorcing party cannot return his divorcee to himself until she marries another man, divorces him or he passes away, and her waiting period expires[85].

- **Revocable divorce** *(talaq raj'i)*: it does not terminate the marital bond immediately. In this case, the husband may take back his wife with whom he consummated the marriage as long as she is in her waiting period, whether the divorce was not preceded by a previous divorce pronouncement, or whether it was preceded by one revocable divorce pronouncement. In other words, every divorce is considered revocable except for the following: a divorce which completed the three divorce pronouncements, a divorce that happened if the marriage was not consummated after the marriage contract was concluded, a divorce by quittance, or a divorce ruled as irrevocable or the marriage rescinded by judicial decree.[86] In a revocable divorce, the husband does not need to renew the marriage contract or *mahr* in order to take his wife back, neither are witnesses required, although it is preferable to have them. The resumption of the marriage happens during the waiting period through word or deed[87].

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[82] *Iddah*: Under Shiite and Sunni personal status laws, the legally prescribed period during which a recently widowed or divorced woman may not remarry; in divorce, the period within which the divorce is revocable. The term is defined as three menstrual periods or three months.

[83] *Khul'* / Quittance: A means of dissolving a marriage under Shiite and Sunni personal status laws whereby the wife is released from the marriage in exchange for financial compensation to the husband. In these cases, a wife typically forfeits all or part of her legal rights to mahr and spousal maintenance in exchange for the husband divorcing her. In some cases, a wife also pays an additional sum of money to the husband.

[84] https://www.islamweb.net/ar/fatwa/141717/ [AR]

[85] Article 83 of the Ottoman Law of Family Rights: http://77.42.251.205/LawView.aspx?opt=view&LawID=258195 [AR]

[86] See https://www.almeezan.qa/PrintArticle_section.aspx?LawTreeSectionID=8768&language=en&lawId=0 [ENG]

[87] See Article 78 of the Ottoman Law of Family Rights: http://77.42.251.205/LawView.aspx?opt=view&LawID=258195 [AR]

• The Sunni sect

In the Sunni sect, a woman may apply for severance (*tafriq*)[88] by submitting a lawsuit to the court because of the harm that befell her as a result of hardship or mistreatment. For instance, because her husband physically abused her, or forced her to commit unlawful acts, or withheld spousal maintenance from her, or was absent for a long time. This course of action allows women who suffer from domestic violence to escape it through divorce by applying for severance. But it remains a long and complicated process: the judge must propose reconciliation in the first session and hear both parties, then propose reconciliation again to resolve the dispute if possible. The judge then asks the plaintiff to present evidence, and in the event that the conflict persists, he may give them more time if he deems it necessary, then he will refer them to the Arbitration Council to study the case and its resolution, or to determine the extent of responsibility of each party. The judge then rules for severance in light of the two arbitrators' report, holding each party responsible for what he deems their part in the divorce to be[89].

A woman may also terminate her marriage contract by way of quittance (*khul'*), whereby she waives the *mahr* or half of it, or some of her marital rights, in exchange for her husband granting her a divorce. This might take place in exchange for a sum of money that the wife pays to placate the husband[90].

According to Sunni jurisprudence, quittance allows a woman to ask for divorce. However in Lebanon, quittance requires that the woman and the man both agree to the separation, whereas in Egypt for example, it has been decreed by law that if the husband refuses the wife's quittance, she then has the right to resort to court to ask for a divorce, and it suffices that she mentions to the judge her profound dislike of living with her husband, and that she is willing to return the mahr and waive her legal rights.

In Sunni jurisprudence, a woman also has the right to enter a stipulation in the marriage contract giving her the right to '*isma* whereby she can divorce herself. She may also include the condition that her husband will not take another wife, and in the event that he does then either she or the second wife will be considered immediately divorced[91]. But this is rarely implemented.

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[88] Under Sunni and Druze personal status laws, severance is the dissolution of the marriage by religious judicial order pursuant to a request from either spouse and for reasons specifically enumerated by law. Severance is not recognized under Shiite personal status law.

[89] Article 130 of the Ottoman Law of Family Rights. See: http://77.42.251.205/LawView.aspx?opt=view&LawID=258195 [AR]; and section 10 of the law regulating Sharia judiciary: http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244292 [AR]

[90] Divorce by quittance is not included in any of the laws in force in Lebanon, but is derived from jurisprudence and interpretation.

[91] Article 38 of the Ottoman Law of Family Rights. See: http://77.42.251.205/LawView.aspx?opt=view&LawID=258195

• The Druze Unitarian sect

In the Druze sect, a man and a woman may not be divorced except by ruling of the sect's judge. If conflict or a rift befalls the couple and one of them resorts to a judge, the judge will assign an arbitrator from the husband's family and one from the wife's family. If no one within their families has the qualifications of an arbitrator, the judge will appoint one from outside the families. The judge may also assign an experienced and qualified social worker or psychologist if necessary to act as arbitrator. The expert or the arbitrators should identify the causes of the rift between the spouses and strive to mend it. If it proves impossible to reconcile them, and if the husband is the one being unreasonable and inflexible, then the judge will separate them and grant the wife the entirety of the deferred mahr or part of it. If the wife is the party judged responsible for the persistent rift, then the judge will decide that she must forfeit the deferred *mahr* as a whole or in part. In both cases, the party that the judge deems to be in the wrong will be ordered to verse the deserved compensatory damages to the other party. If the judge sees that the divorce is not legally justified, he will order the husband to pay compensatory damages in addition to the deferred *mahr*, while taking into account the moral and material harm incurred[92]. And yet a judge in the Druze court stressed that while the text that allows granting women compensatory damages and referring a man's arbitrary divorce to court is very important, practical application shows the extent of the societal restrictions to its implementation.

• The Shiite and Alawite sects

In the Shiite sect and the Alawite sect that follows Jaafari courts, a woman may not apply for severance, but needs her husband's agreement to dissolve the marriage through quittance (*ibra' wa mukhala'a*), either by way of the courts or by mutual consent; for while the Law Regulating the Sunni and Jaafari Judiciary regulates severance, its provisions do not apply to the Jaafari judiciary. In this matter, some Shiite clerics rely on the following *hadith*: "Divorce is in the hands of the man[93]", meaning it is the husband who has the power to effect divorce and dissolve the marital bond. In exceptional specific cases, a man's exclusive right to divorce is forfeited, and the woman can include her right to divorce herself in the term sheet of the marriage contract[94].

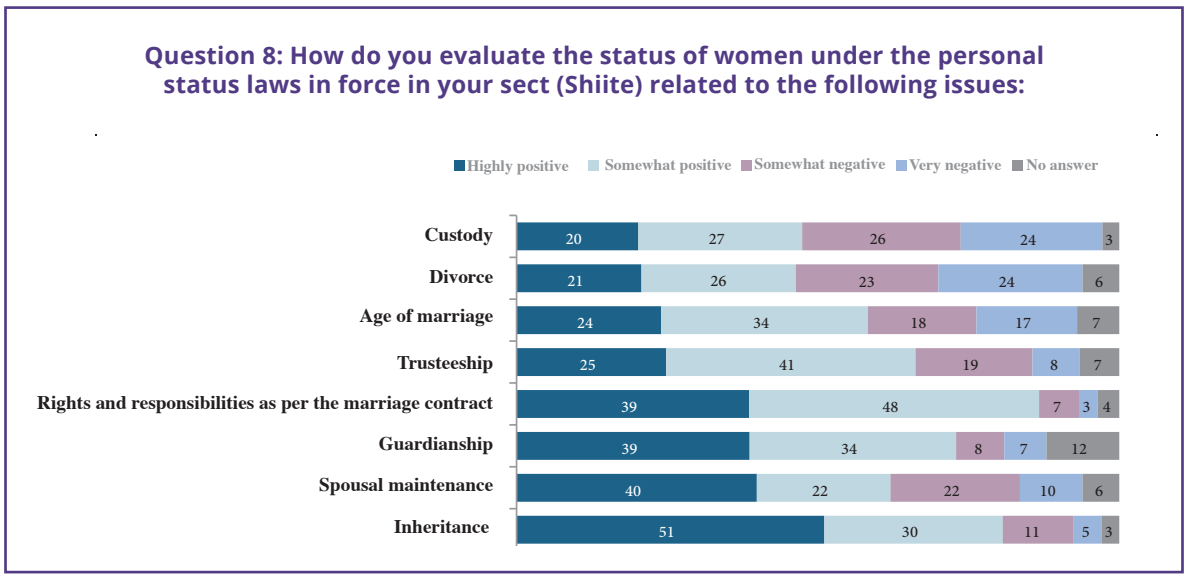
The survey conducted for the purpose of developing this report shows the high rate of negative evaluation of Shiite personal status laws on divorce, with

[92] Articles 37 – 49 of the personal status code of the Druze Unitarian sect. See: http://77.42.251.205/LawView.aspx?opt=view&LawID=258196 [AR]
[93] *Hadith* narrated by Ibn Abbas
[94] See https://bit.ly/3e5aIoD [AR]

23.9% of respondents expressing a highly negative opinion of these laws as they are regulated in the code of the Shiite sect[95].

CHART 15:

An Evaluation of the Status of Women Under Personal Status Laws Regarding Certain Issues (Shiite sect)



• On Reforms

Sunni clerics and judges do not consider the provisions regulating divorce to be prejudicial to women, and they agree that Islamic Sharia rejects arbitrary divorce, based on the following verses: "A divorce is only permissible twice: after that, the parties should either hold together on equitable terms, or separate with kindness" (Surat *Al-Baqara* (The Cow) 2: 229) and "O ye who believe! When ye marry believing women, and then divorce them before ye have touched them, no period of 'Iddat have ye to count in respect of them: so give them a present. And set them free in a handsome manner." (Surat *Al Ahzab* (The Clans) 33 :49). Yet in parallel, they do admit some of the challenges that women face when it comes to divorce. According to them, the husband has the right to pronounce divorce, and he may use this right for righteous reasons or to victimize, slander, or treat his wife with intended disregard. He may also withhold divorce manipulatively, knowing full well that marital life has become impossible, to pressure his wife to waive the rights granted to her by Sharia, or to leave her unjustly and hostilely as if in a suspended state. According to these clerics and judges, this is where the judge's role comes in to guide and advise the spouses towards reconciliation if

[95] *The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon,* p 27, in Arabic on the following link: https://bit.ly/3O8Nydq

possible. Also, in cases where the husband stubbornly refuses to grant his wife a divorce, Islamic Sharia allows the wife to apply for severance before the Sharia judge[96].

In parallel to the general consensus by Sunni clerics that Islamic Sharia has not been unjust to women, another opinion finds it necessary that the right to divorce is constrained by jurisprudence, and the general controls and rules regulating the provisions and conditions of contracts. To the holders of this opinion, it is true that the Hanafi school of jurisprudence places divorce in the man's hands, but the Islamic jurists of the Ottoman State – according to a number of Sunni judges – followed the opinion of the Maliki school where divorce can also happen through quittance; however it is always regulated according to the sole will of the husband and his freedom to accept or reject his wife's request. If he does not agree to it – even if his wife pays him financial compensation- she will not obtain the divorce. Some hold that to correct this situation, one must follow the Islamic jurisprudence scholars who have opined that the husband must be obligated to grant his wife a divorce should she desire it in exchange for compensation. And so there is room to reform quittance by making the judge's divorce ruling - upon the wife's request and tied to financial compensation - binding to the husband, as it is the case in Egypt. The consideration here is that just as the marital union is established by the convergence of two wills, so the dissolution of the marriage should be as well, based on the principle of "the jurisprudence of proportionality", to prevent the arbitrary use of a privilege, and as a rejection of any gender-based or legal-rights-based discrimination between the two contracting parties. Just as unilateral divorce willed by the husband entails the wife's right to the *mahr* as compensation, so does quittance by the unilateral will of the wife entail compensating her husband[97]. Divorce being in the hands of the judge regulates it and prevents injustice against women. Those who hold this opinion proceed from the necessity to re-examine the concept of the right to divorce and of divorce being under the man's exclusive control[98].

They insist that Islamic jurists should re-examine the provisions related to who has the right to divorce, since they are jurisprudential interpretations made in a specific historical, social and cultural context. In their view, divorce should only be enacted pursuant to a legal dispute resulting from an antagonism that makes marital life unendurable, and that both spouses should have the right to apply for divorce before the courts, provided that they testify to the reasons for seeking it, in order to put a stop to the accumulation of strife and the exacerbation

[96] From an interview conducted for the purpose of this report on 15/6/2020
[97] From an interview conducted on 16/10/2020 for the purpose of this report.
[98] From an interview conducted on 17/6/2020 for the purpose of this report.

of problems and enmities. The proponents of this approach deem the following causes to be serious enough to warrant a divorce:

a- Mistreatment initiated by any of the two spouses.

b- The husband or wife violating a term of the marriage contract.

c- Lack of spending out of inability, intransigence or miserliness.

d- Absence, going missing and the absence of any news about the missing spouse.

e- Disappearing from view even if in the same country for a period of time that is considered grounds for divorce.

f- Being kidnapped or incarcerated.

g- A defect or illness that cannot be tolerated or is feared to be contagious.

h- The husband's vow to abstain from sexual relations with his wife for a period of time that warrants a divorce (*ila'*).

i- Incarceration for a disgraceful crime or offense for which the prison time is over a year[99].

The advocates of this opinion stress the importance of curbing extra-judicial divorce by revoking any unilateral divorce pronounced by the husband – even if he is an adult, reasonable, capable of making choices and aware, and even upon the wife's request – during a discussion or argument by the couple about divorce; this is to revoke the right of the husband to unilateral divorce by a legal regulation that forbids divorce outside the framework of the courts. What is being considered here is preventing the man from the facile exercise of divorce as an absolute and unilateral right.

- **In Tunisia**, divorce is granted upon the mutual agreement of the spouses, based on the request of either of them because of harm suffered. The aggrieved party is entitled to compensation for the material and moral damage resulting from the divorce.
- **In Morocco**, divorce is the dissolution of the marriage exercised by both husband and wife, each according to their conditions under the supervision of the courts and in conformity with the provisions of the Family Code.

[99] Idem

Similarly, clerics from the Shiite sect stress the possibility of establishing mechanisms to facilitate the divorce process for women[100]. Quittance (*khul'*) does not exist in Shiite jurisprudence, but this conundrum could be resolved in two ways through legislation and facilitation whereby divorce becomes much easier for women:

- The first way is to make it mandatory to include in the marriage contract the condition whereby both spouses have the right to divorce.
- The second way is to activate "divorce issued by the highest religious authority" (*Talaq al hakim*) whereby Shiite jurisprudential authority, regardless of its geographical location, grants a cleric in Lebanon the mandate to effect divorce in specific cases. However, this remedy was rarely resorted to in Lebanon and applied in one case only. We would like to point out a proposed law to amend Article 346 of the Law Regulating the Sunni and Jaafari Sharia Judiciary[101], according to which "the provisions of the previous articles in this section do not apply to the Jaafari religious judiciary", meaning the provisions of article 346 on severance do not apply to divorce cases in the Shiite sect. As such, this proposition opens the way for the wife to request a "divorce issued by the highest religious authority" if the conditions for it are met. She submits a non-litigious request before the president of the Supreme Jaafari Sharia Court, who takes the necessary measures and conducts the necessary investigations and concludes the divorce if the legal conditions for it are fulfilled, or rejects the application. Although the proposed law is instrumental in regulating "divorce issued by the highest religious authority" as a judicial option to resolve the issue of divorce in the Shiite sect, it can be reproached with restricting its performance to the president of the Supreme Jaafari Sharia Court. Also, it was expected to move forward towards granting Shiite women the right to request severance or quittance, which Sunni women have, or to make divorce the exclusive jurisdiction of the courts as it is in the Druze community. This would have contributed to lifting the injustice that women suffer from in matters of divorce.

According to Shiite authority Sayyid Ali al-Sistani's fatwa, any kind of mistreatment from the perspective of custom justifies "divorce issued by the highest religious authority". The conditions for this divorce are three: withholding spousal maintenance, absence of sexual intercourse, and beating. In case any of the conditions is proven, "divorce issued by the highest religious authority" is legitimate. And yet Shiite courts authorize this kind of divorce only in cases where spousal maintenance is being withheld.

[100] From interviews conducted on 17 & 17/6/2020 and 8/7/2020 for the purpose of this report.
[101] http://www.legallaw.ul.edu.lb/LawView.aspx?opt=view&LawID=244292 [AR]

In addition to this, according to a Shiite cleric that we met with, Lebanese religious authority Sayyid Muhammad Hassan Fadlullah sees that "repugnance" (profound dislike of sexual relations with the husband) is a factor that legitimizes this divorce, based on the noble verse: "women shall have rights similar to those due from them, with justice" (Surat al-Baqara 2:228), and also based on his conviction that divorce is as much a woman's right as it is a man's[102].

Some members of the Shiite community whom we met with consider that if repugnance is adopted as a factor for divorce, then this will help ease the suffering of Shiite women, and so they call for widening the scope of the legitimate causes for a "divorce issued by the highest religious authority". The legal concept of "hardship and distress[103]" (*al-'usr wal-haraj*) can also be resorted to, which empowers women to obtain a divorce from the court should continued marriage cause hardship, and if the husband is tyrannical in refusing to pronounce divorce. This is based on Islam being a religion of ease, not hardship; God does not ask of His worshipers what they cannot endure[104].

As we are addressing divorce in the Shiite sect, we would like to point out that in Iraq, in both the Sunni and Shiite sects, men have the right to unilaterally divorce their wives without specifying the legitimate reasons, whereas women may ask for a divorce for specific reasons only, such as their husband mistreating them or their children in a way that renders continued marriage impossible. Women may also resort to quittance, which requires them to waive their financial rights. In Iran, the 1992 amendment related to divorce procedures prohibited registering a divorce without a court order. Since then, either spouse who wants a divorce must go to court. Among the reasons based on which a spouse may request a divorce are mistreatment by the other party, incurable disease, mental disorder, addiction, a prison sentence of more than five years, the wife's refusal to fulfill her legal conjugal duties, and infertility of either of the spouses.

Lastly, in regards to divorce, Sunni and Shiite clerics insist on one way to protect women, which is for her to lay her conditions in the marriage contract. The spouses can agree on the wife being given the 'isma - which gives her the authority to divorce herself on the husband's behalf whenever she wants - in the marriage contract itself or at a later time by amending it, with the husband retaining his right to divorce. This is an important course of action but it is complicated and rarely implemented because of social complexities. A 2015 study by Human Rights Watch showed that none of the 14 women interviewed had included this clause in their marriage contract, and that out of 150 divorce

[102] From an interview conducted for the purpose of this report on 8/7/2020
[103] *al-'usr wal-haraj*: this rule signifies that any provision that causes hardship or distress is refuted by Sharia.
[104] From interviews conducted for the purpose of this report on 18/6/2020 and 8/7/2020

cases before the Jaafari and Sunni courts, only 3 divorce rulings where issued based on the wife exercising her right to '*isma* or to effect divorce[105].

• In the Christian sects

As previously mentioned, Christian marriage is a Church sacrament for Catholic and Orthodox sects, and has two fundamental characteristics: fidelity and permanence, meaning that it cannot be undone. This explains the general difficulty of terminating the conjugal bond in Christian sects. Also, agreement between spouses cannot lead to the dissolution of a marriage. Rather, a marital bond may be terminated in the following ways:

- **Annulment:** whereby the marriage contracted in Church is considered invalid, as if it was never contracted. A reason for annulment would be a spouse's inherent psychological incapacity to bear the basic obligations of marriage, predating the marriage itself; another would be her being forced into marriage. It is important to point out here that the annulment of a marriage does not preclude the effects of the contract, most notably the legitimacy of the offspring who are granted all the rights of legitimate children. Concerning the rights and obligations between the parents and their children, these are governed by personal status provisions.
- **Dissolution and divorce:** whereby the marriage is fundamentally valid, but subsequently reasons arise justifying its dissolution. Dissolution and divorce are recognized only in the Orthodox and Evangelical/Protestant sects (for example: one of the spouses converting to another religion, adultery, being convicted of a "shameful" offense...)
- **Desertion:** whereby the two spouses separate but the marital bond persists, impeding remarriage with someone else. Desertion is considered canceled by reconciliation, meaning it is revocable[106].

There are two types of desertion:

- Permanent desertion, which is justified by adultery (recognized only by Catholic sects).

[105] See https://www.hrw.org/report/2015/01/19/unequal-and-unprotected/womens-rights-under-lebanese-personal-status-laws [ENG]

[106] An expert on personal status cases explained that "desertion is not always voided through reconciliation, since the court may for example, if it saw that there was room for reconciliation, suspend the trial to give reconciliation a chance. If it is unsuccessful, desertion is not considered void, rather the period of time determined for desertion resumes from the point it was reached before the attempted reconciliation. In other words, each case is to be addressed separately." She added that "reconciliation doe not always cancels desertion, especially when the reconciliation is only nominal and there is no real intention towards it, and arises from special circumstances and pressure, or for the sake of the children's needs, so one cannot speak of reconciliation here or say: the desertion is now canceled." (From an interview conducted with an expert of personal status matters in the Christian sects on 18/6/2020)

- Temporary desertion, the duration of which is left to the court's discretion, until the cause justifying the desertion no longer exists (recognized by all the Christian sects). Temporary desertion in the Orthodox and Evangelical sects may lead to the termination of the marital bond after a specific period of time if the spouses fail to reconcile (three years for Orthodox sects and two years for the Evangelical sect)[107].

In principle, women and men belonging to the Christian sects are equal in terms of the conditions and reasons necessary to apply for the termination of the marital bond, whether for annulment, dissolution or desertion, except for the Greek Orthodox sect where the man may apply for divorce from his wife "If on the marriage day he found her to be not a virgin, unless he knew of this before the marriage (Article 69)[108]".

When addressing the principle of equality between women and men, one often overlooks an important case of discrimination, namely violence against women, which none of the Christian religious legislations addresses. The Catholic sects do not consider that violence against women during marriage is a reason for its annulment. Exceptionally, when it is proven that the husband's psychological incapacity of bearing the basic obligations of marriage predates the marriage, the violence he exercises against his wife is considered a reason for annulment.

As for the Orthodox and Evangelical sects, where dissolution or divorce are possible, numerous laws indicate the ability of either spouse to resort to marriage dissolution if it is proven that they have been subjected to attempted murder at the hands of the other party, or in the event that cohabitation is suspended for a determined period of time. It is important to clarify that marital abuse does not in itself constitute a legitimate reason for the dissolution of the marriage, but it may lead to a temporary desertion ruling, which may in turn lead to the termination of the marital bond after a specific period of time in the event that the spouses fail to reconcile (three years in the Orthodox sects and two years in the Evangelical sect).

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[107] The duration of desertion in the Evangelical sects ranges between a minimum of two years to a maximum of five years, determined by the court, as seen in Article 36 of the Personal Status Code of the Evangelical Community in Syria and Lebanon: "If conjugal life becomes bitter and unendurable because of mutual ill-treatment, and the means of reconciliation between them fail, and one of them applies for desertion, then the court may decide on it for a specific period of time ranging between a minimum of two years and a maximum of five years according to its evaluation, either until they reconcile, or until a ruling is passed to dissolve their marriage according to Article 29 item 'f' of the present Law". See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR]

[108] Article 69 of the Personal Status Code and the Code of Procedure of the Greek Orthodox sect stipulates that "Is governed by the rulings pertaining to adultery, including but not limited to what is included in the following clauses, and according to which a husband may ask for a divorce: a- If on the marriage day he finds her to be not a virgin, unless he knew of this before the marriage. He must immediately raise the matter with the local religious hierarchy and to give proof of it..." See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]

In the Evangelical sect, opinions are divided on the interpretation of Article 29 of the sects' personal status code in Syria and Lebanon, and which counts the following among the cases where a marriage can be terminated based on the request of a spouse and court ruling: "If the spouses cease to cohabit and to have conjugal relations for a period of time ranging between two and five years determined at the court's discretion, and the court's efforts fail to convince them to resume cohabitation and conjugal relations, they are both entitled to request from the court that it dissolves their marriage and to ascribe responsibility for the interruption of cohabitation[109]." Some consider that the text is imposing two conditions for marriage dissolution, which are the interruption of cohabitation, and the interruption of marital relations for at least two years. Meaning that if there is a de facto separation of home and bed between the spouses for at least two years, then the marriage is dissolved. The other opinion is that the text is implying that there should be a fundamental reason for dissolution besides the de facto separation of home and bed for at least two years, such as spousal physical abuse. If the second interpretation is adopted, then "violence or spousal abuse constitutes a reason to dissolve the marital bond, provided a de facto desertion of bed and home by the spouses for at least two years; in other words, if a wife is physically abused and does not apply for desertion on this basis, she can apply for dissolution after a de facto separation from her husband's home and bed of at least two years on this basis and without having to go through a desertion lawsuit[110]".

As for the judges we interviewed, none of them indicated the necessity to treat the issue of violence against women as a direct cause for marriage termination. According to Catholic judges, pursuant to the characteristics of marriage, spousal violence cannot be considered a direct reason to terminate the marital bond, except in cases where this abuse is attributed to the husband's mental or psychological disability that preexists the marriage, rendering him unable to bear the basic marital obligations.

In the Orthodox and Evangelical sects, cases of violence against women may lead to a court ruling of temporary desertion leading to marriage dissolution or divorce after a legal interval, if reconciliation fails. Due to the difficulty of terminating the marital bond, a wife who is physically abused by her husband is forced to remain in a harmful environment that endangers her and her children. The Human Rights Watch Report "Unequal and Unprotected"[111] points out many cases where women are abused without being able to terminate their marriage.

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[109] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271[AR]

[110] an interview conducted with an expert on personal status matters in the Christian sects on 18/6/2020.

[111] *Unequal and Unprotected: Women's Rights Under Lebanese Personal Status Laws*, Human Rights Watch, 2015, p. 60. See https://www.hrw.org/report/2015/01/19/unequal-and-unprotected/womens-rights-under-lebanese-personal-status-laws [ENG]

Matters are further complicated when the husband is the owner of the marital home, which forces the woman to live with him and continue to endure a damaging relationship until the judge issues a dissolution ruling. In cases of domestic abuse, the religious courts do not have the authority to consider issuing an eviction order; but with the 2014 Law on the Protection of Women and Family Members from Domestic Violence, when battered women resort to the Court for Urgent Matters, the judge may order the husband to vacate the conjugal home, regardless of who owns the house[112].

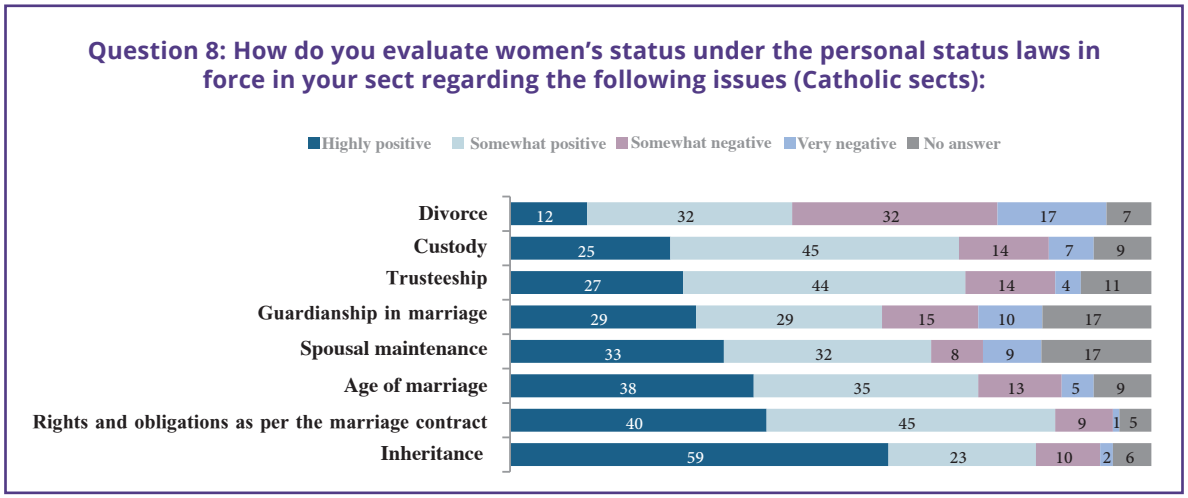
The Human Rights Watch Report also expounds how difficult it is to terminate bad marriages, and how many women are forced to waive their financial rights to maintenance and compensation in exchange for the husband agreeing to end the marriage by changing his sect and adhering to another Christian sect, where it is easier to terminate marriage.

Another issue that numerous legal experts and religious judges complain of, and which widens the discrimination gap between women and men when it comes to marriage termination, is that of men resorting to converting to Islam, since this allows them to remarry without having to go through the termination process before the Christian religious authorities.

The survey on the view of Lebanese men and women on personal status laws in Lebanon shows that the positive evaluation of Christian personal status laws on divorce is significantly low, with only 11.7% of respondents giving a highly positive evaluation, whereas 16.6% gave a very negative evaluation[113].

CHART 12:

An Evaluation of the Status of Women Under Personal Status Laws Regarding Certain Issues (Catholic Sects)



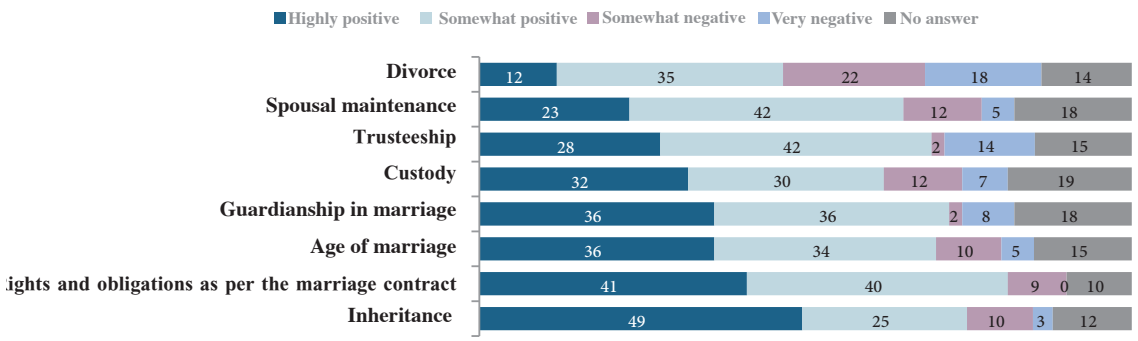
[112] From a meeting organized by Adyan Foundation with Urgent Matters judges on 15/1/2021.

[113] See: *The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon*, pp 25-26, in Arabic on the following link: https://bit.ly/3O8Nydq

CHART 13:

An Evaluation of the Status of Women Under Personal Status Laws Regarding Certain Issues (Orthodox sects)

Question 8: How do you evaluate women's status under the personal status laws in force in your sect regarding the following issues? (Orthodox sects)



In order to qualify the differences between the many cases that lead to terminating the marital bond (marriage annulment and dissolution) in the Christian sects, we have prepared the following table:

Mechanism of Marriage Termination	Armenian Orthodox Sect	Assyrian Eastern Orthodox Sect
Annulment	A marriage that was contracted without the free and explicit consent of both parties, or without the consent of one party or by deceit, provided that the concerned party submit the lawsuit within 6 months of the date when they recovered their freedom or were made aware of the deceit (Article 49). If an annulment request is submitted because of the impossibility of sexual coupling by the aggrieved party (proven by a medical report) (Article 51); if one of the spouses has an illness that may endanger the other spouse or their offspring and has concealed it, the healthy party may ask for an annulment (Article 52); if one of the spouses is bound by an earlier marriage at the time of the marriage celebration (Article 53).	A marriage is annulled if the marriage is contracted in contravention of Church laws; if contracted while an earlier marriage is still valid; if it is contracted due to coercion (Article 140).

Mechanism of Marriage Termination	Armenian Orthodox Sect	Assyrian Eastern Orthodox Sect
Permanent desertion	N/A	N/A
Temporary desertion	A desertion ruling may be issued for one to three years. If the spouses do not reconcile during this period, one of them may ask for dissolution (Article 66).	N/A
Dissolution	A dissolution may be applied for in the following cases: Adultery by either spouse; if one of the spouses attempts to murder the other and if one of the spouses is sentenced for a "shameful" offense; if one of the spouses treats the other with unbearable violence and aggression, and if the aggrieved party's life is so miserable that cohabitation has become impossible; if one of the spouses converts to a non-Christian religion; if a spouse evades marital obligations and continuously avoids, for two years, cohabiting with the other; if one of the spouses goes insane for three years and qualified doctors provide a certificate stating that they are incurable; if one of the spouses is absent from the home and their whereabouts are unknown for five consecutive years (Article 62)[114].	A marriage is dissolved if one of the spouses converts to another religion; if one of them attempts to end the other's life; if one of them becomes incurably insane (with a medical certificate); if one of them is sentenced to prison for three years for a "shameful" offense; if one of the spouses neglects the other whether while being present or absent from their place of residence; if the husband proves impotent for three consecutive years starting from the wedding date or if he declares that he is abstaining from that obligation; or if the marriage is contracted through fraud and deceit (Article 141).
Divorce	N/A	Either spouse may ask for divorce for adultery (Article 142) A husband may ask for a divorce: If he finds out on their marriage day that his wife is not a virgin, unless he knew of this before the marriage; if the wife intentionally destroys her husband's semen; if he repetitively forbids her to visit a certain house or frequent people of ill-conduct and she disobeys

[114] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258204 [AR]

		him; if she takes him by surprise and sleeps outside the home without his approval in a suspect place; if the court rules that she should follow her husband to his place of residence and she refuses, or if the court rules that she return to conjugal cohabitation within a specific delay and she does not, without offering a legitimate reason (Article 143). A woman may ask to divorce her husband for one of the following reasons: if the husband abuses her virtue by facilitating adultery for her; if he has intercourse with her contrary to nature; if he brings an adultery lawsuit against her and does not prove his claim (Article 144)[115].

Mechanism of Marriage Termination	Catholic Sects	Coptic Orthodox Sect
Annulment	A marriage is annulled on grounds of defects that could directly impact marital consent. Among these reasons: coercion and grave fear (Canon 825 of the Code of Canons of The Eastern Churches); non-consummation of the marriage (Canon 862); error[116] (Canon 820); ignorance of the nature and purpose of marriage (Canon 819), simulation[117]; if the marriage is not celebrated according to Church rites (Canon 828).	A marriage is annulled in the following cases: If spousal consent is not validly fulfilled; if the marriage is not celebrated publicly according to the religious rite; if either of the spouses has not reached the legal age of marriage; if there is an impediment of blood relation or close familial relation or adoption; if one of the spouses is still legally bound by an earlier valid marriage at the time of the marriage;

[115] See http://77.42.251.205/Law.aspx?lawId=255320 [AR]

[116] Error is perceiving something incorrectly or having an incorrect image of something. Error is of two kinds: Legal error, which is a misconception about the Law or its content, and factual error, which is a misperception of a factual matter mainly related to a person's qualities and their marriage motivations. Error concerning a person: "as when Elias believes he is marrying Mariam, but it is not in fact Mariam." (Ibrahim Traboulsi, *Marriage and Its Effects in Communities Governed by the Law of April 2, 1951 in Lebanon*, 2nd and Improved Edition, Sader Legal Publishers, Beirut, 2000, p.108).

[117] Simulation is when the contracting party, by a positive act of their will, expresses consent to the religious marriage with its words and signs, but in fact internally rejects marriage as an institution or denies one of its three fundamental properties: permanence – the indissolubility of the sacrament of marriage-, fidelity and unity, and procreation." (Ibrahim Traboulsi, *Marriage and Its Effects in Communities Governed by the Law of April 2, 1951 in Lebanon*, 2nd and Improved Edition, Sader Legal Publishers, Beirut, 2000, p.118)

Mechanism of Marriage Termination	Catholic Sects	Coptic Orthodox Sect
	incapacity to assume marital duties for reasons of a mental or psychological nature or mental disability.	if the perpetrator of murder with intent or their accomplice marry the spouse of the victim and it is proven that they were accomplices in the murder with the motive of getting married; if a Coptic Orthodox marries a person who belongs to another religion; if a Coptic Orthodox marries a person from a sect that the Coptic Orthodox Church does not recognize; if one of the parties had been previously divorced for committing adultery (Article 35). A man's marriage is annulled if he kidnaps the woman or restrains her freedom with the purpose of marrying her, if the marriage is concluded while she is in captivity (Article 36); if there is deceit regarding the wife's virginity, and she claims to be a virgin but its turns out she had been deflowered through her ill-conduct, or if she claims to not be pregnant but it turns out that she is (Article 37).
Permanent desertion	Adultery (Canon 863)	N/A
Temporary desertion	If either spouse causes serious danger to the other or to the children, or renders common life too hard, that spouse gives the other legitimate cause for separating in virtue of a decree of the local hierarch, or even on his or her own authority if there is danger in delaying. In the particular law of individual Churches sui juris other reasons can be established according to the customs of the people and circumstances of the place. (Canon 864)	N/A

Mechanism of Marriage Termination	Catholic Sects	Coptic Orthodox Sect
Dissolution	A non-consummated marriage can be dissolved; a marriage can be dissolved by the Pauline privilege (a marriage between two non-baptized persons, one of whom converts to Christianity and the non-baptized refuses to cohabit or to continue in the Christian conjugal life (Canon 854)), or by the Petrine privilege (a marriage between a Catholic and a non-Catholic where the non-Catholic party does not fulfill their commitments towards the Catholic party in terms of their Christian duties)[118]	N/A
Divorce	Prohibited	If one of the spouses leaves the Christian religion for atheism or another religion or a sect that the Coptic Orthodox Church does not recognize (Article 52); adultery (Article 53). Is considered under adultery any action that indicates spousal infidelity, such as the wife running away with a man who is not her kin, or her spending the night with him without her husband's knowledge or permission; or the existence of messages from one of the spouses to a stranger indicating a sinful relationship; the presence of a stranger with the wife in the marital home in a suspect situation; the husband urging his wife to commit adultery and debauchery; if the wife gets pregnant at a time where she cannot have sexual relations with her husband because of his absence or illness; sexual deviance. What applies to the wife applies to the husband (Article 54)[119]

[118] See http://www.intratext.com/IXT/ENG1199/_PNQ.HTM [ENG]
[119] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246399 [AR]

Mechanism of Marriage Termination	Evangelical/Protestant Sect	Greek Orthodox Sect
Annulment	A marriage is annulled if it was contracted while an earlier marriage was still valid; if the marriage was contracted between two spouses barred from marrying by the church because of their close familial relationship; if one of the parties was not of sound mind, or had a mental illness at the time of marriage; if the marriage was not consummated within no longer than a year after the date of marriage, provided this is proven by a report from a medical committee appointed by the court, or through any other means that provides undeniable proof as the court sees fit; if the guardian's permission was not given when required to the marriage of a minor; if the marriage was contracted based on fraud of a fundamental condition of the marriage, or in the essential character of a spouse, or by coercion; if the conditions requires for the marriage to be considered valid are lacking; and if a woman remarries before three months have passed after an annulment or divorce were issued, or her husband's death (Article 25)	If the marriage is contracted while one of the spouses is still bound by an earlier marriage that is still valid; if it is contracted in contravention of the basic provisions of Church laws, such as marriage between relatives up to the third degree; if the marriage is celebrated by a priest who does not belong to either parties' sects; if the marriage is flawed at the level of consent, or is contracted by coercion and threat; if either party is shown to be unfit for conjugal life at the date of the marriage (Article 64).
Permanent desertion	N/A	N/A
Temporary desertion	If one of the spouses mistreats the other, the court may at its discretion rule for desertion for a specific period of time between two and five years, or until the spouses reconcile or a ruling of dissolution is issued (Article 36)	If there are daily altercations or significant disagreements, or life together has become impossible even if temporarily, or a spouse poses a threat to the other (Article 47); the desertion period cannot exceed three years (Article 48).

Mechanism of Marriage Termination	Evangelical/Protestant Sect	Greek Orthodox Sect
Dissolution	If one of the spouses has an incurable mental illness (confirmed by medical report); if a criminal court issues a final ruling confirming that one of the spouses attempted to kill the other; if either spouse converts to a religion other than Christianity; if a final court ruling confirms that one of the spouses was absent or missing and their whereabouts were unknown for at least five years; if the spouses cease to cohabit and to have conjugal relations for a period between two and five years to be determined by court; if one of the spouses deserts the other under a ruling of the religious court and the court's efforts to reconcile them fail by the end of the interval specified in the ruling; if one of the spouses is sentenced for a 'shameful' offense to at least three years of prison (Article 29)	If either spouses converts to another religion; if one of them makes an attempt against the other's life; if one of them is sentenced to at least three years of imprisonment for a shameful offense; if one of them neglects the other for three consecutive years, whether by being present or absent from their place of residence; if the court rules for a maximum of three years of desertion and the efforts spent fail to restore the conjugal partnership, provided the aggrieved party submits a new lawsuit; if one of the spouses intends, without the other's consent, to avoid procreation by any means necessary, or abstains from conjugal relations without legitimate reason as determined at the court's discretion (Article 67)
Divorce	Adultery is the only reason for divorce, and must be definitively verified by the court. It is up to the non-adulterous spouse to exercise their right to apply for divorce and demand the resulting compensation[120] (Article 32)	Divorce may be granted on grounds of adultery (Article 68). The following may be characterized as adultery (not exclusively): if a husband discovers his wife is not a virgin on the marriage day, unless he knew of it before they married; if the husband asks his wife not to frequent a place of ill-repute or people of ill-conduct, but she persists; if she takes her husband by surprise and spends the night outside the conjugal home without his consent in a suspect place, provided the husband did not forcefully kick her out of the house or caused this by battering her; if the court rules that she must return to the marital home within a specific time period and she fails to do so without a legitimate excuse; if she is shown to be sexually deviant (Article 69).

[120] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR]

Mechanism of Marriage Termination	Evangelical/Protestant Sect	Greek Orthodox Sect
		Also characterized as adultery is the husband violating his wife's virtue by facilitating her adultery and insists upon it against her will; having sexual intercourse with her contrary to nature; suing her for adultery without proof; being shown to be sexually deviant; or if she repeatedly asks her husband to not frequent a place of ill-repute or people of ill-conduct and he persists (Article 70)[121]

Mechanism of Marriage Termination	Syriac Orthodox Sect
Annulment	A marriage is annulled if either spouse is bound by an earlier marriage contract; if either spouse took monastic vows before the marriage; if either spouse claims to be Christian but is shown not to be; if either spouse suffers a natural impediment to marriage; if fraud is shown at the basis of marriage contract (Article 28); if the girl is kidnapped (Article 29); if the marriage contract was concluded by a non-Syriac Orthodox priest (Article 30) or in contravention of the provisions of the Syriac Orthodox Church (Article 31).
Permanent desertion	N/A
Temporary desertion	If either spouse deliberately harms the other or abstains from relations with them for one year; if either spouse agrees to bring harm to the other or knows of impending harm to them but keeps silent about it; if the husband exposes his wife to corruption either to corrupt her virtue or her faith; if the wife refuses to follow her husband to his place of residence without legitimate cause; if the husband has sexual relations with his wife contrary to nature (Article 48).
Dissolution or divorce	Marriage dissolution or divorce may be granted if the wife had pretended to be a virgin and it is shown after her husband has intercourse with her that she is not (proven by certified medical report); if either spouse commits adultery; if the wife becomes accustomed to getting drunk and enjoying her time with strange men without her husband's knowledge; if the wife destroys her husband's semen deliberately; if either spouse abandons the Christian faith; if either spouse becomes incurably insane, or contracts a dangerous and contagious illness that brings harm to others and is incurable (medical report required); if a rooted and escalating conflict makes mutual understanding impossible, and after at least three years of desertion or separation the marriage is dissolved (Article 54)[122]

[121] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]

[122] See قانون الأحوال الشخصية للسريان الأرثوذكس – دائرة الدراسات السريانية (dss-syriacpatriarchate.org) [AR]

• Christian Marriage: Holy Sacrament and Civil Effects

Based on the foregoing and on the fact that the majority of Christian Churches consider marriage to be a Church sacrament, the Church considers that her courts alone have the authority to look into the lawsuits related to the validity or invalidity of a marriage.

On the other hand, the effects of the marriage contract are considered civil matters. Accordingly, "if the lawsuit was filed as an original case, then it belongs to the civil judges to hear it, and if it is filed as a subsidiary or ancillary case, then it belongs to the ecclesiastical judge to hear it and judge it by his own authority." The civil effects are considered temporal effects: "...and they are the jurisdiction of civil authorities in some countries, especially in the countries where government is separate from the Church.[123]"

The civil effects of marriage are the following: spousal maintenance and maintenance for the offspring, guardianship and custody, compensation upon marriage annulment or dissolution, trusteeship, adoption, etc... Issues of inheritance and will and testament are not included within these rights, except those related to the inheritance of clerics, monks and nuns.

As for Lebanon, by the will of Lebanese legislation, and based on the principle of equality between the sects, these issues were included under the jurisdiction of the religious judiciary (the Law of 2/4/1951). Christian Holy Scripture thus does not codify any of these matters (the civil effects), but their regulation was taken on by the ecclesiastical institution. According to what we previously mentioned, the majority of sects have endeavored in recent years to modernize their personal status laws. In principle, there is no impediment to updating legislation towards realizing perfect equality between women and men in terms of the effects of marriage and personal status laws in Christian courts. The prevalent societal culture, which considers women to be of inferior rank to men, remains the greatest obstacle to gender equality and justice for women.

Canon 780 clause 1 of the Catholic Code of Canons of the Eastern Churches stipulates that marriage between Catholics is regulated by Divine Law with due regard for the competence of the civil authority in regard to the civil effects of marriage[124]. The Church granted this freedom to Catholic Churches because they exist in many countries with different legal systems. In some countries (Italy for example), ecclesiastical tribunals limit their jurisdiction to the verification of marriage validity, and leave it up to the civil judiciary to look into the aforementioned civil effects of marriage.

As for the Evangelical sect, its Code of Procedure stipulates in Article 31 that

[123] Father Ibrahim Chahine, You and the Law (volume 2): *A legal Study of Marriage and Its Dissolution and Marital Lawsuits in Catholic Confessions*, p.175.

[124] See http://www.intratext.com/IXT/ENG1199/_PLO.HTM [ENG]

"If the court recognizes, at any stage of the trial, that there is room to conclude an agreement between the litigants, the court may put the agreement in writing provided it does not contradict personal status laws of general civil laws, as per a judgment it issues[125].

Based on the foregoing, litigants often resort to making agreements that govern the civil effects of their marriages, and agree on the details of shared matters. These effects are custody and visitation, maintenance and compensation.

By concluding a "civil agreement", the two parties agree on the details of the issues in common. They determine the maintenance and compensation owed by a spouse, or to both waive them. They agree on the details of custody and visitation, how to divide the time between themselves during the week and during official and school holidays, and how to divide educational and medical costs, housing allowance, etc... These are the effects codified in the Law of April 2, 1951, and legislation included under the jurisdiction of religious courts. These agreements do not become enforceable until ratified by the religious court. When the agreement is signed before litigation or during it, "The court in charge of the dispute is required to ratify it and consider it an integral part of the ruling, for it to acquire writ of execution[126]." For this reason, the court checks the terms of the agreement to make sure that they are in line with the laws in force and with the authority the courts are granted according to the laws in force.

The contents of the contract may vary from one case to another. Overall, this agreement includes the points over which the spouses are in accord. As for disputed issues, if any, they are heard by the court. According to one expert, the agreement "hastens the trial that would otherwise be prolonged due to disputes around civil issues such as maintenance and custody, etc....[127]" In addition to shortening the trial period, this agreement may save the two parties much of the costs, particularly lawyer fees and trial fees; and it may also spare the children – in the event that the parents agree on custody – the negative effects resulting from a parental dispute.

The interviews we conducted did not cover an in-depth study of the civil effects agreement and its impact on women, or the pressure they may be under to accept conditions that may be unjust to them in exchange for accelerating the marriage annulment process.

[125] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246065#Section_294045 [AR]

[126] See Ibrahim Traboulsi, *Marriage and Its Effects in Communities Governed by the Law of April 2, 1951 in Lebanon,* 2nd and Improved Edition, Sader Legal Publishers, Beirut, 2000, p.215

[127] From an interview conducted with a legal expert on Christian personal status issues on 22/6/2020

Conclusion

The religious laws of the Christian sects do not discriminate between women and men in terms of access to religious courts for the purpose of terminating marriage. Both spouses enjoy equal rights to apply for marriage annulment or dissolution.

As for the civil effects of marriage, spouses may be given the freedom to agree on the details, including custody, maintenance and compensation. Because these effects are of a civil nature, Church authorities have the power to amend them in a way that secures true equality between women and men. On another level, it is useful to examine in depth the impact of these contracts on women and their conditions, particularly the pressures they may face to waive some rights in exchange for accelerating the marriage annulment process.

The nature of Christian marriage and its fundamental properties (unity and indissolubility) also impact the rights of women who are exposed to domestic violence, and who are forced to remain in a harmful relationship, especially when the ruling does not consider that the violence perpetrated by the husband is caused by his inability to assume basic marital duties (the Catholic sect), or when a specific period of time must pass after the desertion ruling is issued and reconciliation proves impossible (Orthodox and Evangelical sects).

And in spite of the magnitude of the harm befalling women and the nefarious impact of violence on the family at various levels, no judge pointed out the necessity of dealing with the issue and counting it as a direct cause for terminating the marital bond, as reform at this level requires an amendment at the level of doctrine and of the fundamental properties of marriage.

Considering marriage a Holy Sacrament by some Christian sects therefore limits reforms to the civil effects of the marriage contract. When it comes to violence against women in all its forms (physical, psychological, economical, etc...) and which are not included in the reasons for marriage annulment or dissolution, women remain unprotected.

Regarding the Islamic sects, the clerics we met with are divided on the subject of divorce. While some who belong to the Sunni and Druze sects do not perceive any discrimination or injustice against women in this field, others consider that there are significant possibilities for protecting women against the arbitrary exercise of the right to divorce by impeding divorce practices happening outside the judicial council, or by making it a right shared by both parties to be exercised via litigation, in addition to expanding the legitimate reasons for applying for divorce. In the Shiite and Alawite sects, mechanisms can be adopted to facilitate the divorce process by including a mandatory condition in the marriage contract that places the right to divorce with both parties, and also by activating “divorce issued by the highest religious authority” (Talaq al hakim).

In spite of the significant support for amending divorce provisions towards facilitating women's access to divorce and protecting them against its arbitrary practice, none of the persons we met with proposed to include gender-based violence as a reason for divorce, with talk generally restricted to 'repugnance' and mistreatment. It is true that the Sharia courts may rule for severance if the wife is exposed to violence, but these rulings are limited to physical violence. The courts do not take into account the different forms of domestic violence, which also include sexual, psychological and economic violence. Hence the importance of adopting the definition of domestic violence as stated in international standards or in the Law on the Protection of Women and Family Members from Domestic Violence (Law 293).

3. Custody

• International Framework

The best interest of the child is a principle enshrined in the international conventions that aim to protect children's rights. Both the Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the Convention on the Rights of the Child (1990) obligate the state parties to uphold this principle when introducing and implementing legislation to protect the rights of children.

The Convention on the Elimination of All Forms of Violence Against Women calls for considering motherhood and family education as a social function performed jointly by the spouses in the interest of the children[128]. The Convention on the Rights of the Child in turn insists in Article 3 on the best interest of the child being the primordial consideration in all actions concerning children. The Convention gives this responsibility to the various concerned parties, public, legislative and judicial institutions, as well as to the parents (or those legally responsible for the child), the family, and public and private social welfare institutions when it

[128] Clause b of Article 5 of the Convention on the Elimination of All Forms of Violence Against Women stipulates the duty of states to take the appropriate measures to "ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases." Clauses d and f of Section 1 of Article 16 stipulate that the interest of the children shall be paramount when making legislations and implementing them in matters related to realizing equality in parental responsibilities and rights, such as guardianship, wardship, trusteeship, adoption, etc. See https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf [ENG]

comes to legislation and the measures concerned with protecting the rights of children[129].

• National Framework

Lebanon did not pass a law for children the way many other countries have done, but it passed the Law on the Protection of Minors at Risk or in Conflict with the Law (Law 422 of 2002[130]). This Law gave the judiciary, represented by the Juvenile Judges, the right to protect children exposed to danger. It is true that this law is not concerned with personal status matters, but the jurisprudence has addressed personal status cases of endangered children, especially in the framework of custody. Lebanese Parliament also ratified in 2014 the Law on the Protection of Women and Family Members from Domestic Violence, or what has become known as Law 293. Article 11 of this Law allows taking measures and making decisions about the protection of female victims and the children in their custody[131].

Concerning child related mechanisms in place in Lebanon, there is the Higher Council for Childhood[132], which is the national framework for complementary work between non-governmental organizations and the public sector as to child care and development, in collaboration with the competent international organizations and in compliance with international conventions (especially the Convention on the Rights of the Child).

On 7/7/2009, the Court of Cassation issued a decision to reject the objections made by the sectarian authorities against the decisions of the Juvenile Court to order protective measures for any child, even when they conflict with the rulings of Islamic religious courts. For example, the Juvenile Court's decision – as per a legal ruling – to keep a child in his mother's custody in spite of the right of guardianship having transferred to the father. The decision was based on the notion of "child at risk"[133].

[129] For further details you can review Articles 3, 9, 18, 19 & 20 at https://www.unicef.org/child-rights-convention/convention-text

[130] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244401 [AR]

[131] Articles 11 to 14 detail protection measures and orders as per Law 293. See https://kafa.org.lb/sites/default/files/2021-10/law-293-english.pdf [ENG]

[132] Lebanon established the Higher Council for Childhood in 1994, which seeks to improve the situation of children in Lebanon and ensure their rights to survival, development and protection. See http://www.atfalouna.gov.lb/

[133] See https://www.hrw.org/report/2015/01/19/unequal-and-unprotected/womens-rights-under-lebanese-personal-status-laws [ENG]

• In the Islamic Sects

When it comes to child custody, the personal status laws of the Islamic sects rely on the age of the child to determine when the maternal custody period ends, rather than focusing on other criteria such as the best interest of the child or their protection, which are the focus of international conventions and the Lebanese state's Higher Council for Childhood.

A mother loses custody of her children when they reach the following age:

Islamic sect	Age of Maternal Custody for the Male Child	Age of Maternal Custody for the Female Child
Sunni	Ends at 12 years of age	Ends at 12 years of age
Shiite and Alawite	Ends at 2 years of age	Ends at 7 years of age
Unitarian Druze	Ends at 12 years of age	Ends at 14 years of age

According to the Code of Family Provisions applied by the Sunni sect, custody is considered the duty of both parents as long as the matrimonial bond exists. If their marriage is terminated, custody passes to the mother. Pursuant to the 2011 amendment, the maternal custody period ends when the daughter or son complete 12 years of age according to the solar calendar. The custody period for non-mothers (women who are related to the child on their mother's side) ends when the little boy is seven years old, and the little girl is nine years old according to the solar calendar. The custodian's custody is terminated if she marries a man who is not a close family relation to the child (Not a mahram: includes anyone that the child cannot marry according to Sharia); if she belongs to a religion other than the father's, her custody is terminated when the child reaches five years of age[134]. The parents may come to an agreement concerning custody, but it does not forfeit the custody rights of either of them as determined by the provisions of Sharia.

In the Unitarian Druze sect, the mother is favored when it comes to custody and upbringing of the children, during marriage and in the event of termination, if she has the required eligibility. The law however does not specify the criteria for this eligibility, and it is not required of the male custodian. According to the amendment of 19/10/2017 whereby Parliament ratified Law 58 amending Article 16 of the Personal Status Code of the Unitarian Druze sect issued on

[134] See Articles 14, 15 &17 of the Code of Family Provisions: http://77.42.251.205/LawView.aspx?opt=view&LawID=230626 [AR]

24/2/1948[135], the maternal custody period for a boy ends when he is 12 years old, and the maternal custody period for a girl ends when she is 14 years old[136]. Also, a mother's right to custody as well as other female custodians' rights is forfeited in case they marry someone who is not a *mahram*[137] to the child, according to the provisions of Article 56 of the Personal Status Code of the Druze Unitarian sect[138].

One of the main issues that has preoccupied Lebanese public opinion in recent years is that of custody in the Shiite sect, especially that no steps have been taken towards amending the provisions of its custody laws. The Shiite Sharia Court determines the maternal custody cut-off age at only two years for boys and at seven years for girls. If the mother remarries, she forfeits her custody rights which automatically go to the father; and if she is of another religion than the father, she has no custody rights at all. The Alawite sect follows the same laws as the Shiite sect.

The survey commissioned by Adyan Foundation shows that the level of dissatisfaction or negative evaluation of the personal status laws related to custody is highest among the Shiite sect compared to the other sects, with half of the respondents having a negative view of these laws and 45% considering the issue to be a priority[139].

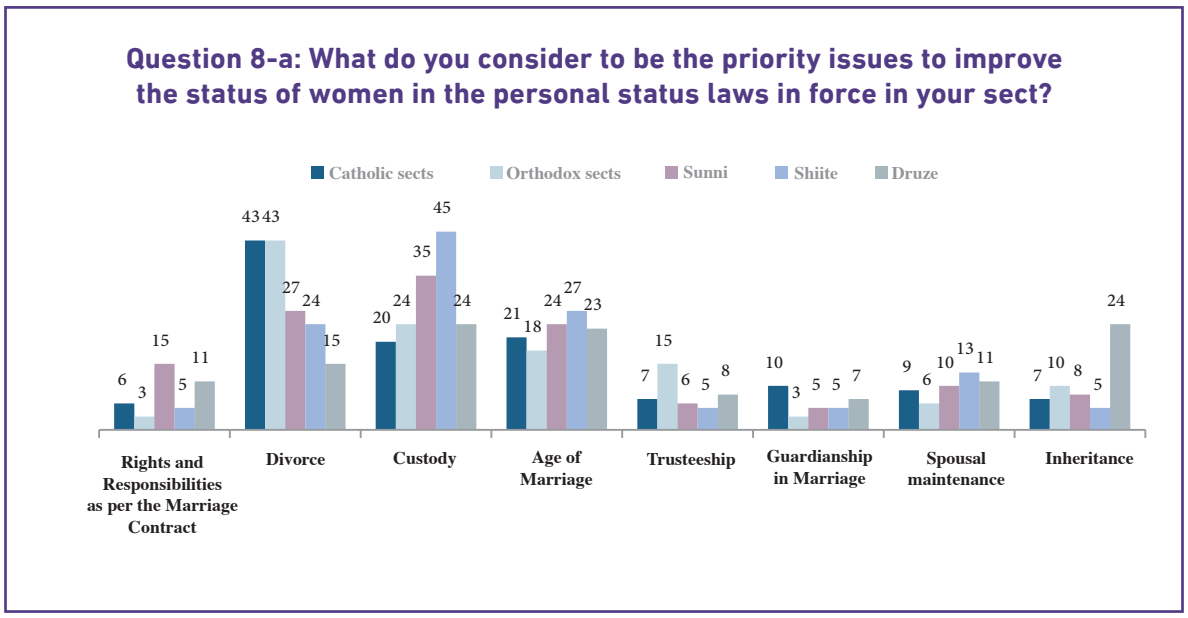
The Negative Views					
Injustice against women when it comes to custody/ Forcing women to forfeit their custody rights	7	5	7	13	10
Injustice against women when it comes to maintenance/ Forcing women to waive their maintenance rights	1	1	3	2	-
Patriarchal society that prevents the proper application of the law	9	3	4	6	6
Women are subordinate to men in religion and the law	1	2	0	2	2
The law is not applied properly/ The law is not applied according to Sharia	4	1	13	10	2
Clerics are biased towards men	2	-	1	-	-
More constraints are placed on women than on men when it comes to family and marriage	1	2	0	1	-
Women are discriminated against/ There is no equality between men and women	4	-	4	3	8

[135] See http://77.42.251.205/LawView.aspx?opt=view&LawID=274009 [AR]
[136] See Article 64 Clause 'a' of the Personal Status Code of the Druze Unitarian sect, amended pursuant to Law 58/2017.
[137] A *mahram* is a person that one cannot marry according to Sharia
[138] See http://77.42.251.205/LawArticles.aspx?LawTreeSectionID=266448&LawID=258196&language=ar [AR]
[139] See *The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon*, pp 27-28, in Arabic at the following link: https://bit.ly/3O8Nydq

There is corruption and favors based on connections in religious institutions	1	4	5	7	2
The law allows violence against women/ The law justifies violence against women	1	-	2	1	-
The law is unjust against men by making it difficult for them to divorce	0	2	1	-	-
Women do not obtain their rights/ Injustice against women	14	12	14	15	21
A woman's right to transfer her nationality to her children	1	-	-	1	-
Amendment of laws	5	-	1	4	4
There is discrimination and injustice in giving people their rights	1	-	-	1	-
Other	6	5	6	6	-
I don't know	1	-	1	1	2
No answer	1	-	-	1	-

CHART 16:

Priority Issues to Improve the Status of Women in Personal Status Laws (By sect)



We could cite dozens of cases of women suffering from these laws and practices. Here are but a few of these cases:

- Fatima was "convicted for custody of her child" and imprisoned. The conflict began when Fatima was pregnant and discovered that her husband was married to another woman, and so she left the conjugal home. Her husband

filed a "return to obedience" suit, and Fatima filed a suit demanding that her husband secure a home and spousal maintenance to preserve her rights. The husband agreed to Fatima moving back in with her parents after giving birth as she was in need of care. When the child became three years and eight months old, the husband filed for custody, citing that he was being denied from seeing his child. When Fatima refused to hand over her son, the civil court (Public Prosecution) intervened alongside the Sharia court and ordered the Law Enforcement department in Baabda to execute the Jaafari Sharia Court's decision and to imprison the mother to chastise her for resisting the decision.

- Nadine Jouni passed away in a car accident, before the conditions for her son's custody were amended. Nadine was one of the most prominent figures of the national campaign to raise the age of maternal custody in the Shiite sect, as she was a victim of early marriage and spousal violence. Nadine had her child at 19, and was denied contact with him and custody after her divorce due to a decision by the Jaafari court. Nadine died when she was 29 years old, without her campaign against the Sharia courts bearing fruit.
- Among the cruelest of cases is that of Liliane Shaito, who has been denied contact with her son since she was injured in the Beirut port blast of August 4, 2020 and went into coma. The Jaafari court deprived Liliane of her custody rights and allowed her to see him 4 hours a day only. But the court's decision was not implemented after her husband challenged it, and he confiscated her passport and banned her from traveling even to receive treatment, after he placing her under the court's wardship. The husband's family justified denying Liliane contact with her son on the pretext that they were protecting him from viruses or contagion during hospital visits to her.

The three Islamic sects' reliance on the age factor in their personal status laws negatively and directly impacts both mothers and children. On the one hand, the principle of the best interest of the child is absent, and on the other hand, the child's right to choose or to express their preference regarding their custody is revoked, knowing that clause 2 of Article 12 of the Convention on the Rights of the Child obligates states to give the child a chance to be heard in any judicial or administrative proceeding that affects them[140].

Also, these laws do not equate between women and men in the conditions they lay down, either in terms of the qualifications of the female custodian and her responsibilities, or in terms of revoking maternal custody for remarriage. According to the Jaafari Judiciary Guide: "Custody is granted to the mother on

[140] See https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child [ENG]

the condition that she be Muslim if the child is Muslim by law[141].”; also: “No custody for a non-Muslim woman over her Muslim child.” Thus, in the Shiite sect, a woman loses custody of her children if she is of another religion than her husband’s, or if she remarries. Her custody is revoked in the Sunni sect when the child is 5 years old if the mother is of another religion than the father’s, or if she marries someone who is not the child’s *mahram* (the child’s uncle)[142]. In the Druze sect, maternal custody is also revoked if she marries someone who is not the child’s *mahram*[143].

• On Reforms

Civil organizations, especially feminist organizations, among them the Working Women League in particular, have played a role in lobbying for amending the custody provisions of the Sunni sect. Some organizations have chosen to lobby “from within the sects”, and have focused on collecting evidence of progressive custody laws in Arab countries and on using jurisprudential extrapolation and Quranic exegesis to gain allies within the Sunni religious institution and among Sunni political elites.

A number of clerics, Sharia judges and jurists from both the Sunni and Druze sects confirm the justness of the adopted amendments, since there exists no Quranic text or hadith that determines a cut-off age for maternal custody. They pointed out that initially, some clerics of both sects rejected amending custody provisions, considering that they would encourage women to divorce, in addition to the necessity to preserve paternal custody rights, since fathers are not responsible for maintenance only[144].

In approaching amendments, Sunni judges are unanimous in holding that there are no religious texts determining the cut-off age of custody, and that the amendments were formulated on the basis of the rule: “until the child can dispense with the need for the mother as carer”. This has allowed the last amendment to consider the end of primary school (at 12 years of age) as the point where a child can do without their mother, because of the necessity to allow the father to care for his children. A Sunni judge however pointed out the existence of Islamic schools of jurisprudence, such as the Maliki school, that go further in protecting the custody rights of mothers, particularly when the child

[141] See https://www.darelmachreq.com/article/100464-%D8%A7%D9%84%D8%AD%D8%B6%D8%A7%D9%86%D8%A9-%D8%A8%D9%8A%D9%86-%D8%AC%D8%A7%D8%AD%D8%AF%D9%8A-%D8%A7%D9%84%D8%A3%D8%B1%D8%AD%D8%A7%D9%85-%D9%88%D9%86%D8%A7%D9%83%D8%B1%D9%8A-%D8%A7%D9%84%D8%B7%D8%A8%D9%8A%D8%B9%D8%A9-%D8%A7%D9%84%D8%B4%D9%8A%D8%B9%D8%A9-%D9%88%D8%A7%D9%84%D9%81%D9-%84%D8%A7%D8%B3%D9%81%D8%A9--%D9%86%D9%85%D8%A7%D8%B0%D8%AC#_ftn12

[142] See Articles 13 & 14 at http://77.42.251.205/LawView.aspx?opt=view&LawID=230626 [AR]

[143] See Article 14: http://77.42.251.205/LawView.aspx?opt=view&LawID=274009 [AR]

[144] From interviews conducted for the purpose of this report on 15/6/2020.

is a girl, by viewing a girl's custody to be the mother's right until the girl gets married[145].

In fact, Sunni judges are happy to rely on Article 21 of the Code of Family Provisions[146], which requires the judge to give due attention to what is best for the child, and to provide everything that could be beneficial to them. A number among them often take the best interest of the child as criteria, regardless of the age of the child, and extend the maternal custody period independently from the legal text. To that end, they seek psychological and social expertise. When children with disabilities are involved, they rule for keeping them with the mother, because in their view, she is more capable of providing what is best for them and of caring for them. These examples from the practical experience of judges confirm the need to base legislation on the best interest of the child.

The Shiite sect's religious jurisprudential authorities determine the period of maternal custody of a boy to two years based solely on the Quranic verse that states: "Mothers (should) suckle their children for two full years" [Surat al-Baqara (The Cow) 2: 233]. A girl remains longer in her mother's custody, up until she is seven years old, as the mother is considered more entitled to raise her. And while the official position of the Shiite religious institution appears to reject amending the custody provisions applied by the Jaafari Sharia courts, numerous Shiite clerics implicitly approve these amendments and are inclined to operate them, but they prefer to not speak out for personal considerations. These individuals believe that there is great potential for reform and for many reasons, especially in the absence of a Quranic verse or a hadith that specifically address the cut-off age of maternal custody[147]. Some Jaafari jurisprudence scholars set the cut-off age for maternal custody of boys at seven years of age, and there is no jurisprudential prohibition against relying on these references. In the same vein, even the Islamic jurists who set the cut-off age at two years for the boy do so based on the principle of '*ala al-ahwat*[148] ("being on the side of caution"), meaning that it is possible to set the end of the maternal custody period at seven years for the boy, but determining it at two years is the safest course of action. A number of Shiite clerics cite the examples of Iraq and Iran, home

[145] From an interview conducted for the purpose of this report on 17/6/2020.
[146] See http://77.42.251.205/LawView.aspx?opt=view&LawID=230626 [AR}
[147] From interviews conducted for the purpose of this report on 18/6/2020, 1/7/2020 and 8/7/2020.
[148] *'ala al-ahwat*: meaning that the matter is not obligatory but rather preferable, and one may in this case refer to another jurist.

to the prominent religious seats in the cities of Najaf and Qom respectively. In Najaf, religious authority Ali Al-Sistani – followed by many Shiite Lebanese – has the legal opinion (fatwa) that the mother has right of custody over her children of both sexes until they are ten years old. In Iran, the Law stipulates that the maternal custody period extends until a boy is seven years old and the girl nine years old.

To confirm the potential for amendment, the persons we met with point out the ease of such a process, since it is possible to agree on the provisions related to custody within the conditions set in the marriage contract, specifically through the term sheet that the president of the Jaafari courts proposed in 2019, whereby the wife may include the proviso that her children will remain in her custody until they are 18 years old[149].

In conclusion, adopting a strict age standard to determine the conditions of custody presupposes the homogeneity of the age group in question in terms of needs and of emotional and physical characteristics, which are evidently not predetermined. Accordingly, this criterion becomes subject to criticism in light of other factors that have greater impact on a child's relationship with their parents. Additionally, relying on these criteria may lead to automatic rulings being issued, which do not necessarily take into account the best interest of the child. And in the Lebanese context specifically, this standard is made more brittle by the fact that it differs from one sect to the other.

- **In Egypt**, women retain their right to custody until their children are 15 years old, and the maternal custody period may be extended until the son or daughter are 21 years old, or until they complete all the stages of their education, or until they marry.
- **In Jordan**, a woman retains her right to custody until her children are 15 years old, and the judge may extend the maternal custody period if it serves the children's best interests.
- **In Saudi Arabia**, the woman retains her custody rights until her children are 15 years old after a divorce.
- **In Iraq**, in all the Islamic sects, a woman retains her custody rights until her children are 10 years old. The maternal custody period may be extended until they are 15 years old if it is in the children's best interest.

[149] See https://lebanon.shafaqna.com/news/171536/ [AR]

• In the Christian Sects

On the legislative level, the laws of the Christian sects determine varying cut-off ages for custody, which also differ from girl to boy in most cases. Although many sects have amended their laws in recent years and raised the cut-off age for maternal custody, it remains low. Determining the period of maternal custody is related to the mother's responsibility to raise and care for her children, in preparation for transferring custody to the father. Some sects chose to set a longer maternal custody period for girls than for boys, "so that the mother may accompany her daughter during adolescence and the psychological and physical changes thereof." Other sects chose to adopt a unified maternal custody period for boys and girls, seeing no reason to distinguish between them. In this context, a judge belonging to the Greek Orthodox sect informed us that work is underway to amend the personal status code of the sect, and among these amendments is unifying the maternal custody period for boys and girls.[150]"

It is noteworthy that the personal status code of the six Catholic sects does not determine the cut-off age for maternal custody, rather it mentions the breastfeeding period set at 2 years[151]. But based on the works of the Episcopal Committee charged with amending the Personal Status Code, it is clear that religious judges now apply 14 as the cut-off age for maternal custody for both girls and boys. However, this amendment has not been made official yet because the law is still being discussed by the Committee, and it is hence – in principle – not binding to the religious judges. Nothing prevents the judges from changing their position and opting for a different age when ruling on custody. The only guarantee is to amend these laws and submit them to Parliament for discussion and ratification, even if according to a Catholic judge: "Since all judges are adopting this age, there is no urgent need to codify the amendment[152]."

Regarding the Evangelical sect, a legal expert we interviewed pointed out the continuous discussion around the obligation to follow the letter of the law and the termination de jure of a mother's custody rights when her child reaches 12 years of age. She also pointed out that "the application of this Article differs from one judge to another. There are those who follow the text to the letter, and others who go beyond it by basing themselves on the facts of the case submitted before them, and who decide for continued maternal custody despite the children having reached the legal cut-off age, for example when the father is repeatedly absent because he works abroad." She added that in all cases, the best interest of the minor primes all other consideration, and the court verifies

[150] From an interview conducted for the purpose of this report on 29/6/2020.
[151] See Article 124 at http://www.legallaw.ul.edu.lb/LawView.aspx?LawID=258198 [AR]
[152] From an interview with a Catholic judge conducted on 18/6/2020

that transferring custody will not affect their stability or their performance at school.[153]"

Cut-off Custody Age for the Different Christian Sects:

The Christian Sect	Maternal Custody Age for Daughters	Maternal Custody Age for Sons
Armenian Orthodox	Ends at 9 years. The court may extend or reduce this period depending on the best interest of the child.	Ends at 7 years. The court may extend or reduce this period depending on the best interest of the child.
Assyrian Eastern Orthodox	Ends at 9 years	Ends at 7 years
Catholic sects	The breastfeeding period legally ends at 2 years. Ends at 14 years (the cut-off maternal custody age as currently applied by religious courts)	The breastfeeding period legally ends at 2 years. Ends at 14 years (the cut-off maternal custody age as currently applied by religious courts)
Coptic Orthodox	Ends at 13 years.	Ends at 11 years.
Evangelical	Ends at 12 years.	Ends at 12 years.
Greek Orthodox	Ends at 15 years	Ends at 14 years
Syriac Orthodox	Ends at 11 years Custody period may be extended and additional two full years if necessary	Ends at 9 years Custody period may be extended and additional two full years if necessary

In addition to the age criterion, the Christian sects often resort to the notion of "the best interest of the child" to decide on the most qualified party for custody. Most sectarian laws stipulate the necessity of taking that into account

[153] From an interview with a legal expert held on 18/6/2020

when looking into custody cases in the framework of marriage dissolution[154] or desertion[155] lawsuits. For this reason, judges are granted a wide margin to make their decisions based on this principle[156]. During our interviews, a number of judges from various Christian denominations emphasized that the codified cut-off age for maternal custody is often exceeded, and that maternal custody of male and female children continues until they reach the legal age of majority (18 years) when courts find that it is in the interest of the child to remain with their mother and under her care. A minor reaching the legal cut-off age of maternal custody does not automatically entail the mother losing her right to custody. A judge stated that "in any case, the minor remains under the authority of the court until they reach the age of majority, that is 18 years of age, and the court then decides which parent is more qualified to be the custodian[157]". Accordingly, the court retains the right to evaluate the condition of the child during the period of custody, to implement what is best for them depending on the circumstances that may arise. An Orthodox judge stated that "when the legal cut-off age for maternal custody is reached, the court may resort to hearing the minor in order to determine the best party for custodianship, provided that the final decision rests with the court." It is therefore clear that religious judges enjoy a wide discretionary power when looking into custody cases. When it comes to the sound application of the principle of "the best interest of the child", clear and objective conditions and criteria that equate between the mother and the father are required. As it stands, on the legislative level, laws still discriminate against women in terms of the conditions they are required to fulfill so they may keep their custody rights. Also, the traditional views that judges hold towards women and their role can significantly affect the rulings they issue on maternal custody.

The majority of Christian denominations consider that the mother has the right to custody of her children provided she meets the following conditions[158]:

[154] A marriage is dissolved when an initially valid marriage is impacted by legally determined causes (for example: a valid unconsummated marriage in Catholic sects, or in the event of one of the spouses converting to another religion in the Orthodox and Evangelical sects).

[155] Desertion: The separation of the spouses in terms of residence, conjugal bed and meal-sharing while retaining the marital bond, whereby neither can remarry.

[156] See Article 63 of the Personal Status Code of the Evangelical Community in Syria and Lebanon at http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271, Article 92 of the Personal Status Code of the Coptic Orthodox sect at http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246386 , Articles 74, 75, 76 & 78 of the Personal Status Code of the Armenian Orthodox sect at http://77.42.251.205/LawView.aspx?opt=view&LawID=258204, Article 125 of the Personal Status Code of the Catholic sect at http://www.legallaw.ul.edu.lb/LawView.aspx?LawID=258198 and Article 27 of the Personal Status Code of the Greek Orthodox sect at http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]

[157] From interviews with Greek Orthodox and Catholic judges,

[158] See Article 131 of the Personal Status Code of the Armenian Orthodox sect at http://77.42.251.205/LawView.aspx?opt=view&LawID=258204, Article 63 of the Personal Status Code of the Evangelical Community in Syria and Lebanon at http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271, and Article 95 of the Personal Status Code of the Coptic Orthodox sect at http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246386 [AR]

- That she does not marry a man other than the father of her children.
- That she be of good conduct and morals.
- That she be capable of raising and caring for her children.

In general, these conditions are limited to the mother, except in the Personal Status Code of the Greek Orthodox sect, where the conditions for losing custody are the same for both spouses (Article 58)[159]. In the Evangelical sect, while Article 63 stipulates the conditions that the mother needs to meet in order to have the right to custody[160], Article 65 stipulates that the father also can have custody if he meets the conditions stipulated in Article 63 of the Code. The personal status expert we met with for the purpose of this report stated that "the conditions specified for maternal custody are also imposed on the father when it comes to custody and care of the children, so if one of the conditions imposed on the mother is that she is not committed to a man other than the father, this also applies to the father."

A number of sects (such as the Assyrian Eastern Orthodox sect and the Syriac Orthodox sect) have added other conditions for custody, among them that the right of custody may be given to one of the spouses provided they are not the party responsible for the dissolution of the marital bond, and that when a mother loses custody then it shall pass to the father provided he was not an transgressive upon the marriage dissolution or behaved badly[161].

Certain sects insist that the mother must be Christian, such as the Assyrian Eastern Orthodox sect where the custodian "must be a reasonable, trustworthy Christian capable of raising and protecting the child[162]. In Catholic sects, the mother forfeits custody if "she leaves the Christian faith or changes her Catholic denomination[163]. The Syriac Orthodox sect considers that a mother who is

[159] Article 58 of the Personal Status Code and Code of Procedure of the Patriarchy of Antioch and All the East for the Greek Orthodox: "The right to custody is forfeited in the following cases:
a- Incapacity or gross failure on the part of the custodian in raising and caring for the child.
b- The custodian's remarriage if it harms the minor. Whether this harm exists is up to the court's discretion.
c- The custodian adhering to another religion.
d- If the custodian's behavior morally or psychologically harms the minor."
See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]

[160] Article 63 of the Personal Status Code of the Evangelical Community in Syria and Lebanon: "The conditions for custody and its entitlement: The mother has the right to custody provided she is of good conduct and morals and is capable of raising and caring for the children. If the mother passes away, or if she does not possess these qualities, or is tied to a man other than the children's father, the right of custody passes to the father in principle, provided he meets the conditions for custody, otherwise the court shall take the necessary decision to provide custody in the interest of the children." See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271[AR]

[161] See Article 102 of the Personal Status Code of the Assyrian Eastern Orthodox sect at http://77.42.251.205/Law.aspx?lawId=255320 [AR] and Article 65 of the Personal Status Code of the Syrian Orthodox sect at قانون الأحوال الشخصية للسريان الأرثوذكس – دائرة الدراسات السريانية (dss-syriacpatriarchate.org) [AR]

[162] See Article 102 at http://77.42.251.205/Law.aspx?lawId=255320 [AR]

[163] See Article 125 at https://bit.ly/3zmKR3l [AR]

originally not Syriac Orthodox and whose husband dies forfeits her right to custody (Article 64)[164].

The majority of these laws stipulate that when the mother passes away or does not meet the custody requirements, custody passes to the father, with the exception of the Assyrian Orthodox Personal Status Code where Article 101 stipulated that upon the mother's death, custody passes to the maternal grandmother then to the paternal grandmother[165].

In this context, and given that the judges enjoy wide discretion in custody cases, the majority of judges and lawyers whom we interviewed individually pointed out that some custody conditions are rarely applied. For example, the condition that the mother be of the same denomination as the father to retain custody of her children, or that she does not remarry[166]. She is however required to be of good morals to raise the children. One judge said that one issue being positively considered is "the step taken by some women who choose to remarry, when their new acquaintance is formed following the socially accepted norms; the fact that these women have chosen stability is taken into account, and it is good for the children.[167]" But in practice, each case is treated separately, and remains subject to the judge's decision in these matters, depending on how he views such issues.

On another level, the Christian courts often resort to "joint custody" through a court order, or pursuant to an agreement contracted by the spouses who are terminating their marriage and whereby they agree on a shared custody schedule. This agreement enters into effect as soon as it is ratified by the court[168]. Our interviewees insisted on encouraging the spouses – in case of a dispute – to coordinate this kind of agreement, since it is more beneficial for the children, especially when it comes to custody. One judge pointed out that "In fact, we give the mother custody in the majority of cases, and it is mostly because they tend to have more time and be more available. But in light of the current situation, with women entering the job market increasingly and committing to long work hours, this approach has become discriminatory against men." This judge ties custody to the mother's availability, and so an increase in her economic activity may be an obstacle to the recognition of her custody rights. The same judge also proposed giving more time for paternal visitation, so the child may get to know their father better, as well as

[164] See at قانون الأحوال الشخصية للسريان الأرثوذكس – دائرة الدراسات السريانية (dss-syriacpatriarchate.org) [AR]

[165] See http://77.42.251.205/Law.aspx?lawId=255320 [AR]

[166] This point was particularly emphasized in many interviews with judges and lawyers of Christian religious courts.

[167] From an interview conducted with a Maronite religious court judge on 18/6/2020

[168] It is an agreement contracted by spouses who with to separate amiably with the aim of dividing the tasks, responsibilities and rights between the two of them (such as custody, visitation, maintenance, etc...). The agreement is only implemented after the court reviews and approves it.

facilitating the process of transfer to paternal custody when the child reaches the appropriate age[169].

The primary concern for religious judges remains the best interest of the child, and the court retains a wide discretionary power to decide what this best interest is, regardless of the legal cut-off age for maternal custody.

[169] From an interview with a Maronite religious court judge conducted on 18/6/2020

Conclusion

None of the Christian religious judges addressed the possibility of raising the age of maternal custody to match the legal age of majority. They in fact seldom rely on age as a sole factor to determine the custodian.

They do however insist on resorting to the principle of "the best interest of the child" to determine which parent is more qualified to be the custodian, regardless of the legal custody age. Courts also resort to joint custody in the event that the spouses agree on a custody schedule in the framework of a civil effects agreement. In all cases, the court remains in charge of the case following shifting circumstances and depending on the individual cases submitted before it, and the decision belongs to the judge's discretion. In fact, the judge has a wide discretionary power in deciding who gets custody.

We here must point out that the issue of custody is tied to women's expected role as caregivers in our society. Accordingly, strict rules are imposed on women to retain this right upon the termination of the marital bond, for example the rule against remarriage, which does not apply to men.

In the Christian sects, custody reform needs to happen at two levels: First, at the legislative level, by establishing specific and equal criteria for women and men's custody cases when considering the best interest of the child. Second, at the level of societal culture where women are not viewed as men's equals in rights and duties, especially when it comes to caregiving (raising and caring for the children), a role almost entirely assigned to women with no expected participation from men. Accordingly, the desired reforms would recognize shared parental authority and adopt the principle of equality between women and men in rights and duties in terms of family care.

With regard to all the Islamic sects, we did not see a willingness on the part of the clerics and the judges to reconsider a mother's loss of custody upon remarriage.

As for the Christian religious judges, they have a wide discretion in deciding which parent is the most suitable custodian upon a mother's remarriage. In the sects whose laws stipulate equal conditions for women and men in matters of custody, as well as those that still discriminate between them in this regard, the decision rests with the judge as to whether a mother is qualified to retain custody of her children in the event that she remarries.

Lastly, neither the Muslim nor the Christian clerics showed any willingness to amend the laws that stipulate early or absolute forfeiture of maternal custody if the mother is of another religion than the father's or if she chooses to change her religion.

4. Guardianship of Children/ Parental Authority

Guardianship or parental authority is a legal power for the purpose of protecting the rights of minors. Guardianship grants the guardian the general mandate to manage the minor's money, to raise them and care for their livelihood and their life in general.

• International Framework

At the international level, Article 16, section 1, clause 'f' of CEDAW stipulates that "States Parties shall take all appropriate measures [...] and in particular shall ensure, on a basis of equality of men and women: 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[170]". It is important here to note that the Lebanese State had reservations about this specific paragraph, and that this should be reconsidered.

The Convention on the Rights of the Child states in Article 18, section 1: "States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.[171]"

The Lebanese State did not have reservations about the latter Article, as it had no reservations on Article 15 of CEDAW that calls for according women a legal capacity identical to that of men to pursue their interests in judicial institutions and civil matters, and them the same opportunities to exercise that capacity. Article 15 also eliminates all restrictions imposed on that capacity, and calls on State parties to treat women and men equally before the Law.

Lebanon did not have reservations either on clause 'a' of section 1 of Article 16 of CEDAW, which stipulates that State parties shall ensure, on a basis of equality of men and women, that they both have the same right to enter into marriage[172].

• National Framework

In the text of the Law, parental guardianship goes automatically to the father or the male members of the family. The roots that enshrine peremptory paternal

[170] See https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf [ENG]
[171] See https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child [ENG]
[172] See https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf [ENG]

guardianship over children go back to Article 974 of the Islamic Civil Law Code which remains in force[173], and which stipulates that a child's guardian is:

First: their father.

Second: the trustee chosen and appointed by the father during his lifetime, upon the father's death.

Third: the trustee appointed by the first trustee during his lifetime, upon the first trustee's death.

Fourth: the children's grandfather, meaning the father of the child's father, or the father of the father of the child's father.

Fifth: the trustee chosen by the grandfather and appointed during the grandfather's lifetime.

Sixth: the trustee appointed by the previous trustee.

Seventh: the judge or the trustee appointed by the judge. As for relatives such as the brother, paternal uncles and others, they cannot play this role unless they were appointed as trustees.

Guardianship is of two kinds: Moral (Guardianship over the person of the minor), and financial (related to investing, managing and preserving the minor's finances). Guardianship obligates the guardian to protect the minor and their money, and hence peremptory guardianship accords the guardian the authority to evaluate what is in the minor's interest and to protect that interest. In practice, peremptory guardianship means signing on behalf of the child various commercial, bank-related or administrative documents and transactions.

In recent years, feminist and human rights organizations have been calling for equality of the parents in guardianship of children, because pursuant to peremptory paternal guardianship, a mother has no right to issue ID cards for her children, choose a school for them, open them a bank account or handle their financial matters[174].

[173] See https://maqam.najah.edu/legislation/158/ [AR]. Article 1106 of the Code of Obligations and Contracts stipulates that "Any provisions of the Islamic Civil Law Code and other legislative texts that contravene or contradict the provisions of the Code of Obligations and Contracts are annulled and shall remain annulled" (See https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/57070/134590/F-755173354/LBN57070%20ARA_FR.pdf [AR/FR]

[174] See https://kafa.org.lb/en/node/318 [AR]

In 2013, the General Directorate of General Security in Lebanon issued an administrative decision that accords women and men equal rights in issuing passports and travel permits for their minor children. The circular in question imposed on parents the need to secure a double approval from the mukhtar (a government official tied to a specific locality) in order to issue passports and travel permits for their children under 18 years of age. Thus, both parents are equally entitled to withhold travel permits from their children. Previously, the General Directorate of General Security's instructions required a double approval to issue passports for children younger than 17 years of age only, but required the father's approval alone to issue travel permits. The new development came about as the result of a campaign led by the Union of Progressive Women.

As for guardianship of women, it indicates the guardianship of the father or the husband over the adult woman. The Code of Obligations and Contracts does not differentiate between males and females, but rather considers that individuals, men and women, are to organize their legal relationships as they wish, provided they observe the requirements of public order, public morals, and mandatory legal provisions[175]. For according to Lebanese Law, women are their own guardian, however this is not reflected at the level of Islamic personal status laws when it comes to contracting marriage[176].

• In Islamic Sects

• Guardianship of children

Peremptory guardianship over children in the personal status laws of Islamic sects belongs to the father known as "the peremptory guardian", even if the mother has custody of the children. Guardianship over a minor is an authority that entails legal duties such as protecting the rights of the minors, caring for them and organizing their livelihood, and the right to raise, discipline, educate them and see to their marriage (this is termed moral guardianship), in addition to financial guardianship, which entails taking care of the minors' money and managing it.

[175] See https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/57070/134590/F-755173354/LBN57070%20ARA_FR.pdf [AR/FR]

[176] See Article 10 of the Ottoman Law of Family Rights at http://77.42.251.205/LawView.aspx?opt=view&LawID=258195 [AR] and Article 6 of the Personal Status Code of the Druze sect at http://77.42.251.205/LawView.aspx?opt=view&LawID=258196 [AR]

In the three Islamic sects in Lebanon, the mother cannot have guardianship of her children.

According to the survey commissioned by Adyan Foundation, between 35% and 40% of respondents belonging to Islamic sects do not know about their personal status code's provisions regarding guardianship[177].

CHART 5:

The extent of knowledge about specific personal status matters (in the Sunni sect)

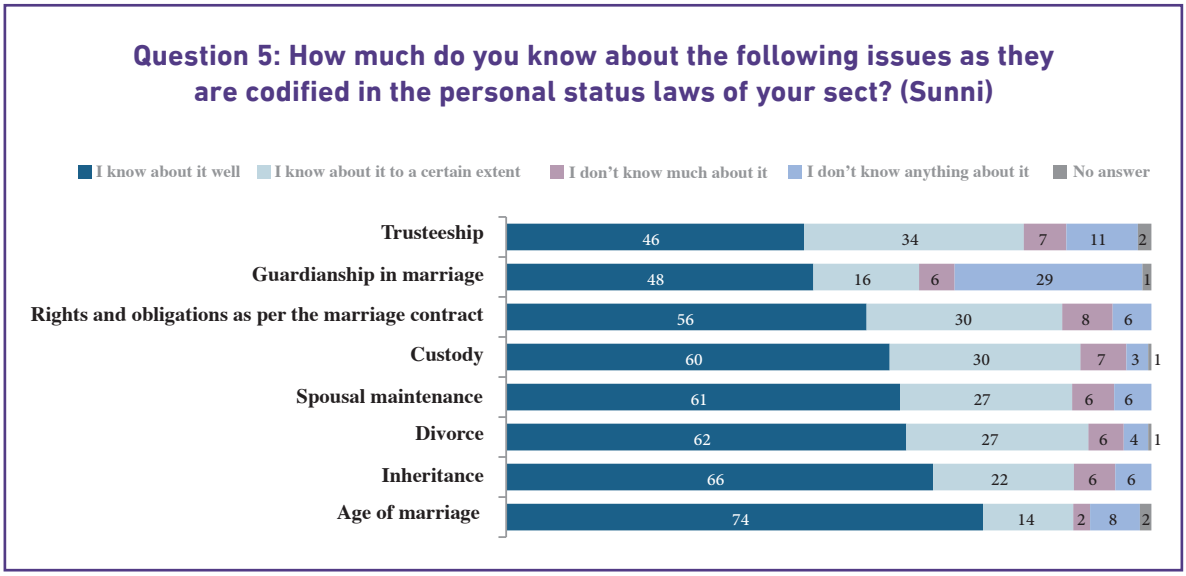
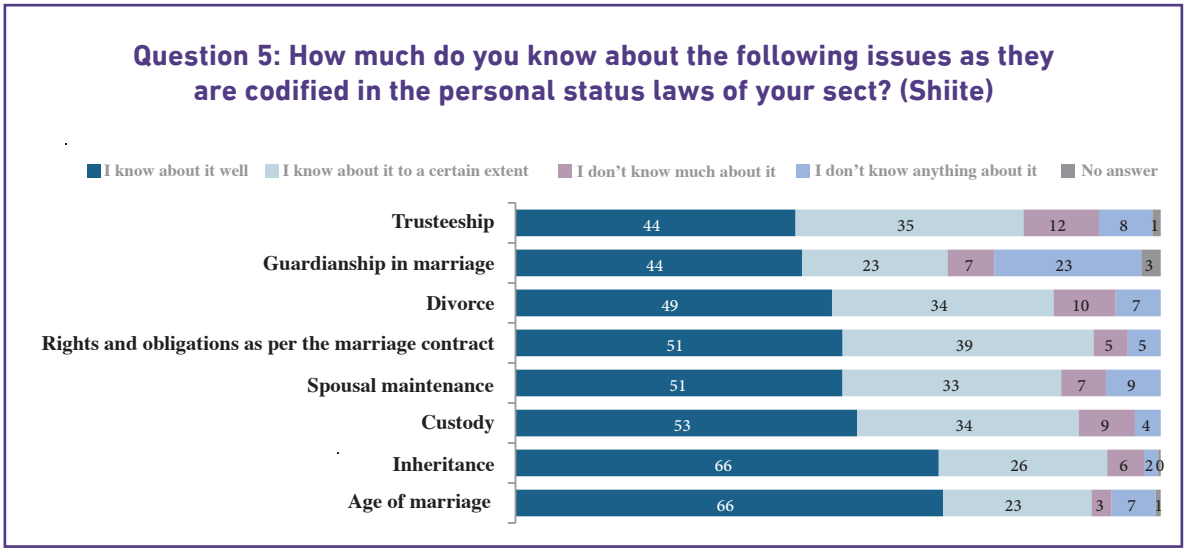


CHART 6:

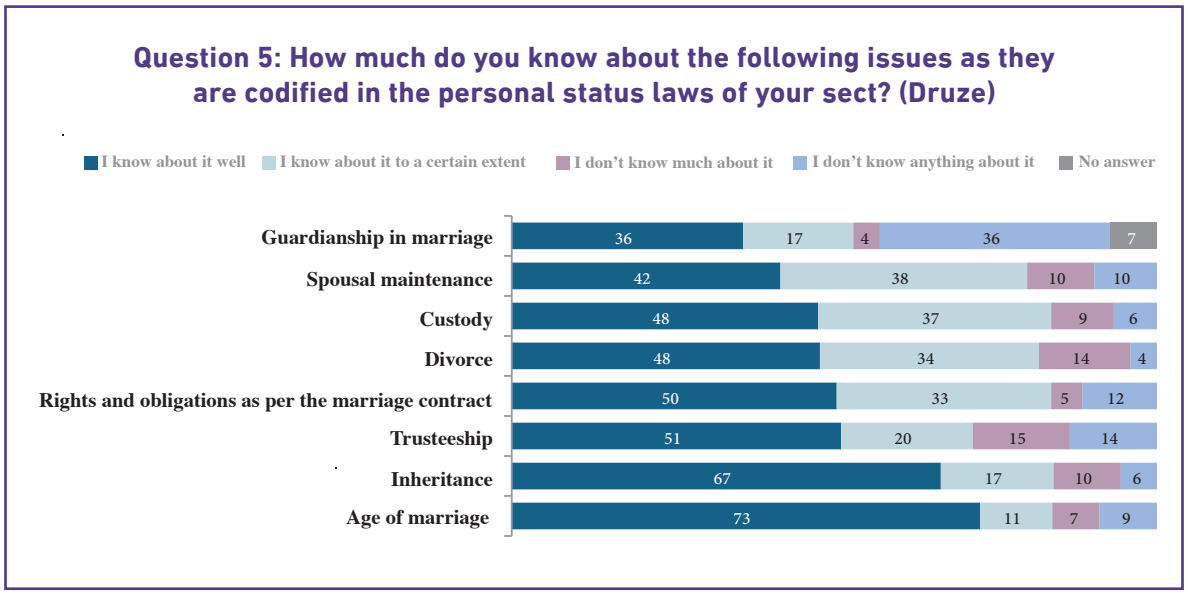
The extent of knowledge about certain personal status matters (in the Shiite sect)



[177] See *The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon*, pp16-17 at https://bit.ly/3O8Nydq [AR]

CHART 7:

The extent of knowledge about certain personal status matters (in the Druze sect)



The Hanafi school of jurisprudence – applied in Sunni Sharia courts in Lebanon – gives moral guardianship to the father during his lifetime, and to the paternal grandfather in the event of his death, if he goes missing, loses his eligibility or if the conditions of his guardianship are disrupted, as per Article 242 of the Law regulating the Sharia Judiciary amended pursuant to Law 177 of 29/8/2011[178]. Hence, their guardianship is considered a kind of "peremptory guardianship". Moral guardianship involves raising the children, educating them, protecting them, caring for them and seeing to their marriage. It is to be noted here that the mother has a strong participation in this moral guardianship when it comes to raising, educating and protecting the children during the breastfeeding and custody periods. while the father alone has marriage guardianship of the children (seeing to their marriage).

According to Section 12 of the Personal Status Code of the Druze Unitarian sect, even if the father is going through economic hardship (bankrupt), he still retains moral and financial guardianship of his little children, and of his older children if they are they are deemed not apt according to Sharia to carry out its commandments, be they male or female, even if the children are in their mother's or relatives' custody. If a child comes of age "physically disabled" or "mentally insane", paternal custody persists, and if they come of age sound of mind and body then become "physically disabled" or "mentally insane", guardianship is restored to the father by a judge's order[179].

[178] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244292 [AR]
[179] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258196#Section_266451 [AR]

In the Shiite sect and according to al- Sayyid Muhammad Hussein Fadlullah's book *fiqh al-sharia*[180] (Understanding Sharia), guardianship is a right that prioritizes the father, the paternal grandfather or their representative as carers for the minor until s/he becomes mature and rational, otherwise their guardianship remains in place as long as the son/daughter is not fully rational, provided they are not mentally insane or a foolish spendthrift (*safih*). This comprehensive guardianship is a father or paternal grandfather's duty towards the children, as they are their descendants and live with them, and they do what it required to preserve them, not only by providing nourishment, clothes and shelter, but by meeting all their needs[181]. Also, according to the Shiite religious authority and jurisprudence reference al-Sayyid Sistani, financial guardianship belongs to the child's father or paternal grandfather. In the event of the loss of the trustee (the person appointed to manage the minor's affairs by the father or the paternal grandfather after they are deceased), guardianship goes to the Sharia judge. As for the mother, the maternal grandfather and brother, as well as the paternal and maternal uncles, they do not get guardianship. These are the provisions applied by the Jaafari courts for the Shiite and Alawite sects in Lebanon[182].

• Guardianship in Marriage

In the Islamic sects in Lebanon, parental authority extends to marriage as well. A father has guardianship of his son's marriage for as long as his son is a minor. However, this mandate over his daughter's marriage does not end when she reaches adulthood, as he remains her guardian and she needs his approval to contract a marriage. This paternal guardianship over adult daughters when it comes to marriage shows that women are seen as being less than able, while men are seen as fully competent. It also shows that girls /women who are still virgins are seen as minors, no matter their age.

In the Sunni sect, the guardian of the girl/woman in marriage is the agnate 'residuary heir in his own right' (See section on inheritance) as per the succession line (that is the male in the family and always on the father's side[183].) Pursuant to the last amendment by the Supreme Sharia Council, a minor girl cannot be married without both her and her guardian's consent. If her guardian marries her off without her consent, she has the right to ask for marriage termination, just as her guardian can ask for the same if she marries without his permission.

[180] See http://arabic.bayynat.org.lb/ListingByCatPage.aspx?id=4742 [AR]
[181] See http://arabic.bayynat.org.lb/HtmlSecondary.aspx?id=11516 [AR]
[182] See https://bit.ly/3e5aZb9 [AR]
[183] In the Sunni sect, the guardian of the daughter (minor or adult) in marriage is the agnate himself in the following order: the father, then the brother, then the paternal father then the paternal uncle. Otherwise, the judge shall be the guardian in marriage.

In the Druze Unitarian sect, the guardian of the girl/woman in marriage is the agnate 'residuary heir in his own right', and he must be eligible to abide by Sharia: there is no guardianship for "the boy, the mentally insane and the imbecile" over a girl or anyone else. If the person wanting to get married has no guardian, or if their guardian has no legal eligibility, the function shall be filled by the Sheikh al-Aql or the religious judge (or whomever he deputizes to this end). If a girl/woman aged between 17 and 21 years of age asks to marry a specific person, the Sheikh al-Aql or the religious judge shall inform her guardian; if he does not object within a delay of fifteen days from being notified, or if he does object but his objection is deemed inadequate, the Sheik al-Aql or the judge may give permission for the marriage[184].

In the Shiite sect, the rational adult man and the rational adult woman -who has already had intercourse due to being married or has lost her husband to death or divorce- have no guardian, rather they are their own guardian. A father or paternal grandfather's guardianship of a virgin girl/woman in marriage is terminated if he keeps withholding his permission from her to marry persons who are an appropriate match for her according to Sharia and custom[185]. When guardianship of the virgin girl/woman is not just the father's but the paternal grandfather's too, the latter will be her guardian in marriage if the father is a foolish spendthrift[186].

- **In Iraq**, in both the Sunni and Shiite sects, a male guardian is not required for the marriage of adult women. The function of guardian in marriage was eliminated, except in cases of marriage of minors under 18 years of age.
- **In Egypt**, judges are required to follow the Hanafi school of jurisprudence, according to which the guardian's permission is not required when the woman is a rational adult (at least 18 years old), even if the guardian may object to the marriage based on a limited number of reasons. In 2021, online campaigns under the banner "Guardianship is my right" were launched to protest the new personal status law in Egypt, particularly its provisions for the legal and educational guardianship of women over themselves and their sons and daughters. Some content from the new draft law was leaked that stated that "A mother does have guardianship of her child in matters related to medical care, education, travel, and issuance of official documents", with one article stating that "a woman's guardian has the right to annul her marriage if she marries a person he considers unqualified or without his permission."

[184] See Articles 6,7, & 8 of the Personal Status Code of the Unitarian Druze sect at http://77.42.251.205/LawView.aspx?opt=view&LawID=258196 [AR]

[185] See https://www.sistani.org/arabic/qa/0756/ [AR]

[186] Jurists' definition of the safih/foolish spendthrift vary. In summary, it is someone who squanders their money against the requirements of reason and Sharia as well as against their own interests, and is motivated by the lightheadedness that overtakes a person due to joy or anger, driving them to overspend without regard to worldly or religious good.

• On Reforms

A number of clerics, Sharia and civil judges from the Islamic sects in Lebanon believe that the provisions of guardianship of children need to be amended since they institutionalize a patriarchal and discriminatory perspective on women. The proponents of this position call for making both categories of guardianship (of the person and of property) a shared right for parents as long as the marital bond stands; in the event of marriage termination, guardianship should pass to the more qualified of the two; in the event of the father's death, guardianship should pass to the mother if she is the minors' custodian or if they live with her for one reason or another. They consider peremptory paternal guardianship over the children's person and property an institution of the patriarchal regime based upon "a masculinist paternalist authority dominating Arab Islamic culture." They also believe that the jurisprudential texts related to guardianship need to be changed, and that it is insufficient to merely reform them as long as they remain "interpretations that rely on prevalent cultural norms and traditions", as one interviewee puts it. Their perspective is that guardianship is required for the good of the children, to support them in exercising their rights and performing their duties, that is to manage their social affairs, whether personal or financial, and to take care of their civil and economic legal affairs within specific limits and codified conditions. When a judge establishes who is the best candidate to preserve the children's rights and to manage and care for them and their affairs, this best candidate should be appointed guardian regardless of their gender and with no gender-based discrimination whatsoever. Shared guardianship should never be overlooked as a possibility, whether joint or separate depending on the minor's interest, given that guardianship requires deliberate attention and insight, and so must not be upheld with its harmful outcome.

These same persons also consider that the provisions governing a woman's guardianship over herself in contracting marriage are possible to amend. In fact, they consider that all matters, from peremptory paternal guardianship to the age of marriage and the cut-off age of maternal custody are subject to discussion, and that jurisprudential texts can be bypassed when they do not include a Quranic text or a hadith. For there are no legal limits but those of justice, humanitarianism, morals, honor, proper behavior and the relation to God. All issues can be amended if they lead to injustice and subjugation[187].

There are also Sunni clerics who consider that the legal texts on guardianship in marriage can be amended to give adult women (18 years old and above) the right to marry without the need for a guardian. They believe guardianship to be tied to competence, and that a judge can give a woman guardianship if her

[187] From an interview conducted on 16/10/2020 for the purpose of this report.

father refuses his permission, provided she is competent. These clerics proceed from the fact that Islamic jurisprudence gives women guardianship of property when they reach the legal age of majority[188].

Some Shiite judges stressed that despite the insistence on the father's presence when a marriage is contracted, a girl can, by Islamic law, marry herself to another. The basis of the practice is one of custom rather than jurisprudence, the general idea being that there is no one more mindful of a girl's interests than her father.

On the same subject, some of our interviewees from the three Islamic sects confirmed that a girl may marry herself to another without referring back to her guardian if she is 21 years old, but still needs his permission when she is younger. They also pointed out that the judge can intervene and make a final decision should the guardian arbitrarily and obstinately withhold his permission[189].

• In the Christian sects

In the Christian sects, the notion of guardianship is limited to peremptory paternal guardianship, its main purpose being the protection of the minors and their property. Religious legislation in this regard was influenced by civil law, which restricts compulsory guardianship to the father, and by ecclesiastical law that considers that "[...] the husband is the head of the wife[190]". The approach to guardianship impacts women's issues, especially in legislating the social authority of men and women and the gender-based distribution of roles, whereby women are in charge of care and custody, and men assume essential decision-making roles in matters related to the upbringing of the children and the preservation of their property until they reach the age of majority.

In Christian sects, guardianship includes guardianship over children only, during the marital union and after its termination.

On the level of religious legislation, the majority of laws give the father guardianship rights, except the Armenian Orthodox sect that considers that "during the marriage, the father and the mother exercise parental authority equally. When there is disagreement, the father's opinion primes. When one of the spouses is deceased, parental authority passes in full to the living spouse. Upon dissolution of the marriage or desertion, parental authority passes to the party that has custody of the children." (Article 151[191])

[188] From an interview conducted on 16 & 17/6/2020 for the purpose of this report.
[189] Interviews conducted on 20/6/2020 for the purpose of this report
[190] Ephesians 5:23
[191] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258204 [AR]

As for the Catholic sects, their Personal Status Code mentions the expressions "parental authority" and "paternal guardianship[192]", with Article 119 stipulating that "parental authority or paternal guardianship is the sum of the rights of the parents over their children and their duties towards them, over their person and property, until they reach the age of majority, whether they are the offspring of a legal marriage or are legally adopted.[193]

In the new amendments that the Catholic Episcopal Committee is working on and that presently remains as a draft law, we read the following: "The father is no longer the only one in charge of the family, but both spouses are, and this has been termed "parental guardianship[194]"." According to a Catholic judge: "We have adopted the notion of parental guardianship instead of parental authority, because guardianship denotes love, and the mother and the father are jointly responsible for raising the children.[195]" He added that amended Article 13 stipulates that "As for parental guardianship, it concerns both parents. It passes from one of them to the other pursuant to a custody ruling, if the judge does not grant part of it jointly to the parents."

The laws of the remaining Christian sects clearly state that guardianship or parental authority is restricted to the father. This is found in the laws of the Assyrian Eastern Orthodox sect, the Coptic Orthodox sect, the Evangelical sect, the Greek Orthodox sect and the Syriac Orthodox sect.

The conception of parental guardianship is thus connected to the absolute authority granted to men at the level of familial decision-making, and there is a general trend among judges to follow what they perceive as the 'natural' functions of men and women. In the course of our interviews, it was also mentioned that limiting guardianship to the father is due to the ease of appointing one person in charge of the decisions made within the family unit, and this authority was given to the father since he is "the head of the family" in our society's understanding. This was confirmed by many of the experts we interviewed, who indicated that shared parental authority is simple as long as the marital bond stands, but complications arise in the event of a legal dispute and when the spouses disagree on how to divide tasks and roles between them, at which point it is simpler to grant one party guardianship. As is expected, the father is chosen in these cases due to the prevalent norm that grants the man the authority to be the decision-maker, and therefore this is a matter that needs to be reconsidered. For instance, when guardianship is limited to the father, the mother may not enroll her children in school or

[192] Although termed "paternal", in effect it is currently being understood as "parental".
[193] See http://www.legallaw.ul.edu.lb/LawView.aspx?LawID=258198 [AR]
[194] From an interview conducted with a Catholic court judge on 25/6/2020.
[195] From an interview conducted with a Catholic court judge on 25/6/2020.

allow them to travel without the father's permission, because he is the one with parental authority.

In practice, courts often resort to "joint custody" when a marriage bond is terminated. According to one expert: "in principle, guardianship is limited to the father, but in reality, both parents may be granted joint custody, with the father being the principal guardian, and the mother having a secondary role in decision-making. This is translated on the ground by adopting "joint custody", meaning that no decision about the minor may be taken other than by both parents looking out for the minor's interest. In case of disagreement, the spouses resort to court"[196].

In the Orthodox sects, some judges insist that the man is not always given guardianship upon the termination of a marriage, especially if he is unqualified for it. A judge we met with stated that "as judges, we always examine who of the two spouses is more qualified to care for the child, and where the latter's interests lie." And so, it is possible to appoint one or both parents as custodians. In some cases, it is possible to appoint a male family member (the grandfather or uncle) by court order, if the mother and father are not fit to take care of their child. The same source also pointed out that a father's guardianship may be forfeited for reasons specified in the Law. On another hand, a father may appoint a trustee for his children during his lifetime, and as such may choose the mother as trustee[197].

Based on the decisions and rulings of the religious courts, and considering the broad authority enjoyed by religious judges, professor Ibrahim Traboulsi notes that "If the father asks that his right to parental authority be confirmed based on a legal text that grants him this right, the court may not agree to his request if it finds that it is not in the interest of the minor. The court will bypass the legal text in question and will make an interpretation, so to speak, based on a generally accepted legal principle, which is that the court handling the dispute is entitled to take the necessary measures to ensure the best interest of the minor. Based on this rule, religious courts are not too bound to the texts[198]."

• When Can a Mother be Her Children's Guardian?

The laws of most Christian sects agree on one case where the mother is granted guardianship: if the marriage comes apart because of the father, guardianship belongs to the spouse who did not cause the harm (the mother).

[196] From an interview conducted on 23/7/2020
[197] From an interview conducted on 23/7/2020
[198] See Ibrahim Traboulsi, *Marriage and Its Effects in Communities Governed by the Law of April 2, 1951 in Lebanon*, 2nd and Improved Edition, Sader Legal Publishers, Beirut, 2000, p.79

There are also other situations where this is warranted, specific to the different sects[199]:

- In the Catholic[200] and the Greek Orthodox sects, guardianship passes to the mother when the father's right is forfeited or denied, provided she has the required competence. The law did not specify the elements or the conditions included under "competence", but it is clear from the interviews and from reviewing a number of rulings issued by Orthodox courts that there are two levels to this notion: the moral standard for women, following socially accepted norms, and the religious level represented by a woman fulfilling her religious obligations, such as persevering in the practice of her faith, taking part in Mass, and giving her children a religious education.
- In the Armenian Orthodox sect, both parents exercise parental authority equally[201].
- In the Syriac Orthodox sect, guardianship is the mother's if the father entrusts her with it himself[202].
- In the Evangelical sect, if the father dies, guardianship passes to the mother, provided she is of good reputation and morals, and is able to raise and care for her children[203].
- The Personal Status Code of the Assyrian Eastern Orthodox sect states that "When the father is absent or forfeits his guardianship or has not chosen and appointed a trustee, peremptory guardianship goes to the paternal grandfather." (Article 113)[204] The Coptic Orthodox Personal Status Code stipulates that "Guardianship over the person of the minor is legally the father's, then passes to whomever the father appoints during his lifetime. If the father fails to appoint a guardian, guardianship shall pass to the grandfather, then to the mother as long as she does not remarry [...]" (Article 141)[205]

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[199] See Articles 123 & 129 of the Personal Status Code of the Catholic sects at https://bit.ly/3zmKR3I; Article 57 of the Personal Status Code of the Patriarchate of Antioch and All the East for the Greek Orthodox at http://77.42.251.205/LawView.aspx?opt=view&LawID=244776; Articles 74 & 151 of the Personal Status Code of the Armenian Orthodox sect at http://77.42.251.205/LawView.aspx?opt=view&LawID=258204; Article 63 of the Personal Status Code of the Syriac Orthodox sect at قانون الأحوال الشخصية للسريان الأرثوذكس – دائرة الدراسات السريانية (dss-syriacpatriarchate.org); Article 46 of the Personal Status Code of the Assyrian Eastern Orthodox sect in Lebanon at http://77.42.251.205/Law.aspx?lawId=255320; Article 66 of the Personal Status Code of the Evangelical sect at http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [All links in Arabic]

[200] See Articles 123 & 129 of the Personal Status Code of the Catholic sect at https://bit.ly/3zmKR3I [AR]

[201] See Article 151 at http://77.42.251.205/LawView.aspx?opt=view&LawID=258204 [AR]

[202] Article 82 of the Personal Status Code of the Syriac Orthodox sect at قانون الأحوال الشخصية للسريان الأرثوذكس – دائرة الدراسات السريانية (dss-syriacpatriarchate.org) [AR]

[203] See Article 66 at http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR]

[204] See http://77.42.251.205/Law.aspx?lawId=255320 [AR]

[205] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246399 [AR]

• Parental Guardianship and Joint Custody (in Civil and Religious Laws)

We have noticed that there is no explicit legal definition of the categories of parental guardianship or authority and its implications, and that there is an overlap between the notions of guardianship and custody in all the sects, which means that these categories need to be more precisely defined. Adopting the idea of joint custody in the personal status laws of the Christian sects does not in fact ensure full participation by women in terms of family-related decision-making.

Joint custody recognizes equal rights for men and women in terms of making decisions related to the best interests of the children (such as choosing their school, how to raise and protect them etc..), but it does not entail equality when it comes to certain legal or administrative procedures (such as opening a bank account, managing the money, etc..). On another hand, joint custody can be counted on when the spouses are in agreement, although even then many decisions are the exclusive and absolute right of the husband to make. Realizing equality in the field of guardianship requires the amendment of civil laws, first and foremost Article 974 of the Islamic Civil Law Code[206], followed by the amendment of religious laws so they are compatible with civil law.

We conclude from the foregoing that guardianship is tied to the social order of the 19th century, the influences of which can still be seen today. This explains why men have exclusive decision-making authority in our society. The required amendment at the level of civil law may lay the groundwork for amendments at the level of religious legislation. The obligation for sects to align their laws with constitutional and legal principles and to subject them to public order is matched by the obligation of national legislative authorities to provide legal rules and principles that recognize the supremacy of the principle of equality and to enshrine it in all the fundamental legislations, in compliance with the international obligations ratified by the state of Lebanon and in light of economic and social developments.

[206] The last editions of the Islamic Civil Law Code or Mejelle was published in 1876, and its provisions came into force in 1877.

Conclusion

When it comes to parental authority or the authority of one parent over the children, the religious legislation of the Christian sects includes several concepts: paternal guardianship, parental guardianship and parental authority. They also include joint parental custody when it comes to annulment or dissolution of marriage and divorce.

Many laws decree the need for joint custody if the court verifies that there is an agreement between the spouses to organize their situation amicably in annulment or dissolution cases. However, and in cases of disagreement, most opinions reject the idea of joint parental guardianship after the termination of marital bonds.

As for women, the different religious legislations place additional obligations and conditions on them in the event that paternal guardianship is forfeited. Most of these legislations have a moralistic approach when looking into women's request for guardianship of their children. Moreover, with regard to what we mentioned previously about the potential for amending the civil effects of the marriage contract, including guardianship: these provisions can be amended by all the Churches, to achieve equality between women and men in their exercise of parental authority over their children.

Such an amendment would however remain incomplete without the amendment of civil laws – first and foremost Article 974 of the Islamic Civil Law Code – that enshrines peremptory paternal guardianship and the guardianship of male family members. Also needed is a change at the level of societal behavioral patterns and culture, to recognize women's right to share in decision-making in the family.

Most of the Muslim clerics we met with do not object to amending the provisions for guardianship in marriage, but they do insist that the provisions for guardianship over children need to remain as they are. Their argument is that the father is more capable of managing the affairs of his minor children, and that joint parental guardianship is still a vague concept and needs to be regulated.

5. Trusteeship

Trusteeship – like guardianship – is a type of legal representation of another person. The issue of trusteeship is raised when a minor's compulsory guardian is deceased.

Trusteeship involves the court appointed guardian making day-to-day decisions regarding the child and monitoring them. On the whole, trusteeship involves raising and caring for the child by making parental decisions.

• International Framework

Trusteeship – like the previously mentioned legal categories – is included under the provisions of Article 16 of CEDAW, section 1, clause 'f', which, as previously cited, calls upon state parties to ensure, "on a basis of equality of men and women: 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."[207] Lebanon expressed its reservations on this clause, although it is fundamental and provides a framework for the different relational categories between a mother and her children.

• The National Framework

Article 126 of The Lebanese Code of Obligations and Contracts addresses the responsibility of ascendants and guardians for the illicit actions of the minors residing with them and who are under their authority[208]. The term "ascendants" could have been limited to the father and mother, if it weren't customary in Lebanon that "ascendants" also includes the grandfather, especially in the event of the father's death. In that case, the care of the minor falls to the mother if she has guardianship or trusteeship, otherwise it falls to the grandfather or the uncle, by custom, consent or court order. With his text on the "ascendants", the Lebanese legislator wanted to take into account prevailing norms, as well as the sectarian personal status laws that give the grandfather trusteeship rights[209].

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[207] See https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf [ENG]

[208] Article 126 of the Code of Obligations and Contracts: "Ascendants and guardians are responsible for every illicit act committed by the minor children residing with them and who are subject to their authority. Schoolteachers and skilled traders are liable for the damage caused by the illicit acts of their students or apprentices committed while under their supervision, but the State bears this liability in their stead. The liability of these persons is engaged unless they can prove that they were unable to prevent the acts that gives rise to this liability; the liability subsists even if the person who caused the damage in nor responsible for lack of discernment." See https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/57070/134590/F-755173354/LBN57070%20ARA_FR.pdf [ARA/FR]

[209] Mustafa El-Aougi: *Civil Law (vol.2): Civil Liability*, Bahsoun Institute 1996, p.393.

• In the Islamic sects

For the Islamic sects, trusteeship includes judicial guardianship (appointed by order of the judge) and guardianship by will (chosen and appointed by the guardian or trustee). While legal guardianship may be moral and financial at once, trusteeship is most of the time limited to the financial aspect[210].

The survey on the views on women's status under Lebanese personal status laws shows a weak knowledge of the provisions of trusteeship on the part of Muslims respondents, with only 36% of Druze respondents, 44% of Shiite respondents and 46% of Sunni respondents having a good knowledge about them[211].

CHART 5:

The extent of knowledge about specific personal status matters (in the Sunni sect)

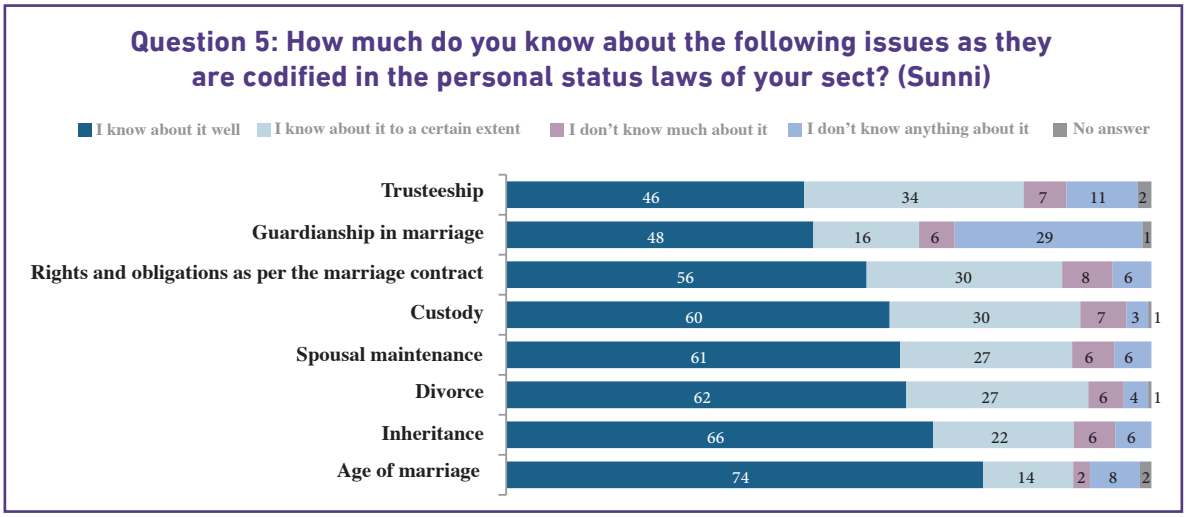
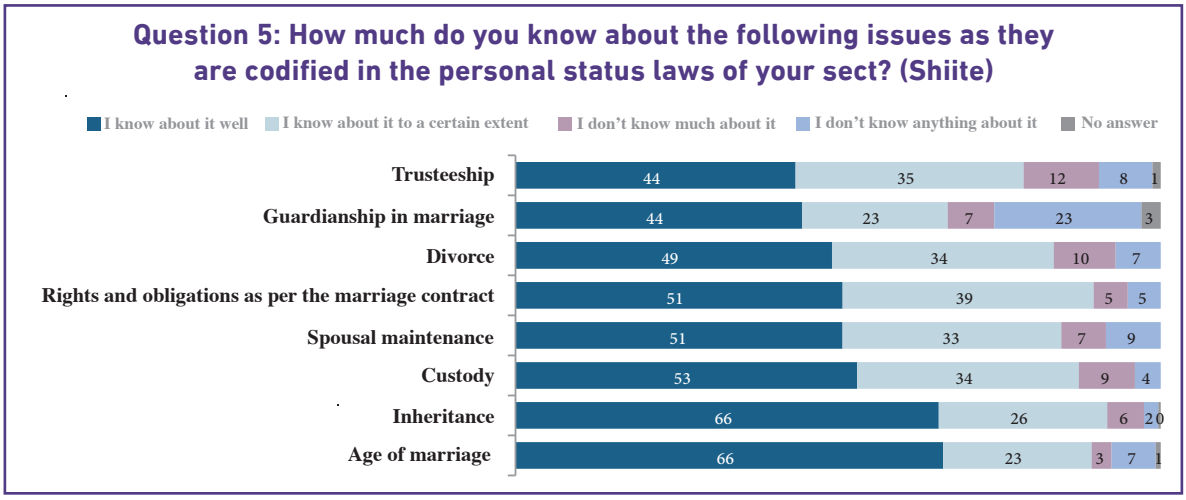


CHART 6:

The extent of knowledge about certain personal status matters (in the Shiite sect)

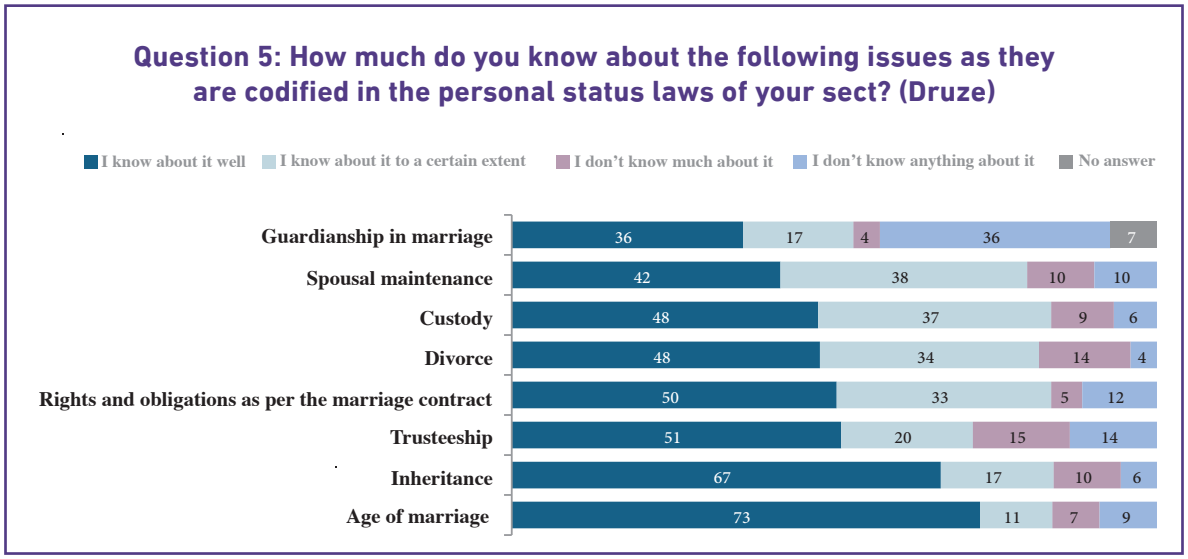


[210] Guardianship over the person of the child is termed "moral guardianship" while guardianship of their financial assets is termed "financial guardianship".

[211] See *The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon*, pp16-17 at https://bit.ly/3O8Nydq [AR]

CHART 7:

The extent of knowledge about certain personal status matters (in the Druze sect)



In the Sunni sect, trusteeship passes to the paternal grandfather in the event of the father's death, or if he goes missing, or loses his competence, or if the conditions of his guardianship are disrupted[212]. Pursuant to Article 242 of the Sharia Courts Law amended by Law 177 of 29/8/2011, and in accordance with the sequence stipulated therein, moral guardianship belongs to the father during his lifetime, and to the paternal grandfather in the event of the father's death, or if the father goes missing, loses his competence, or if the conditions of his guardianship are disrupted. Based on this, the guardianship of the father and father's father is considered "peremptory."

The Hanafi school of jurisprudence gives the peremptory moral and financial guardian the right to appoint a chosen trustee to fill his function upon his death, or if he loses his competence, or if the conditions of his guardianship are disrupted. This chosen trustee has the broad powers of the peremptory guardian, and most of the time does not need to refer back to the judge or to court. He also has priority over the paternal grandfather if the latter is alive and capable.

In the Druze sect, according to the most recent amendment of 2017, the jurisprudential interpretation whereby the mother is given trusteeship over her child even if the latter's uncle is alive, was codified as follows: "Trusteeship can be granted to the wife and mother and other women, and to one of the heirs or others. The mother may be made supervisor alongside the trustee. The mother is given priority over other trustees.[213]"

[212] Article 242 of the Sharia Courts Law, amended as per Law 177 of 29/8/2011. See http://77.42.251.205/LawView.aspx?opt=view&LawID=244292 [AR]

[213] Article 91, amended by Law 58/2017. See http://77.42.251.205/LawView.aspx?opt=view&LawID=258196 [AR]

In the Shiite sect and according to the opinion of Shiite jurisprudential authority and reference Sayyid Muhammad Hussein Fadlullah, appointing a trustee for a minor is a right for the father and the paternal grandfather, provided one of them is deceased, since the father may not appoint a trustee for his children while his own father lives, and the grandfather may not appoint them a trustee when their father still lives[214]. As for the mother, the maternal grandfather, brothers or uncles, they may not appoint trustees for their children, their grandchildren, their brothers or nephews because they are not their guardians; rather, at the death of the father, of the paternal grandfather and the trustee appointed by either of them, the Sharia judge becomes the children's guardian[215]. The Shiite jurisprudential authority and reference Sayyid Ali al-Sistani holds the same legal opinion, namely that guardianship over the finances of the child and the responsibility to decide on their interests and affairs belongs to their father and paternal grandfather, and that upon the loss of the appointed trustee, guardianship passes to the Sharia judge. The mother, the maternal grandfather and the brother as well as paternal and maternal uncles do not get guardianship anyhow[216]. This is applied in the Jaafari courts for Shiites and Alawites.

Therefore, the Sharia judge plays an important role in the Islamic sects, as "the judge is the guardian of those without a guardian."

A few Sharia judges we met with expressed the conviction that mothers should be granted trusteeship, especially when the grandfather is unable to shoulder the responsibility. Their argument is "how can a man of advanced years, who can sometimes barely take care of his personal affairs, bear responsibility for children?" In this case, priority should be given to the person best able to manage the children's affairs[217].

On the whole, the views of the judges and clerics of the three Islamic sects who we met with can be divided into two main positions:

- The first calls for differentiating between financial responsibility and moral responsibility. The proponents of this position consider that the mother may be given the responsibility of managing the children's money, but not moral guardianship over the children themselves. This is what happens in practice, since most rulings on financial trusteeship are in favor of the mother; even when trusteeship is granted to another person such as the uncle or the grandfather, it is shared with the mother.
- The second supports a comprehensive amendment related to establishing the mother's legal right to trusteeship, and advocates not leaving the matter

[214] See http://arabic.bayynat.org.lb/HtmlSecondary.aspx?id=11516 [AR]
[215] The Sharia judge or legal judge is the Islamic jurisprudence scholar who fulfills all the requirements to judge between the faithful in disputes and disagreements.
[216] See https://www.sistani.org/arabic/qa/0756/ [AR]
[217] From interviews conducted for the purpose of this report on 15, 18 & 30/6/2020.

of granting the mother trusteeship or guardianship in the event of the father's death to the judge's discretion.

• In the Christian sects

The Christian sects regulated the issue of trusteeship in their personal status laws by counting two kinds of trustees:

- The chosen trustee, appointed by one of the parents in their will and testament during their lifetime[218]. The majority of personal status laws indicate that the father may appoint a trustee of his choosing[219].
- The appointed trustee, appointed by the court's own initiative or upon request by the concerned parties[220].

• Does A Mother Have Trusteeship Rights?

As previously mentioned, the Armenian Orthodox sect considers parental authority to be equally shared between the mother and the father during their marriage. Accordingly, the mother is granted trusteeship provided she does not remarry and is qualified to carry out this function.[221]

The Catholic[222] and Evangelical[223] sects refer to the principle of the best interest of the minor, which supersedes any text. However, both these sects laid down conditions that need to be fulfilled in order for the mother to be qualified to be a trustee for her children. The Catholic sects require that she does not remarry, a condition that is not applied to the father. In the Evangelical sect: "The father's will and testament is not binding to the court in terms of the identity of the trustee or trustees, but it is taken into consideration", meaning that the matter remains at the court's discretion. According to the succession stipulated in Article 69, priority is given to the mother and/or the closest Evangelical adult

[218] See for example Article 184 of the Personal Status Code of the Catholic sect at https://bit.ly/3zmKR3I [AR]

[219] See Article 95 of the Personal Status Code of the Greek Orthodox sect at http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR], Article 166 of the Personal Status Code of the Armenian Orthodox sect at http://77.42.251.205/Law.aspx?lawId=258205 [AR], Article 83 of the Personal Status Code of the Syriac Orthodox sect at http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246386 [AR], Article 142 of the Coptic Orthodox Personal Status Code at http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246386 [AR], and Article 114 of the Assyrian Eastern Orthodox Personal Status Code at http://77.42.251.205/Law.aspx?lawId=255320 [AR]

[220] See Article 184 of the Personal Status Code of the Catholic sects at https://bit.ly/3zmKR3I [AR], Articles 94&96 of the Greek Orthodox Personal Status Code at http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR], Article 168 of the Armenian Orthodox Personal Status Code at http://77.42.251.205/Law.aspx?lawId=258205 [AR], Articles 82 7 84 of the Personal Status Code of the Syriac Orthodox sect at قانون الأحوال الشخصية للسريان الأرثوذكس – دائرة الدراسات السريانية (dss-syriacpatriarchate.org) [AR] and Article 142 of the Coptic Orthodox Personal Status Code at http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246386 [AR].

[221] See Articles 166 – 168 of the Personal Status Code of the Armenian Orthodox sect at http://77.42.251.205/Law.aspx?lawId=258205 [AR]

[222] See Article 188 of the Catholic Personal Status Code at https://bit.ly/3zmKR3I [AR]

[223] See Articles 67, 69, 70 & 71 of the Personal Status Code of the Evangelical Community in Lebanon and Syria at http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR]

relative from the father's family. Concerning the qualifications of the trustee, Article 70 stipulates that they be Evangelical, not without adding: "except in special circumstances evaluated by the court."

As proof that the Evangelical courts follow the interest of the minor regardless of the mother's sectarian affiliation, a legal expert pointed out a case submitted to the Evangelical court under the old law concerning a trusteeship dispute between the mother and the uncle. The legal expert said that "in this case the mother was not Evangelical, and she was not educated, while the uncle was a doctor and well-to-do, married and without children. The marriage in question had been beset by problems prior to the death of the father. In this case and in light of these circumstances, it would have been logical and natural for the court to grant the uncle trusteeship, especially with the legal provisions in place that support such a ruling. But in order to preserve the rights of the mother, the court established a shared trusteeship system as follows: the uncle oversees the education of the children, while the mother takes care of their person."[224]

The Greek Orthodox sect does take into account the father's will, but they do not mention the mother among the persons who may be appointed as trustees of the minor. However, according to a judge we interviewed, priorities are determined while trusteeship is being decided on, following the same sequence applied for maintenance, where the mother comes in the first position after the father.

The Assyrian Eastern Orthodox sect considers that the father may appoint a chosen trustee, but does not mention the mother as trustee of minor children; rather "in the event of the absence of the father or the forfeiture of his guardianship by court order, peremptory guardianship passes to the paternal grandfather."[225]

In the Coptic Orthodox sect, if the father does not appoint a trustee before his death, guardianship passes to the paternal grandfather, then to the mother as long as she has not remarried. As for guardianship, it comes to an end when the minor reaches 21 years of age, which differs from the civil legal age of majority, and which is adopted by the other sects[226].

The different religious legislations still see women as unqualified for trusteeship of their underage children, and they are required to meet additional

[224] From an interview with a legal expert conducted on 18/6/2020.

[225] See Article 113 of the Personal Status Code of the Assyrian Eastern Orthodox sect at http://77.42.251.205/Law.aspx?lawId=255320 [AR]

[226] According to a representative of the Coptic Orthodox sect in Lebanon (in an interview we conducted on 3/8/2020), this is due to the influence of Egyptian religious legislation on the lawmakers who wrote this law. We want to point out here to Article 2 of the Coptic Orthodox Personal Status Code which stipulates that "Justice is exercised in the courts of the Coptic Orthodox Church in Lebanon in accordance with the texts of this law, with the particular law, heritage and ecclesiastical tradition of this sect, with Lebanon's Law Defining the Privileges of the Congregational Authorities of the Christian Communities issued on April 2, 1951 and with the Civil Code of Procedure, in what does not contradict and is not stipulated in this law." See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246399 [AR]. Hence, when this issue is raised, the Lebanese law is applied.

conditions that do not apply to men. The various laws that require (in trusteeship and custody cases for example) "that women be fit for it", do not define the content of this 'fitness', and give the judges – most of whom are men – a wide margin for deciding when issuing their verdict. And although the main principle relied on in these cases is the minor's best interest, it very much depends on the judge's point of view whether women are recognized as individuals equal to men in rights, duties and opportunities. It is necessary to amend legal texts and to recognize women's right to trusteeship of their children, without these rights needing to be shared with the grandfather, the uncle or the other male ascendants and descendants. They must be given priority over the grandfather, the uncle or the cousin.

Prevailing societal culture affects personal status issues, especially issues of guardianship and trusteeship. The most recent Law of the Evangelical Lutheran Church in Jordan and the Holy Land was not spared its influence, in spite of the significant amendments it introduced, the most important of which are the following:

1- Complete equality between man and woman upon, during and after marriage.

2- The right of both spouses, in exceptional situations determined by the Law, to apply for separation, marriage dissolution, or annulment.

3- Equal rights between the sexes in terms of what they inherit from a male or a female.

4- The right to adopt for both sexes.

(Personal Status Code, Law of Evidence and Code of Procedure of the Evangelical Lutheran Church in Jordan and the Holy Land).

Conclusion

None of our interviewees who represent the Christian sects indicated a need to update the existing legal provisions on trusteeship, although they discriminate against women through the additional requirements they are meant to meet to secure trusteeship of their children. However, reform is possible towards achieving equality between women and men, given that the issue of trusteeship is included in the civil effects of marriage as we previously mentioned.

The judges and clerics of the Islamic sects we met with unanimously affirmed, in contrast to the issue of guardianship, that the provisions relating to trusteeship can be amended. In their view, this course of action has already been initiated by the religious judges who grant mothers trusteeship rights over her children; but it remains to be codified in the Law.

6. The Economic Rights of the Wife, the Divorcee and the Widow

• International Framework

Article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women calls upon state parties to take all the appropriate measures to eliminate discrimination against women in all matters related to marriage and family relations, and in particular to ensure, on the basis of gender equality, that women and men have the same rights and duties during marriage and after its termination, in addition to having the same personal rights including the right to choose their family name, profession and type of work[227].

Economic and financial rights are included within these rights, among them the right to conjugal property and maintenance after divorce for the divorcee and her children.

At the international level, maintenance may be approached based on Article 16 of CEDAW and the general recommendations issued by the Committee tasked with following up on the implementations of the Convention's provisions. Many of these general recommendations called upon state parties to achieve equality between women and men in the framework of marital relations and after their termination. Among these recommendations are the following: General Recommendation N.21 issued in 1994 about equality in marriage and family

[227] See https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf [ENG]

relations[228], General Recommendation N. 29 issued in 2013 on the economic consequences of marriage, family relations and their dissolution[229], and General Recommendation N. 34 issued in 2016 on the rights of rural women[230]. The latter requires state parties to harmonize personal status laws with Article 16 of CEDAW, to guarantee that rural women have equal rights in marriage, including to marital property upon divorce or death of their spouse and to maintenance or alimony. It is true that the recommendation concerns rural women in particular, based on the fact that they are among the most vulnerable groups and the most affected by poverty, but its effects extend to all women.

• National Framework

Pursuant to the national laws represented by the Labor Law, the Code of Commerce and the Code of Obligations and Contracts, women may participate in economic life and enter into civil and commercial contracts. Lebanese women enjoy a high level of business ethos and entrepreneurship, but they have not yet reached their full potential as part of the workforce or in terms of starting their own businesses, since women's participation to the labor force in Lebanon is largely confined to wage labor. Even in this respect, they lag behind men, with a labor force participation rate of 26%[231]. According to the Global Gender Gap Index[232] of 2020 issued by the World Economic Forum, Lebanon ranked 145th out of 153 countries[233].

At the level of the personal status laws of the Christian sects, we find that the main issues raised in terms of the economic status of women during a marriage and after its termination are maintenance and compensation, as well as the legal regime that governs the couple's assets and their distribution. In the Islamic sects, the main financial issues that arise are compensation and *mahr*.

• In the Islamic sects

A husband's rights over his wife are the following:

- The right of obedience in licit matters.

- The obligation to reside with him in the same home.

[228] See https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#11 [ENG]
[229] See https://digitallibrary.un.org/record/764504?ln=en (choose download language)
[230] See https://digitallibrary.un.org/record/835897?ln=en (choose download language)
[231] See https://www.worldbank.org/en/news/feature/2019/09/25/revolutionizing-women-led-businesses-in-lebanon-through-e-commerce [ENG]
[232] The Global Gender Gap Index is a composite measure that evaluates the gap between the genders in the following 4 spheres: economic participation and opportunity, educational attainment, health and survival, and political empowerment.
[233] See https://www.weforum.org/reports/gender-gap-2020-report-100-years-pay-equality/in-full [ENG]

- The obligation to accompany him wherever he wishes, provided she did not specify otherwise in the marriage contract.

On the other hand, a wife's rights over her husband are the following:

- Payment of *mahr*
- Sufficient maintenance
- Satisfying sexual relations
- Securing decent housing where none of his parents or relatives reside without her permission.

As for the rights and duties shared by both spouses, the most important are the following:

- The right to mutual sexual enjoyment.
- The right to inheritance.

In relation to financial matters between spouses in the Islamic sects, one can speak of spousal maintenance and mahr. It is noteworthy that a woman may stipulate certain terms in her marriage contract[234].

• Spousal Maintenance

Maintenance is a husband's obligation towards his wife as long as the marital bond stands. In the Islamic sects, only the husband is obligated in this towards his wife, because the marriage contract does not require the woman to spend her own money in the course of the marriage, not even on herself, since the husband is so obligated by Sharia, based on the known Quranic verse that grants men wardship and headship of the family during the course of marital life: "Men are in charge of women because of that with which God has preferred the one over the other, and because of what they expend of their property." (*Surat al-Nisa* (Women) 4: 34[235]). Spousal maintenance includes food, clothing, medical

[234] In the Sunni sect, a woman may stipulate that her spouse not contract another marriage while married to her, and that if he does, then either she or the other wife shall be considered divorced; that he does not make her leave her country; that she have the same right to divorce as the man (i.e. the 'isma). In the Shiite sect, a woman may stipulate that her husband does not make her leave her country; that he does not make her reside in a specific house; that she be his deputy in divorcing herself. In the Druze Unitarian sect's personal status laws, there is no legal text concerning the stipulations that may be included in the marriage contract. However, the applied principle is that whenever a matter is not stipulated expressly in a specific text, the religious judge shall refer to the provisions of Islamic Sharia following the Hanafi doctrine.

[235] We would like to point out that there are today many feminist interpretations of this verse, where 'being in charge' is seen to point to the financial responsibility of the more affluent of the spouses. See for example: Asma Lamrabet, *An Egalitarian Reading of the Concepts of "Caliphate", "Guardianship" and "Wardship", and Men in Charge? Rethinking Authority in Muslim Legal Tradition*, edited by Ziba Mir-Hosseini, Mulki Al-Sharmani, and Jana Rumminger, Musawah, 2017.

care, accommodation and everything necessary for the wife to lead a dignified and decent life. As soon as the husband ceases to fulfill his duty of spending on his wife, she may resort to the Sharia justice system to file a claim for spousal maintenance, without the need to apply for divorce.

In exceptional circumstances arising from a strained relationship, and while the Sharia court is looking into the divorce case, a monthly maintenance is sometimes ordered for the wife, as long as the final ruling has not been issued. If a divorce ruling is issued, the required maintenance will be for the legally required waiting period ('iddah), that is the cost of living of the divorcee who is compliant with confinement to her house for a period of three months after the divorce.

According to the Code of Family Provisions, the judge has the right to estimate the spousal maintenance and expenses owed by the husband to his wife as a result of the marital bond, and this estimation is most often based on the capacity and situation of the spender. As for specifying the amount due to ascendants (the parents) and descendants (the children), it is done depending on their need, considering the economic and social situation of the time and place[236].

In principle, a wife may not ask for an advance on spousal maintenance during the course of the trial, however the judge may order– depending on the case – that she be given an advance to cover a period of time he specifies, or he may permit the wife to borrow money in her husband's name.

In the Shiite sect, and according to Shiite jurisprudence reference Sistani, spousal maintenance is a husband's obligation in case of a continuing marriage where the wife is obedient to him in the required matters, and there is no difference in his obligation towards a Muslim wife and a wife belonging to the People of the Book[237]. This is applied in Jaafari courts for Shiites and Alawites.

In the Sunni and Shiite sects, maintenance is due after the divorce and during the legal waiting period if the divorce is revocable.

If a husband legally bound to pay alimony does not do so, a decision to incarcerate him or to seize his possessions may be issued by the Enforcement Department[238]. His salary may also be seized if he is an employee in a public or private institution. A wife also has the right to provisional seizure of her husband's property and to request his forced incarceration, a travel ban and the seizure of his salary or retirement pension if he refrains from paying due alimony, to guarantee her right to compensation and maintenance.

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[236] See Article 4 of the Code of Family Provisions at http://77.42.251.205/LawView.aspx?opt=view&LawID=230626 [AR]

[237] See https://bit.ly/3TqwEea [AR]

[238] See https://kafa.org.lb/en/faq/personal-status-law-muslim [ENG]

A number of judges and legal experts we met with in the course of preparing this report raised the issue of the difficulty of increasing or reducing maintenance. It is true that maintenance may be increased or decreased depending on a change in circumstances, but in the Sunni sect, an increase or decrease claim cannot be heard before at least a year has passed after maintenance was imposed. Also, it cannot be retroactive.

The rulings on spousal maintenance issued in the three Islamic sects show that the amounts ordered do not suffice to meet the minimum needs of a family. And although maintenance cases can be adjudicated prior to the final ruling on the dispute, they do take a long time during which the situation of women in financial distress is for the most part not considered, knowing than they are often responsible for their children's expenses. This problem is exacerbated by Lebanon's recent deteriorating and disastrous economic situation.

According to a (woman) lawyer we met with, men who are legally bound to pay maintenance but refrain from doing so pose a real challenge to the women concerned, whether in spousal or child maintenance claims. Even if the woman resorts to the Enforcement Court and an incarceration order is issued, security forces sometimes neglect to carry out the ruling. The lawyer added that she has come across cases where the man had accumulated several years' worth of maintenance dues[239].

The challenges faced by women are exacerbated when the husband and/or the wife have no remunerated work, or when the actual wages earned or business profits are not declared. It becomes difficult to verify the husband's and/or the wife's movable financial assets, since the Bank Secrecy Law does not include any exceptions in their favor.

On the other hand, the husband has the right to submit a "cohabitation" claim against the wife if she leaves the marital home without his permission or without a lawful excuse. If the wife refuses to implement the cohabitation order, she is considered "disobedient" (nashiz). In all the Islamic sects, a woman's right to maintenance if forfeited if she is considered "disobedient".

Therefore, women risk losing their spousal maintenance rights before Sunni and Jaafari courts if they leave the marital home and are judged "disobedient". Given that Sharia courts – with the exception of the Druze courts – accept obedience and cohabitation claims, women's right to a just termination of their marriage is restricted.

[239] From an interview conducted on 17/10/2020.

• Child Maintenance

In addition to spousal maintenance, there is child maintenance.

In the Druze Unitarian sect, the father is obligated to pay child maintenance for his necessitous child, male or female, until the male reaches an age where he can earn a living and the girl gets married. The father is also obligated to provide maintenance for an older necessitous son if he is unable to earn a living because of a disability, and an indigent unmarried daughter[240].

The same applies for the remaining Islamic sects, since maintenance is the money that has to be given to beneficiaries among ascendants, descendants, the wife and relatives so they may secure the necessities and means of livelihood.

In the three Islamic sects, the value of child maintenance is determined based on the father's means. But one of the main flaws in these cases is that the court does not verify the father's material resources to base its maintenance ruling on it, rather the judge contents himself with father's declaration in this regard.

The same rules of maintenance claims and of the implementation of the rulings of maintenance issued by the religious courts are applied here. If the debtor refuses to pay maintenance in favor of either spouses or the children, the claimant may request the debtor's incarceration based on clause '3' of Article 997 of the Code of Civil Procedure[241]. The possessions of the debtor may be subject to provisional and executive seizure of his assets to secure the creditor's rights. A husband legally bound to pay child maintenance who refrains from doing so may have an incarceration order issued against him by the Enforcement Department, or his possessions, should he have any, may be seized. Also, his salary may be seized if he is an employee of a public or private institution.

• Mahr

Besides maintenance, a wife may claim mahr. Mahr is an amount of money – movable or unmovable – that the husband commits to pay in exchange for marrying and cohabiting with his wife, the value of which is determined in the marriage contract. The husband settles part of it upon concluding the marriage, prior to its consummation, and this is known as the advance mahr (al-mahr al-mu'ajjal). The remaining part is known as the deferred mahr (al-mahr al- mu'ajjal), and it is usually due either upon the husband's death, or upon termination of the marital bond when the husband is responsible for the termination.

It is possible to advance or defer the mahr, or to advance part of it and defer a part. The deferred mahr is a debt owed by the husband. If he dies first without

[240] View Articles 67 & 68 of the Druze Personal Status Code at http://77.42.251.205/LawView.aspx?opt=view&LawID=258196#Section_266449 [AR]

[241] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244565 [AR]

having paid the deferred mahr to his wife, he dies indebted to her, unless the wife forgives his debt and he is then discharged of it. The wife has the right to withdraw her deferred mahr from her husband's inheritance before the declaration of his will or before the distribution of his inheritance among his heirs, and then she takes what remains of the inheritance for herself. If the wife dies before her husband, her heirs (among them her husband) will take their share of the deferred mahr as well as her other assets, which are distributed among them according to their share of the inheritance.

In the Sunni sect, there was a refusal to include mahr provisions within the package of amendments introduced into its Personal Status Code in 2011, since when the mahr, evaluated in Lebanese pounds, is due, the payment is estimated in gold ounces at its value at the date of the marriage contract and according to Lebanon's Central Bank restrictions. The due payment is settled in gold or its equivalent in Lebanese pounds at the time of the final ruling.

In the discussions on women's financial rights pursuant to the marriage contract, three positions emerged among our interviewees:

- **The first position** sees that provisions regulating women's financial rights are in no way discriminatory against women.
- **The second position** sees that problem lies in the practices of the courts and the difficulty in implementing the provisions for maintenance and mahr, as well as the many instances of women forfeiting their rights.
- **The third position** is a two-fold conviction that sees that on the one hand, addressing financial issues within the family unit requires reconsidering the social patterns that govern familial relationships; as the father is deemed the head and breadwinner of the family, and this affects family dynamics. For those who uphold this position, it is not enough to codify financial rights, since the capacity to enjoy and obtain these rights depend on the person's reality, circumstances and their ability to claim their rights. In a contract whose parties are unequal, financial rights are no more than a bargaining chip. In many cases for instance, women from the Islamic sects face challenges in obtaining their financial rights as stipulated in the marriage contract, not counting the complications and the long duration of trials. Women are very often forced to forfeit their rights either to obtain a divorce or to retain custody of their children. On the other hand, the notion of "disobedience" (nushuz) is a violation of women's dignity, especially that it is not raised in relation to men, although the Noble Quran speaks of it in relation to men in verse 128 of *Surat al-Nisa* (Women) 4: "And if a woman fears from her husband ill-treatment (*nushuz*) or rejection, they are not at fault if they are reconciled through some agreement; reconciliation is better. But greed has been made present in the

souls. If you are virtuous and fear, surely God is ever aware of what you do."[242] It is interesting to note that when verses speak of women's nushuz, the word is translated as disobedience, but when they refer to the *nushuz* of men, the word is translated as ill-treatment in most English translations.

• In the Christian sects

Two main issues emerge when speaking of spousal financial rights in the Christian sects: maintenance and compensation.

Maintenance is an inter-spousal obligation on the one hand, and generally an obligation towards the wife and the children on the other.

• Spousal maintenance

Spousal maintenance is the amount that the husband must pay for the benefit of the wife, in order to secure a decent life for her through covering the expenses of food, clothing, accommodation and health care.

Clause '1' of Article 5 of the Law of April 2, 1951 stipulates that the following falls under the jurisdiction of religious congregational authorities:

"Imposing and estimating a spouse's maintenance in favor of the other upon hearing a separation, divorce or annulment case"[243].

The text is therefore clear in terms of considering a maintenance suit as a subsidiary of the original suit, meaning that a maintenance case (considered a subsidiary) may not be filed independently from a desertion, annulment or dissolution case (considered the original case). It is important to emphasize that a maintenance case is bound to a marriage annulment, dissolution or desertion case, however the wife may file a maintenance claim before the religious court independently from an original case if she suspects stinginess and avarice on the part of the husband[244] (Article 154 of the Catholic Personal Status Code[245]).

[242] From an interview conducted for the purpose of this report on 18/6/2020.

[243] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258197 [AR]

[244] A legal expert considered that "there is nothing to prevent filing a maintenance case as an original case before the civil courts if the wife suspects her husband of being stingy and miserly, especially that the first clause of Article 5 of the April 2, 1951 Law restricts the imposition and estimation of spousal maintenance to the religious courts in special cases, namely raising the issue during separation, divorce and annulment proceedings. The Law of April 2 is an exceptional law. Accordingly, when spousal maintenance is being considered an original lawsuit independent from a separation, divorce or annulment suit, it falls under the jurisdiction of civil law, which has general jurisdiction."

[245] See https://bit.ly/3zmKR3I [AR]

Maintenance is of two kinds[246]:

- Temporary maintenance, which is the husband's obligation towards his wife during the proceedings of the pending lawsuit before the religious court.
- Permanent maintenance, issued as the result of the final ruling on the litigation, and is usually associated with a desertion ruling.

Temporary Maintenance

Article 153 of the Catholic Personal Status Code stipulates that maintenance is owed the wife "without presenting guarantee or a refund commitment during the proceedings of a desertion and annulment case, until she is proven guilty or until the marriage is annulled by a final ruling[247]". Meaning that as soon as a marriage annulment or desertion case is filed, the woman may claim maintenance from her husband, until a final dissolution ruling is issued or her responsibility for terminating the marriage is proven. In this case, she forfeits her right to maintenance.

In the Greek Melkite Catholic sect, "the Church Synod introduced an amendment to the matter of interim maintenance, whereby it is no longer due during desertion or annulment proceedings except for a wife in financial distress. In every instance where it is proven that the wife has a job or any returns that secure her maintenance during case proceedings, there will be no maintenance ruling in her favor.[248]" A Catholic court judge pointed out that in the context of the discussions of the Episcopal Committee working on amending the current personal status code, there is a direction towards approving maintenance for women who are not economically active outside the home, and not considering maintenance for those who do. However, this view which seemingly upholds the principle of equality between women and men is in fact lacking, as it ignores the structural discrimination suffered by women at the level of economic participation.

In the Greek Orthodox sect, Article 55 of its Personal Status Code and Code of Procedure stipulates that spousal maintenance to the wife shall continue to be paid until "the implementation of the marriage termination ruling in the personal status departments.[249]"

[246] See Ibrahim Traboulsi: *The Legal Status of Lebanese Women Under the Personal Status Laws of Christian Sects*, a study commissioned by the National Commission for Lebanese Women – October 2016.
[247] See https://bit.ly/3zmKR3I [AR]
[248] See See Ibrahim Traboulsi: *The Legal Status of Lebanese Women Under the Personal Status Laws of the Christian Sects*, a study commissioned by the National Commission for Lebanese Women – October 2016.
[249] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]

Permanent Maintenance

In terms of permanent maintenance, all the different Christian sects adopt the principle that only an 'innocent' wife is deserving of it. The wife's right to it is forfeited if she is "disobedient", if she leaves the marital home without a lawful justification, or if she is responsible for the break-up of the marriage.

The wife is owed spousal maintenance if she did not cause the dissolution or annulment of the marriage, and in case of desertion in some sects. Article 67 of the Armenian Orthodox Personal Status Code[250] and Article 36 of the Evangelical Personal Status Code[251] stipulate that in case of desertion, if the wife is not the cause, the husband shall be legally bound to pay maintenance to his wife.

Regarding the maintenance amount determined by the court, it is subject to change depending on developments in the spouses' financial situation. These rulings are not considered res judicata[252] and accordingly, maintenance rulings may be amended, increased, decreased or even canceled altogether.

There is therefore a noticeable progress on the part of Christian religious courts and a movement towards change in the prevailing social culture that considered that the husband – as head of the family and father- has the duty to provide a decent life for his wife and children. This duty is now shared by both spouses if they are both engaged in remunerated work. On another hand, we should not forget that this issue is tied to that of women's economic participation and to the wage gap in different economic sectors. Equality between the sexes in this respect must be accompanied with official measures to achieve equal pay for work of equal value[253].

Also, this progress by the religious courts remains limited, due to a non-comprehensive view of women's issues.

Discrimination in Maintenance Cases

Women are subjected to greater discrimination than men in terms of maintenance, as it is bound to the persistence of the marital bond. A husband is in fact not obligated to pay maintenance once his marriage is annulled or dissolved if the wife is found undeserving. This could place a woman in a difficult financial situation, particularly if she did not have a remunerated job during the marriage. As for the compensation owed to the wife when she is not the cause of the annulment or dissolution, it is usually a symbolic amount as we shall see further on.

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[250] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258204 [AR]

[251] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR]

[252] *Res judicata*: Literally meaning "a matter judged", referring to a matter finally decided on its merits by a court having competent jurisdiction and not subject to litigation again between the same parties.

[253] According to the Equal Remuneration Convention (Number 100) adopted by the International labor Organization on 29/6/1951.

Some religious judges point out that in fact injustice is being done to the man in the matter of maintenance on two levels: first, when maintenance is ruled for women engaged in productive work, and second because it is rare for a maintenance ruling to be issued with the husband as beneficiary. But given that maintenance remains tied in the majority of cases to a wife's obedience to her husband and to a judgment of her innocence and lack of responsibility for the termination of the marriage, would a maintenance ruling with the husband as beneficiary require that he be obedient to his wife?

One of these judges said that "the various laws that were not amended or updated were issued at a time when women were not economically productive. The prevailing mentality was that the man had to provide for and support his family. But currently the situation is different, and it is no longer fair that the man has to bear the responsibility of supporting his family on his own." He added: "When we demand a right, we are also demanding the duty that comes with it."[254]

In this respect we would like to point out the circular published by the Patriarchate of Antioch and All the East in 2019 concerning marital lawsuits and the civil effects of marriage before the Maronite courts, particularly the sections on temporary maintenance and its determination, whereby the circular states the need to consider "the urgent need of the beneficiary and the capacity of the payer. It needs to be fair and to tend towards limitation rather than excess, and to be imposed for only the needy woman, taking into account the circumstances of the marital dispute, the evident responsibilities and the children's needs, to secure a contented life for them[255]."

The importance of this discussion is in pushing for the adoption of a comprehensive approach to issues of equality between women and men. Just as maintenance is affected by economic developments, other issues are affected by societal developments, and hence there is a need for a reconsideration of the concepts of guardianship and custody in light of shared parental responsibility in family matters.

Maintenance for Descendants or Children

The second clause of Article 5 of the Law of April 2, 1951 stipulates that the following is under the jurisdiction of the religious courts: "Imposing and estimating maintenance for parents and children (ascendants and descendants)."

Pursuant to this, the personal status codes of the Christian sects regulated

[254] From an interview conducted with a Catholic judge on 18/6/2020.

[255] A circular concerning marital lawsuits and the civil effects of marriage in Maronite courts issued by the Patriarchate of Antioch and All the East, Bkerki, 2019, p.8.

child maintenance[256]. If the marital bond stands, the father must provide for his children, being the breadwinner in the family, unless he is insolvent, in which case this obligation passes to the wife, especially if she earns well or is affluent.

When there is a dispute between the spouses, and an annulment, dissolution or desertion case, most often the wife – if the children are in her care – applies for child maintenance so she is able to spend on them and provide them with the basic necessities. The court decides the amount of this support according to the criteria we previously mentioned. The two parties also may – in the framework of a legal agreement – divide the responsibility between themselves. In one of the contracts we reviewed, the spouses agreed that the husband would pay for school and university tuition as well as transport, school effects and the school uniform, while the wife would pay medical and hospital bills as well as for medications and vaccines[257].

[256] Article 167 of the Catholic Personal Status Code stipulates: "Maintenance in all its kind is the father's obligation towards his little necessitous child whether male or female, until the male reaches an age where he can have an income and is financially comfortable, and until the female gets married." Article 170 adds that in case the father is insolvent, "the well-to-do mother must spend on her children (…)". See https://bit.ly/3zmKR3I [AR]. Articles 77 & 79 of the Syriac Orthodox Personal Status Code stipulates that the father is responsible for maintenance, "and if he is stingy towards his children, it is permitted for the mother to meet their needs from her own money without his directive." See قانون الأحوال الشخصية للسريان الأرثوذكس – دائرة الدراسات السريانية (dss-syriacpatriarchate.org) [AR]. Article 53 of the Greek Orthodox Personal Status Code stipulates the father's maintenance obligation towards his children as long as they need his support, and if he is insolvent, when needed the affluent wife must spend on him. See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]. Articles 82 & 84 of the Coptic Orthodox Personal Status Code stipulate that "Maintenance is the father's obligation towards his little child (…) until the male is old enough and able to have an income, and until the female is married or has a job that pays her a sufficient income"; and "if the father is broke or insolvent, the mother shall be responsible for child maintenance if she is affluent." See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246386 [AR]. Concerning the Evangelical sect, Article 20 stipulates that "The marriage in principle obligates the husband to spend on his wife and on his children until they reach the age of majority, and to house them according to his means, and to protect them. In exceptional cases, when the father becomes incapable or earning a livelihood for a fundamental reason evaluated by the court, the wife shall strive to secure the family's expenses." See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR].

[257] Upon reviewing some rulings issued by the religious courts, the following trend is confirmed: "With a progressive and modern legal interpretation, the Unified First Instance Court of the Greek Melkite Catholic sect in Lebanon ruled in a decision issued on 30/5/2017 to reject a mother's petition to obligate the father to pay her the Nursery fees and housing fees of their minor daughter, based on the following reasoning: "Since it has become evident that the wife is requesting the nursery fees for her nursing babe, while at the same time being a working and productive woman, and since pursuant to Article 122 of the Personal Status Code, nursing is one of the most important tasks under parental authority, and is the mother's responsibility according to Article 123 of the aforementioned Code, this entails that the mother shall shoulder the costs of the Nursery which is fulfilling her function. On another hand, since the mother is a doctor and productive and is able to provide an independent accommodation for herself, and the daughter is currently living with her under her care, consequently the father must not be obligated to pay housing allowance to the mother for the sake of the daughter."" (Ibrahim Traboulsi, The Legal Status of Lebanese Women Under the Personal Status Codes of Christian Sects, a study commissioned by the National Commission for Lebanese Women – October 2016, p.15).
We also want to mention the jurisprudential interpretations issued by the Court of Appeal of the Antiochian Orthodox sect: In a ruling issued on 26/5/2015, the court stated: "Since the father works and earns an income, he has the obligation to spend on his children, and as the mother works too, so she is obligated to spend on them too at the best of her ability (…) on equal footing, meaning that each of them will pay $1250 – one thousand and two hundred and fifty dollars – on a monthly basis a support for the daughter (…) so she may meet her basic necessities." (Father Ibrahim Chahine, You and the Law, a collection of rulings and jurisprudence of the Greek Orthodox Court of Appeal, Volume 5, First Edition, 2017)

Determining the Maintenance Amount

In principle, when it comes to maintenance for the wife, its amount is calculated based on the obligated man's capacity to pay and on the need of the woman who is the beneficiary[258]. Other criteria are also considered, among them the evidence presented by each spouse upon submitting the case file, and which "is often based on the customs of the people of the country and to family affiliation and even sometimes on what is apparent. If the husband used to spend extravagantly on his wife and satisfy all her demands, and if this is supported by documents such as bank checks issued for the wife monthly or on special occasions, such documents may count as evidence of the husband's material situation and his capacity to pay, since issued at the time prior to the dispute and its submission to the court, known as "time without suspicion" (in tempore non suspecto)."[259]

In the course of our interviews, several judges have spoken about the difficulties they are currently facing in determining maintenance due to the economic crisis, because of the instability of prices. They also mentioned that they amend these amounts regularly, due to these changing circumstances.

In this regard, we would like to note that more often than not, ecclesiastical courts rely on the spouses themselves to determine maintenance in the framework of civil effects agreements. While reviewing a number of these agreements, we found that the spouses may distribute financial obligations between each other, and in some cases the husband will commit to paying a specific monthly maintenance to his wife. Other agreements include no mention of maintenance, when both spouses are engaged in gainful employment.

What about the husband? Is an affluent wife obligated to pay him maintenance?

In principle, personal status laws stipulate maintenance with the wife as recipient, and exceptionally, with the husband as recipient.

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[258] Paragraph 1 of Article 143 of the Catholic sect's Personal Status Code stipulates: "Is taken into consideration when maintenance is imposed and estimated the need of the beneficiary party and their status and the capacity to pay of the obligated party, and the customs of their country" (See https://bit.ly/3zmKR3l [AR]). Article 54 of the Greek Orthodox sect's Personal Status Code and Code of Procedure leaves it to the court to impose maintenance in the event that its beneficiary and the party it is required from disagree on its amount, based on the needs of its beneficiary and the capacity of obligated party. (See http://77.42.251.205/LawView.aspx.opt=view&LawID=244776 [AR]. Article 135 of the Armenian Orthodox sect's Personal Status Code gives the ecclesiastical Court of First Instance the right to estimate the amount of the maintenance after considering the needs of the party requesting it and the capacity of the party obligated to pay it.(See http://77.42.251.205/Law.aspx?lawId=258205 [AR]). Article 34 (of the year 2003) of the Personal Status Code of the Syriac Orthodox sect requires the husband to support his wife and minor children in terms of food, clothing, housing and medical care depending on his financial situation (See قانون الأحوال الشخصية للسريان الأرثوذكس – دائرة الدراسات السريانية (dss-syriacpatriarchate.org) [AR]. Article 20 of the Personal Status Code of the Evangelical Community in Syria and Lebanon obligates the father to support his wife and children until the latter reach the age of majority, and to house them according to his capacity (See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR].

[259] Ibrahim Traboulsi, *The Legal Status of Lebanese Women Under the Personal Status Codes of Christian Sects*, a study commissioned by the National Commission for Lebanese Women – October 2016, p.13.

The Armenian Orthodox Personal Status Code includes no instance where the wife is obligated to pay maintenance to the husband. However, the Catholic sects (Article 155, clause 2[260]), the Greek Orthodox sect (Article 52, clause 'a'[261]), and the Assyrian Orthodox sect (Article 131[262]) require the wife to financially support her husband in the following two cases:

- Proof of the husband's physical incapacity to earn money, or his financial distress.
- Proof of the wife's affluence.

Article 21 of the Personal Status Code of the Evangelical Community in Syria and Lebanon stipulates: "the wife shall contribute to the family's expenses if she earns well.[263]"

When it comes to implementing the law, our interviews showed a trend among judges of the Christian sects to rule maintenance with the husband as beneficiary, however such cases remain rare. According to these judges, one cannot speak of equality between women and men without amending the approach governing the issue of maintenance. If the wife is affluent or earns well, then she should contribute to spousal and child support. In the words of one legal expert: equality requires sharing"[264].

The Burden of Evidence in Relation to Maintenance

Generally speaking, the burden of proof of the husband's financial situation falls on the wife. Hence, women sometimes face difficulties in obtaining appropriate maintenance, due to the difficulty of proving what the actual salary or general income of the husband is. According to the laws currently in force, the judge estimates the amount of the maintenance to be paid by relying on the evidence presented by both spouses in the case file, as well as on the customs of the country and the lifestyle of the family prior to filing the case, as well as on the cost of living in the country.

One legal expert pointed out "the challenges faced by lawyers and judges to determine the financial status of a person and their capacity to secure maintenance. It is difficult to identify the income of a husband who is self-employed, and an employee who obtains a statement from Social Security often declares a salary that is inferior to what he actually makes. Therefore, the problem is not in the courts, but in the evidentiary process. This means that the

[260] See https://bit.ly/3zmKR3I [AR]
[261] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]
[262] See http://77.42.251.205/Law.aspx?lawId=255320 [AR]
[263] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=214271 [AR]
[264] From an interview conducted on 18/6/2020.

law is not as unfair as the lengths to which some people go to evade their duties. This kind of fraud, and sometimes bank secrecy as well, are challenges that are difficult to overcome, and that we face in these cases."

Another legal expert mentioned "the wide margin of discretionary power granted the judge, and which contributes to solving some issues", for example: "The man declared that he had a specific job, and he submitted bank loan documents to prove that he was in debt. The judge considered this debt, incurred for the purposes of opening a new branch of his business, to be explicit evidence of his financial capacity, since according to the judge, this loan was made because of the husband's business' prosperity, not because he is unable to pay. The challenges are sometimes overcome, depending on the judge's acumen.[265]"

There was a consensus among our interviewees that the main problem does not lie in the legal texts but in the practices of individuals who try to circumvent the laws to avoid paying due maintenance. Most of them also spoke of the challenges posed by the current economic crisis.

We conclude that maintenance is among the most important cases brought before the religious courts, as it concerns the management of the wife and children's day to day life and ensuring a decent life for them. And yet despite its importance - especially in the event of a marital dispute where the first thing that women do upon filing a case is to apply for maintenance for themselves and their children, especially when the latter are in their care - the knowledge of its details remains relatively weak among citizens.

The survey showed that 32% of Catholic respondents and 42% of Orthodox respondents who know – if only a little – about personal status laws, know about maintenance. This rate is low in comparison with that of other personal status matters[266].

[265] From an interview conducted with a legal expert on the Catholic sects on 22/6/2020.

[266] See *The Views of Lebanese Men and Women on Women's Rights in Light of Personal Status Laws in Lebanon*, p. 15 at https://bit.ly/3O8Nydq [AR]

CHART 3:

The extent of knowledge about certain personal status matters
(in the Catholic sects)

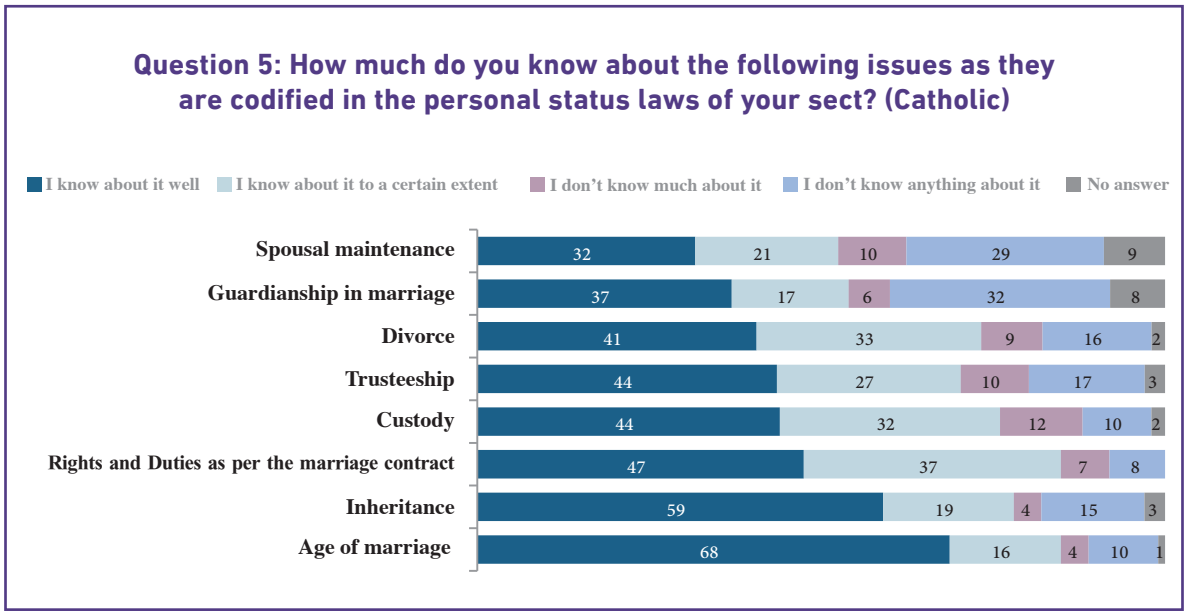
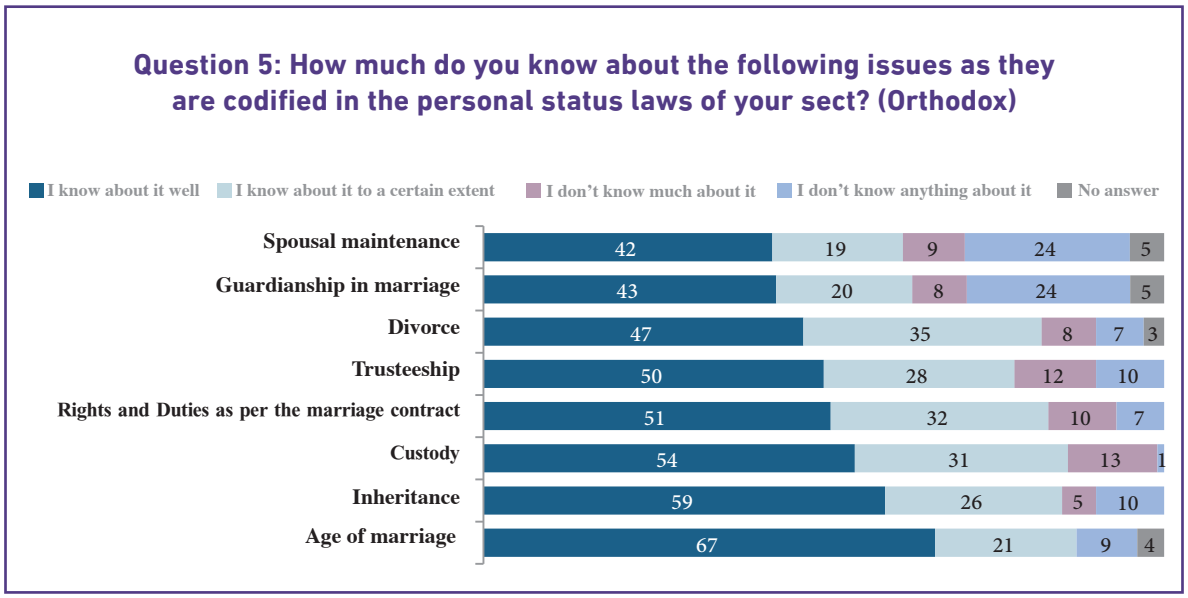


CHART 4:

The extent of knowledge about certain personal status matters
(in the Orthodox sects)



• **Compensation**

Pursuant to filing a marriage annulment or dissolution case, the aggrieved party (wife or husband) may apply for material compensation for the harm inflicted by the party responsible for the marriage termination. All personal status laws of the Christian sects obligate the party responsible for annulment, dissolution or divorce to pay compensation to the other party, without discriminating between women and men. As for the amount of the compensation, it is estimated by the court according to the capacity of the party obligated to pay it.

Article 68 of the Personal Status Code of the Armenian Orthodox sect stipulates that "the party who incurred material or moral damage from the issues that cause the marriage dissolution may ask for financial compensation.[267]" Article 179 of the Personal Status Code of the Catholic sects states: "The spouse responsible for the marriage being null or subject to dissolution shall be required to compensate the other party for the damages incurred as a consequence." Article 182 of the same law adds: "When estimating the compensation, consideration must be given to the material and moral damages as well as to the harm done to the standing of the man or the woman and the status of both parties.[268]"

Article 59 of the Personal Status Code of the Coptic Orthodox sect obligates the party guilty of causing the divorce to compensate the second party. The Article also stipulates that "the wife may, instead of compensation, ask for a monthly maintenance fee from her divorced husband until she dies or remarries, and her right to this regular payment shall not be forfeited as long as she does not remarry.[269]"

Article 61 of the Syriac Orthodox Personal Status Code stipulates that "Each of the spouses has the right to apply for compensation for all the damages they incurred from the other party's straying and transgressions caused by the marriage dissolution or breakup.[270]"

As for Article 74 of the Personal Status Code and Code of Procedure of the Greek Orthodox sect, the court does not rely on the element of responsibility, but on the harm resulting for the breakup of the marital bond. The court leaves it up to the spouses to decide on compensation, but if they fail to do so or decide to leave it up to the court to assess the damages, then the court will assume the task. This means that the judge does not consider the responsibility of the spouse/s for the marriage termination, but rather the harm incurred by her/him as a result of the termination. This Article also allows the court to obligate the husband to pay a sum of money to the woman provided she is in financial

[267] See http://77.42.251.205/Law.aspx?lawId=258205 [AR]
[268] See https://bit.ly/3zmKR3I [AR]
[269] See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246386 [AR]
[270] See قانون الأحوال الشخصية للسريان الأرثوذكس – دائرة الدراسات السريانية (dss-syriacpatriarchate.org) [AR]

distress, regardless of her part of responsibility for dissolution or divorce, so she may cope with her new situation after the breakup of the marital bond[271].

We conclude from the aforementioned that the law does not discriminate between women and men in terms of the right to apply for compensation. The principle relied on is that of the innocent spouse's right to file a compensation claim against the party responsible for the dissolution or annulment of the marriage. It is also important to note that according to the Law of April 2, 1951, compensation is included in the jurisdiction of the ecclesiastical courts with the consideration that an aggrieved party who failed to exercise their right to request compensation before the religious court may do so before the civil court[272]. On another hand, the spouses may – through a civil effects agreement – agree on the compensation amount to be paid from one party to the other, as they may waive compensation altogether.

The majority of the judges we interviewed agree that compensation puts women at a disadvantage, since until recently, "this issue was dependent on a traditional mentality that considered that a woman whose marriage was terminated would return to the parental home, and that her financial needs would be shared by her own family and her husband. This mentality has not really changed, and it is one of the factors that explain the low amounts of the compensation ruled for women by the Christian courts.[273]" On another hand, some judges expressed the idea that no amount of money can represent the sacrifices made by women in a marriage and the many roles they play in the family.

Concerning the Evangelical courts, a legal expert explained that "in these cases, the text is often bypassed. When ruling on compensation for the wife in the context of a dissolution decision, we do not do so only as an obligation pursuant to the marriage termination, but we also consider the current situation of the wife and the amount of harm incurred by her; for it is rare that the entire responsibility for the termination falls on the woman, even when she is the cause of the termination. We also consider her age, whether she can support herself or is without support, whether she works or not. We decide based on this information. At a certain time, our court decided that even in cases of adultery, the woman does not bear full responsibility for the marriage dissolution.[274]"

In light of the prevailing trend in religious courts to set a low compensation for women for the years of marriage and family care, and in the event of the failure of the spouses to reach an amicable agreement concerning the compensation amount, some lawyers resort to the civil courts. Some civil courts set a higher

[271] See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]
[272] According to the principle of res judicata (See footnote 253)
[273] From an interview with a Catholic court judge conducted on 24/6/2020.
[274] From an interview conducted on 18/6/2020.

amount, as they take into account the psychological, moral and economic harm incurred by women.

This was confirmed by a legal expert who stated that "religious courts most often set a symbolic compensation amount that does not represent the damage incurred, which does get counted by the civil judiciary. This means that after fifteen years of marriage where the woman spent her life serving her husband and children and sacrificed to see her children grow up, when she no longer has the health or ability to go on and has lost her chance to find work, she is rewarded with a symbolic amount by the religious courts, with no appreciation for her suffering and sacrifice, which does not guarantee a new beginning for her. On the hand, when we resort to the civil courts to demand a compensation, the judge evaluates it based on the harm incurred, and takes into account the psychological, physical and emotional damage.[275]" In this regard, we point out that determining compensation is within the jurisdiction of the religious judiciary according to the Law of April 2, 1951; however, if a compensation claim is not submitted during annulment or dissolution proceedings before the religious court, the aggrieved spouse may resort – pursuant to Article 120 of the Obligations and Contracts Code – to the civil court to request compensation[276].

Determining the Compensation Amount

Determining the compensation amount is problematic for many reasons, some related to the dominant societal culture that is embodied in the behavior of women and men, and others related to civil and religious laws.

One such problem mentioned by judges and legal experts is the socially-driven lack of open and transparent communication about financial matters between persons who are ready to marry, or even between spouses. Several judges we interviewed pointed out that in compensation cases, wives are often asked to submit documents (bills, receipts, etc...) to prove their financial rights, and they are for the most part unable to produce them because they do not exist, even when women have contributed to family and home expenses, like buying the family home for example. This obstructs the judge's ability to rule an appropriate compensation for the wife, especially that in such rulings the financial situation and capacity of the husband are taken into account. In some cases, religious courts are faced with challenges similar to those of maintenance cases, such as the husband finding ways to circumvent the law and to hide financial resources to weaken the woman's right to compensation. These practices amplify the discrimination practiced against women and their weak access to resources,

[275] From an interview conducted with a legal expert of Catholic sects onn 22/6/2020.
[276] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258197 [AR]

particularly real-estate property that for the most part remains in the possession of male family members.

The other problem concerns the legal regime that governs the finances of the spouses in cases of marriage termination. Here we would like to point out initially that the system applied according to civil laws is 'separation as to property', whereby each spouse retains ownership of what they owned and earned during the marriage, unless they agree otherwise upon contracting marriage – or subsequently – in a written agreement. However, some religious legislation addresses the issue of spousal financial management[277], and stipulates that the spouses may agree on their financial affairs through an independent contract, although this was not included in the jurisdiction of religious congregational authorities by the Law of April 2, 1951.

A (woman) legal expert explained that "the absence of a special legal regime that regulates financial relations between spouses does not prevent the spouses from agreeing to establish a consensual regulation of these relations in their marriage contract. The issue is not doctrine or worship-related, whether for Christians or Muslims, it is an issue of the financial interests of the spouses. Accordingly, a contract regulating financial relations is considered valid, provided it does not violate doctrinal principles, public morality or the public order. Therefore, it is possible to resort to civil justice for its implementation.[278]" Accordingly, the spouses can contract an agreement to regulate financial relations between them, to be executed as per the provisions of civil law. The main question this raises is "what's the use of including these articles in personal status laws, since these cases are within the exclusive jurisdiction of civil law?" This brings us back to the question of Parliament's duty to oversee the laws issued by the religious sects and to verify their compliance with "the principles of public order and the basic rules of the Lebanese State[279].

[277] Article 39 of the Personal Status Code of the Catholic sects stipulates that "each spouse shall retain ownership of their money and the right to manage it and benefit from it as well as the fruit of their labor, provided they do not agree otherwise by writing." See https://bit.ly/3zmKR3l [AR]. Article 29 of the Greek Orthodox Personal Status Code stipulates that "Any financial agreement between the spouses remains their own law and cannot be amended after the marriage except by mutual agreement between the two parties, and in the event of a dispute between them it shall fall within the jurisdiction of the competent judiciary." See http://77.42.251.205/LawView.aspx?opt=view&LawID=244776 [AR]. Article 37 of the Personal Status Code of the Syriac Orthodox sect stipulates that "Each spouse may be independent in owning and managing their personal fortune, unless they agree otherwise when contracting marriage or by virtue of an independent contract, provided it does not contravene the general ecclesiastical code in which case it shall be considered invalid." See قانون الأحوال الشخصية للسريان الأرثوذكس – دائرة الدراسات السرياني. (dss-syriacpatriarchate.org) [AR]. Article 48 of the Coptic Orthodox Personal Status Code stipulates that "the marital bond does not obligate combining financial rights, rather they remain the separate responsibility of each spouse." See http://www.legiliban.ul.edu.lb/LawView.aspx?opt=view&LawID=246386 [AR]

[278] From an interview conducted with a legal expert on 18/6/2020.

[279] Article 33 of the Law of April 2, 1951, on "the duties of the sects covered by the provisions of this Law." See http://77.42.251.205/LawView.aspx?opt=view&LawID=258197 [AR]

Lastly, it must be mentioned that to this date, no such case was brought before the civil courts. However, nothing prevents it from happening in the future[280].

Compensation Awarded to the Man

The cases where the courts award the man compensation are rare. A judge we interviewed said that recently, a man was awarded a compensation of $25,000 to be paid by the woman who married him then refused to consummate the marriage because she loved another man. Her husband had paid a substantial amount of money for the wedding celebration. The judge added: "We consider that what is rightful for a man is rightful for a woman; meaning that his right to sue, like hers, is upheld. Accordingly, the man has a right to compensation, exactly like the woman has a right to compensation when the responsibility of marriage termination is the man's." He concluded by saying: "I believe that these issues should be considered by the civil judiciary. Religious judges are specialized in ecclesiastical law, which is based on mercy and the good of souls. When civil issues are raised, the civil justice system should hear them[281]."

The Mechanism Governing Maintenance and Compensation Decisions

The jurisdiction of religious congregational authorities – defined by the Law of April 2, 1951 – does not include implementation issues. Article 29 of the law stipulates: "Enforceable religious rulings and decisions are enforced by Law Enforcement Departments in accordance with the civil procedural laws related to implementation, and the religious congregational authorities do not have the right to halt the implementation of these rulings and decisions.[282]" Article 828 of the Code of Civil Procedure stipulates: "The Enforcement Department shall be in charge of implementing rulings, decisions and orders issued by the different courts (...)"[283] Hence, religious sectarian authorities have no procedural authority, and the enforceable decisions issued by religious courts are entrusted to Enforcement Departments as per the Code of Civil Procedure.

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[280] What is currently being raised is the possibility of distributing the assets between the spouses, in the framework of civil marriages contracted abroad, in two cases: the first is that the two spouses agree on community of property (joint ownership) at the time of the marriage contract. In this case, when dissolution procedures are completed, would the agreement contracted between the spouses be applied, or would it be considered in contravention of the public order? In the second case, the spouses do not reach an agreement on the separation of property, and so ordinary law is then applied (the community of property system). In that case, when one of the parties ask for the implementation of the ruling, can the judge apply the principle of community of property, although it contravenes the public order as it is in force in Lebanon?

[281] From an interview conducted on 29/6/2020.

[282] See http://77.42.251.205/LawView.aspx?opt=view&LawID=258197 [AR]

[283] See http://77.42.251.205/Law.aspx?lawId=244565 [AR]

Concerning maintenance, when the debtor refuses to execute the maintenance order in favor of the spouse and the children, it is possible to ask for the incarceration of the debtor as per Article 997, clause '3' of the Civil Code of Procedure. It is also possible to request provisional or executive seizure of the debtor's assets in order to secure the rights of the claimant[284].

Conclusion

In both the Muslim and Christian sects, a 'disobedient" wife forfeits her right to maintenance.

On the Christian side, there is evidence of a trend among the majority of religious judges to set a low maintenance amount for the wife, and even to eliminate it altogether if she is affluent or is engaged in income-generating work. We also notice a trend among some judges to amend the approach to maintenance, and to start applying it to women and men without examining the wage gap between them.

As for compensation, most judges tend to rule a symbolic amount for the woman who is not responsible for the annulment or dissolution of the marriage. Most of them consider that no compensation can give the innocent wife what she deserves after the breakup of the marital bond, and the main criterion remains the husband's financial and economic status.

Reform at the level of economic rights depends on the Church judges and legislators changing their view on women. When ruling for compensation, it is essential to consider the situation of women who were never engaged in economic activity outside the home during the marriage, regardless of the responsibility of each spouse in the termination of the conjugal bond. Concerning compensation, reform also lies in judges changing their view of women and of their right to a more than symbolic compensation for their years of service and the sacrifices they made for their families.

On the Islamic side, the majority of our interviewees see no structural discrimination against women in the division of marital rights. They admit that there are problems, but they blame them mainly on the prevailing practices and the failure to apply the provisions and values of Islam. A number of them call for developing a process of addressing spousal and child maintenance cases as well as mahr cases based on the financial situation of both spouses, and they also see the need to facilitate the procedures of obtaining these rights by accelerating maintenance cases. They consider that all the Sharia judges should expedite maintenance because of the length of trials, and that the mechanisms of implementing maintenance rulings should be facilitated for the judiciary.

[284] Ibid

7. Inheritance

• International Framework

The Convention on the Elimination of All Forms of Discrimination Against Women does not explicitly address equal rights to inheritance, but the topic applies to a number of Articles of the Convention.

• National Framework

According to the Lebanese Constitution, married and unmarried women enjoy equal rights with men in entering contracts, owning and managing property. However, it is usually the male family members who make final decisions about assets, even when owned by a woman. Real estate ownership is predominantly registered to males, even if this contravenes the inheritance laws stipulated in Islamic Law or Civil Law (for non-Islamic sects), in order to preserve wealth within the family[285].

Under Ottoman rule, all the sects were governed by the provisions of Islamic Sharia following the Hanafi doctrine, which was the official doctrine of the Empire, except when it came to inheritance in state domain lands (amiri lands) and endowed lands, which are lands controlled by the Ottoman state and for which there may be a right of disposal by individuals in exchange for payment[286]. The lands were governed by a special regime stipulated in the law of February 21, 1912.

After World War I (1814-1918), when Lebanon was placed under French Mandate (1920-1943) and until French forces fully withdrew in 1946, the Hanafi school of jurisprudence was no longer the public law that governed all the Lebanese.

On December 27, 1926, the French High Commissioner of Greater Lebanon, following the French State's wish, issued Legislative Decree 2503 ratified by French High Commissioner as per a decree issued on 30/1/1926, which recognized the Jaafari doctrine. Inheritance in the Shiite sect became governed by the provisions of this school of jurisprudence. Concerning the Druze Unitarian sect, a law was issued on 9/12/1930 which granted Druze courts a number of privileges. Starting 2/2/1948, the Druze sect's own personal status code came into effect, along with Hanafi jurisprudence in all matters not codified in the personal status code[287].

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[285] Depriving women from inheriting land and real estate prevents her from taking out bank loans, which as a result limits her capacity to make investments. See Unequal and Unprotected: Women's Rights Under Lebanese Personal Status Laws, Human Rights Watch, 2015.

[286] *Amiri* lands are properties that are officially owned by the state but where non-state actors can acquire the right to use and benefit from them.

[287] See https://www.lawyerslb.com/user/romeomarwan/article-display?id=44 [AR]

As for the non-Islamic sects, prior to the issuance of the 1959 Law, they were governed by the provisions of the Islamic Hanafi school of jurisprudence, except for wills and testaments, which were subject to the Inheritance Law for non-Muhammadans issued in 7/3/1929.

• In the Christian sects

The Inheritance Law for Non-Muhammadans was issued in 1959, which stipulated the principle of total equality between women and men, whether in terms of their right to inherit or their share of inheritance (Article 15). Yet in reality, customs and traditions still weigh heavy, whereby measures are taken so that males inherit larger portions, or even so that women are deprived of their inheritance rights.

• In the Islamic sects

The provisions for inheritance differ among the three Islamic sects in Lebanon, including different provisions for the inheritance of the wife and that of the daughter. When it comes to the remaining female heirs, the mother, sister, paternal aunt, maternal aunt, the daughter of the son and the daughter of the daughter, there is no discrimination between women and men. There is discrimination however between the son and the daughter and between the Muslim wife and the *kitabi* (belonging to the People of the Book) wife, as the latter does not stand to inherit from her Muslim husband.

The causes for inheritance in Islam are three[288]: blood relation (*al-qarabah*), valid marriage (*nikah bi 'aqd sahih*), and legal kinship through manumitting (*al-wala'*[289]).

The different schools of Islamic jurisprudence agree that upon distribution of the inheritance, the first considered are the primary heirs (ashab al-furud), who are the heirs whose shares of inheritance are estimated in the Qur'an, the Sunnah or by the universal and infallible agreement of either the Muslim community as a whole or Muslim scholars in particular (*ijma'*)[290]. What remains of the inheritance is distributed among the secondary heirs, or 'residuary heirs' (*al-'asabat*[291]).

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[288] See *Sunni Jurisprudence*, Alsayyid Sabeq, volume 3, p.606 [AR] and Jurisprudence of the Five Schools, Muhammad Jawad Mughniyyeh, p.498 [AR]

[289] *Al-wala'* refers to a bond arising from manumitting a slave, termed *wala' al-'atq* or to *wala' al-mawla*, which is a contract between the previous slave owner and the manumitted slave (al-mawla) that allows each of them to inherit the other in the event that the deceased has no heirs.

[290] The primary heirs are 12: 4 males (the father, the father's father, the half-brother by the same mother and the husband) and 8 females: (the wife, the daughter, the blood sister, the half-sister by the same father, the half-sister by the same mother, the daughter of the son, the mother and the grandmother).

[291] A man's *'asaba* are the male agnates who surround and protect him. In inheritance terms, a *'asaba* is every heir who does not have a preset share, and who takes what is not inherited by the primary heirs. If nothing of the inheritance remains, then they inherit nothing, or alternatively they inherit everything left by the deceased in the absence of primary heirs.

In the Sunni sect, residuaries are divided into two groups: residuary legatees by blood relation (*'asaba nasabiyyah*), the relatives of the deceased with no female relative tying them to the deceased, and residuaries by special cause (*'asaba sababiyyah*), for example the bond created through manumitting a slave between the two parties - which no longer applies today.

As for residuaries by blood relation, they are divided into three categories:

- **Residuaries in their own right** *(al-'asaba bil-nafs*): meaning the independent secondary heirs who are such in all cases and circumstances. They include the male agnates of the deceased, ascendants or descendants no matter how up and down the chain they are with no female relation between themselves and the deceased, and who are not primary heirs but follow them in line in entitlement to the inheritance, ranked by priority according to the nearest degree: first the sons, then the father, then the brothers, then the uncles of the deceased. For example, if a husband dies leaving a wife and son behind, the wife inherits one eighth as her primary heir portion, and the son inherits the rest as residuary in his own right.
- **Residuaries through another** (*al-'asaba bil-ghayr*): meaning the female agnates with a prescribed inheritance who have with them a residuary in his own right of the same degree of relation to the deceased. For example, a daughter is a primary heir entitled to half the inheritance if she is an only child, and to two-thirds if she has one sister or more. If the only daughter or the daughter and her sisters have a blood brother, the daughters become residuaries through him. For example, if a man dies leaving a wife, a son and a daughter behind, the wife inherits one eighth as her primary heir portion, and the son and daughter are the residuaries (meaning the daughter is no longer considered a primary heir but a residuary through her brother, who is a residuary in his own right). This is based on the following Qu'anic verse: "Allah directs you concerning your children: for a male there is a share equal to that of two females." (*Surat Al-Nisa'* (Women) 4:11)
- **Residuaries together with others** (*al-'asaba ma' al-ghayr*): meaning the female who becomes a residuary when grouped with another female. This is restricted to two cases only: the blood sister(s), and the half-sister(s) from the same father. They both become residuaries together with another: with the daughter of the daughter of the son. So, what is not inherited by the daughter or the daughter of the son goes to the blood sister or the half-sister by the same father. For example, if the father dies leaving a wife, a daughter and a sister, the wife inherits one eighth of the inheritance as her primary heir portion, the daughter inherits half being her primary heir portion, and the blood sister takes what remains as residuary together with the daughter.

If a husband has more than one wife, the wives inherit equal shares. According to the Hanafi school, a wife's inheritance from her husband depends on one of two possible situations:

The first situation: She inherits one eighth if a son exists, whether her own or from another wife.

The second situation: She inherits one quarter in the absence of a male heir.

This is based on the following noble verse: "For you there is one-half of what your wives leave behind, in case they have no child. But, if they have a child, you get one-fourth of what they leave, after (settling) the will they might have made, or a debt. For them (the wives) there is one-fourth of what you leave behind, in case you have no child. But, if you have a child, they get one eighth of what you leave, after (settling) the will you might have made, or a debt." (*Surat Al-Nisa'* 4: 12)

Concerning the primary inheritance of the 'direct' daughter (*al-bint al-salbiyya*)[292], it is regulated along three cases:

First: the daughter who has no sister/s inherits half provided she is not made a residuary through a male agnate of her degree, such as a blood brother.

Second: Two daughters and more will get two-thirds shared equally among them provided they are not made residuaries through a male agnate of their same degree (a blood brother).

Third: she inherits based on the "for a male there is a share equal to that of two females" rule if she is a residuary through her brother.

The verse relied on in these cases is the following: "Allah directs you concerning your children: for a male there is a share equal to that of two females. But, if they are (only) women, more than two, then they get two-thirds of what one leaves behind. If she is one, she gets one-half."[293] (Sur*at Al-Nisa'* 4: 11)

[292] *Al-bint al-salbiyya*: every female daughter born directly to the deceased without mediation. A daughter by mediation would be the daughter's daughter downwards through the succession chain, or the daughter of the son downward through the succession chain.

[293] The full text of verse 11 of *Surat Al-Nisa*': "Allah directs you concerning your children: for a male there is a share equal to that of two females. But, if they are (only) women, more than two, then they get two-thirds of what one leaves behind. If she is one, she gets one-half. As for his parents, for each of them, there is one-sixth of what he leaves in case he has a child. But, if he has no child and his parents have inherited him, then his mother gets one-third. If he has some brothers (or sisters), his mother gets one-sixth, all after (settling) the will he might have made, or a debt. You do not know who, out of your fathers and your sons, is closer to you in benefiting (you). All this is determined by Allah. Surely, Allah is All-Knowing, All-Wise."

A mother inherits as follows:

- **First,** if primary heirs exist (a son, a daughter, a son of the son or the daughter of a son downwards through the succession chain), or if there are two or more siblings (whether blood siblings or half-siblings by the father or the mother, male or female), she receives one sixth of the inheritance, based on the verse "As for his parents, for each of them, there is one-sixth of what he leaves in case he has a child." (*Surat Al-Nisa'* 4: 11) Further along the verse continues: "If he has some brothers (or sisters), his mother gets one-sixth."
- **Second,** in the absence of the heirs mentioned in the previous paragraph, and if the deceased son has no wife or the deceased daughter has no husband, then the mother receives one-third of the inheritance: "But, if he has no child and his parents have inherited him, then his mother gets one-third." (*Al-Nisa'* 4 :11).
- **Third**, the mother of the deceased inherits one third of what remains after the spouse of the deceased has been allotted his/her share as primary heir, provided there are no descendants and no siblings (mentioned above in the first case), in the event that:

  a- A husband dies and leaves a mother, a father and a wife.

  b- A wife dies and leaves a mother, a father and a husband.

In the Druze Unitarian sect, if the deceased has daughters but no sons, the daughter(s) is considered a residuary in her own right and inherits everything that her father left behind after the primary heirs have received their share. If there is more than one daughter, they receive equal shares[294].

In the Shiite sect, the Jaafari jurisprudence school classifies heirs into categories following a system of priority, whereby the advanced categories cancel the one following them. The inheritance cannot pass from one category to the other if a person belonging to the category that has priority exists. For example, if a person dies leaving a mother and a brother, the mother inherits everything because she has priority over the brother. The closest relation to the deceased inherits without discriminating between males and females, but it remains that within the same category, the rule of "for a male there is a share equal to that of two females" applies. These categories of inheritance are three:

- **The first category** includes the parents, the children, the children's children, etc... however if a 'direct' child exists, the grandson or other grandchildren do not inherit.

[294] See Articles 17 & 18 of the amendment to the Personal Status Code of the Druze Unitarian sect at http://77.42.251.205/LawView.aspx?opt=view&LawID=274009 [AR]

- **The second category** includes siblings (male and female) and if there are none, then their children, paternal and maternal grandfathers and grandmothers no matter how far up in the ascending chain. If the brother has children or children's children, the closest child in relation to the deceased prevents the one further in the line from inheriting.
- **The third category** includes paternal and maternal uncles and aunts, and if there are none, then their children. The closest in the line of succession inherit, meaning that cousins on the paternal or maternal uncle or aunt's side do not, if the paternal or maternal uncles or aunts are present, except for one case stipulated in jurisprudence books.

There are special provisions for a wife's inheritance. For example, some assets cannot be inherited by her in any way, neither in themselves nor their value/price. Generally speaking, a wife may not inherit the land over which the house stands or the land of the farm, among others. Any land owned by the husband may not be inherited by his wife, nor can she inherit its value or price[295].

With regard to the issue of the man obtaining twice the inheritance share of the woman in all the Islamic sects, clerics explain it by the fact that the man bears the responsibility of providing the home, necessities and financial support to his wife, children and sisters.

*An important matter is the difference between the Shiites and the Sunnis when it comes to daughters inheriting when they do not have male siblings.

In the Sunni sect, if the deceased has only one daughter, she receives half of the inheritance, based on verse 11 of *Surat Al-Nisa'* (4): "If she is one, she gets one-half." If the deceased has more than one daughter they receive two-thirds of the inheritance, and what remains of it goes to the males agnate residuaries.

In the Shiite sect – based on the aforementioned – the category with priority negates the category that follows it. If a man dies leaving daughters only, they receive the entire estate.

Muslim clerics, Sharia judges and Muslim jurists express a cautious position on amending inheritance provisions, especially when it comes to child inheritance, which they attribute to the existence of a religious determinant represented by the noble verse: "for a male there is a share equal to that of two females." (*Al-Nisa'* 4 :11) In a case like this where an explicit text exists, they deem that they may not speak of equality between the sexes (the matter of child inheritance) or of amending the provisions in force, since this would be a transgression against the Qur'anic text. They insist on two points:

[295] See http://aqaedalshia.com/ahkam/erth/index.htm [AR]

First, that the law is not unfair to women, since the male family members are obligated to support the women in the family should the latter be in financial distress, on the basis that "the disadvantage is in the advantage"[296]. However, there is no enforcement mechanism for this. For instance, a sister cannot sue her brother if he fails to support her financially after receiving twice her inheritance from their parents.

On the other hand, another position calls for reinterpreting the distribution of inheritance shares. The proponents of this consider that the provisions for inheritance belong to the category of explanatory provisions or complementary rules, not peremptory norms, which implies that the heirs may agree on a consensual distribution of the portions, notwithstanding these provisions. The holders of this opinion believe that jurists should be guided by the spirit of Islam on the path of justice, equality, raising the status of women and giving them their rights without discrimination, and that they should issue *fatwas* towards achieving equality between the sexes in the matter of inheritance. They believe that the legislative power can be given the authority to establish a new inheritance regime that does not discriminate between the beneficiaries of the inheritance. Inheritance is after all a social issue governed by the values of social life according to Islamic rationale, in the framework of the aims of Sharia and its principles, and this makes of equality a religious legal duty that Islam calls for upholding[297].

[296] "The disadvantage is in the advantage", which can be flipped to "the advantage is in the disadvantage" is a proverb spoken to someone who is enduring damage or loss in exchange for benefits or profit.

[297] From an interview conducted on 16/10/2020 for the purpose of this report. Along similar lines, Tunisian thinker Mohammad Ben Jamaa says: "Equal rights in inheritance are among the aims of Sharia towards achieving social justice and the equal distribution of wealth. Justice here takes many aspects under consideration: the weight of social responsibility, familial responsibility, income, expenses, and others." See https://bit.ly/3Q2q4HU [AR]

- **In Egypt**, the Constitution stipulates guaranteeing the heir's right to receive their inheritance in order to counteract social constraints on women's right to inheritance[298]. Law 219 was issued in 2017 to amend the provisions of inheritance and include penalties to whoever abstains for delivering the inheritance to the heirs or intentionally abstains from delivering title documents to them.
- **In Jordan**, rules were introduced to restrict voluntary waiving of inheritance portions in order to prevent women from being pressured to give up their shares of it. In 2001, the Office of the Supreme Shari'a Judge issued a decree that prohibits the registration of the withdrawal (*takharuj*[299]) from the inheritance until at least four months have passed from the date of death, and not before a detailed statement of the deceased's assets is submitted, signed by all the heirs and ratified by the competent local agency, as well as a report including the actual value of the inheritance shares being withdrawn from, signed by three experts.
- **In Tunis**, the Personal Status Code was amended pursuant to law 77 of 1959 with the purpose of empowering daughters to benefit from rights to the entire estate if they have no male siblings. Additionally, after the issuance of a judicial ruling in 2009, it became possible for non-Muslim women to inherit from their Muslim husband. And in 2018, the Presidency of the Republic presented a legislative initiative to revise a number of inheritance provisions in order to ensure equal inheritance shares for male and female siblings; it was submitted to Parliament but has not been ratified until today. The initiative was in response to the request of the Individual Freedoms and Equality Committee.

Concerning the provisions for inheritance in the Sunni sect, a will bequeathing to a non-heir is lawful only up to one-third of the estate; and in case of a will in favor of an heir, it is only permissible with the consent of all the heirs. Jaafari legislation in turn permits a will that bequeaths to an heir or a non-heir within the limit of one-third of the estate. If the will exceeds this limit in favor of a specific heir, then the consent of all the heirs is required[300] In the Druze Unitarian sect, a bequest to the wife, the daughter or to other women is permissible, as well as to an heir or others. The mother or another woman may be made supervisor of the will alongside the trustee, and the mother has priority over other trustees. If a

[298] See https://bit.ly/3RihiXa [AR]

[299] *Takharuj* is the agreement between the heirs on some of them withdrawing their claim to the estate in exchange for a determined compensation.

[300] See https://www.sistani.org/arabic/book/13/694/ [AR]

testator writes their will, then marries and has a child; or if they write a will after marrying but prior to having a child, and then has a child, their will is voided and their estate is distributed according to the prescriptions of Sharia, taking into account the provisions of Article 169 of the Unitarian Druze Personal Status Code. If the testator does not have a child, their will is executed after the wife or husband receive their share as primary heirs.[301]

Conclusion

In the Islamic sects, amending the legal provisions for inheritance is particularly complicated, with the majority of religious authorities defending them as being fair to women. Most of our interviewees attribute this to the social system that affects women's access to their share of inheritance, as well as to women not demanding their rights forcefully enough. According to them, discrimination is not caused by the legal texts regulating inheritance, but by social customs that drive women to waive their shares or to not claim them.

In the Christian sects, the civil courts handle inheritance and base themselves on the principle of women and men's equal rights to inheritance and its portions. The main problem remains the prevailing cultures that prioritizes male family members by giving them greater shares of the estate or even by depriving women of their own shares.

[301] See Articles 16 & 17 of the amendment to the Personal Status Code of the Unitarian Druze sect at http://77.42.251.205/LawView.aspx?opt=view&LawID=274009 [AR]

Conclusions

Conclusion

The consensual democracy model adopted by Lebanon since its foundation has led to the historically recognized religious sects being accorded a wide degree of autonomy in the fields of education and personal status. Starting in 1926, Lebanese legislation gave a legislative and judicial mandate to these sects, with the main problem being that over time, the Lebanese State and Parliament abandoned their fundamental legislative duty towards protecting the rights and freedom of individuals living on Lebanese soil, as well as their duty to monitor and ratify - based on these standards - the legislations proposed by the sects. This has contributed to widening the discrimination gap between women and men and to an increase in violence against women under multiple personal status codes.

This has also contributed to enshrining the privileges enjoyed by men in the various personal status cases, such as guardianship, custody, trusteeship, maintenance and inheritance, due to religious interpretations influenced by a patriarchal and masculinist culture. Various sectarian provisions discriminate against women and perpetuate their standing as second-class citizens who do not enjoy equal rights with men.

Despite Lebanon's international commitments and the periodic reports it submits to the different organs and committees of the United Nations, the Lebanese State continuously invokes the successive political and economic crises to justify its failure to amend current laws (whether civil or religious) or to implement them in a way that achieves equality between women and men and upholds the rights and dignity of women and girls.

But human rights are indivisible, and cultural and religious rights cannot be prioritized at the expense of women's rights.

Based on our report, and in addition to the suggestions included in its three chapters and the practical recommendations published in the White Paper (See the Appendix), we would like to put forth some elements that may be used strategically towards bridging this gap and correcting the flaws that hinder the achievement of equality between the sexes.

* At the Level of Policies and Laws

a- Reassigning Personal Status Matters to Parliament

Judge Dr. Chadi Hajal writes: "The right of religious sects to regulate their affairs is settled and undisputable, but it must intersect with the legislative sovereignty of the State. This means that their rights remain outside the framework of the State until Parliament ratifies them through Constitutional and legal procedures, putting them into effect." In his opinion, the State may, by implementing the Constitution and the Law, "introduce civil legislation alongside sectarian legislation, in accordance with its sovereignty, authority and autonomy. Nothing prevents widening the scope of civil law, as the Constitution did not deprive constitutional authorities of their absolute law-making power; it in fact allows civil authorities to conduct the required reforms and to define their scope and mandatory nature." He adds that the authorities, particularly the legislative power, must enjoy "some degree of power in the face of the various forces present on its territory, without monopolizing power, for it is in charge of legislation and of overseeing the various forces' implementation of the Law."[1]

The State's right to legislate pertains to sovereignty, and it exercises it on its territory and on all those in it without exception, through the constitutional institutions. The legal texts regulating the religious sects do not limit or in any way waive the State's role or function.

b- The State's Fulfilment of its International Obligations

The Constitutional amendment of 1990 re-asserts the basic freedoms and rights that would lead to instating the principle of equality. Lebanon also adhered to numerous human rights standards. The core principles of Lebanon's obligations requires a number of measures to be taken, the most important being: combating all forms of discrimination against women, pledging to integrate the principle of equality between men and women into the legislative process, and taking the necessary legislative or other measures that include the required penalties to prohibit any discrimination against women and to change or abolish the existing discriminatory laws, systems, customs and practices, in addition to repealing all national penal provisions that discriminate against women[2]. The State is also directly responsible for protecting and respecting

[1] See Judge Chadi Hajal's paper Legislative Power and Personal Status: Between Democracy and Sectarianism, included in the Appendix to the Arabic version of the present report at https://adyanfoundation.org/wp-content/uploads/2022/12/WRL-Report-Size-A4-308-pages-Final-DIGITAL-HR.pdf [AR] (pp 192-198)

[2] See The Convention Against All Forms of Discrimination Against Women (CEDAW) at https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf [ENG]

women's right to equality, as enshrined in the Constitution. The State is also liable for any breach of its obligations, including if it has invested– through its Constitution, its legislation and its judicial decisions – a court, council or person, in a religious context, with the authority to exercise State jurisdiction in Family Law. This needs to be guaranteed at the legislative and judicial levels.

c- Guaranteeing Women's Access to Justice

This requires work at various levels. First, justiciability requires women's unhindered access to justice and their ability and empowerment to claim their rights. According to General Recommendation 33 on women's access to justice, "Accessibility requires that all justice systems, be secure, affordable and physically accessible to women, and be adapted and appropriate to the needs of women". In the same context, "Good quality of justice systems requires that all components of the system adhere to international standards of competence, efficiency, independence and impartiality and provide, in a timely fashion, appropriate and effective remedies that are enforced and that lead to sustainable gender-sensitive dispute resolution for all women. It also requires that justice systems be contextualized, dynamic, participatory, open to innovative practical measures and gender-sensitive". Also, "provision of remedies requires that justice systems provide women with viable protection and meaningful redress for any harm that they may suffer."[3] The State should provide coordination mechanisms between the religious and the civil judiciaries for this purpose.

* At the Cultural Level

a- Rethinking the Family, Gender Roles and Stereotypes and their Impact on Justice

A new conception of the family and its internal dynamics is needed at the level of religious courts as well as civil law. Families may look different and be conceived of differently from one country to another, or even from one region to another within the same country. But no matter how they look and regardless of the legal system, religion or customs of a country, the treatment of women within the family (either in the law or in private life) should be consistent with the principle of equality and justice for all; also, there should be no discrimination in the private

[3] See the General recommendation No. 33 on women's access to justice https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FGC%2F33&Lang=en [ENG]

and public spheres, and in all legal areas. We need to revise the nurturing role exclusively assigned to women as well as the sovereignty granted to men, which are represented in custody, guardianship and trusteeship laws in particular, both in sectarian and civil laws. We refer here in particular to peremptory paternal guardianship stipulated in Article 974 of the Islamic Civil Law Code, still in force to this day. These gender stereotypes undermine women's rights in general, and their family rights in particular. We cannot resort to such considerations as 'protecting and strengthening the family' to justify family dynamics that do not fulfil principles of equality between women and men, girls and boys. It is unacceptable to focus on the preservation and non-fragmentation of families in exchange for keeping in place unfair and sometimes violent dynamics. Violence comes in various forms: sexual, economic, psychological and moral, in addition to physical violence that has made countless female victims.

Stereotypes and discrimination that are part of the justice system have a far-reaching impact on women's access to their full human rights. Judges often adopt strict criteria of what they consider to be appropriate behavior for women, and they penalise those who do not conform to these criteria. Women must be able to rely on a justice system devoid of preconceived notions and stereotypes, and on a judicial authority whose impartiality is not prejudiced by bias. Eliminating judicial stereotypes from the justice system is critical for achieving justice and equality for women.

b- Revising Religious Interpretation and Discourse

The geographical, temporal and cultural context plays an important role in the exegesis of religious texts, given that the scholars conducting it are the children of their era and culture. Both Islamic fiqh and Christian ecclesiastical law were shaped by men who lived in patriarchal and masculinist cultures. Therefore, it is important to rid religious texts of this cultural influence and to re-interpret them in light of the values of justice and equality between women and men. This initiative by religious scholars, men and women of both religions, started in the previous century on a global level, and must be taken into consideration in order to renew laws and religious discourse. Some may think that keeping matters as they are amounts to a defense of religion, whereas in fact it is merely a defense of a particular interpretation that privileges men at the expense of women; when the fundamental message of religions is one of equal human dignity and equal rights.

c- Educating Women

It is crucial to educate and raise the awareness of women. A woman who is not aware of her rights cannot demand them. Men's awareness of women's rights is also indispensable to ensure non-discrimination and to achieve equality.

Finally, we hope that this report can mark the beginning of a path towards reform, not only at the level of religious personal status laws and courts, but also at the level of public policy and culture in Lebanon; a reform based on the belief in justice and the commitment to rejecting injustice, in the name of inclusive religious and human values.

Appendix

Appendix 1

White Paper Resulting from the Roundtable Held in the Framework of the Project

"Women, Religions and Human Rights in Lebanon"

2022

Introduction

The Lebanese Constitution was adopted in 1926 and has from the outset granted the historically recognized religious sects legislative and judicial powers over personal status matters, such as marriage and its effects. Article 9 of the Constitution stipulates that the state "shall also guarantee that the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected." The Constitution also asserts the principle of equality among all the Lebanese, with Article 7 stipulating that "All Lebanese shall be equal before the law. They shall equally enjoy civil and political rights and shall equally be bound by public obligations and duties without any distinction." The Preamble to the Constitution amended under the Taif Agreement in 1990 made it clear that Lebanon "is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception."

In 1996, the Lebanese Republic ratified the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), albeit with reservations about a number of obligations included in the second item of Article 9, related to recognizing women and men's equal rights when it comes to passing on their nationality to their children. It also has reservations about items c, d , f & g of Article 16 on the spouses' equal rights and responsibilities during marriage and after its dissolution.

Although Article 7 of the Constitution asserts the principle of equality among all citizens as well as Lebanon's international obligations, the legislator did not fulfill his role in implementing the Constitution and enacting laws that embody the equality of all Lebanese people before the law. In fact, the personal status laws in force include discriminatory provisions against women, especially in

matters of custody, guardianship, marriage age and the economic rights during or after a marriage.

It is in this context that Adyan Foundation's Rashad Center for Cultural Governance has initiated, in partnership with Danmission and with the support of the Danish Ministry of Foreign Affairs, the "Women, Religions and Human Rights in Lebanon" project, which spanned over three years, from 2019 to 2022.

Within the framework of this project, a 2 day roundtable was organized in December 2021 to discuss public policies and the possible reforms of the different religious personal status laws in Lebanon, in parallel with the efforts undertaken over the years by Lebanese civil society to develop a civil personal status code.

The aim of the roundtable was to try and bring into clear focus ideas around possible reforms to religious personal status laws currently in effect, as well as to the mechanisms of the fifteen Muslim and Christian religious courts, through opening a dialogue between religious, political, legal and civil actors, founded on core common values and shared social responsibility. This initiative seeks in fact to go beyond the sharp polarization between these different parties, to find common ground among them and to open up spaces of cooperation for the benefit of all, and of women in particular.

The roundtable brought together civil and religious judges from the different sects along with clerics (men and women), lawyers, human rights defenders and civil society activists. A number of Parliament Members, women and men, were also invited, but they did not attend.

This White Paper presents a summary of the recommendations made by the participants over the two days of the roundtable. They are grouped into 4 main axes: Age of marriage; custody, guardianship and trusteeship; divorce, financial rights and inheritance; and lastly the religious courts, in addition to general recommendations. The latter are organized according to the body they are addressed to: Parliament, the Executive Power, religious leaders and courts, and civil society organizations.

1st Axis: Age of Marriage

In recent years, efforts have been made by some sects to raise the age of marriage, while others have kept it below the legal age of majority, or have made exceptions allowing marriage for girls under the age of 18. It is a proven fact that early marriage causes grievous harm to girls, whether in terms of physical or psychological health. It is also greatly detrimental to their education because

in most cases a minor is forced to leave school when she is married off, or gets expelled when she gets pregnant. On the economic and social levels, girls who drop out of school often lack the appropriate education and necessary skills to participate in economic life and which would have otherwise allowed them to raise their own and their family's living standard. This practice also undermines the autonomy of women and girls and restricts their capacity to make decisions about their lives. It is a major factor in perpetuating gender-based inequality, poverty and violence. Child marriage is considered a form of gender-based violence, and it can also perpetuate other forms of violence, as the girls who marry before the age of 18 are more vulnerable to physical, sexual and emotional violence than those who marry later on in life.

In the Christian sects, written laws still allow the marriage of minors, even if this is not actually implemented. It is thus necessary to amend these laws to reflect what happens on the ground. In the Catholic Church, exceptions are also maintained whereby a minor may be married with the approval of a Bishop.

On the Islamic level, exceptions allow for the recognition of marriage contracts concluded by clerics outside the framework of Sharia Courts.

As for Civil Law, while law 522 was amended, laws 505 and 518 remain in effect, and allow a rapist to marry his victim, as the penalty for the rape is lifted when the perpetrator marries his victim if she is between 16 and 18 years of age.

Age of Marriage According to the Personal Status Laws Currently in Force in Lebanon		
Sect	**Females**	**Males**
Sunni	18 (exceptionally 15)	18 (exceptionally 15)
Shiite and Alawite – Not codified	Starting at the age of majority which is 9	Starting at the age of majority which is 15
Unitarian Druze	17 (exceptionally 15)	18 (exceptionally 16)
Catholics	14	16
Greek Orthodox	15	17
Armenian Orthodox	15	18
Assyrians	15	18
Coptic Orthodox	16	18
Syriac Orthodox	16	18
Evangelists/Protestants	16	18
Latin	18	18

RECOMMENDATIONS

To Parliament:

- Adopt a legal definition of childhood.
- Issue a law in Parliament that specifies the age of 18 as the minimum age for legal marriage, and if an exception is adopted, it must be conditional on the approval of the Civil Juvenile Court Judge.
- Issue a law for the protection of children in accordance with international standards, and strengthen the mechanisms of protection from all forms of violence against children.
- Implement a comprehensive amendment of the Penal Code with an approach centered on the protection of women, girls, and all members of society, and repeal all provisions that allow lifting the penalty for a rapist who marries his victim.
- Issue the implementation decree for the law amended in 2011 on compulsory and free education after the age of 15, or at least up to the Brevet level (Intermediate School certificate).

To religious courts and institutions:

- Organize psychological, legal and health coaching sessions for individuals about to get married, to take place in the religious courts and under the supervision of the state.
- Add to the medical clearance currently required for any marriage, the requirement for psychological clearance.
- Refer every case considered by religious courts as an exception that allows for the marriage of minors to specialized coaching centers.
- In Christian sects, raise the legal age of marriage to match the age of majority and the facts on the ground.
- In Muslim sects, adopt the criteria of adulthood rather than physical maturity, and impose tougher penalties on clerics who conclude these marriages outside the framework of the courts (the Sunni, Shiite and Alawite sects).

To the Civil Judiciary

- Activate the role of Juvenile Court judges in protecting children from marriage in accordance with the law for the protection of juvenile offenders and minors at risk (Law 422 of June 6, 2002).

- Communicate with religious courts to follow up on the rulings that allow child marriages.
- Hear the minor via the Juvenile Court Judge before the marriage is concluded and without the presence of the parents.

To civil society:

- Organize discussions between the different Lebanese sects to agree on the minimum age for marriage.
- Organize awareness raising campaigns in schools, universities and clubs around the rights of minors and their protection, especially in marginalized communities.
- Organize wide awareness raising campaigns for parents – and especially for underage girls – about cases where marriage is contracted outside the courts.
- Provide specialized social follow-up for child marriage cases of boys and girls.

2nd Axis: Custody, Guardianship and Trusteeship

Most sects set a very young age as a cap for maternal custody. In the written laws of the Catholic sects for example, it is still defined by the age of nurture, which is 2 years, whereas in application the judges in Catholic courts follow the custom that defines the age cap for maternal custody as being 14 years of age for boys and girls alike. This custom is however not binding to the religious judges as no official law has been issued in this regard. The Assyrian sect sets the age cap for maternal custody at 7 years for boys and 9 years for girls.

In the Islamic sects, the Sunnis have set the age cap for maternal custody at 12 years for boys and girls, and the Unitarian Druze sect has set it at 14 for girls and 12 for boys. The Shiite (and Alawite) sects however, still consider the age cap to be at 7 years of age for girls and 2 years of age for boys.

We note that for the most part a distinction is made between boys and girls when it comes to defining the limit of maternal custody, with most sects setting a higher age cap for girls than for boys. Custody also raises the problem of the criteria adopted for determining the most appropriate party for custody. Islamic sects adopt age as a criteria for this limit, and their texts do not address other factors such as the child's welfare or protection. Christian sects on the other hand adopt the principle of "the best interests of the child" for determining the appropriate custodian. Beside this standard, the Christian religious courts resort to "joint custody" where the spouses agree on how to divide the time their children spend with each of them in the frame of the civil custody agreement. However, in the event of the father's death, the courts impose additional conditions of a moral nature on women when it comes to determining the most appropriate party for custody and trusteeship (meaning guardianship after the death of the guardian). In most cases, the courts rule that women must share their children's trusteeship with the court or a male relative. Thus we see that in terms of guardianship and trusteeship, all religious personal status laws adopt a traditional division of roles between husband and wife, whereby the responsibilities of care are the woman's duty and legal guardianship - that is the authority to make decisions within the family unit - is granted to the man.

Another example of discrimination suffered by women is the fact that they lose custody of their children if they remarry, or if they belong to a different religion than that of the husband.

The rulings related to custody and visitation rights often prove challenging to women, who in many instances find themselves having difficulties or being

unable to implement them. In many cases, mothers end up waiving their financial rights – alimony or compensation – in order to keep their custody rights.

Age Cap for Maternal Custody			
Sect	**Girls**	**Boys**	**When the mother is from a different religion than the father's**
Sunni	12 years	12 years	5 years for boys and girls
Shiite and Alawite	7 years	2 years	No custody rights for a non-Muslim mother
Unitarian Druze	14 years	12 years	No marriage to a member of another religion or sect
Catholic	No custody age. The law considers 2 the age of breastfeeding, and religious courts generally apply the age of 14	No custody age. The law considers 2 the age of breastfeeding, and religious courts generally apply the age of 14	The mother loses her custody rights if she changes her religion or her sect, unless the judge decides otherwise based on the best interests of the child
Latin	No custody age. The law considers 2 the age of breastfeeding, and religious courts generally apply the age of 14	No custody age. The law considers 2 the age of breastfeeding, and religious courts generally apply the age of 14	No custody for the mother, unless the judge decides otherwise based on the best interests of the child
Greek Orthodox	15 years	14 years	No marriage to a member of another religion
Armenian Orthodox	9 years (Court may amend in the interest of the child)	7 years (Court may amend in the interest of the child)	No marriage to a member of another religion
Assyrian Orthodox	9 years	7 years	No custody for the mother
Coptic Orthodox	13 years	11 years	No marriage to a member of another religion
Syriac Orthodox	11 years	9 years	No custody for the mother if she instructs her child/ren with teachings that differ from the teachings and rites of the Church, and no custody for the mother in the event of the father's death
Evangelists/ Protestants	12 years	12 years	There is no legal text regarding this case

RECOMMENDATIONS

To Parliament:

- Amend Article 974 of Majallat al-Ahkam al-Aadliyya (Ottoman Civil Law Code) and replace compulsory paternal custody with joint custody.
- Provide mechanisms for coordination between the civil and religious judiciaries.
- Approve the critical proposed amendments to the law on protection from domestic violence and the law for the protection of juvenile offenders and minors at risk in a way that ensures real protection from all forms of violence against women and girls at the family level.

To religious authorities and courts:

- Abolish compulsory paternal custody and replace it with joint custody in the religious Personal Status Codes.
- Abolish the additional conditions imposed on women in cases of guardianship, custody and trusteeship.
- Adopt the principle of "the best interests of the child" and determine with precision the criteria that must be adopted by the courts in relation to custody according to international criteria.
- Arrange for a joint custody agreement between the parents before reaching the courts.
- Call on a neutral third party to facilitate dialogue and agreement between the parents, with priority given to a well-meaning dialogue in the interest of the children.
- Find a unified, scientific method to determine the criteria that will be most helpful in deciding which parent is the most appropriate custodian, that is, the parent who is more fit psychologically and socially to provide the best care for the child.
- Grant the more qualified parent (or whoever takes over from them legally) custodial rights, until the child reaches the age of majority.
- Adopt a coordination mechanism with the civil judiciary in cases of violence against women and for the protection of minors.
- Integrate the compulsory recourse to financial, social, and mental health experts, as well as child psychologists, in addition to generalizing the rights of children to be heard in court.

- Work on a long-term conceptual workshop with the aim of developing new scientific concepts and countering double standards such as the “moral criteria” used in maternal custody cases.

To the Civil Judiciary:

- Strengthen the powers of the civil judiciary regarding cases of child protection from violence.

To civil society:

- Organize awareness raising campaigns about the importance of the participation of both parents in raising and caring for their children.

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3rd Axis: Divorce and Financial and Economic Rights

For Christian denominations, marriage is a Holy Church Sacrament. The marital institution must be characterized by stability, constancy and permanence. This explains the absence of the concept of divorce and the difficulty of the annulment or dissolution of a Christian marriage, and its restriction to legally determined causes. Violence against women is not one of the causes that lead to an annulment or dissolution. And yet Christian courts give women and men the same rights upon application for annulment or dissolution of a marriage.

Concerning marital economic rights, they include alimony and compensation, which are ruled on according to the capacity of the party on whom it is imposed and the need of the party at the receiving end. There is a tendency among Christian religious court judges to award alimony only to women in financial distress, while assessing their part of responsibility in ending the marital bond. As for the compensation, judges tend to underestimate its value, on the basis that women's labor and sacrifices during the years of marriage cannot be really estimated. The questions of alimony and compensation add yet another layer of discrimination against women, especially for those who were not economically productive outside the home but played an important role in supporting their husband's career and their children's education. Also, the new trend seen with some judges whereby they do not recognize the right of working women to alimony is also discriminatory, as they fail to consider structural inequalities such as the pay gap for the same jobs held by women and men who have the same level of education, experience and professionalism.

Regarding the Islamic sects, the provisions for divorce differ between Sunni to Shiite denominations, but they are unanimous in considering divorce as the man's absolute and exclusive right. This also applies to the Alawite sect that follows the Jaafari courts. This does not mean that women do not have the right to apply for a divorce, but this right is not absolute and is always conditional. In the Unitarian Druze sect, divorce can only happen by the judge's ruling.

As for the economic rights that follow from the marriage contract, it is true that both spouses have rights, some of which are shared, in addition to their responsibilities, but these do not institute a framework of equality, not to mention that women face difficulties in securing these rights. In fact, the majority of rulings on marital alimony in both the Islamic and Christian sects indicate that the sums awarded do not meet the minimum needs of a family. And although alimony suits can be determined before adjudicating the dispute, they do take a considerable amount of time, during which the situation of the economically

powerless woman who is often responsible for spending on her children is not given due consideration.

Also, according to both Islamic and Christian courts, the woman loses her economic rights if she is proven to be "insubordinate".

RECOMMENDATIONS

To religious authorities and courts:

- Expand the determination of the requisite reasons for separation or divorce to include gender-based violence in all its forms (sexual, economic, psychological...)
- Activate mediation mechanisms in courts.
- Raise awareness about women's right to ask for divorce in Islamic sects.
- Prohibit the husband to change his religion during the divorce process, for example prohibit a Christian man from converting to Islam with the aim of evading his duties.
- Adopt the principle of punitive damages against the responsible party in cases of arbitrary divorce.
- Provide mechanisms that facilitate obtaining alimony.
- Establish a code for sharing acquired funds during and after married life.
- Take into account the adjustment of the value of currency against the value of gold when concluding the marriage contract in order to determine monetary compensations (in Islamic courts).
- Make divorce a judicial matter for the Shiite and Sunni Muslims, as is the case with the Unitarian Druze.
- In Islamic courts, have a mandatory procedure for putting on record the conditions of the marriage contract, and all important matters related to the rights of the spouses.
- Sharia courts should inform women of their rights and duties before contracting the marriage.
- Sharia courts should attach additional pages to the marriage contract where all the rights of the spouses are expounded, and give the woman in particular the time to get acquainted with all the provisions and the freedom to agree to what she deems appropriate among them (right to apply for divorce, work, alimony, dowry, etc...)

- In case of a financial dispute during divorce proceedings, it should be the husband's responsibility to raise the compensation amount – particularly if he is well-to-do – to include housing.

To civil society:

- Raise awareness on women's economic rights and their right to ask for a divorce or a dissolution of the marital bond.
- Offer legal support through consultations and legal representation for women in legal cases related to divorce or marriage dissolution applications.

4th Axis: Religious Courts

While the judicial system of the Christian sects developed independently from official institutions, the judicial system of the Islamic sects is part of the Lebanese state's judicial organizations. In both cases, there is weak oversight on the part of the Lebanese Court of Cassation over the rulings issued by these courts, knowing that the Court of Cassation is responsible for examining the extent to which personal status provisions respect the public order and the basic state laws. In spite of this fact, oversight over the rulings of the religious courts has long been limited to formal procedures, without addressing the content of the rulings. Also, the mechanisms for monitoring judges and holding them accountable remain under the jurisdiction of the sects themselves, and the official Civil Judiciary has no supervisory authority over the work of judges in case of breach of office. The Christian and Islamic judiciaries also suffer from a shortage of civil law specialization despite the application of civil trial procedure, and from the impact of this shortage on the judges' knowledge of these procedures and their application. There is also a quasi-absence of participation by women in the religious judiciary, in contrast to the civil judiciary where they are well represented.

Furthermore, women face challenges that prevent them from obtaining justice, and these include economic challenges because of the high legal fees involved in some lawsuits in conjunction with the economic vulnerability experienced by women in general, as well as their insufficient knowledge of how to access legal assistance. On the other hand, women also face obstacles during the lawsuit, the most important being the courts' technicalities-based approach which is generally biased towards males, and which makes them fail to consider the gender-based factors and the structural violence against women in custody, divorce or alimony cases. Another obstacle is the delay in determining cases.

Also problematic is the fact that civil courts have jurisdiction over disputes arising from marriages contracted in a foreign country between two Lebanese nationals or between a Lebanese and a foreign national according to the civil law of that country, and yet they have to take into consideration the provisions of the laws related to the jurisdiction of the Sharia and Unitarian Druze courts when both spouses belong to a Muhammadan sect, and one of them at least is a Lebanese national.

RECOMMENDATIONS

To Parliament:

- Amend or repeal Article 79 of the civil procedure code which stipulates that Lebanese civil courts have jurisdiction over disputes arising from a marriage contract that was concluded in a foreign country between two Lebanese nationals or between a Lebanese national and a foreign national according to the civil laws of said country, and must take into consideration the provisions of the laws related to the jurisdiction of religious courts when both spouses belong to the Muhammadan sects and one of them at least is Lebanese.
- Take the adequate measures to deal with the double standards resulting from having the religious judiciary deal with certain effects of the civil marriage contract concluded abroad (especially regarding custody and inheritance).
- Activate the law on the independence of the judiciary, provided that it includes the religious judiciary.

To the Executive Power (The Government):

- Activate the Monitoring, Inspection and Accountability Committees for religious judges, provided that the committees are independent.

To religious authorities and courts:

- Amend the curricula of religious judges to include the concepts of human rights and gender equality.
- Provide mechanisms whereby women can be judges in religious courts, and impose a quota for women in the religious courts of all sects.
- Bolster women's participation in the religious councils of Islamic and Christian sects to guarantee that their voices are heard as part of the process of amending laws.
- Establish a permanent dialogue mechanism that brings together religious courts and civil society.
- Establish a Sharia Judicial Institute for the Islamic sects, whereby judges must be graduates of this institute.
- Adopt flexible jurisprudence in the Sunni and Jaafari courts.

GENERAL RECOMMENDATIONS

To Parliament:

- Initiate a workshop to review all discriminatory laws against women and amend them.
- Activate the role of Parliament to monitor the legislations issued by religious authorities and ensure that their provisions are in compliance with public order, with the April 2, 1951 Law and with the Lebanese Constitution in terms of their commitment to the Universal Declaration of Human Rights and to the principle of equality before the Law.
- Initiate dialogue with religious courts and authorities to review Lebanon's reservations about CEDAW.
- Establish an optional civil personal status code.

To civil courts:

- Bolster coordination between the civil judiciary and the religious judiciary, for stronger protection and greater justice for litigants, especially women and children.

To religious authorities:

- Initiate a discussion around the role of religious courts and their impact on women's rights in Lebanon.
- Create a committee dedicated to raising awareness about the personal status laws of all sects.
- Establish a permanent dialogue mechanism between religious courts and civil society.
- Work on providing mechanisms that bolster trust between individuals and religious courts in Lebanon.

To civil society organizations:

- Launch an awareness raising campaign on marriage and personal status laws in all sects.

ROUNDTABLE PARTICIPANTS

1- Samia Abi Nader (Ecclesiastical lawyer, KAFA organization's lawyer for Christian sects)

2- Saja Abu Zaid (Expert in social work, intervention in cases of gender-based violence and child protection – ABAAD Resource Center for Gender Equality)

3- Claudine Aoun (President of the National Commission for Lebanese Women)

4- Hanna Alwan (Supervisor of the First Instance Court of the Maronite sect)

5- Rayan Assaf (Doctor in International Law and Arbitration, former Head of the Legal Department at the Presidential Palace)

6- Chantal Bou Akl (Researcher in Women and Child Affairs and Personal Status –expert in the project)

7- Adriana Bou Diwan (Head of Community Engagement Department at Adyan Foundation – Project Manager)

8- Dima Dabbous (Regional Director of Equality Now)

9- Angela Dagher (Ministry of Justice representative)

10- Karma Ekmekji (Roundtable moderator, Mediation Advisor with UN Women)

11- Maya Ezzeddine (University professor and feminist activist)

12- Ghenwa Ghazi (Project Coordinator of the program for the support of violence survivors at the Union of Progressive Women)

13- Fadia Habib (Program Manager at the EuroMed Feminist Initiative)

14- Muhammad Haidar (Member of the Islamic Alawi Council)

15- Zalfa El Hassan (President of the Juvenile Criminal Court in Beirut)

16- Rim Haydamous (Communication and PR Officer at Danmission)

17- Marguerite El Helou (University professor and gender expert)

18- Muhammad Hijazi (Director of the Family Guidance and Awareness Center of the Shiite Community)

19- Elie Al Hindi (Executive Director of Adyan Foundation)

20- George Iskandar (Metropolitan of the Archeparchy of Tyre and its Dependencies for the Greek Catholic sect)

21- Ghada Jumblatt (Member of the Unitarian Druze Council and the National Commission for Lebanese Women)

22- Lama Karame (Lawyer and researcher, President of the Administrative Board of the Legal Agenda).

23- Najla Kassab (Minister of the Evangelical Church and president of the World Communion of Reformed Churches)

24- Shada Kassab Dabliz (Political and social activist in Tripoli)

25- Aziza Khalidi (Executive Director of the Collective for Research and Training on Development)

26- Akram Khoury (Judge at the Patriarchal Court of Appeal for Greek Catholics)

27- Nayla Khoury (Marketing expert at MADD)

28- Lina Kreidie (Professor of Political Science and Public Policies, specialized in gender studies)

29- Zeina Maalouf (Gender-Mainstreaming Training and Reporting Coordinator at the National Commission for Lebanese Women)

30- Outeiba Merhebi (Practicing lawyer at the Sunni Sharia Court in Tripoli and Akkar)

31- May Miller (Advisor at the Evangelical First Instance Court)

32- Nadine Moubarak (Member of the Lebanese Center for Human Rights)

33- George Mourad (President of the First Instance Court of the Evangelical sect)

34- Yara Mourad (Assistant Director of the Issam Fares Institute for Public Policy and International Affairs)

35- Miriam Muawad (Administrator at The Lebanese Women's Democratic Gathering)

36- Abdullah Musallam (Legal consultant)

37- Mirna Mzawak (Head of the Department of Social Sciences at the Holy Spirit University- Kaslik, Coordinator of the Women's Pastoral at the Maronite Patriarchate)

38- Hala Naja (Judge of Urgent Matters in Beirut)

39- Maroun Nasr (Judge at the Maronite Court of Appeal and other Catholic Churches)

40- Line Ramsdal (Regional Representative of Danmission)

41- Khaled Sabbagh (Legal expert)

42- Miriam Sfeir (Director of the Arab Institute for Women at the Lebanese American University in Beirut)

43- Ibrahim Shaheen (Head of the Greek Orthodox Court of Tripoli)

44- Caroline Slaibi (President of the Lebanese Democratic Women's Gathering)

45- Ibrahim Traboulsi (Lecturing Professor at law faculties in several Lebanese universities)

46- Fouad Younes (Judge in the Druze religious court)

47- Maya Zaghrini (Member of the Beirut Bar Association and the National Commission for Lebanese Women)

48- Manar Zaiter (Lawyer and expert in the project)

49- Josephine Zgheib (Political activist and President of Beity Association)

Adyan Foundation has prepared this report out of its belief that the values of diversity, solidarity and equal human dignity must be materialized justly among all members of society.

With this in view, Adyan Foundation opened a dialogue with the persons in charge of the fifteen personal status religious courts, with civil law judges, representatives of civil society and parliamentarians, and together they participated in proposing possible reforms towards guaranteeing women's rights in these courts and their laws. A summary of the thoughts and opinions advanced was included in the report, which presents the following in its three chapters: 1- An overview of the personal status system in Lebanon, highlighting the historical, political and legal frameworks of personal status there, alongside shedding light on the constitutional system of the country, the mandate given the recognized sects, the issues and problems resulting therefrom, and how this system affects women; 2- Islamic and Christian religious courts in Lebanon, their establishment process, laws, problems and potential areas of reform; 3- The basic issues addressed in personal status laws, such as the legal age of marriage, divorce, custody, guardianship and trusteeship, the economic rights of wives and widows, in addition to inheritance laws in Islamic sects in particular, their major flaws and ways to amend these laws.

We hope that this report will be an encouraging first step, followed by practical measures towards activating the possible reforms and amendments of laws and courts mechanisms. We also hope that it will be followed by an ongoing process of thinking potential amendments. We believe that each amendment towards greater equality for women not only helps religious courts to be more in line with international human rights standards and particularly the Convention on the Elimination of All Forms of Discrimination Against Women, it also contributes to making them more in tune with the basic message of religions.

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