

Protection of Women from Domestic Violence Under

“The Bill for the Protection of Women and Family Members Against Domestic Violence”

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Introduction

Violence against women is directly linked to the historic discrimination against them. It is an expression of the gendered imbalance of power that has resulted in a gap intensified by the existing legal, social, and cultural institutions. Eliminating gender-based violence can only be achieved by addressing gender gaps, which require the adoption of specialized policies and programs. The Lebanese government ratified the Convention on the Elimination of all Forms of Discrimination Against Women in 1996, and civil society utilizes it as a standard reference to eliminate discrimination against women from the existing legislations as well as to improve on them¹ in order to create a more women-friendly environment. In such a context, I refer particularly to the gap that needs to be bridged in the Lebanese legal system with respect to the protection of women from domestic violence. After the Beijing Conference and following the mock court hearings held in Beirut in 1995, which resulted in the Beirut Declaration on the Elimination of Violence Against Women, especially domestic violence, the magnitude of the phenomenon and the need to target violence against women with special interventions began to unfold. As a result, the Lebanese Council to Resist Violence against Woman (LECORVAW) was established in 1997 as a non-governmental association.

As of 2005, the Lebanese government began to give a special attention to women's issues in ministerial statements. In the statement approved in 2009, the government pledged in Article 22 that it:

... will strive to adopt an action plan to combat violence against women, including the completion of discussions about the draft law on the Protection of Women from Domestic Violence, and the elaboration of policies and legislation to combat trafficking of women and children for sexual exploitation and forced labor.

The effort to promulgate a special law to protect women from domestic violence began in 2007. The aim was to send a clear and direct message condemning violence

and to put in place effective measures to protect the victims, punish the perpetrators and compensate for the damage incurred. After public and private consultations that lasted several years, a draft of the “Act on the Protection of Women Against Domestic Violence” was prepared in 2010; and then adopted by the civil society and the Council of Ministers which submitted it as a Bill to Parliament for voting. After lengthy discussions, the law was passed in 2014 and renamed “The Bill for the Protection of Women and Family Members Against Domestic Violence”. Just a glance at the Bill shows that it did not represent a comprehensive condemnation of violence against women, and that the addition of the phrase ‘family members’ did not enhance women’s protection. Rather, it created unfortunate intersections with other laws, which could weaken the protection of women and possibly other family members.

In Section I, I will present the new concepts brought up by the law, i.e. the protective measures and amendments introduced to the Penal Code. In Section II, I will touch on the flaws in the law, which reflect the absence of political will to explicitly condemn violence against women, and the adoption of red lines that are not in the interest of the family but reveal a desire to maintain the gender gap.

Section I: The New Concepts Introduced by the Bill

Protection laws in Lebanon are recent, the most important one being Law 422/2002 for the ‘Protection of Juvenile Delinquents and Endangered Juveniles’. In 2007, Kafa Association (Enough Violence and Exploitation) called upon an array of civil society organizations and specialists to work on the drafting of a law to protect women from domestic violence. A committee that included a number of judges, lawyers, and security officials, as well as specialists in sociology and psychology who had previously worked with abused women was set up. After lengthy discussions that lasted months, the committee issued an exhaustive draft law that was adopted by the Minister of Justice, Professor Ibrahim Najjar, and the Minister of Interior and Municipalities, Mr. Ziad Baroud. Once submitted to the Council of Ministers, the Bill² was subjected to some amendments, particularly Articles 3 and 26. For example, Article 3 that was added by the Legislative and Judicial Affairs Authority, enumerated the acts that must be penalized, as they constitute crimes of domestic violence with aggravated penalties. As for Article 26,³ it unduly expanded the jurisdiction of religious and sectarian authorities in violation of the legal system in general which sparked a wave of protests and sharp debates that eventually led to its removal.

The Council of Ministers issued the Bill under Decree number 4116 on April 6, 2010, and submitted it to Parliament on the same date. When it was referred to Parliament and later to a sub-committee derived from the “Parliamentary Administration and Justice Committee”, the Bill created a huge uproar and much controversy.

The Bill was placed before a special sub-committee in the Parliament where a significant series of amendments were introduced. There is no doubt that the introduced amendments dealt a heavy blow to the Bill’s effectiveness. Civil society actors rejected the amendments, but they were presented with one of two possibilities. Either the sub-committee could pass the law as it was, despite its distortions, to be reconsidered by the General Assembly of the Parliament later on; or, it could remain before the sub-committee hence totally disregarded given the unduly ferocity of the

clergy's opposition. Civil society representatives and 71 deputies made an agreement, by virtue of which the deputies agreed to reconsider the draft before the General Assembly of the Parliament, and to accept the amendments. The law was passed before the Parliamentary sub-committee, and the Bill was published in the Official Gazette on April 1, 2014, without introducing the controversial amendments.

A. Presentation of the Articles Pertaining to Protection

The Bill consists of 23 articles relating to definitions, prerogatives, and protection procedures, as well as measures and actions that judges are entitled to take. Article 3 contains the amendment of some provisions related to women in the Penal Code.

Definitions

According to the Bill, the family⁴ is defined as based on kinship ties rather than on the house as a residential unit. Under Article 2, domestic violence is defined as:

Every act of violence, abstinence or threat thereof committed by one family member against one or more members as per the definition of family, comprising one of the crimes stipulated herein, the consequences of which may cause death or physical, psychological, sexual and economical injury.

Interestingly, the Bill does not address moral violence, although this form of violence appears in other pieces of legislation and provisions.

Eligibility to Look into Cases of Domestic Violence:

The request to obtain a restriction order shall be filed before the relevant investigating judge or the Penal Court entrusted with the same and shall be examined in the deliberation room. The request may also be submitted before the judge in chambers to apply for summary procedures. (Article 13)

In line with Article 6 of the Bill, the victim shall also have the right to initiate proceedings in his/her temporary or permanent residence. It is worth noting in this regard that, as per this Bill, the State Prosecutor shall appoint one public attorney or more in the governorate (*mohafaza*) and entrust him/her with receiving the complaints on domestic violence and following up on them.

The Establishment of Competent Units within the Internal Security Forces (ISF): Article 5 of the Bill stipulates that:

A special unit on domestic violence shall be established at the Directorate General of the Internal Security Forces (ISF), shall carry tasks similar to the judiciary police, and shall examine the complaints submitted before the same and referred thereto according to the provisions of the present law.

The Unit shall be composed of women adequately trained to solve conflicts and carry social guidance. Unit members shall carry investigations in the presence of social assistants who are acquainted with domestic affairs and conflict resolution and who shall be selected from a list prepared by the Ministry of Social Affairs.

And for the first time in Lebanon, and perhaps in other countries as well, Article 8 of the Bill stipulates that:

The judiciary agent who attempts by means of coercion to force the victim of violence or exert pressure thereupon to drop charges, shall be subject to the sentence as stipulated in Article 376 of the Penal Code.

Additionally, Article 10 of the Bill stipulates that it is incumbent on the Judicial Police to:

Inform the victim with his/her right to obtain a restraining order as per Article 12 of the present law and to assign an attorney if he/she wishes to. It shall also inform the victim with all other rights stipulated in Article 47 of the CCP.

- Restraining Orders

Addressed in Articles 12-14, restraining orders and measures that a judge is entitled to take are the most important part of this Bill. However, although the Bill includes good protection measures, these are narrowed to the minimum in terms of implementation and subjected to constraints that may lead women to withdraw their charges.

Article 12 defines the restraining order and identifies the people who benefit from it:

A restraining order is a temporary measure made by the relevant authorities as per the provisions of the present law and in the course of examining the cases of domestic violence.

The restraining order aims at protecting the victim and his/her children. As for other descendants and persons living with him/her, they shall benefit from the restraining order where they are in danger. Social assistants, witnesses and any other person providing the victim with assistance shall, as well, benefit from the restraining order in order to prevent violence from continuing or from the threat of recurring.

Children involved de facto in the restraining order mean those children who are in the age of legal custody as per the provisions of the applicable Code on Personal Status and any other applicable laws.

- Narrowing the Scope of Implementation of Article 12

As far as the amendments to the Bill are concerned, the gist of the first objection lies in Article 12. On the one hand, Article 12 has brought the Code of Personal Status and 'other applicable laws' to the public sphere without specifying the nature of these laws. Also, Article 12 makes a distinction between children with respect to custody as defined by the respective Codes of Personal Status and puts the mother in a situation that will force her to inevitably withdraw her request for protection. How could she protect herself and only some of her children and leave some prone to violence pending the outcome of a trial to decide whether the restraining order covers them or not! This issue will be discussed further in Section II.

As for the temporary measures, they include the following as per Article 14 of the law: The restraining order shall compel the defendant to take one or more of the measures below:⁶

- Refrain from holding prejudice to the victim and other persons covered by the restriction order...
- Compel the offender to leave the house temporarily...
- Move the victim and other cohabitants outside the house when they are believed to be in danger and subject to a threat that could be the result of a continued presence in the household, and transfer them to a temporary safe and convenient place. When the victim moves out, her children who are of a legal age shall move out with her along with any other children or cohabitants at risk. The defendant shall pay the accommodation fees in advance according to his/her means.
- Compel the defendant, with due consideration of his capacities, to pay in advance an amount of money adequate to cover the fees for food, clothing, and education for dependant persons. Compel the defendant as per his/her capacities to pay the fees necessary for medical treatment or the hospitalization of the victim and other persons established in Article 12 of the present law where violence resulted in the need for therapy”

In Article 20, the Bill allows the tribunal to compel the offender to take rehabilitation sessions on violence at specialized centres. Additionally, Article 21 stipulates that:

A special fund endowed with moral personality and financial and administrative autonomy shall be established to assist the victims of domestic violence, provide them with care and the means necessary to limit the crimes of domestic violence, prevent the same, and rehabilitate the perpetrators thereof.

The Scope of Implementation of the Bill on Domestic Violence

Article 3 of the Bill includes a list of domestic violence crimes. The Bill modified some articles of the Penal Code and enumerated topics that can be considered forms of domestic violence. Article 3 reads as follows:

A. Crimes of Domestic Violence Shall be Punished as Follows:

1. Article 618 of the Penal Code shall be amended as follows:

Whoever shall incite a minor aged less than 18 years to begging shall be sentenced to a term of imprisonment of no less than six months and no more than two years and shall be subject to a fine of no less than the minimum wage and no more than double its amount.

2. Article 523 of the Penal Code shall be amended as follows:

Whoever shall instigate one person or more, male or female, that has not completed the age of 21 to engage in prostitution or corruption, and whoever shall facilitate the same by aiding or abetting, shall be sentenced to imprisonment between one month and one year and shall be subject to a fine varying between the minimum wage and three folds the same.

Shall be subject to the same sentence whoever is involved in clandestine prostitution or engages in the facilitation thereof.

Without prejudice to the provisions of Article 529 annexed to Article 506, the sentence shall be increased as per the provisions of Article 257 of the present Law

where the crime is committed within the family regardless of the age of the person against whom the crime is committed.

3. Article 527 of the Penal Code shall be amended and a new paragraph shall be added thereto as follows:

Whoever shall rely on the prostitution of a third party to gain his/her living, whether fully or partially, shall be sentenced to a term of imprisonment of no less than six months and no more than two years and shall be fined no less than the minimum wage and no more than double its amount.

Without prejudice to the provisions of Article 529 annexed to Article 506 of the present law, the sentence shall be increased where the crime involves violence or threat.

4. A new paragraph shall be added to Article 547 of the Penal Code as follows:

Whoever shall commit homicide purportedly shall be sentenced to hard labor between fifteen and twenty years. The sentence shall vary between twenty and twenty five years, where homicide is committed by one spouse against the other.

5. Article 559 of the Penal Code shall be amended as follows:

The sentences herein shall be increased as per the provisions of Article 257 where the offense is committed in one of the cases established in Paragraph two of Article 547 and in Articles 548 and 549 of the present law.

6. Articles 487, 488, and 489 of the Penal Code shall be amended as follows:

Article 487:

Any person committing adultery shall be sentenced to a term of imprisonment of no less than three months and no more than two years. The same sentence shall apply to partners in adultery where they are married; otherwise they shall be sentenced to imprisonment for no less than one month and no more than one year.

Article 488:

The spouse shall be punished to imprisonment for no less than one month and no more than one year where he/she takes a lover in public. The partner shall be subject to the same sentence.

Article 489:

- Adultery shall only be prosecuted upon the complaint of one of the spouses and where the plaintiff associates in a court action with the public prosecutor;
- Partners or accomplices shall only be prosecuted together with the adulterer;
- A complaint filed by the spouse having given his/her consent to the adultery shall be null;

- A complaint filed three months after the plaintiff became informed of the crime shall not be accepted;
- Dropping charges against the spouse results in annulling public and private actions against the offenders;
- Where the plaintiff accepts to resume life in common, charges are dropped.

7. a. Whoever shall with the intent of redeeming marital rights to intercourse or because of the same, beat the spouse or inflict harm thereto, shall be subject to one of the sentences established in Articles 554 to 559 of the Penal Code.

Where beating or harming recurs, the sanction shall be increased as per the provisions of Article 257 of the Penal Code.

Where the plaintiff drops charges, public action subject to Articles 554 and 555 of the Penal Code shall be refuted.

Provisions governing recidivism shall remain applicable, where conditions are satisfied.

7. b. Whoever shall with the intent of redeeming⁷ marital rights to intercourse or because of the same, threaten the spouse, shall be subject to one of the sentences established in Articles 573 to 578 of the Penal Code.

Where threat recurs, the sanction shall be increased as per the provisions of Article 257 of the Penal Code.

Where the plaintiff drops charges, public action subject to Articles 577 and 578 of the Penal Code shall be refuted. Provisions governing recidivism shall remain applicable, where conditions are satisfied.

The Need to Put in Place a Clear and Unambiguous Draft

The amended clauses of Article 3 of the Penal Code constitute only a part of the demands of civil society, but the Bill does not amend Article 522⁸ et seq., which halts the prosecution of an offender who agrees to marry the woman he has raped. The Bill remains silent on many other forms of abuses occurring within the family, including beatings and other forms of physical abuse that may lead, if not prevented, to murder. Manal's husband used to beat her constantly, and he continued to do so, unpunished, until Manal's death due to a lack of a law protecting her. Rola's husband too used to beat her until he killed her with no possibility whatsoever for her to secure any protection measures. This is the case of Latifa, Amina, Rokaya, Crystelle, and many, many other women who were killed because of the intolerable violence they suffered from. The Bill also remains silent on other forms of violence like deprivation of freedom, slander, defamation, and intimidation, and these usually go along with physical abuse, all of which are ignored in the Bill.

Section II: The Pitfalls and Flaws of the Bill

It is clear that the Bill is the result of multiple compromises. Whereas the government committed to protecting women from domestic violence in its ministerial statement and unanimously approved the Bill and transferred it to Parliament, it was Parliament

that put incremental limitations on the protection of women under the pretext of protecting other family members. Despite some appropriate procedures and measures introduced by the lawmakers, they did not hesitate to insert articles that weaken the protection of women and undermine the legal system and its cohesion. This was the reason behind the reservations made vis-à-vis the Bill, especially emanating from those who followed its drafting or participated in it.

Several reasons justify the reservations made to the Bill, some of which pertain to the procedures and the relating problems occurring during the implementation process, as well as the ambiguity of the texts which create great difficulties for judges to implement the law. The problems that judges face include: an increase in the cost of referrals on women, linking some articles to decrees, and resorting to society or to the courts in order to solve litigations. However, two main axes require more than just a rebuff; they demand condemnation since they give priority to power over justice. Sectarian concepts and texts have trespassed the domain of the private sphere to invade the public sphere which lead to the abolition of all remnants of a civil state, hence promoting the traditional positions and structures that generate violence. The legitimization of marital rape, for example, fully abolishes personal freedoms denying women's rights over their bodies. Also discriminating against children and depriving some of them of the right to protection contradicts the most basic rules of the Convention on the Rights of the Child. Not to mention that this places women in a position that forces them to abandon some of their children in order to save the others, hence accepting the status quo and relinquishing any demand for protection.

First: The Need for the Promulgation of a Special Law to Protect Women from Domestic Violence

The argument against restricting the protection Bill to women applies to positive discrimination measures too, and particularly to the quota. Given that the Constitution⁹ expressly provides for equality, any legal action taken in favor of women is considered a discriminatory decision and cannot be adopted. This is not true, given that the Parliament accepts many laws that remain discriminatory against women.

A law particularly designed for women aims at ensuring equality not the opposite. It is a transitional solution intended to end the marginalization of women and to achieve equality among citizens. This is a procedure that enhances women to recover their lost dignity legally speaking. Women account for 60 percent of the population. Once they overcome their fears, they are more likely to assume their responsibilities at the level of the family and that of the country in general.

Thus, a female-only protective law will promote justice and equality.

Women or Family Protection: A Provoked Dual

Which one is more important - protecting the family or protecting women? This is a question that arises every time a topic about women is touched upon - as if a family can be strong if its members are not strong, especially women who play a pivotal role within the family. This is also a question raised by some people out of good will, fearing for their families, but also by others who might fear the idea of 'equality'. The Lebanese lawmakers seem to have taken a balanced position, at least ostensibly, with the promulgation of the Bill on "The Protection of Women and Other Family Members

from Domestic Violence". But laws should not be judged by their appellation but rather by their detailed clauses.

Women face many obstacles when filing a lawsuit: once the material costs are overcome, women find themselves confronted with an archaic biased legal system, devised by men and for men, with the full support of a society that discriminates against women.

Case Study 1:

The story of Leila: Leila was severely beaten by her husband at home in front of her parents, and that prevented her from working for a period of three weeks. When she asked her parents to testify before the court, they refused because they "did not want her to sabotage her marriage and cause harm to her family". As for her husband, he secured a number of witnesses who claimed that his wife was the one who lashed out at him in the parking lot, that she was the one who hit him, and that it was only self-defense. He managed to get a medical report from a forensic doctor and a four-day leave from work. The story ended with each of them withdrawing their complaints and subsequently the public action was dropped as well. This is neither an isolated case nor a unique one, and this is a case where the protection law should have been applied.

Case Study 2:

Farida was used to the beatings of her husband and had given in, as she lacked social and legal protection. After the promulgation of the Law on Protection, and after her husband had beaten her so severely that she was unable to go to work for a week, as confirmed by the forensic doctor's report, she pulled herself together and asked the court to protect her from the violence that was inflicted on her. Effectively, the court issued a restraining order for Farida. Her husband too got a restraining order because he obtained a report from the forensic examiner stating that he had been bitten on the hand, and that teeth marks were evident. So, the judge had to issue a restraining order for the husband too because the law is not confined to women, but also includes other family members. At the expiration of the restraining order, Farida did not ask for its renewal, nor did her husband. What is the point of such an order when the offender and the victim are placed on equal footing?

Addressing gender-based violence within the family requires a series of effective measures, dedicated to the protection of women and to bridging the gap that has only been aggravated with time. Only then it will be possible to produce standard rules applicable to all. The most evident example would be the European experience. In Europe, several laws, policies, and programs are dedicated to women, which help in bridging the gender gap. This has helped address the phenomenon of violence against women and alleviate the procedures related to their protection as well. Even though, the promulgation of female-only laws is still taking place to-date so as to achieve gender equity. Therefore, it is not reasonable for us to step over half a century of European positive discrimination, making of their end result our starting point. Hence it is essential to dedicate to women a law that addresses the issue of domestic violence.

Second: The Bill's Encroachment on the State's Neutrality and Civil Character

Legislators and civil society activists have worked hard to avoid any infringement by

the State on the prerogatives of religious sects; however, they omitted to prevent the religious concepts and laws from encroaching on the state's prerogatives. In fact, Article 9 of the Lebanese Constitution is one where the State undertakes to guarantee rights within the Codes of Personal Status, and adopts the principle that the State shall remain "neutral" towards denominations, treating them on an equal footing, and committing to human rights in an equation that ensures the civil character of the legal system.

Although the Constitutional Council has maintained on more than one occasion that the denominations' rights derived from Article 9 of the Constitution do not limit, in any way, the right of the State to pass legislation. Moreover, even though the subject of protection is not among the topics where denominations are entitled to claim any right, the Bill in question, and for reasons that are not acceptable by any standard, most of which due to political reasons, introduced concepts from the Codes of Personal Status into the civil domain, which is an infringement on the civil character of the law. Additionally, it opens the door to confessional and sectarian infringements regarding civil and citizenship issues.

This infringement is particularly obvious in Articles 3 and 12 of the Bill: In its paragraphs 7.a. and 7.b., Article 3 provides for the punishment of:

7.a. Whoever shall with the intent of redeeming marital rights to intercourse or because of the same, beat the spouse or inflict harm thereto, shall be subject to one of the sentences established in Articles 554 to 559 of the Penal Code. Where beating or harming recurs, the sanction shall be increased as per the provisions of Article 257 of the Penal Code. Where the plaintiff drops charges, public action subject to Articles 554 and 555 of the Penal Code shall be refuted.

Provisions governing recidivism shall remain applicable, where conditions are satisfied.

7.b. Whoever shall with the intent of redeeming marital rights to intercourse or because of the same, threaten the spouse, shall be subject to one of the sentences established in Articles 573 to 578 of the Penal Code. Where threat recurs, the sanction shall be increased as per the provisions of Article 257 of the Penal Code. Where the plaintiff drops charges, public action subject to Articles 577 and 578 of the Penal Code shall be refuted.

Provisions governing recidivism shall remain applicable, where conditions are satisfied.

Do 'Marital Rights to Intercourse' Constitute the Crime of Rape?

The expression 'marital rights to intercourse' is derived from the Code of Personal Status, more specifically from some Muslim jurists. Its implications are manifold, such as those derived from the French law that preceded the Civil Law. The adoption of Islamic concepts and their application to all citizens, whether non-Muslims or those who belong to no religion whatsoever constitutes an infringement on the freedom of belief of non-Muslims as well as on that of non-religious people, and a violation of the civil state. In fact, it is in contradiction to the provisions of Article 9 of the Constitution, which guarantees the freedom of belief.

'Marital rights to intercourse' was a concept known in French law prior to the promulgation of the Civil Law, and it has been used as a justification against

the criminalization of marital rape. How could a person practicing his 'right' be criminalized? It is based on the presumption that spouses have expressed their prior consent to sexual relations for the duration of their marriage. Until the 1990s, this presumption was in force in many countries worldwide. There is no doubt that proving marital rape is a real problem, but the difficulty of proof should not annul the crime itself.

In addition, the expression 'fulfilling marital rights in intercourse' is outdated, since marriage is now more viewed as a partnership within the family, while also acknowledging women's right over their body. It is noteworthy that adepts of the concept of 'marital rights to intercourse' are seemingly referring to a legitimate act, 'the right' each of the spouses has to intercourse, which refutes any violation of law.

Here, the lawmakers erred when considering that this expression condemned the rape of the wife, while, to the contrary, it added legitimacy thereto. Rape is not a sexual act; rather, it is a violent action that someone carries out by force and against the will of the other party and despite their objection, even if no harm occurred.

When marital rights are the result of a single-handed appropriation that violates the rights of the other to their body, marital rights turn into violent acts that are legally described as rape. The lawmakers' condemnation and incrimination is not so much about the transformation of the sexual act into a violent act, but about the harm that results from a legitimate act, or that is carried out for the purpose of fulfilling the legitimate right.

Subsequently, one can say that adding this controversial expression was undue and did not have any impact on protection, but introduced to the Penal Code the confirmation that "marital rights to intercourse" are legal rights, and therefore they are no longer considered criminal acts, and thus legitimize rape.

The complexities introduced by the lawmakers concerning this issue are significant. The penal judge only applies the law, and there is no such concept of 'rape' in the criminal code. He/she will prosecute in accordance with Articles 544 et seq. of the Penal Code related to beatings and harm. As for the chamber judge dealing with urgent matters, to which law shall he/she resort? Lebanon counts 18 denominations, and each of them has its own understanding of marital rights to sexual relations. For Christians for example, both parties are partners in a sexual relationship; one-sided forced sexual relationships are not legally permissible at all. In this case, the act is no longer a sexual act, but rather a violent act.

If the judge has to implement foreign laws in case of civil marriages held abroad, how should he/she deal with laws that criminalize the rape of the wife or sanctions it? And how should he/she deal with Lebanese couples who do not belong to a particular religious community and who held a civil marriage in Lebanon instead? What is the applicable law?

In terms of procedures, the proof of the confessional law for non-Muslims just like the proof of the foreign law before the Lebanese courts, is subject to procedures that

may be very lengthy and may thus annul the need for protection measures. The laws that govern the five Islamic confessions are issued by Parliament and published in the Official Gazette.

As for the laws that are applicable to non-Muslim communities, they are not issued by Parliament or published in the Official Gazette. Moreover, the jurisprudence of the Court of Cassation considers them to be binding because they are similar to written covenants. The proof and evidence of these laws submitted before civil or criminal courts follow the applicable procedures to the material facts. Litigants must prove them and it is no secret that they are time-consuming. Additionally, foreign laws that are enforced by the Lebanese courts upon the examination of marriages held abroad, which need to be translated and authenticated before the foreign competent authorities, sometimes include rules on marital rape that are in contradiction to the national or religious laws.

In light of these complexities, civil society has demanded that the crime of marital rape be discussed with various society groups upon the introduction of the reforms to the Penal Code. However, the lawmakers insisted on introducing the article related to marital rape. This confusion regarding the concept itself or vis-à-vis the difficulty of implementation, means that keeping this article in spite of its ambiguity accentuates the power relations within the family, subjects the wife to the individual will of the husband, and reveals that whatever is related to women in the family is a confessional matter, even if it does not fall within the scope of religious laws.

Discrimination vis-à-vis Children

The other article that invokes religion in the public field solely for power considerations, even if it entails harm to children, is the last paragraph of Article 12, which states that

... Children involved de facto in the restraining order are those children in the age of legal custody as per the provisions of the Personal Status Codes and other applicable laws

This article invokes unduly the Codes of Personal Status. In fact, the issue of protection does not fall within the scope of the prerogatives of the religious law; the issue of protection falls de facto under the jurisdiction of the state and its duties towards its citizens. This commitment took shape when Lebanon signed the Convention on the Rights of the Child without reservations, and upon the ratification of the Juveniles Protection Law 422/2002.

By invoking the Personal Status Codes on the subject of juvenile protection, this article opens the door for sectarian and religious courts to step in and claim authority where it does not exist, which disrupts the effects of restraining orders that must be rendered promptly.

Also, with respect to the children's protection measures, relying on custody orders according to the Personal Status Codes leads to discrimination between boys and girls in the same family. This is because the determined custody age for a boy can

be different from that of a girl of the same confession, which results in the inclusion of one child in the restraining order and the exclusion of the other, although they were both (the boy and the girl) present with the mother during the occurrence of violence. This is not to mention the discrimination that would be caused by the implementation of protection measures among children in general due to differences in the age of custody among the different confessions. The Juveniles Protection Law No. 422 defines a child involved in the restraining order as one who has not yet attained 18 years of age, according to the Convention on the Rights of the Child. The text of Article 12, as described above, goes beyond the Juveniles Law and creates confusion in the implementation of this article that will affect the speed at which the restraining order is issued. The inclusion of this text excludes from protection children not falling under the mother's custody as per the Codes of Personal Status, which means that a child who is visiting his/her non-custodial mother is not covered by protection in the event that the husband subjects the mother to violence during the child's presence at her place.

The restraining order must encompass all those living or residing with the woman at the time of violence, including children, because they are, in this case, secondary victims of violence, and they should be subject to the same procedures. In addition to the substantive and procedural complexities, the judges face difficulties during the implementation of the law, including the proof of the religious and foreign laws. What shall the judge do if the foreign law applies the principle of joint custody?

In this context, we have witnessed for seven years, the exceptional work achieved mainly by women's organizations that have put the Bill at the heart of public debate. We have witnessed the emergence of feminist leaders, as they learned the basic principle of negotiating with politicians, linking their demands to accountability in the elections. The clergy are no longer able to stand in the way of an active civil society. Civil society has recovered its self-confidence, and civil society organizations have resumed their actions following the promulgation of this Bill. Further, we have seen the start of activities related to a range of draft laws. It has become clear that the problems will not find radical solutions without the amendment of the Codes of Personal Status, especially in closed societies where the State does not have a serious say, therefore, grievances should not be tolerated under the pretext that they fall under the scope of the confessions.

Deferring Problems to the Courts

It is still early to study the impact of the law by examining the sentences rendered by the judiciary, because the sentences issued in application of the Bill are not sufficient to assess its impact. As of April 2014, nine sentences were issued, all of which were restraining orders that were not challenged or appealed; all were issued by the judges in chambers dealing with urgent matters and in subjects pertaining to beatings and harm in particular.

The proper implementation of a law pertains basically to the drafting of its clauses and to the clarity of the rules it sets forth; this is not the case for the Bill of April 1. Actually, the deliberate lack of clarity and the complexity tainting the wording of some articles of this text reflect the Parliament's inability to find solutions for real

social problems and to elaborate clear and simple procedures, easily invoked and enforced. This is the reason why it resorted to compromises when drafting the law, deferring them to the courts, so as to cast on them the burden of finding solutions. Usually, judges resort to jurisprudence. They seek to update and interpret laws when they are outdated, vague and are open to more than one interpretation. They also resort to jurisprudence when the text is vague, incomplete or omitting particular facts. The judge interprets in an attempt to seek the original meaning of the text. Similarly, the judge gives the text a new meaning, possibly more in line with the status of the community. Nevertheless, seeking a judge's jurisprudence with an ambiguous text is a constant challenge to the judge.

By reviewing the nine orders rendered so far, we see that they were issued by the courts of Beirut and Mount Lebanon, but we have not yet seen any orders issued by other courts. Nonetheless, those sentences are contradictory and do not all align behind a particular judicial interpretation of the law; for example, a restraining order was issued by a judge in a particular case and withheld by another in an identical case. This should come as no surprise, in fact, since standardizing the law and finding a specific orientation will not occur until higher authorities render judgments.

Next Steps and Recommendations

There is no doubt that the Bill will be enforced but will not be amended for some time. Therefore, efforts must be exerted in order to give it the best chance of implementation while simultaneously preparing an amended draft. The Bill sets forth a number of mechanisms that remain postponed, or waiting to be put in the right practical framework, such as the establishment of a fund, the drafting of a list of experts from the Ministry of Social Affairs, and the appointment of specialized General Prosecutors in all regions. Civil society organizations should be working on these matters and following up on their implementation. As for the procedures, we must wait for the judiciary to deal with them in order to figure out how it proceeds and whether the suggested solutions are realizable. As for the matters related to considerations of authority within family and society, there is no doubt that they will go back, once again, to the public arena for debate.

The Irony of the Challenges

The greatest challenge related to the Bill on Domestic Violence is that its concepts and essence conflict with the personal status laws and the subsequent habits and customs that were established under the guise of these laws. Personal status laws create a state of structural violence: they bring about a hierarchical structure, where man occupies the top of the pyramid as the head of the household. This structure is also characterized by the centralization of decision-making powers where man is the decision-maker and where his wife and children have an unquestionable duty to obey. Personal status laws discriminate between men and women, giving the former privileges by virtue of being men and women are deprived of fundamental rights simply because they are women.

The said structure inevitably allows the man control, undue demand of obedience and oppression, and leads to the social and economic marginalization of women,

as well as to a long history of violence under many forms, that is just beginning to unfold. Holding on to these laws and applying them as they stand promotes structural violence that results in a culture of violence and violent practices.

The great irony resides in having to strive to eliminate domestic violence to preserve human dignity and the guarantee of human rights, in a country that has undertaken to preserve such basic rights in the Preamble to its Constitution which stipulates in said Preamble that Lebanon commits to abide by the Universal Declaration of Human Rights and their principles in all fields and areas without exception. The first step toward this achievement lies in civil society's decision to commit to human rights, regardless of sacrifices.

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ENDNOTES

1. The Lebanese State has pledged in accordance with Article 2, paragraphs "c" and "f" to achieve the following: "Enact the legal protection of the rights of women on an equal footing with men and ensure the effective protection of women..." As stipulated in paragraph 6 of General Recommendation No. 19, the Committee on the Elimination of Discrimination against Women considers that discrimination includes gender-based violence, that is: "violence that is directed against a woman because she is a woman or that affects women disproportionately, including acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty." It also considers in paragraph 24/b that: "State parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity." The Committee also requested in paragraph 24/r that State parties take all the measures that are necessary to provide effective protection of women against gender-based violence, and these measures, according to the Committee are not limited to penal sanctions, but include as well preventive measures, protection measures, as well as support services for women who are victims of violence.
2. The project was put forward on the agenda of the Cabinet two times. The first time, a ministerial committee was set up, and the former minister Ibrahim Shams al-Din was asked to study the draft law. At that time, a committee of experts was formed and the draft law was sent to all confessional, spiritual and religious courts for the sake of collecting their observations. Based on those observations which reached the ad-hoc committee, some amendments were made to the draft law.
3. Article 26 stipulated that "all texts that are contrary to the provisions of this law shall be repealed, and in the case of contradiction of the provisions set forth in this law with the provisions of Personal Status laws and the rules of the jurisdiction of the religious, spiritual and confessional courts, shall apply the provisions of the latter in each case."
4. According to Article 2 of the Bill for the Protection of Women and Family Members Against Domestic Violence, the family comprises "The spouse, the mother, father, brother, sister, ascendant or descendant of the same, legal or illegal, as well as persons related thereto by adoption, marriage, guardianship or custody up to the fourth degree, orphans in the care thereof, or stepmothers or stepfathers."
5. Any neglect by the judicial agent to deal with the complaints and information related to domestic violence shall be considered a major offense as per the provisions of Article 130, Paragraph 2 of Law number 17 dated 6/9/1990 (on organizing the Internal Security Forces). The offender shall appear before the Disciplinary Council.
6. The payment of alimony as decided by competent courts shall end the payment established in the restraining order.
7. See Azza Charara Baydoun, Man Akraha zawjahu aidan, *an-Nahar* supplement, Saturday, September, 12th 2012.
8. If a true marriage contract is concluded between the perpetrator of one of the crimes listed in this chapter and the victim, public action shall be refuted and if the sentence has already been rendered, the implementation of the sanction shall be suspended.
9. Article 7 of the Lebanese Constitution provides for the principle of equality.