

Enhancing Access to

**JUSTICE FOR
SURVIVORS OF
DOMESTIC
VIOLENCE**

**BEFORE
LEBANESE COURTS**

– A Practical Approach –



Funded by the European Union



EUROPEAN UNION FOR
WOMEN EMPOWERMENT
مشروع الإتحاد الأوروبي
لتمكن المرأة

CONTENTS

4 ACKNOWLEDGEMENTS

5 ACRONYMS AND ABBREVIATIONS

6 EXECUTIVE SUMMARY

7 INTRODUCTION, OBJECTIVE, AND METHODOLOGY

Contextual introduction

Objective of the study

Methodology

11 CHAPTER I. ACCESS TO JUSTICE FOR DOMESTIC VIOLENCE BEFORE LEBANESE CIVIL COURTS

13 SECTION I. THE LEGAL OPERATIONAL FRAMEWORK FOR ACCESS TO JUSTICE OF SURVIVORS OF DOMESTIC VIOLENCE

14 Subsection A.

The International operational legal framework

27 Subsection B.

The Lebanese operational legal framework

32 SECTION II. JURISPRUDENCE ON DOMESTIC VIOLENCE FROM JUDGES OF URGENT MATTERS: FINDINGS AND RECOMMENDATIONS

33 Subsection A.

Forms of violence: findings and recommendations

35 Subsection B.

Burden of proof and evidence of violence: findings and recommendations

40 Subsection C.

Time frame for granting a protective order: findings and recommendations

44 Subsection D.

Family concept and protection of children (new amendment to Law 293): findings and recommendations

46 Subsection E.

Mediation for reconciliation as a resolution for domestic violence: findings and recommendations

49 Subsection F.

Additional requests for relief: findings and recommendations

51	CHAPTER II. ACCESS TO JUSTICE FOR DOMESTIC VIOLENCE BEFORE LEBANESE RELIGIOUS COURTS
54	SECTION I. DOMESTIC VIOLENCE BEFORE LEBANESE DRUZE COURTS Subsection A. Evidence of domestic violence: findings and recommendations Subsection B. Payment of damages and Mahr: findings and recommendations
59	SECTION II. DOMESTIC VIOLENCE BEFORE LEBANESE SUNNI COURTS³ Subsection A. Assignment of fault after a finding of discord and injury/domestic violence and prorating of Mahr: findings and recommendations Subsection B. Wife's duty of obedience: finding and recommendation
66	SECTION III. DOMESTIC VIOLENCE BEFORE LEBANESE JAAFARI SHIIA COURTS Subsection A. Loss of the right to maintenance and duty of obedience: findings and recommendations Subsection B. The Marriage Contract Form: recommendation
72	SECTION IV. DOMESTIC VIOLENCE BEFORE LEBANESE CHRISTIAN COURTS, SAMPLES OF JURISPRUDENCE Domestic violence facts: findings and recommendations
81	CONCLUSION
83	GLOSSARY
85	BIBLIOGRAPHY

ACKNOWLEDGEMENTS



Funded by the European Union



This research was prepared by Attorney Joelle Choueifati (Legal and Gender Expert for the EU4WE project), with the oversight and gender expertise advice by Elena Ferreras Carreras (Team Leader of the EU4WE project). Are acknowledged, with appreciation, the contributions (legal contributions and personal views) of Attorney Mohammad Mourad (President of the Tripoli Bar Association), Attorney Suzan Ismail, Attorney Abeer Dbouk, and Attorney Brigitte Chelebian; the support of Attorney Khaled Sabbagh, Attorney Omar Taleb, Attorney Bassel Chahal, and Attorney Mohammad Sharif; the peer review and legal input of Judge Ahmad Issa; and the support to the study implementation of the team from Expertise France, Constance De Liedekerke, Charlotte Binet (Programme Managers), and Maen Naboulsi (Project Officer).

The content of this report is the sole responsibility of Expertise France and can, in no way, be taken to reflect the views of the European Union.

© 2021

ACRONYMS AND ABBREVIATIONS

CAT	Convention against Torture and Other Cruel, Degrading, or Inhuman Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
EF	Expertise France
EU4WE	European Union For Women Empowerment
GAP	Gender Action Plan
GBV	Gender-Based Violence
GR	General Recommendation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
JUM	Judge of Urgent Matters
LCCP	Lebanese Code of Civil Procedure
UDHR	Universal Declaration of Human Rights
UN	United Nations

EXECUTIVE SUMMARY

The present study is a legal study that analyzes the jurisprudence of Lebanese Judges of Urgent Matters issued under Law 293/2014 on domestic violence, as well as the jurisprudence of various Lebanese religious courts pertaining to family law matters with elements of domestic violence. The aim of this study is to identify inaccurate current legal gaps in practices of these judges and courts, in an effort to improve the outcome of cases for survivors of domestic violence in the fight against gender-based violence, which is one of the key engagements of the European Union and the subject of its latest Gender Action Plan for 2021–2025

The introduction to this study explains the contextual background and rationale for the study, as part of the European Union for Women Empowerment Project, and defines the specific objectives of the study, along with the adopted research methodology followed in the study.

Chapter I, Section I, introduces and explains the international operative legal framework for the protection of human rights in Lebanon, namely the various conventions adopted, including the Convention for the Elimination of All Forms of Discrimination Against Women/CEDAW and the Convention on the Rights of the Child. It also explains the obligations (created by these conventions) of the Lebanese State to protect Lebanese women and children from domestic violence, with all ensuing legal consequences. Section I also lays out the Lebanese civil legal framework by introducing the main legal texts that apply in the event of domestic violence and their interplay with international conventions. Section II analyzes judgements on protective orders issued by Judges of Urgent Matters across Lebanon, within the normative frameworks above. Specifically, inaccuracies and gaps are highlighted in the application and interpretation of these legal texts, such as a restrictive definition of violence, stringent evidentiary requirements, and an extended timeframe for granting the protective orders. To remedy these gaps, the chapter proposes recommendations based on international law, mainly the General Recommendations of the CEDAW Committee, as well as international best practices.

Chapter II of the study focuses on access to justice for survivors of domestic violence before religious courts of Lebanon. Looking in general at the personal status laws of the main four religious denominations of Lebanon—namely, the Druze, Sunni, Jaafari Shiia, and Christian denominations, the chapter analyzes (in four sections) the judgements issued by the relevant religious courts in a personal status matter with elements of domestic violence (divorce, maintenance, obedience, custody of children, etc.) and identifies inaccurate practices based on existing personal status laws. For each denomination, the chapter proposes recommendations for harmonization based on the same personal status laws and international law (mostly the General Recommendations of the CEDAW Committee).

The Conclusion of the study proposes several summarized comprehensive recommendations, for religious and civil judges alike, that could have a positive impact on the performance of judges as well as on the outcome of domestic violence cases if adopted and applied.

INTRODUCTION, OBJECTIVE, AND METHODOLOGY

CONTEXTUAL INTRODUCTION

The European Union (EU) Gender Action Plan III (GAP III)¹ approved in November 2020 sets the roadmap for the EU's engagement in the fight against gender-based violence (GBV), which is among its **key areas of engagement**.² The EU recognises that GBV is rooted in harmful social norms and stereotypes across cultures and social classes and affects all communities at tremendous costs for not only for victims and survivors but also for their families, societies, and economies. For instance, the COVID-19 pandemic, which started in 2020, took (and of this writing, is taking) a heavy toll on women, as various lockdown measures led to a substantial increase in GBV (including domestic violence) in many parts of the world.

The EU also recognises that **“every human being has the right to live a life free from all forms of violence**. However, this is far from being a reality and multiple forms of GBV—against women and girls—or violence that is directed against a woman because she is a woman or that affects women disproportionately persist in every country, constituting one of the most widespread and under-reported forms of human rights violations. Women and girls with disabilities, migrant women and girls, and other minority groups are among the groups particularly at risk”.³

GAP III highlights the EU actions against GBV, focusing on:

- “increasing protection – by supporting legislation criminalising all forms of gender-based violence and capacity building of law enforcement institutions, in line with international legal and policy frameworks;
- promoting prevention – by challenging harmful gender norms, working with all relevant stakeholders to ensure a victim-centred approach and measures that end recidivism by perpetrators, also engaging men and boys, traditional and religious leaders;
- contributing to increasing prosecution of perpetrators including those involved in human trafficking by strengthening a victim-centred approach by the law-enforcement bodies;
- increasing protection of survivors also by supporting access to life-saving social and justice services with a survivor-centred approach, particularly in fragile and conflict/post-conflict settings or when survivors face intersecting discriminations;

¹ European Union Gender Action Plan III, GAP III 2020-2025, https://ec.europa.eu/international-partnerships/system/files/join-2020-17-final_en.pdf (accessed Apr. 23, 2021).

² The key areas of engagement are: ensuring freedom from all forms of gender-based violence; promoting sexual and reproductive health and rights; strengthening economic and social rights and the empowerment of girls and women; advancing equal participation and leadership; implementing the women, peace and security agenda, addressing challenges and harnessing the opportunities offered by the green transition and the digital transformation.

³ GAP III, supra n. 1, at 11.

- supporting access to psycho-social support services and participation in economic and social life of victims of gender-based violence and victims of trafficking in human beings;
- safe and quality humanitarian actions that support preparedness, prevention and response to sexual and gender-based violence and the work of the Call to Action; and
- strengthening women’s rights organisations and social movements as well as civil society organisations (CSOs) working on the intersectional dimension of gender-based violence.”⁴

GAP III also calls for supporting the mobilisation of religious actors for gender equality in line with the **Faith for Rights** framework⁵, which was launched by the Office of the United Nations High Commissioner For Human Rights at the Beirut Declaration in 2017.⁶ This initiative aims to unite various religious communities and faiths in the fight against discrimination and religious-based violence and considers religious leaders to be very important human rights actors.⁷

The EU-funded Project European Union for Women Empowerment (EU4WE) is a 36-month project (October 2019–October 2022) that aims to promote full and unconditional equality between men and women in Lebanon. This project is implemented and managed by Expertise France (EF), the French public agency for international technical assistance. The agency provides partner countries with knowledge, skills, and management expertise in democratic, economic and financial governance; stability, international security and peace; sustainable development, climate and agriculture; and health and human development.

The overarching purposes of EU4WE are to:

- I. Reduce GBV through women’s empowerment.
- II. Enhance existing institutional mechanisms working towards gender equality.

Achieving the following results will help to achieve the abovementioned purposes:

- Result 1.1 (component 1): Entrepreneurial capacities of Lebanese women are enhanced (Women economic empowerment programme).
- Result 1.2 (component 2): The legal mechanisms against GBV are enhanced (legal capacity building on GBV for legal professionals).
- Result 2.1 (component 3): Gender-oriented knowledge production and dissemination with the relevant stakeholders (support to gender observatory and gender machineries).

This legal analysis falls under Purpose I, Result 1.2 and aims to enhance access to justice for women survivors of domestic violence before civil and religious courts of Lebanon, based on existing applicable international conventions and Lebanese laws.

This analysis is based on jurisprudence and does not address any future legal amendments that Lebanon must enact to comply with the requirements of international

⁴ Id.

⁵ OHCHR, Faith For Rights, <https://www.ohchr.org/en/issues/freedomreligion/pages/faithforrights.aspx> (accessed Apr. 23, 2021).

⁶ Id.

⁷ OHCHR, Beirut Declaration enhances role of religions in promoting human rights, <https://www.ohchr.org/en/newsevents/pages/faithforrights.aspx> (accessed Apr. 23, 2021).

conventions or to completely eliminate discrimination against women (including GBV). The analysis followed a sound code of conduct and relevant standards with respect to anonymity, confidentiality and right to privacy of all parties involved, with an approach respectful of human rights and the rights of survivors.

OBJECTIVE OF THE STUDY

The objective of the study is to provide a legal analysis in light of Law 293/2014, international conventions adopted by Lebanon, and international best practices pertaining to domestic violence. This study is based on legal assessments of four denominations (Druze, Sunni, Jaafari Shiia, and Christian) and identifies and illustrates legal gaps and inaccurate practices in jurisprudence of civil courts, mainly jurisprudence of Judges of Urgent Matters (JUMs), under Law 293/2014 (enacted in 2014, with the latest amendments adopted in December 2020) and jurisprudence of religious courts in cases containing domestic violence elements. To bridge these gaps, this analysis provides recommendations under applicable Lebanese laws, international conventions adopted by Lebanon, and international best practices, through a legal harmonization approach, keeping in mind that the ultimate objective is to strengthen access to justice for survivors of domestic violence and to improve the outcome of their cases, before both Lebanese civil courts and religious courts.

This legal analysis is divided in two main parts:

Chapter I addresses access to justice for survivors of domestic violence before Lebanese civil courts by establishing the legal operational framework (domestic laws and international conventions pertaining to domestic violence) and then examining protective orders issued by JUMs. This chapter identifies inaccurate practices and legal gaps with respect to JUMs and proposes recommendations based on existing legal provisions and international best practices.

In Chapter II, the analysis will look at whether domestic violence is taken into consideration by Druze, Sunni, Jaafari Shiia, and Christian courts in cases of dissolution of marriage or other personal status law matter, and whether elements of domestic violence impact the outcome of the case and access to justice for women survivors.

LIMITATIONS OF THE STUDY

This legal analysis is based on a review of a specific number (95) of judgments, which were selected by the short-term experts and by the EU4WE legal expert because they are most illustrative of identifiable and repetitive legal gaps and inaccuracies. As evidenced by the selected judgments, cases of physical violence were the most recurrent before the courts. However, as discussed in this study, domestic violence is not limited to physical violence. In addition, the analysis does not purport to cover all judgments of JUMs and religious courts that were issued in cases of domestic violence and that addressed matters not analyzed herein.

CONTENT WARNING:

This study is intended for mature readers and contains descriptions of violence that are disturbing.

METHODOLOGY

First, EU4WE conducted an in-depth review of existing literature to gather baseline information and assess status of jurisprudence, which confirmed the following:

1. A lack of a unified definition and interpretation of domestic violence before civil courts under Law 293/2014 and the lack of a legal understanding of the concept of domestic violence (as defined by CEDAW and explained in its recommendations) in various court judgments, including the JUMs' jurisprudence.
2. A lack of understanding for, or consideration of, the element of domestic violence. This was observed despite provisions in some personal status laws that indirectly protect women from domestic violence (for instance, by allowing a woman to leave the marital home if the couple's life becomes impossible or if there is danger to her life and the children's life). The lack of understanding and/or consideration by religious judges of the concept of domestic violence and GBV in personal status cases is pervasive in cases dealing with divorce, disobedience, legal separation, spousal maintenance and alimony, custody of children, etc.

In order to gather information from real cases, and based on a transparent competitive process involving a call for proposal and terms of references published online, the EU4WE project selected and hired four (4) legal experts (some attorneys worked in teams) through short-term contracts, with expertise in the application of Law 293/2014 in civil and criminal courts and with legal professional practical expertise in the various religious personal status laws of the Sunni, Jaafari Shiiia, Druze, and Christian denominations.⁸

Each team/expert undertook a legal assessment of the JUMs' decisions on protective orders and of judgments of religious courts on matters of personal status (e.g., divorce, disobedience, legal separation, spousal maintenance and alimony, custody of children, etc.) that had an element of domestic violence. Each expert was required to provide and analyze ten to fifteen judgments issued by the JUMs and ten to fifteen judgments issued by the relevant religious courts. The short-term experts reviewed a total of 46 judgments on protective orders. The majority of the judgements were issued in 2017 or later, and a few were issued in 2015 and 2016; there were no duplications. The short-term experts also reviewed a total of 49 judgments issued by the various religious courts. The experts started their assignment in August 2020 and completed their legal assessments by November 16, 2020. The review of all judgements and all legal work was performed under the strictest standards of anonymity, confidentiality, and respect for the right to privacy of all individuals involved. As such, the names of individuals and parties to the judgments were completely redacted.

Relying on the legal assessment provided by each team of legal experts, the EU4WE legal expert then undertook this legal analysis in light of Law 293/2014, international conventions adopted by Lebanon, and international best practices pertaining to domestic violence. The legal expert reviewed the legal assessments and selected judgments to identify and illustrate legal gaps and inaccurate practices of JUMs and religious courts. Finally, the legal expert provided recommendations based on existing Lebanese laws, international conventions adopted by Lebanon, and international best practices.

⁸ The call for proposal was published on the Daleel Madani website (<https://daleel-madani.org/>) between Apr. and June 2020.

CHAPTER I.

ACCESS TO JUSTICE FOR

DOMESTIC  CIVIL
VIOLENCE 

BEFORE LEBANESE

CIVIL
COURTS

SECTION I. THE LEGAL OPERATIONAL FRAMEWORK FOR ACCESS TO JUSTICE OF SURVIVORS OF DOMESTIC VIOLENCE

GBV is an umbrella term that encompasses violence directed at any individual because of their gender. UN Women, the United Nations' entity dedicated to gender equality and women empowerment, defines GBV as *"harmful acts directed at an individual or a group of individuals based on their gender. It is rooted in gender inequality, the abuse of power and harmful norms. The term is primarily used to underscore the fact that structural, gender-based power differentials place women and girls at risk for multiple forms of violence. While women and girls suffer disproportionately from GBV, men and boys can also be targeted. The term is also sometimes used to describe targeted violence against LGBTQI+ populations, when referencing violence related to norms of masculinity/femininity and/or gender norms."*⁹ GBV presents itself in many ways, including violence against women, sexual harassment, online violence, and domestic violence, which is the focus of this study. *"GBV in all its forms has tremendous physical, emotional, and social consequences for the person victimized by it, who is often referred to as a 'survivor'. Survivors of GBV have the right to receive quality, compassionate care and support that addresses the harmful consequences of violence in order to help them heal and recover."*¹⁰ Domestic violence, also called intimate partner violence or domestic abuse, is a persistent and pervasive phenomenon that has historically existed and still exists around the world in all societies, regardless of any distinctive criteria. UN Women also defines domestic violence as *"any pattern of behavior that is used to gain or maintain power and control over an intimate partner. It encompasses all physical, sexual, emotional, economic and psychological actions or threats of actions that influence another person. This is one of the most common forms of violence experienced by women globally."*¹¹

Domestic violence is thus based on intimate relationships, including marriage, and manifests itself through the various forms of violence below:

- *Physical violence, which involves "hurting or trying to hurt a partner by hitting, kicking, burning, grabbing, pinching, shoving, slapping, hair-pulling, biting, denying medical care or forcing alcohol and/or drug use, or using other physical force. It may include property damage."*¹²
- *Economic violence, which involves "making or attempting to make a person financially dependent by maintaining total control over financial resources, withholding access to money, and/or forbidding attendance at school or employment."*¹³

⁹ UN Women, Frequently Asked Questions, types of violence, key terms, <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence> (accessed Apr. 19, 2021).

¹⁰ Interagency Standing Committee, Interagency Gender-Based Violence Case Management Guidelines: Providing Care and case management services to gender-based violence survivors in humanitarian settings, p. 7 (2017). "A survivor is a person who has experienced gender-based violence. The term 'victim' and 'survivor' can be used interchangeably. 'Victim' is often used in the legal and medical sectors, whereas 'survivor' is generally preferred in the psychological and social support sectors because it implies resiliency."

¹¹ UN Women, *supra* n. 9.

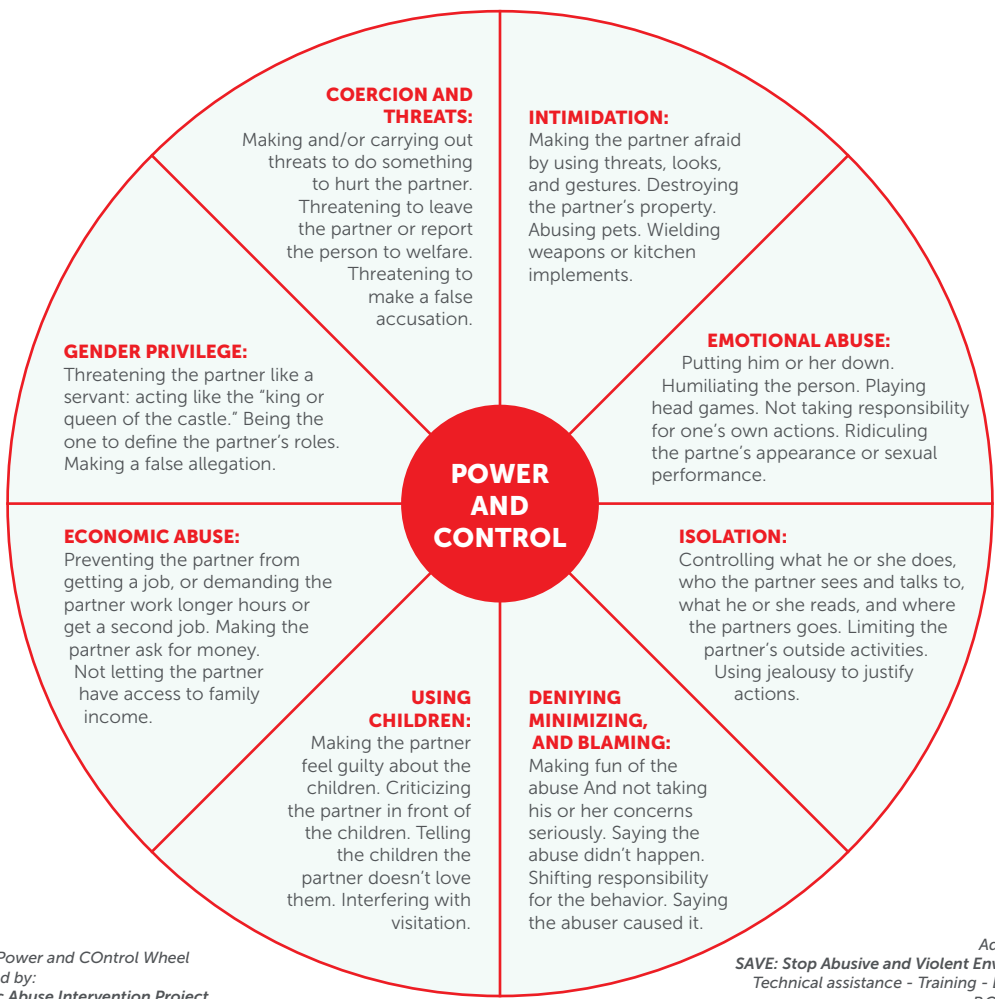
¹² *Id.*

¹³ *Id.*

- Psychological violence, which involves “causing fear by intimidation; threatening physical harm to self, partner or children; destruction of pets and property; “mind games”; or forcing isolation from friends, family, school and/or work.”¹⁴
- Emotional violence, which involves “undermining a person’s sense of self-worth through constant criticism; belittling one’s abilities; name-calling or other verbal abuse; damaging a partner’s relationship with the children; or not letting a partner see friends and family.”¹⁵
- Sexual violence, which involves “forcing a partner to take part in a sex act when the partner does not consent.”¹⁶

GENDER-INCLUSIVE POWER AND CONTROL WHEEL

Physical and sexual assaults, or threats to commit them, are often linked to other abusive behaviors. Although physical assaults may occur only occasionally, they can instill the fear of future violence, allowing the abuser to take control of the partner’s life. The gender-Inclusive Power and Control Wheel is a helpful tool to understand the overall pattern of abusive and violent behavior.



Original Power and Control Wheel developed by:
Domestic Abuse Intervention Project
202 East Superior Street
Duluth, MN 55802

Adapted by:
SAVE: Stop Abusive and Violent Environments
Technical assistance - Training - Education
P.O.Box 1221
Rockville, MD 20849
6/24/09

14 Id.
15 Id.
16 Id.

These definitions are illustrated in the “*Power and Control Wheel*” (developed by the Duluth Domestic Abuse Intervention Project).¹⁷ Even though originally created for women survivors, this wheel is used nowadays in a gender-inclusive way to depict intimate partner violence, regardless of the gender of the perpetrator and the survivor. It illustrates most common behaviors observed in cases of domestic violence. The wheel has also been adapted by various organizations to address other specific kinds of violence (such as cyberbullying or workplace violence) and specific categories of individuals (such as teens, employees, persons with disabilities, immigrants, or other).

On the whole, women who face and live through domestic violence are resilient survivors who want to move forward. Safety and empowerment are quintessential to the recovery process of survivors, to keep them safe from harm and give them the ability to regain control of their lives, and make their own appropriate decisions.¹⁸

Safety and personal intrinsic empowerment of the survivor cannot, however, exist in a vacuum; to be effective, these factors must be accompanied by a set of social and legal structures that would permit, assist, and accompany the survivor on her journey to recovery. Social structures include access to social services for women survivors, such as emergency shelters and medium-term safe houses, access to mental and physical healthcare, education and employment assistance programs, among others. The legal structures mainly entail a government operating under the Rule of Law, with a properly functioning justice system that relies on adequate legal instruments and on an efficient judicial apparatus. The first critical step in assisting a survivor is to cut short the cycle of violence by affording her safety from harm through appropriate legal protection from the perpetrated abuse.

This chapter focuses, first, on the availability of legal instruments—both international and domestic—for the protection against domestic violence in Lebanon. Next, it addresses the adequacy of use of these instruments through the analysis of jurisprudence of JUMs.

SUBSECTION A.

THE INTERNATIONAL OPERATIONAL LEGAL FRAMEWORK

Traditionally called the “Law of Nations”, international law is a body of rules that govern relationships between nations and also between consenting States and various organizations and bodies, often with a direct impact on the legal rights of individuals. International law stems from many sources, including international customary legal rules and practices and written documents (such as declarations, conventions, and treaties). International law covers a wide array of disciplines, one of which is international human rights law. In “An Introduction to International Law”, Mark Janis and William Farr explain that international human rights law “*posits the*

¹⁷ Power and Control Wheel, <https://www.med.unc.edu/beacon/wpcontent/uploads/sites/598/2018/03GenderInclusivePCWheel.pdf> (accessed Apr. 21, 2021).

¹⁸ ESCWA, Shelters for Women Survivors, Availability and Accessibility in the Arab Region, E/ESCWA/ECW/2019/5, E/ESCWA/EW/2019/5, www.unescwa.org (accessed Apr. 19, 2021).

direct application of international law to individuals and in some instances even gives individuals direct access to international legal machinery.”¹⁹

The main legal instruments for international human rights applicable in Lebanon are listed hereunder with a brief description of each; it should be kept in mind Lebanon that has duly adopted these instruments and has agreed to be bound by them, under specific conditions. Further, it must be noted that these conventions have bodies that monitor their implementation by State parties through committees of independent experts.²⁰ These bodies also issue recommendations called “General Recommendations” or “General Comments”, which are specific recommendations that define the breadth of obligations under each convention and guide State parties and relevant institutions with the interpretation, application, and practical implementation of the convention.

1. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

Three years after its establishment, the United Nations (UN) proclaimed the Universal Declaration of Human Rights (UDHR) on December 10, 1948, through its General Assembly Resolution 217. This declaration officially consecrated the existence of human rights to all and created a fundamental legal framework for their recognition, application, and protection. The UDHR legally established in writing the principle of equality for all and became the foundational express text for international human rights and subsequent international human rights instruments, as set in articles 1 and 2 of the UDHR (see below). The UDHR expressly guarantees the right of individuals to safety and security in article 3.

“Article 1.

*All Human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in spirit of brotherhood.*²¹

Article 2.

*Everyone is entitled to the all the rights and freedoms set forth in this Declaration, without any distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any limitation of sovereignty.*²²

Article 3.

Everyone has the right to life, liberty and security of person.”²³

The UDHR recognizes 30 basic human rights and freedoms, including the right to marriage and family and equality of men and women in marriage and family in article 16:

¹⁹ Mark W. Janis & William F. Farr, *An Introduction to International Law*, p. 249 (3 ed. Aspen Law & Business 1999).

²⁰ Additional information on treaty monitoring bodies is available at <https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

²¹ Universal Declaration of Human Rights, https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf (accessed Nov. 26, 2020).

²² *Id.*

²³ *Id.*

"Article 16.

- 1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and after dissolution.*
- 2. Marriage shall be entered into only with the free and full consent of the intending spouses.*
- 3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."²⁴*

Lebanon, one of the original 51 members of the UN, adopted the UDHR in 1948 without any reservations (see link below).

2. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

Adopted by the UN in 1966, with entry into force in 1976, the International Covenant on Civil and Political Rights (ICCPR) guarantees equal political and civil rights to all, as described in the covenant, and imposes an obligation on State parties to uphold and protect these rights. Unequivocally, and similar to the UDHR, the ICCPR also guarantees the equality of men and women in rights, including in marriage and family rights, and imposes a duty on State Parties to ensure the equality of rights and duties of both with respect to marriage, both during marriage and after dissolution of the marital bond. The covenant also expressly guaranteed the right to freedom of torture or to cruel, inhuman or degrading treatment or punishment.

"Article 2.

- 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

- 2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*

- 3. Each State Party to the present Covenant undertakes:*
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;*
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;*

²⁴ Id.

(c) To ensure that the competent authorities shall enforce such remedies when granted.²⁵

Article 3.

*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.*²⁶

Article 7.

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*²⁷

Article 23.

- 1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.*
- 2. The right of men and women of marriageable age to marry and found a family shall be recognized.*
- 3. No marriage shall be entered into without the free and full consent of intending spouses.*
- 4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.”*²⁸

Lebanon duly ratified the ICCPR on November 3, 1972, with no reservations (see link below).

3. THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

Adopted by the UN in 1966, with entry into force in 1976, the International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees equal economic, social and cultural rights to all, as described in the covenant, and imposes an obligation on State parties to uphold and protect these rights. Unequivocally, and similar to the provisions of the UDHR and the ICCPR, the ICESCR also expressly guarantees the equality of men and women in rights, including in marriage and family rights, and imposes a duty on State Parties to afford the widest protection and assistance to families.

“Article 3.

*The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.*²⁹

²⁵ International Covenant on Civil and Political Rights, https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf (accessed Nov. 27, 2020).

²⁶ Id.

²⁹ International Covenant on Economic, Social and Cultural Rights, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (accessed Nov. 27, 2020).

²⁷ Id.

²⁸ Id.

Article 10 (1).

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while

it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.”³⁰

Lebanon duly ratified the ICESCR on November 3, 1972, with no reservations (see link below).

Based on the UDHR, both covenants affirm that because all individuals are human, they enjoy the same human rights. *“Human rights are universal and inalienable; indivisible; interdependent and interrelated. They are universal because everyone is born with and possesses the same rights, regardless of where they live, their gender or race, or their religious, cultural or ethnic background. Inalienable because people’s rights can never be taken away. Indivisible and interdependent because all rights – political, civil, social, cultural and economic – are equal in importance and none can be fully enjoyed without the others. They apply to all equally, and all have the right to participate in decisions that affect their lives. They are upheld by the rule of law and strengthened through legitimate claims for duty-bearers to be accountable to international standards.”³¹*

4. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Adopted by the UN in December 1979, with coming into force in September 1981, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) aimed to completely and definitively eliminate forms and means of discrimination against women that still persisted at that time despite the existence and application of the former human rights instruments (see link below). CEDAW is the main human rights convention that specifically recognizes absolute substantive equality of women to men and simultaneously grants women equal rights in the social, political, cultural and economic fields, irrespective of whether a woman is single, married, widowed, or divorced.³² CEDAW defines discrimination against women in its article 1 and establishes the standard of due diligence for violence against women of State Parties in article 2:

“Article 1.

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”³³

³⁰ Id.

³¹ United Nations Population Fund, Human Rights Principles, <https://www.unfpa.org/resources/human-rights-principles#:~:text=Human%20rights%20are%20universal%20and,religious%2C%20cultural%20or%20ethnic%20background> (accessed Nov. 27, 2020).

³² Convention on the Elimination of All forms of Discrimination Against Women, <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#intro> (accessed Nov. 30, 2020).

³³ Id.

Article 2.

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women."³⁴

The due diligence obligation of State parties to CEDAW means that a State must address GBV in both the public and private spheres. A State cannot evade this positive obligation/duty by simply claiming that GBV was the act of private parties, over which the State had no control. Thus, the State must take appropriate measures to prevent GBV from occurring, protect women against GBV, prosecute and punish GBV perpetrators, and provide reparation for survivors of GBV. This legal duty stands no matter the identity of the perpetrator(s).³⁵ According to ESCWA's Policy brief of 2018, in addition to prevention, protection, punishment and remedies, due diligence is critical because *"it challenges the public–private divide created within international (and domestic) law"*³⁶ while also complementing *"other human rights principles and frameworks."*³⁷

³⁴ Id.

³⁵ Yakin Erturk, Special Rapporteur on Violence Against Women, its causes and consequences, Integration Of The Human Rights Of Women And The Gender Perspective: Violence Against Women, The Due Diligence Standard As A Tool For The Elimination Of Violence Against Women; E/CN.4/2006/61, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/103/50/PDF/G0610350.pdf?OpenElement> (accessed Dec. 17, 2020).

³⁶ ESCWA, Policy Brief, Due Diligence Standard, Violence against Women and Protection Orders in the Arab Region, E/ESCWA/ECW/2018/Brief.2, <https://www.unescwa.org/publications/protection-orders-due-diligence> (accessed Dec. 15, 2020).

³⁷ Id.

In 1992, expanding on the language of article 3 of CEDAW stating that, “*States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men*”, the CEDAW Committee issued General Recommendation (GR)19 (see link below), which officially recognized GBV as a form of discrimination against women. GR 19 affirmed that GBV (including domestic violence) hinders or annuls the enjoyment of women of their fundamental human rights and freedoms. GR 19 clearly imposed on State Parties the responsibility for the discriminatory acts of State representatives or officials and for acts of private parties, if and when the State fails to fulfill its due diligence obligation.³⁸

GENERAL RECOMMENDATION NO. 19

General comments

[...]

6. The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

7. Gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of article 1 of the Convention. These rights and freedoms include: (a) The right to life; (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict; (d) The right to liberty and security of person; (e) The right to equal protection under the law; (f) The right to equality in the family; (g) The right to the highest standard attainable of physical and mental health; (h) The right to just and favourable conditions of work.

8. The Convention applies to violence perpetrated by public authorities. Such acts of violence may breach that State’s obligations under general international human rights law and under other conventions, in addition to breaching this Convention.

³⁸ Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, Violence Against Women, 1-2, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf (accessed Dec. 3, 2020).

9. It is emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2 (e), 2 (f) and 5). For example, under article 2 (e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

GENERAL RECOMMENDATION NO. 19

Comments on specific articles of the Convention:

Articles 2 and 3

Articles 2 and 3 establish a comprehensive obligation to eliminate discrimination in all its forms in addition to the specific obligations under articles 5-16 [...]

Specific Recommendations

24. In light of these comments, the Committee on the Elimination of Discrimination against Women recommends:

(a) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act; [...]

(t) States parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia: (i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including inter alia violence and abuse in the family, sexual assault and sexual harassment in the workplace; [...]

On the 25th anniversary of GR 19, in July 2017, the CEDAW Committee issued GR 35 (see link below). Updating GR 19, GR 35 is another major milestone in the fight against all forms of GBV. As summarized by Office of the High Commissioner for Human Rights, GR 35:

- *“Recognizes that the prohibition of gender-based violence has become a norm of international customary law;*
- *Expands the understanding of violence to include violations of sexual and reproductive health rights;*
- *Stresses the need to change social norms and stereotypes that support violence, in the context of a resurgence of narratives threatening the concept of gender equality in the name of culture, tradition or religion;*
- *Clearly defines different levels of liability of the State for acts and omissions committed by its agents or those acting under its authority - in the territory of the*

State or abroad- and for failing to act with due diligence to prevent violence at the hands of private individuals and companies, protect women and girls from it, and ensure access to remedies for survivors;

- *Unequivocally calls for the repeal of all laws and policies that directly and indirectly excuse, condone and facilitate violence; and*
- *Emphasizes the need for approaches that promote and respect women's autonomy and decision-making in all spheres of life.*³⁹

For the purposes of this study, the most relevant CEDAW Committee comments and explanations of GR 35 are given below⁴⁰:

GENERAL RECOMMENDATION NO. 35 ON GENDER-BASED VIOLENCE AGAINST WOMEN, UPDATING GENERAL RECOMMENDATION NO. 19

Introduction

Acknowledgements

[...]

2. For more than 25 years, in their practice, States parties have endorsed the Committee's interpretation. The opinio juris and State practice suggest that the prohibition of gender-based violence against women has evolved into a principle of customary international law. General recommendation No. 19 has been a key catalyst for that process.

II. Scope

[...]

15. Women's right to a life free from gender-based violence is indivisible from and interdependent on other human rights, including the rights to life, health, liberty and security of the person, equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, and freedom of expression, movement, participation, assembly and association.

16. Gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices in certain cases, some forms of gender-based violence against women may also constitute international crimes.

³⁹ Committee on the Elimination of Discrimination against Women, Launch of CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation no. 19, <https://www.ohchr.org/en/hrbodies/cedaw/pages/gr35.aspx> (accessed Dec. 3, 2020).

⁴⁰ Committee on the Elimination of Discrimination against Women, General Recommendation 35 on gender-based violence against women, updating general recommendation No. 19, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en (accessed Dec. 3, 2020).

17. The Committee endorses the view of other human rights treaty bodies and special procedures mandate holders that, in determining when acts of gender-based violence against women amount to torture or cruel, inhuman or degrading treatment, a gender-sensitive approach is required to understand the level of pain and suffering experienced by women, and that the purpose and intent requirements for classifying such acts as torture are satisfied when acts or omissions are gender-specific or perpetrated against a person on the basis of sex.

IV. Recommendations

[...]

C. Protection

31. The Committee recommends that States parties implement the following protective measures:

(a) Adopt and implement effective measures to protect and assist women complainants of and witnesses to gender-based violence before, during and after legal proceedings, including by:

(i) Protecting their privacy and safety, in line with general recommendation No. 33, including through gender-sensitive court procedures and measures, bearing in mind the due process rights of victims/survivors, witnesses and defendants;

(ii) Providing appropriate and accessible protective mechanisms to prevent further or potential violence, without the precondition that victims/survivors initiate legal action, including through removal of communication barriers for victims with disabilities.

Mechanisms should include immediate risk assessment and protection comprising a wide range of effective measures and, where appropriate, the issuance and monitoring of eviction, protection, restraining or emergency barring orders against alleged perpetrators, including adequate sanctions for non-compliance. Protective measures should avoid imposing an undue financial, bureaucratic or personal burden on women who are victims/survivors. The rights or claims of perpetrators or alleged perpetrators during and after judicial proceedings, including with respect to property, privacy, child custody, access, contact and visitation, should be determined in the light of women's and children's human rights to life and physical, sexual and psychological integrity and guided by the principle of the best interests of the child;

[...]

D. PROSECUTION AND PUNISHMENT

32. The Committee recommends that States parties implement the following measures with regard to prosecution and punishment for gender-based violence against women:

(a) Ensure effective access for victims to courts and tribunals and that the authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and, as appropriate, *ex officio*

prosecution to bring alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties. Fees or court charges should not be imposed on victims/survivors;

(b) Ensure that all legal proceedings, protective and support measures and services concerning victims/survivors respect and strengthen their autonomy. They should be accessible to all women, in particular those affected by intersecting forms of discrimination, take into account any specific needs of their children and other dependants, be available throughout the State party and be provided irrespective of residency status or ability or willingness to cooperate in legal proceedings against the alleged perpetrator. States should also respect the principle of non refoulement;

E. REPARATIONS

33. The Committee recommends that States parties implement the following measures with regard to reparations:

(a) Provide effective reparations to victims/survivors of gender-based violence against women. Reparations should include different measures, such as monetary compensation, the provision of legal, social and health services, including sexual, reproductive and mental health services for a complete recovery, and satisfaction and guarantees of non-repetition, in line with general recommendation No. 28, general recommendation No. 30 and general recommendation No. 33. Such reparations should be adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered;

(b) [...]

GR 35 thus builds and emphasizes on improved access to justice for women survivors of GBV, as laid out by GR 33, which directly addresses access to justice for women (see link below). Access to justice simply means that part of the State's due diligence obligation under CEDAW is to *"implement a range of measures including, where necessary, amending domestic law to ensure acts of violence against women are properly defined as crimes and ensuring appropriate procedures for investigations, prosecutions and access to effective remedies and reparation."*⁴¹

In GR 33, the CEDAW Committee further explains that, in a justice system, proper and efficient access to justice involves six interrelated components that must coexist and be synchronized together to implement women's rights: justiciability, availability, accessibility, good quality, provision of remedies and accountability.⁴²

⁴¹ ICJ, Women's Access to Justice for Gender-Based Violence, A Practitioners' Guide, Practitioners' Guide No.12, p. 3, (ICJ 2016).

⁴² Committee on the Elimination of Discrimination Against Women, General recommendation No. 33 on women's access to justice, ¶ 14-20, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en (accessed Dec. 3, 2020).

Thus, an assessment of access to justice would evaluate the performance of a justice system against each of these components, which were explained by the International Commission of Jurists (ICJ), as stated below:

“1. Justiciability

- *Unhindered access by women to justice.*
- *Women’s ability and empowerment to claim their rights as legal entitlements.*

2. Availability

- *Establishment and maintenance of courts and other quasi-judicial bodies in urban, rural and remote areas.*

3. Accessibility

- *All justice systems must be secure, affordable and physically accessible to women.*
- *All justice systems must be adapted to the needs of women, including those subject to intersectional or compounded discrimination.*

4. Good quality

- *International standards of competency, efficiency, independence and impartiality must be met.*
- *Justice systems must be contextualized, dynamic, participatory, open to innovation and gender sensitive.*

5. Access to remedies

- *Appropriate and effective remedies, including protection from and meaningful redress to the harm suffered, must be provided and enforced in a timely manner.*

6. Accountability

- *Monitoring of the justice system, including justice system officials, must be undertaken in accordance with the other assessments outlined above and ensuring the legal responsibility of any justice system officials when they violate the law.”⁴³*

Lebanon ratified CEDAW on July 24, 1996, through law no. 592/1996, while expressing reservations against article 9(2) pertaining to equality with respect to nationality rights of children born to a Lebanese woman and a non-Lebanese father, and article 16 (1) (c), (d), (f) and (g) pertaining to: equality of rights during and after the dissolution of marriage (16.1.c); equality in parental rights and obligations based on the best interests of the child (16.1.d); equality of rights and obligations as guardianship and similar legal constructs based on the best interests of the child (16.1.f); and equality in personal rights as husband and wife (16.1.g). Lebanon also expressed reservation against article 29 of CEDAW pertaining to the administration of the convention and arbitration in the event of a dispute. To date, these reservations still exist. It must be noted that Lebanon has not ratified the Optional Protocol to the CEDAW Convention, which provides a pathway for individuals or groups of individuals to file a complaint against the State of Lebanon before the CEDAW Committee. Once a complaint is filed after fulfilling specific criteria, the Committee has legal subject-matter jurisdiction to examine it and issue a decision on it, under its communications procedure.

⁴³ ICJ, supra n. 41, at 34-35.

5. THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (CAT)

Adopted by the UN in Dec. 1984, the Convention Against Torture (CAT) aims to prevent torture and other acts that are cruel, degrading, inhuman or constitute punishment. State parties to this convention must actively prevent such acts when committed by, at the instigation of, or with the consent or approval of a public official or a person acting in an official capacity. CAT defines torture as follows:

“Article 1.

1. For the purposes of this Convention, the term «torture» means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation, which does or may contain provisions of wider application.”⁴⁴

Lebanon ratified this convention (see link below) on Oct. 5, 2000, and ratified the convention’s Optional Protocol in Dec. 2008. The Protocol imposes on State parties the creation of an independent national mechanism aimed at preventing torture and ill treatment of people in detention and allows for the international inspection of detention places.

6. CONVENTION ON THE RIGHTS OF THE CHILD (CRC)

Considered as the most ratified treaty in the world, the Convention on the Rights of the Child (CRC) is the principal human rights treaty on the rights of children and is the main international document that protects the civil, political, economic and social rights of children (see link below). This convention expressly sets the standard of “best interests of the child” as the primary norm to follow when taking actions that affect the lives and interests of children. It clearly imposes on State parties the obligation to protect children from any form of violence, whether physical, emotional, mental or other, through adopting all necessary legislative (administrative, social or educational) or other measures in article 19. Article 1 of the CRC defines children as human beings below the age of 18 years; article 2 provides protection of all children from any discrimination and punishment; and article 3 clearly adopts “the best interests of the child” as the gold standard to follow when authorities and institutions, private or public, are taking actions that affect the lives of children.⁴⁵ In 2011, the CRC Committee expressly recognized that exposing children to domestic violence is

⁴⁴ Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>, accessed November 30, 2020.

⁴⁵ Convention on the Rights of the Child, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (accessed Nov. 30, 2020).

amounts to mental violence and psychological neglect and maltreatment.⁴⁶ The CRC articles that are most relevant to this study are listed below.

“Article 3.

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 19.

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 34.

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;”

Lebanon ratified this convention in 1991, without any reservations.

SUBSECTION B.

THE LEBANESE OPERATIONAL LEGAL FRAMEWORK

1. THE LEBANESE CONSTITUTION

The Preamble. Adopted in May 1926, the Constitution of Lebanon was last amended in 1990. Introduced in 1990, the Preamble of the Constitution provides that (1) Lebanon will respect and uphold its international covenants and (2) all citizens are equal in rights and duties without discrimination.

“(B) Lebanon is Arab in its identity and in its association. It is a founding and active member of the League of Arab States and abides by its pacts and covenants.

⁴⁶ Committee on the Rights of the Child, General Recommendation No. 13, The right of child to freedom from all forms of violence, 2011, ¶ 20, 21, file:///E:/EU-4WE-General/CEDAW-Legal%20Analysis/Working%20bibliography/CRC-GR-13-2011.pdf (accessed Nov. 30, 2020).

*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.*⁴⁷

*(C) 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.*⁴⁸

While the Constitution itself is silent on the legal weight of its preamble, the Lebanese Constitutional Council, in a 2001 judgement, unequivocally affirmed that “international treaties expressly mentioned in the preamble of the Constitution as well as the preamble are an integral part of the Lebanese Constitution and have constitutional legal weight”.⁴⁹ This principle was reaffirmed in a later judgement and has become accepted and adopted legal precedent.⁵⁰ The importance of this principle resides in the application of the theory of hierarchy of legal norms developed by Hans Kelsen⁵¹ in the context of international treaties and conventions. Describing Kelsen’s theory and the operation of constitutional justice, the President of the Lebanese Constitutional Council, Mr. Issam Sleiman, in the 2011 yearbook of the Constitutional Council, explains that by application of the hierarchy of norms and its tiered approach, international human right treaties prevail over domestic laws, based on their constitutional recognition (unofficial translation from French below):

“Constitutional justice is based on the theory of the hierarchy of norms, established by Hans Kelsen, according to which legal order is not a system of legal norms placed all at the same rank, but a building with several superimposed floors, a pyramid or hierarchy formed of a number of levels or layers of legal norms. In other words, a rule does not in and of itself and in isolation have legal value. It acquires such a quality only insofar as it can be brought into relation with a higher standard. Thus, its legal nature results from its insertion into a hierarchical whole. The higher rule transmits its validity to the lower rule, and the latter must be subordinated to the higher standard. At the top of this hierarchy of norms is the Constitution, expression of the general will and of national sovereignty.

*Behind the Constitution come international conventions, followed by laws, decrees, and orders. Under the rule of law, the hierarchy of norms must be strictly observed. Constitutional jurisdictions are responsible for ensuring the consistency of laws with the Constitution. Constitutional Courts and Councils are a guarantee for human rights, provided that these rights are guaranteed by the Constitution. The Constitution must take into account international human rights law because these rights can no longer be reduced to an internal dimension or to a relationship between the citizen and the Government”.*⁵²

⁴⁷ The Constitution of Lebanon, 3, <https://www.wipo.int/edocs/lexdocs/laws/en/lb/lb018en.pdf> (accessed Nov. 30, 2020).

⁴⁸ Id.

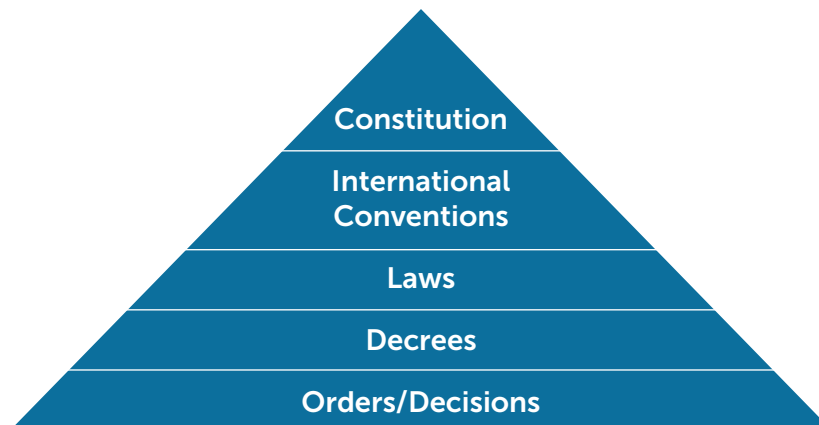
⁴⁹ Tarek Majzoub, *Le Juge Libanais et le Droit International des Droits de L’Homme : Le Droit International Public et le Juge Libanais de la Constitutionnalite*, Etudes, 65-80, *Annuaire International de Justice Constitutionnelle*, p. 25, 2009-2010, <https://www.persee.fr/search?ta=article&q=tarek+majzoub> (accessed Nov.18, 2020).

⁵⁰ Id.

⁵¹ Issam Sleiman, *La justice constitutionnelle et les droits de l’homme : Quelle hiérarchie de normes dans le monde arabe ?*, p. 52, *Annuaire du Conseil Constitutionnel 2011*, <https://www.cc.gov.lb/sites/default/files/4.%20Annuaire%202011.pdf> (accessed Dec. 1, 2020).

⁵² Id.

The following diagram illustrates the principle of hierarchy of norms:



- **Article 7** of the Constitution guarantees equality of all before the law stating:

*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.*⁵³

Thus, and by interpreting this article in line with the spirit of the Constitution and international human rights treaties, any discrimination based on race, sex, national origin, religion, or any other reasons whatsoever should be deemed unconstitutional. However, the Lebanese Constitution does not provide a general definition of discrimination and much less a definition of discrimination based on gender.

- **Article 9** of the Constitution guarantees freedom of religion to all and the right of existing religious denominations (rites) to regulate personal status and interest of their followers as long as “public order” is not disturbed:

*“There shall be absolute freedom of conscience. The state in rendering homage to the 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.”*⁵⁴

2. THE LEBANESE CODE OF CIVIL PROCEDURE (LCCP)

The Lebanese Code of Civil Procedure (LCCP) also recognizes the theory of hierarchy of norms and expressly provides for its application in its article 2⁵⁵ (see below; unofficial translation from Arabic). The LCCP also provides guidance as to how judges must render justice in article 4⁵⁶ (see below) and grants individuals the right to sue the Lebanese State under specific reasons, including denial of justice and gross error in the exercise of reasonable care.⁵⁷

⁵³ The Constitution of Lebanon, supra n. 47.

⁵⁴ Id.

⁵⁵ Lebanese Code of Civil Procedure (1983).

⁵⁶ Id.

⁵⁷ Id.

“Article 2. The Principle of hierarchy of norms

1. Courts must adhere to the principle of hierarchy of norms. When the provisions of international treaties conflict with the provisions of ordinary law, the former shall prevail over the latter.

2. Courts shall not declare as null the works of the legislative power on the basis of inconsistency of ordinary laws with the Constitution or with international treaties.

Article 4. A judge shall be liable for denial of justice if he (she):

1. Refrains from ruling based on obscurity of the law or absence of the law.

2. Delays the rendering of a judgment for no reason. If the law is obscure, the judge shall interpret it in a manner consistent with its purpose and with other texts. In the absence of a law, the judge shall apply the general principles of law, customs, and the principles of justice.”

Article 741. Cases in which the State may be sued for liability arising from the acts of the judge

It is permissible to sue the state for liability arising from the acts of the judge, irrespective of whether the judge is rendering judgment or investigating, or is the public prosecution, and in all cases when such claim is authorized by a specific text and in the following cases:

1. Denial of justice.

2. Deception or fraud.

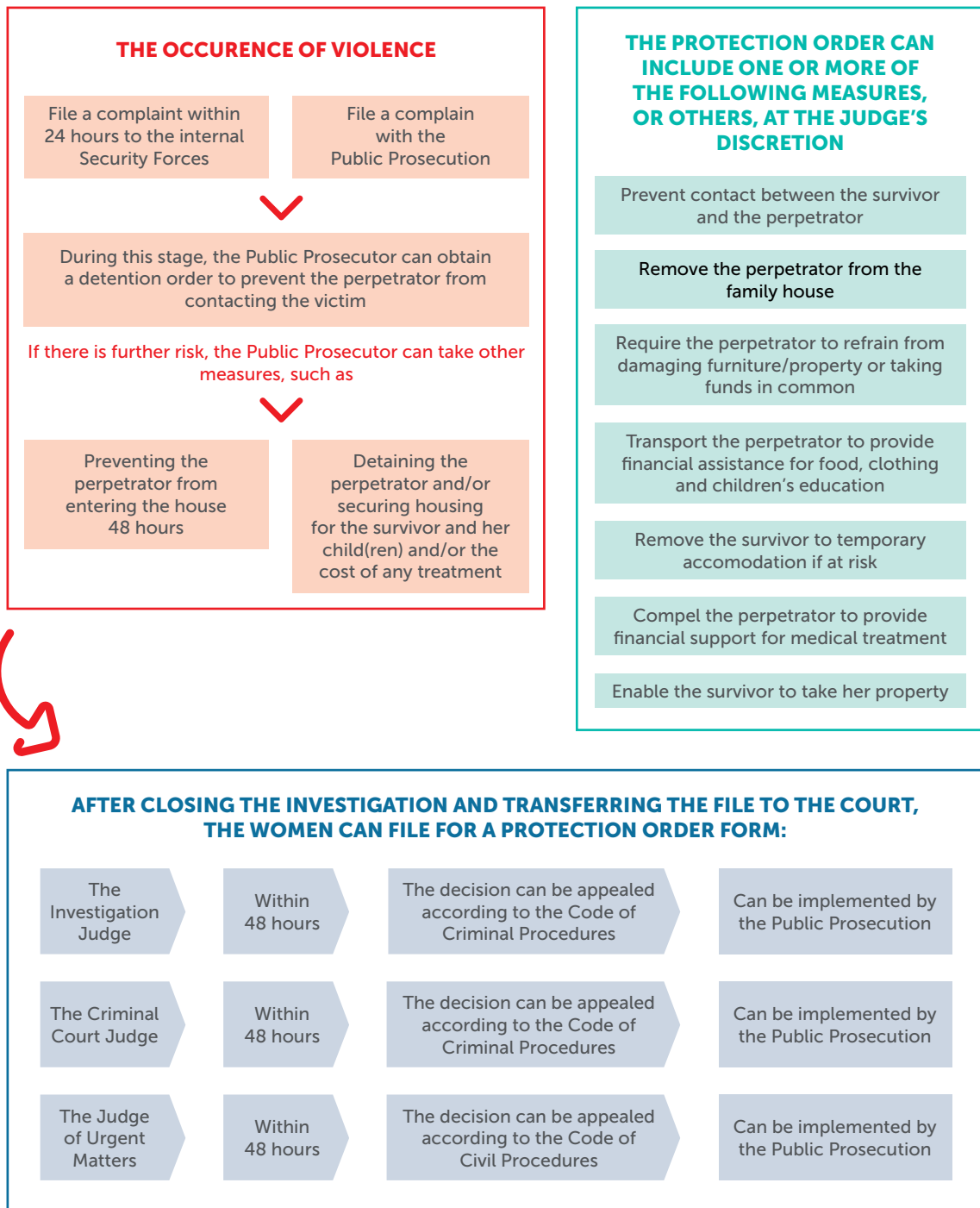
3. Bribery.

4. Serious error that a judge exercising reasonable care should not commit.”

3. LAW 293/2014 ON THE PROTECTION OF WOMEN AND FAMILY MEMBERS FROM DOMESTIC VIOLENCE (DOMESTIC VIOLENCE LAW)

Based on the international conventions’ obligation to address domestic violence and eliminate discrimination against women, and in particular on CEDAW, Lebanon passed Law 293 in 2014, a stand-alone law, to **specifically protect women and children against violence within the family. Law 293 does not cover all forms of GBV and only applies in cases of domestic violence between family members.** Law 293, with its latest amendment, defines domestic violence as any act, omission, or threat committed by a family member against one or more other family members, during marital life or because of it, resulting in death, bodily/physical injury, or psychological, sexual or economic harm/injury. The family, as defined in this law, is composed of the spouses, mother and father of either spouse, siblings of the spouses and lineage thereof (ascending or descending, either legitimate or illegitimate). The family also includes individuals who are relatives by adoption, marriage up to the second degree, guardianship or custody, orphans in the care thereof and stepmothers or stepfathers

(unofficial English translation). This law establishes the main legal framework under which domestic violence cases in Lebanon are decided before JUMs and civil protective orders are issued. The procedure for obtaining a protective order under Law 293 is illustrated in the following diagram taken from the UN's ESCWA report *"Beyond Boundaries: Utilizing Protective Orders to Cultivate a Holistic Response to Domestic Violence in the Arab Region."*⁵⁸



⁵⁸ ESCWA, Beyond Boundaries, Utilizing Protection Orders to Cultivate a Holistic Response to Domestic Violence in The Arab Region, p. 47, E/ESCWA/ECW/2019/1.

This law allows survivors of domestic violence to seek protection from JUMs, among other authorities, through filing a petition for an ex-parte protective order. Ex-parte orders are temporary orders of protection that give a survivor of violence a legal means to escape from a dangerous situation, which can be life threatening, without legal notice to the perpetrator. Falling outside the scope of adversarial proceedings, protective orders are self-executing, do not affect nor stay any other legal proceeding pending before another court, and can be modified by the judge based on changes in circumstances, legal or otherwise (extended or extinguished once the issue is resolved).

The question that poses itself at this level is whether courts, and mainly the JUMs, are resorting to and properly using the existing legal framework to issue protective orders and provide efficient access to justice to survivors of GBV. In the next section of this chapter, the question will be addressed by analyzing a number of protective orders issued by Lebanese JUMs under Law 293. The section will examine how these judges approached the issue of domestic violence, what laws they applied and how they applied them, what forms of relief were made available to survivors, and what gaps, if any, were identified, in an effort to improve access to justice of women survivors.

SECTION II. JURISPRUDENCE ON DOMESTIC VIOLENCE FROM JUDGES OF URGENT MATTERS: FINDINGS AND RECOMMENDATIONS

A total of 46 judgements of protective orders for domestic violence were selected by the short-term experts from various courts/JUMs in Lebanon, with no duplication of judgments. The majority of the judgments were issued in 2017 or later (as requested by Expertise France in the Terms of Reference), with a few from 2015 or 2016. As explained above, the short-term experts analyzed these judgments under the strictest standards of anonymity, confidentiality, and respect of the right to privacy of all parties involved, and EU4WE had no access whatsoever to any identifying information. The most common facts involved a woman, who was usually the spouse of the perpetrator, filing for a protective order after claiming multiple physical violence acts, bodily harm, and abusive emotional and psychological behavior at the hands of a family member, usually the husband or another male family member. Various relief measures provided under Law 293 were granted to the survivors to varying degrees. However, and despite the noted improvements brought about by Law 293, many legal gaps and inaccuracies were still identified, as summarized below.

It must be noted that the terms “wife”, “husband”, and “marital home” are used in this chapter in their legal sense within the framework of the legal bond of marriage and of the jurisprudence analyzed, and therefore, these terms do not carry any derogatory, pejorative, or reductionist connotation on the part of EU4WE.

SUBSECTION A.

FORMS OF VIOLENCE: FINDINGS AND RECOMMENDATIONS

To issue a protective order, a judge must first ensure that domestic violence really exists as defined by applicable laws, be it physical, emotional, psychological, sexual, or economic/financial. When evaluating a matter at hand, including evaluating facts, Lebanese JUMs resort to their discretionary power, which allows them to make a decision based on judicial presumptions, as provided under the LCCP articles 300 and 302. In addition, when a legal text is obscure, or in the absence of a legal text, JUMs also resort to their power of interpretation as stated in the LCCP article 4.2, which allows them to render a decision based on what is legal, fair, and appropriate under the circumstances. Thus, judges cannot render illegal, unsound, or unreasonable judgements because it would amount to abuse of discretion.

In addition, the subject-matter jurisdiction of JUMs is limited to hearing civil and commercial cases with an urgent character that necessitate speedy temporary measures in order to protect a certain right. This is why, when looking at a matter to issue a ruling, JUMs do not address the substance of the case or the right involved (the LCCP article 579). JUMs evaluate and rule on the matter, including evidence presented, at face value, based on what is readily observable and apparent from the file.⁵⁹

The majority of judgments examined did not reject the petitions for protective orders; rather, they granted them based on violence to the petitioner and/or to the children. The kinds of violence identified in the protective orders included physical, emotional, psychological, and economic/financial violence, and were encompassed by the legal definition(s) of domestic violence as well as the examples of the “Power and Control Wheel”.

1. FINDINGS

I. Physical violence in almost all judgments consisted mainly of acts of physical violence and bodily injuries, such as bruises, broken bones (facial or other), deep wounds, damage to ear canal, and trauma to the brain. The judgements cited below provide illustrative examples on the findings of physical violence in the JUMs’ jurisprudence of Law 293.

II. Emotional and psychological violence in the protective orders referred to the screaming, using foul demeaning language, intimidating, forcing, or threatening the survivor and/or the children (including death and murder threats). In most judgements, the JUM’s approach usually combined a finding of physical violence with emotional violence to grant the protective order. However, in a few judgments granting protection to the survivor and /or the children, the JUM relied solely on a finding of emotional violence. As an example, in a protective order issued on June 8, 2020, the JUM granted a protective order to the petitioner/wife without a clear finding of physical violence against her, after considering that her daughter’s exposure to the violence against the petitioner at home constituted sufficient grounds for a finding of emotional and psychological violence perpetrated on a family member, namely the child/daughter, based on Law 293.

⁵⁹ محمود عدنان مكينة، الدليل الى قضاء الأمور المستعجلة، ص. 136؛ الطبعة الأولى، منشورات الحلبي الحقوقية (2009)

III. Economic/financial violence in the protective orders was usually enumerated as part of other findings of violence without detailed explanation, except in one landmark protective order issued on Sept. 10, 2018, in the case of an Egyptian woman married to a Lebanese man. The survivor had met her husband online and they were married in Feb. 2017, shortly after she traveled from Egypt to Lebanon to be with him. After the couple moved into their marital home, the husband started to abuse the wife physically and emotionally, withholding medical treatment as she became ill and leaving the marital home while refusing to pay for rent and other expenses. Relying on the facts that both parties were still legally married and that the survivor was not legally authorized to work, and citing Lebanese religious laws and customary practices that obligate a husband to provide for his wife, the JUM concluded with a finding of financial violence, based on Law 293. The judge thus ordered the husband to advance pay his wife the monthly amount of \$/600.00/ to cover food, clothing, and housing expenses.

2. RECOMMENDATIONS

I. When ruling on a petition for protective order, JUMs should strive to apply an expansive definition of violence, using their interpretation power as demonstrated in the cases above to justify a finding of violence, even when physical violence is non-existing (or not readily evident). Adopting this legal approach aligns the Lebanese court system—as an arm of the Lebanese State, with its international obligations—under the various conventions that have been adopted, and especially under CEDAW. As an example, in the judgement finding of economic/financial violence mentioned above, the JUM not only upheld Law 293 directly, but also upheld CEDAW article 3 and the ICESCR's article 11, which guarantee the State's recognition of the *"right of everyone to an adequate standard of living for himself, and his family, including adequate food, clothing, and housing and to the continuous improvement of living conditions."*⁶⁰ Article 11 also commits state parties to *"take appropriate steps to ensure the realization of this right"*⁶¹, which the JUM rightfully did as an arm of the Lebanese State. In line with CEDAW and the notion of economic/financial domestic violence, the newly passed amendment to Law 293 (December 2020) officially consecrated emotional harm as well as financial/economic harm as a criminal offense punishable by a fine or imprisonment, or both, depending on the severity of the violence committed (article 2 of new Law 293 amending article 3 of Law 293/2014, which modified article 503 of the Lebanese Penal Code). Financial violence has become an officially recognized punishable offence that stands on its own, without the need for additional findings of violence to hold the perpetrator legally accountable.

Another excellent example of aligning Lebanese courts with the requirements of international conventions is highlighted by the JUM's finding of direct domestic violence through the exposure of the child to intimate partner violence, as evidenced by the case of June 18, 2020, cited above. This finding is absolutely in line with the CRC GR 13, which states that a child's exposure to domestic violence perpetrated on others actually constitutes mental and psychological violence against the child as explained above.

⁶⁰ International Covenant on Economic, Social, and Cultural Rights, Article 11.

⁶¹ *Id.*

II. Relying on legal precedent (even if not binding), attorneys assisting survivors of domestic violence should elaborate on the existence of various forms of violence, and especially in the absence of obvious physical violence, or evidence thereof, which will help to guide JUMs towards granting the protective order.

SUBSECTION B.

BURDEN OF PROOF AND EVIDENCE OF VIOLENCE: FINDINGS AND RECOMMENDATIONS

1. FINDINGS

While the burden of proof is obviously on the petitioner for a protective order, Law 293 is silent as to the kind of evidence the judge must rely on to grant or deny the petition. In this instance, judges consider available evidence and also resort to their discretionary power to evaluate the case at hand. While many of the judgments reviewed did not overly burden the survivor with strict evidentiary requirements, other judgments did. Below are a few examples of burdensome evidentiary requirements imposed by JUMs as seen in the judgements of different cases:

JUDGEMENT #1.

On Jan. 24, 2015, the father of the wife/survivor, as the custodian of his married minor daughter, petitioned the JUM for a protective order against his daughter's husband and submitted as evidence a medical report proving that the survivor had been subjected to acts of physical violence (beatings).

The petitioner requested that the court compel the husband to:

- Refrain from having any contact with the survivor (still a minor), her baby, and other family members.
- Return the eight-month-old baby to its mother.
- Pay the amount of ten million Lebanese pounds to the survivor to cover food, clothing, housing, and medical expenses.
- Return the wife's personal belongings.

On Jan. 27, 2015, the judge requested that the petitioner produce additional documents as evidence to support his claim; on Feb. 13, 2015, the petitioner submitted all requested documents. The protective order was issued on Feb. 16, 2015, granting the petitioner his requests.

JUDGEMENT #2.

The wife/survivor petitioned the JUM for a protective order requesting that her husband be removed from the marital home and that he be compelled to advance pay her \$/1500.00/month. As evidence of the violence, she submitted two medical reports from a forensic doctor confirming she was beaten on Jan. 22, 2017, on Jan.

29, 2017, and at the beginning of April 2017. The first medical report, dated Jan. 29, 2017, clearly documented the physical violence and recommended two days of sick leave to recover from her injuries. The second medical report, dated April 6, 2017, documented physical violence and recommended three days of sick leave because of injuries. The survivor petitioned for a protective order after the April incident, filed a criminal complaint against her husband with the relevant authorities, and filed for the annulment of the marriage before the competent religious court. The JUM granted the protective order on April 18, 2020. However, before issuing the order, the JUM held a hearing and interrogated the husband who claimed that the wife's medical reports contained erroneous information, that he was in fact reacting to his wife's provocation, and that his wife and his sons had attacked him. The judgment mentioned that the wife was beaten again in the time period between the filing of the petition and April 18, 2020. The protective order ultimately compelled the husband to:

- Cease contact and abuse, and cease instigating any abuse by others, against the petitioner and her children.
- Pay the petitioner a monthly amount of L.L. /1000,000.00/ as an advance payment to cover food and clothing expenses for her and the children.
- Leave the marital home until the resolution of the case by the competent religious court.

JUDGEMENT #3.

The wife/survivor petitioned for a protective order on May 11, 2017, stating that she and her four children (two of whom were from a prior marriage) were beaten repeatedly and verbally and emotionally abused at the hands of her current husband. She also stated that the violence against them had greatly affected their psychological well-being. The petitioner also explained that her husband was sexually harassing their teenage daughter and pressuring her into prostitution for monetary gain. Based on these facts, the petitioner requested that she be granted a protective order, that her husband be ordered to pay L.L. /1,500,000.00/ to cover food and housing expenses for the family, and that he be barred/forbidden from taking or destroying her personal belongings. On May 15, 2017, instead of granting the petition, the judge ordered the petitioner to:

- Show whether any other legal proceedings between her and her husband were pending before any other court.
- Specify the nature of her husband's job and the amount of his income.
- Specify the husband's place of abode and specify whether she and the children reside with him.
- Clarify her request as to her belongings.
- Present all relevant available evidence to substantiate the petition.

On May 24, 2017, the petitioner submitted a medical examiner's report showing that she and her daughter had been beaten and a psychologist's report showing the daughter was mentally and emotionally distraught by the father's sexual harassment. Counsel for the petitioner also stated on the record that the husband was still beating the petitioner and her children and requested the immediate removal of the husband from the marital home.

On May 29, 2017, the judge finally granted the petitioner and her children the protective order, with available relief under Law 293, including:

- Removing the husband from the marital home for a period of three weeks.
- Preventing him from making any contact with the petitioner and her children, and specifically the teenage daughter (with penalties imposed for violation of the order).
- Compelling the husband to pay the petitioner a lump sum of L.L. /700,000.00/ to assist her with daily expenses.
- Compelling the husband to attend rehabilitation/counseling sessions at a specialized center.

JUDGEMENT #4.

In 2006, the wife/survivor was married at the age of 13, and the couple had three children together. Throughout the marriage, the alcoholic husband abused the family, beat them repeatedly, and threatened them constantly (even with murder). On Feb. 25, 2020, the survivor petitioned for a protective order before the JUM, requesting that:

- The husband be barred from being in close proximity to her and the children and from hurting them in any possible way.
- She be allowed to reside in the marital home with her children.
- The husband be removed from the marital home.
- The husband be ordered temporarily to pay monthly the minimum amount of L.L./1,000,000.00/ as an advance payment on living expenses and child support.

The JUM did not grant the protective order, but instead, ordered the petitioner to:

- Show whether any other legal proceedings between her and her husband were pending before any other court, and provide certified copies of complaints/actions and issued court orders thereof, with affidavits from the relevant court.
- Provide documents showing whether she had a job, with proof of monthly or weekly income.
- Specify the nature of her husband's job and the amount of his monthly or weekly income.
- Specify the husband's and the children's current place of abode.

On Feb. 27, 2020, after questioning the petitioner and receiving adequate responses to all of the above in due time, the judge issued the protective order.

JUDGEMENT #5.

The husband and wife/survivor were married in 2015 and the husband started being violent physically and mistreating her soon after. As violence became continuous and escalated, the survivor left the marital home. However, the husband continued to stalk and harass her. In August 2019, after the husband was physically violent again, the survivor filed a criminal complaint based on article 584 (slander and libel crime) of the Lebanese Penal Code. Despite the criminal proceedings against him, the husband did not stop stalking the survivor, which caused her additional emotional distress, including panic attacks and episodes of depression. The survivor consulted a psychiatrist, who recommended ongoing treatment.

On Jan. 16, 2020, the survivor petitioned the JUM for a protective order requesting that:

- The husband ceases any contact, avoid close proximity to her and her family and refrain from hurting them in any possible way.
- The husband advance pays her the amounts of L.L. /5,000,000.00/ to cover food and clothing expenses, L.L. /5000,000.00/ to cover medical treatment expenses, and L.L. /5000,000.00/ to cover housing expenses.
- The husband be barred/forbidden from damaging her property and belongings.

On the same day, the JUM asked the petitioner to:

- Show whether any other legal proceedings between her and her husband were pending before any other court and to provide certified copies of complaints/ actions and issued court orders thereof, with affidavits from the relevant court.
- Provide documents showing whether she had a job, with proof of monthly or weekly income.
- Specify and show the nature of the husband's job and the amount of his monthly or weekly income.
- Specify what assets of hers be protected from damage by the husband.

On Jan. 22, 2020, the petitioner submitted the requested documents, including Jaafari court affidavits, proof of the husband's monthly income (over \$/5,000.00/), and a list of furniture originally belonging to her father.

On Jan. 29, 2020, the JUM interrogated the petitioner about the violence she was subjected to and granted the protective order on Jan. 30, 2020. The order compelled the husband to:

- Cease contact and violence/abuse against the petitioner and any and all family members living with her.
- Stop damaging the furniture of the marital home, under penalty.
- Advance pay the lump sum of L.L. /1,500,000.00/ for food, clothing, housing, and medical expenses.

In the reviewed judgements described above, which were issued over the course of five years by different JUMs, the protective order was only issued after the judge held hearings and requested various additional documents from the petitioner. While it is understandable that JUMs do not take protective orders lightly and strive to have compelling evidence before granting such orders, **it is a violation of the law** to ignore forensic reports and other medical reports, request additional documents (such as affidavits and others), or hold hearings to gather additional evidence before granting the protective order, as explained below.

I. Violation of the LCCP article 302 and the legal principle of considering readily observable/apparent information and evidence at face value: As previously explained, the LCCP article 302 states that JUMs, when evaluating a file, can rely on judicial presumptions and can use their discretionary power to consider observable/ apparent information and evidence and take it at face value. In addition, the LCCP article 596 grants JUMs the power to privately conduct their own investigations, if deemed useful. By the same token, they can hear individuals who can enlighten them about the matter before them. Applying these rules to the judgements reviewed, the JUMs should have satisfied themselves with the evidence presented, including

medical records and statements of survivors, to find evidence of violence. By requesting additional documents and/or by holding later hearings with the perpetrator, instead of considering that evidence of violence is satisfied with legitimate medical records presented or satisfied with the testimony or sworn affidavit of the survivor as recommended by international best practices⁶², the JUMs are violating the LCCP articles 302 and 596, while exposing the survivors to additional violence.

II. Violation of the provisions of the UDHR, ICCPR, CAT, and CEDAW article 2: By application of the principle of hierarchy of norms, adopted international conventions and treaties prevail over regular laws as stated in article 2(1) of the LCCP. Regular laws must also be interpreted in a manner that is consistent with the provisions of such treaties as stated in the LCCP article 4(2). Based on this requirement and on the fact that Law 293 was passed to fulfill the due diligence obligation imposed on Lebanon as a State party to CEDAW, these burdensome evidentiary requirements are in violation of the law because they contradict the obligation imposed on State parties, in CEDAW article 2, to ensure the effective protection of women through competent national courts and ensure that public institutions and authorities refrain from engaging in discrimination against women (CEDAW article 2(c) and (d)). Further, they are against GR 19 comment 6, read in conjunction with CEDAW article 1, which states that discrimination against women includes GBV. They are also inconsistent with GR 35 comment 22, which further explains CEDAW article 2 and clarifies that a State party is responsible for the acts or omissions of its organs or agents (i.e., the executive, legislative, and judicial branches), and that these state organs must refrain from engaging in acts of direct or indirect discrimination. Delaying a protective order amounts, at a minimum, to a temporary omission and a failure to act by the JUMs and is discrimination against the survivor. The requirements are also inconsistent with GR 33, under which good quality access to justice means that international standards of competency, efficiency, independence, and impartiality are met, as explained by the ICJ.⁶³ In the cases above, the JUMs, who are representative of the Judiciary Power and are public organs and actors of the Lebanese State, did not provide competent, efficient, and impartial access to justice to GBV survivors, and have therefore failed at upholding the due diligence duty imposed by CEDAW.

III. Violation of the provisions of the CRC. As seen in judgements no. 3 and 4, the fact that the JUM did not grant the protective order according to the provisions of Law 293 jeopardized the life and well-being not only of the mother but also of any involved children. In both cases, by delaying the protection order, the JUMs neither acknowledged nor considered that the children were also being abused, thereby taking the risk of exposing them to additional violence. In both cases, the JUMs were in direct violation of the provisions of the CRC, and specifically of article 3.1, which expressly imposes on courts of law the duty to consider the best interests of the child in all circumstances. In addition, in judgement no. 3, in which the father was sexually harassing his fifteen-year-old daughter and pressuring her to engage in prostitution activities, the JUM also violated article 34(1) of the CRC by failing to protect the child and allowed for the inducement of a child into unlawful sexual activity to continue.

⁶² UN Department of Economic and Social Affairs, Handbook Legislation on Violence Against Women, p. 48, ST/ESA/329, <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf> (accessed Dec. 10, 2020).

⁶³ ICJ, supra n. 41.

2. RECOMMENDATIONS

Because protective orders are ex-parte temporary orders mainly aimed at stopping the occurrence of violence or imminent threats thereof and aimed at providing protection and safety, restrictive rules of evidence should be relaxed to allow for immediate protection and safety of the survivor(s). Applying regular or imposing strict evidentiary requirements to protective orders would actually jeopardize the survivor(s) even more and would defeat the purpose of the protective order. Under international best practices, as stated in the “UN Handbook on Legislation for Violence Against Women”, the live testimony or sworn affidavits of the survivor are enough evidence to grant the protective order, and no other external evidence should be required because this might *“compromise the complainant/survivor’s safety by causing significant delays and rescheduling of hearings.”*⁶⁴ Therefore:

I. The JUMs should adopt less restrictive evidentiary requirements, such as the live testimony or the sworn affidavit of the survivor, as recommended by legal international best practices.

II. The JUMs should rely on medical reports (whether by medical forensic examiner or other), prior criminal complaints, and other forms of evidence (such as photographs) when available to grant the order, especially when considering the temporary nature of the protective order.

III. The JUMs should grant the protective order to allow for safety of the survivor regardless of the availability of other documents, such as complaints or actions filed before other authorities or courts, employment affidavits, etc.

IV. Attorneys and survivors should produce medical records, copies of criminal complaints, testimony of witnesses, photographs and any other document that would lead the JUMs to a finding of domestic violence. When such documents are not available, attorneys should push for the survivor’s live testimony and/or sworn affidavit and should rely on international best practices to legally substantiate their request. By the same token, when attorneys are before the penal judge, they should also submit a copy of the protective order issued by the JUM to ensure maximum legal protection for the survivor based on all available evidence.

SUBSECTION C.

TIME FRAME FOR GRANTING A PROTECTIVE ORDER: FINDINGS AND RECOMMENDATIONS

1. FINDINGS

The ex-parte protective order is a civil protective order that the JUMs must grant **within a maximum time frame of 48 hours**, according to Law 293 article 13 (see above). This time frame conveys the urgency element of the protective order and safeguards its ultimate goal, which is the safety of the survivor(s). In the various judgements reviewed,

⁶⁴ UN Department of Economic and Social Affairs, supra n. 62.

many protective orders were granted within the 48-hour time frame in a swift and efficient manner. It must also be noted that, from a practical standpoint, many JUMs are available twice a week only, which delays their review of filed petitions, making matters worse for the survivors. The COVID-19 pandemic, which took Lebanon by storm in February of 2020, only made matters worse as lockdowns and social distancing measures led to delayed hearings and court closures for extended periods of time. Nevertheless, there was a noticeable trend of some JUMs, unrelated to the pandemic, to digress from this time frame, for reasons unexplained, extending the time frame, in some instances to months. In the judgements #1, 3, and 5 (see above), the 48-hour time frame was totally ignored; in the judgements presented below, the protective order was issued months after the petition was filed.

JUDGEMENT #6.

The wife/survivor was beaten regularly by her husband from the start of the marriage. As things escalated, the husband left the marital home, totally ignoring the needs of his family. In 2017, unable to pay for rent and other expenses, the survivor and her daughters moved out of the marital home, moved in with her parents, and filed for divorce before the competent religious court. In the course of the divorce proceedings, the religious court issued an order granting child support to the mother (L.L. /300,000.00/month) and weekly visitation rights of 48 hours to the father. However, the husband continued to stall the divorce proceedings by refusing to agree to the divorce unless the wife/survivor waived her legal rights, including alimony and child support. At some point, the husband asked the survivor to meet him in his office, on the pretext of discussing medical expenses for their sick daughter. As soon as the survivor arrived to the office, he assaulted her, leaving her almost unconscious on the floor, and called the police claiming she had attacked him. At the scene of the incident and through immediate investigation, it became evident to the police the husband was the assailant. A police report was completed at the crime scene, based on which, the survivor filed a criminal complaint against her husband before the public prosecutor.

On July 2, 2019, the survivor petitioned the JUM for a protective order for herself and the children. Along with her petition, she submitted the police report and a copy of the criminal complaint against her husband. She also submitted medical reports showing she had been subjected to physical violence and that her daughters were traumatized because of watching their mother's abuse at the hands of their father. In her petition, she also requested the arrest of judgment of the religious court, as it pertained to the husband/father's visitation rights.

On Mar. 3, 2020, the JUM granted the protective order, compelling the husband to cease abusing the petitioner and her children but rejecting the arrest of judgment on the basis that it was unjustified. It must be noted that the JUM did not rely on any discretionary power to grant the survivor other reliefs available under Law 293.

JUDGEMENT #7.

On Jan., 23, 2020, the wife/survivor, a mother of three young children, petitioned for a protective order for her and her children, claiming domestic violence on the part of her husband (the father of her children). Along with her petition, as substantiating evidence, she submitted multiple medical reports documenting violence against her and the children, including a medical report dated Jan. 2, 2020, stating that she had

been savagely beaten all over her body, and a photocopy of a criminal complaint against her husband that she filed on Dec. 11, 2019. She also produced photographs of one of the children's body parts showing extreme redness. During her testimony before the judge, the petitioner requested that she be granted the amount of \$/2000.00/ month as child support. She also stated that she had filed for child support before the competent religious court. Following the first hearing with the petitioner, the JUM yet held another one in the presence of the husband, who admitted to beating the survivor and to disciplining his children physically.

On Mar. 3, 2020, the JUM granted the protective order, ordering:

- The husband to cease contact and abuse of the survivor and children.
- The husband to pay the sum of L.L. /1,000,000.00/ as an advance on payment as well as pay for the children's medical expenses.
- The husband to be notified of the protective order and that he be allowed to enter the marital home.
- The public prosecutor to be notified of the order to follow-up on any violation of its content.

In these two judgments cited above, the protective orders were delayed by months. Delaying the granting of the protective order beyond the legally mandated 48-hour time frame is in:

I. Violation of article 13 of Law 293. Article 13 of Law 293 clearly states that the protective order must be issued within a maximum time frame of 48 hours, in line with LCCP article 607 stating that the JUMs must issue ex-parte orders within a maximum timeframe of two days. Not abiding by this time frame is in direct violation of the express text of Law 293 and defeats its purpose, while endangering the safety of survivors. This practice is also in violation of the Court of Cassation's (Supreme Court of Lebanon) legal principle of human safety being above all other considerations, adopted in a judgement issued in 2006⁶⁵ and reaffirmed in another judgment issued in 2013.⁶⁶

II. Violation of article 4 of the LCCP. As clearly stated in the LCCP article 4 (2), judges shall under no circumstances delay "the rendering of a judgment for no reason. If the law is obscure, the judge shall interpret it in a manner consistent with its purpose and with other texts. In the absence of a law, the judge shall apply the general principles of law, customs, and the principles of justice." In the event JUMs are unclear as to whether the 48-hour time frame imposed by article 13 is mandatory or not, the LCCP article 4 imposes on them the duty to interpret the language of article 13 in a manner consistent with the spirit or purpose of Law 293, which is always protection of the survivors from domestic violence. Thus, when the JUMs are not satisfied with the statement of domestic violence in the petition (even if corroborated by medical reports) and request additional documents, hold additional hearings, etc., they are de facto delaying the rendering of a judgement, while exposing the survivors to additional violence. By doing that, they are in direct violation of the LCCP article 4 and could be liable for denial of justice.

⁶⁵ Lebanese Court of Cassation, judgment issued on 23/2/2006, case no. 34/2006, www.idrel.com

⁶⁶ Lebanese Court of Cassation, judgment issued on 24/5/2012, published in the Adiel Journal/العدل/ p. 208 (2013).

III. Violation of CEDAW article (2) and inconsistency with GR 33. In addition to being in violation of CEDAW article (2) and the due diligence obligation as explained by GR 19 and GR 35 (see above), delaying a protective order is also inconsistent with GR 33. Under recommendations for State parties to improve access to justice through protection orders, GR 33 specifically stated that State parties should “*guarantee that women are not subjected to undue delays in application for protection orders*”⁶⁷ and that cases of gender-based discrimination, including GBV, should be dealt with in a timely and impartial manner.⁶⁸ Thus, the delaying of a protective order negatively impacts component (5) “access to remedies” of a properly functioning justice system, which must “be provided and enforced in a timely manner” as explained by the ICJ (see above).

2. RECOMMENDATIONS

I. The JUMs should respect the 48-hour time frame of Law 293, for purposes of protecting survivors and for providing swift and efficient access to justice, both under Lebanese law and under CEDAW and its recommendations.

II. The JUMs should keep adopting best practices to enhance the functioning of the justice system. The COVID-19 pandemic had a dampening effect on access to justice across all Lebanese courts, as physical court access became very restricted due to governmental mobilization and lockdown measures. During the lockdown, GBV cases, especially domestic violence, increased at an alarming rate, following the same trend worldwide.⁶⁹ In an effort to mitigate this harmful effect, and relying on technology, the Public prosecutor of the Court of Cassation issued, on April 16, 2020, new innovative procedures allowing the police to intake and register cases of domestic violence remotely even if the survivor did not have any witnesses or documents. By the same token, survivors were allowed to testify via video conferencing and police agents were allowed to take remote statements.⁷⁰ In a similar stance, on April 21, 2020, the President of the Judicial Supreme Council also facilitated access to justice by distributing court email addresses, allowing complaints and petitions for protective orders to be filed via email, and authorizing JUMs to rule on these cases to avoid any further delays.⁷¹ On April 21, 2020, the JUM in Tyr issued the first e-protective order, preventing the husband from contacting the survivor and other individuals of her household located in Tripoli, allowing the survivor to remain with her parents, ordering the husband to deliver the child to his mother, and compelling him under penalty to pay her a monthly food allowance as well as cover her medical expenses. These new practices are in line with GR 33⁷² and with the ICJ’s component (4) “good quality” of a properly functioning justice system, under which good justice systems must be dynamic and open to innovation.⁷³ The newly enacted practices should be adopted permanently as they improve the Lebanese justice system, making it more flexible and more responsive to the needs of survivors of domestic violence.

⁶⁷ Committee on the Elimination of Discrimination Against Women, supra n. 42, at ¶ 51(j),

⁶⁸ Id.

⁶⁹ National Commission of Lebanese Women, Gender Alert on COVID-19, June 3, 2020, p. 1, https://nclw.gov.lb/wp-content/uploads/2020/06/Gender-Alert-on-COVID-Lebanon-Issue-3_English.pdf (accessed Dec. 21, 2020).

⁷⁰ Id. at 4.

⁷¹ Id.

⁷² Committee on the Elimination of Discrimination Against Women, supra n. 42, at ¶ 17(d),

⁷³ ICJ, supra n. 41, at 34.

III. Attorneys petitioning for a protective order should rely on the LCCP articles 606 and 607, which expressly state that in cases of extreme urgency, petitions for ex-parte orders can be filed with the JUMs at their residence, on weekends and outside of regular working hours, and that the JUMs cannot exceed two days to either grant or deny the petition. They should also rely on the LCCP article 741 that allows individuals to sue the Lebanese State for denial of justice when the JUMs take extended periods of time to decide on a petition for protective order.

SUBSECTION D.

FAMILY CONCEPT AND PROTECTION OF CHILDREN AMENDMENT TO LAW 293): FINDINGS AND RECOMMENDATIONS

1. FINDINGS

More often than not, and as evidenced by the facts of the above judgements, children in the same household of the perpetrator are also survivors of violence. Law 293 provided protection to both mother and children as long as the mother was the petitioner and the children were still within the legal age of maternal custody, as determined by the various personal status laws. The amendment of Law 293 passed in Dec. 2020, now allows for protection of the children age 13 and under, regardless of the provisions of personal status laws. In article 2 of Law 293 (un-amended), the definition of family is still restricted to the enumeration of a group of individuals, tied together by either blood kinship or legal kinship. This definition, because restrictive, does not take into consideration the broader concept of family as “individuals living under the same roof”, even though it addresses family violence. The problem arises when mother and children are abused in the household they live in by a family member that is not listed in the definition of article 2, and the mother is incapable of petitioning for a protective order to protect herself and the children. Under this scenario, even a divorced or separated father cannot benefit from the provisions of Law 293 to protect his children, as seen in the judgement below.

JUDGEMENT #8.

On Sept. 12, 2019, a father of two filed a petition for a protective order claiming that his children were being subjected to physical violence by the husband of their maternal grandmother, with whom they lived with their mother. He further requested that he be awarded sole temporary custody of the children until the relevant competent religious court’s final decision on the custody matter. Interpreting Law 293 article 22, the JUM denied the protective order, considering that petitions aiming to solely protect children were of the exclusive subject-matter jurisdiction of the Court of Minors. Moreover, the JUM also stated that he did not have any authority to look into the matter because the petition also aimed to modify a prior custody order, which was of the exclusive subject-matter jurisdiction of the relevant competent religious court. As a consequence of denying the request for a protective order, the children remained totally unprotected and at the mercy of the perpetrator.

2. RECOMMENDATIONS

I. The main legal issues raised by this case focus on the jurisdictional overlap between old Law 293 and Law 422/2002 for the protection of minors, as well as the father's implicit lack of standing under Law 293 because the perpetrator was not a family member as defined by the express language of Law 293 article 2 and the father is not the survivor either. Standing under Law 293 was exclusive to the survivor of the violence or to the legal guardian/custodian if the survivor is a minor and the perpetrator is one of the individuals enumerated in said article 2.

In this case, the JUM justified denying the request for a protective order based on the exclusive subject-matter jurisdiction of the Judge of Minors, even though the father is a family member according to the family definition of Law 293. The outcome of the case could have been different if the JUM had justified his decision using analogy and relying on a 2007 decision of the General Assembly of the Lebanese Court of Cassation⁷⁴, which examined the issue of competing and overlapping jurisdiction of religious courts and the Judge of Minors. The case before the Court of Cassation also involved a temporary protective order issued by the Judge of Minors compelling the father to deliver his minor daughter to her mother. The father appealed the protective order, claiming that the Judge of Minors had violated the exclusive jurisdiction of religious courts in custody matters. The Court of Cassation rejected the appeal, explaining there was no competing jurisdiction because the protective order "was just a temporary measure adopted for the purpose of protecting the minor from specific circumstances that could endanger the minor if they continue".

The court further explained that the decision of the religious court awarding custody to the father remained unaffected because the father was still the legal guardian of the minor for all legal matters (unofficial English translation).

The General Assembly's justification in this case is a classic and perfect example of harmonizing two legal texts that appear to be competing and contradictory at first reading, as recommended by the LCCP article 4. Relying on the precedent of the highest Lebanese Court, and by analogy, the JUM could have granted the petition on the basis that the protective order is a temporary measure serving the best interests of the children and safeguarding them until their father is able to file before the Judge of Minors based on article 26 of Law 422/2002. In harmony with this precedent, the latest amendment to article 13 of Law 293 expressly states that minors can petition for a protective order without their legal guardian. In other words, the new article 13 has granted concurrent jurisdiction over protective orders to the JUM or the investigative judge and to the Judge of Minors, based on article 26 of Law 422/2002. The other notable amendment of Dec. 2020 is the modification of Law 293 article 12, which now states that protective orders cover both the survivor and her children aged 13 and below. Thus, this amendment allows children who are within or beyond the legal age of maternal custody to still benefit from protection as long as they are not older than 13 years of age.

Regardless of who has the right to custody of the children according to the relevant personal status laws, each of the parents, whether divorced or not, should have a legal remedy available to protect the children from abuse by an extended family member.

⁷⁴ Lebanese Court of Cassation, judgment issued by the General Assembly of the Court on 23/4/2007, case no. 22/2007, www.idrel.com

It must be noted that GR 21 on CEDAW article 16 acknowledges that the notion of family may take many forms, depending on the socio-cultural and religious context in which it exists, and recognizes equality of men and women within the family in law and in private. Building on GR 21, GR 29 on CEDAW article 16 reiterates that family must be understood in a wide sense and relies on the ICESCR article 11.1: *“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”*

Relying on the CRC article 3 and the best interests of the child, and using the power of interpretation to expand on the definition of family and on the principle of non-discrimination and equality between men and women as stated in CEDAW and in the ICESCR, the JUM could have justified granting the protective order to the father. Therefore, JUMs should rely on existing provisions of international conventions and relevant recommendations, as well as on the Court of Cassation’s precedent, to grant protective orders for minors when there is violence in the household directed at them exclusively and when a family member petitions for the order.

II. The latest amendment to article 13 provides a partial solution to this problem by allowing minors themselves to file for a protective order, but the problem remains if said minor is incapable of such filing.

SUBSECTION E.

MEDIATION FOR RECONCILIATION AS A RESOLUTION FOR DOMESTIC VIOLENCE: FINDINGS AND RECOMMENDATIONS

1. FINDINGS

Another finding from the jurisprudence of the JUMs is the fact that some judges not only delay the protective order process, but also act as “mediators” between the perpetrator and the survivor and propose reconciliation despite blatant proof of physical and emotional violence, for extended periods of time. This is exemplified in the judgment below.

JUDGEMENT #9.

The wife/survivor and her husband were married in 2010 and had a son in 2012. The survivor was beaten and threatened constantly by her husband over the course of the marriage. On July 28, 2019, the husband savagely assaulted her, held a knife to her throat threatening to kill her, and called on his son to witness his mother’s murder. On Sept. 4, 2019, the attorney for the survivor petitioned for a protective order before the JUM. The submitted evidence of the domestic violence included an official forensic doctor’s report describing the severe beatings and physical violence, documenting head injuries, bodily injuries with swelling, persistent dizziness, and difficulty of movement. The medical report also documented psychological violence and described the survivor as being in a “difficult mental state”.

On Sept. 5, 2019, the JUM ordered the parties to appear for a hearing that was set for Sept. 17, 2019. On Sept. 17, 2019, the JUM proposed reconciliation to the parties. During the hearing, the husband admitted that he had abused the petitioner and that he suffered from mental disorders, for which he had been previously treated at a specialized hospital. The petitioner rejected reconciliation, but the JUM still did not issue the protective order.

On Sept. 24, 2019, the petitioner submitted photographs substantiating the content of the medical forensic report.

On Sept. 26, 2019, the JUM finally issued the protective order, compelling the husband to:

- Cease all contact with the petitioner, their minor child, and the petitioner's family and individuals residing with her, under penalty of L.L. /300,000.00/ for each violation.
- Provide the petitioner with an advance payment of L.L. /1000,000.00/ to cover food and clothing expenses for the son.
- Allow the petitioner to recover her belongings from the marital home.

The JUM further ordered the clerk of the court to accompany the petitioner to the marital home to get her belongings, to notify the husband of the protective order, and to call the police if necessary.

In addition to the issues of evidence and timeframe discussed above, which also exist in this judgment, the JUM resorted to offering reconciliation to the parties despite overwhelming evidence of physical and psychological violence and extensive injuries to the petitioner. While the LCCP article 596 grants JUMs a discretionary power to privately investigate and seek facts to enlighten them, JUMs may be tempted to use this prerogative to act as mediators and propose reconciliation in an effort to keep the family together. Resorting to this practice stems from patriarchal social values and norms that prioritize the so-called family "unity", which however covers up the abuse of women and children. Offering reconciliation and delaying the protective order when the survivor rejects reconciliation also equates to JUMs minimizing criminally punishable acts and providing impunity to the perpetrator based on the judge's personal beliefs, even if the JUM does not technically have the legal authority/ subject-matter jurisdiction to impose penal sanctions on the perpetrator. Not only does this practice send the wrong message to perpetrators, it is also in violation of human rights and CEDAW:

I. Violation of CEDAW article 2 and inconsistency with GR 33. Under these texts, the State has the due diligence obligation to ensure through competent tribunals that women are effectively protected against discrimination. A national tribunal, namely JUMs, using their discretionary power to allow GBV to continue through reconciliation amounts to a legal breach by an organ of the State of Lebanon of the due diligence obligation as explained in GR 19 and GR 35. Such practice is also in direct contradiction with GR 33 as it directly addresses stereotyping and gender-bias in the justice system⁷⁵ and their far-reaching effect on hindering the enjoyment of women of their full human rights. Also, by proposing reconciliation the judge is being biased and lacks impartiality when turning a blind eye to the violence at hand. This negatively impacts component

⁷⁵ Committee on the Elimination of Discrimination Against Women, J, supra n. 42, at ¶ 26 and 28.

(4) or the good quality of a properly functioning justice system.⁷⁶ To that extent, the language of GR 33 that warns against such practices is clear:

“IV. Recommendations for specific mechanisms

A. [...]

B. Alternative dispute resolution processes.

57. Many jurisdictions have adopted mandatory or optional systems for mediation, conciliation, arbitration and collaborative resolutions of disputes, as well as for facilitation and interest-based negotiations. This applies, in particular, in the areas of family law, domestic violence, juvenile justice and labour law. [...]. While such processes may provide greater flexibility and reduce costs and delays for women seeking justice, they may also lead to further violations of their rights and impunity for perpetrators because they often operate on the basis of patriarchal values, thereby having a negative impact on women’s access to judicial review and remedies.

58. The Committee recommends that States parties:

[...]

(c) Ensure that cases of violence against women, including domestic violence, are under no circumstances referred to any alternative dispute resolution procedure.”⁷⁷

II. Violation of CEDAW article 5. Under this article, the State has the obligation to modify social norms and cultural patterns of conduct in an effort to eliminate prejudice and discriminatory cultural practices that reinforce negative gender stereotyping of men and women. A national tribunal, namely the JUM, using discretionary power to reinforce the social norm of family safeguarding, at the expense of a woman’s life and safety, amounts to a direct violation by the State of Lebanon of its duty to change cultural norms and eradicate prejudice against women.

2. RECOMMENDATIONS

I. The JUMs should not try to reconcile the survivor and the perpetrator of domestic violence because such an attempt equates to considering the perpetrator and the survivor as “equally at fault” and that they must “work things out” for the sake of protecting the so-called “family unity”. This approach puts the survivor at an increased risk of abuse and additional violence, especially if the JUM offers reconciliation without any rehabilitation of the perpetrator.

II. Attorneys filing for protective orders should specifically state on the petition that the survivor does not want to reconcile with the perpetrator and ensure the survivor is not pressured into any bargaining position by the JUM or any other individual.

⁷⁶ ICJ, supra n. 43.

⁷⁷ Committee on the Elimination of Discrimination against Women, supra n. 42, at § 57(j).

SUBSECTION F.

ADDITIONAL REQUESTS FOR RELIEF: FINDINGS AND RECOMMENDATIONS

In addition to the protection and safety from violence, when granting the protective order, the JUMs should order all other measures available under article 14 of Law 293, including rehabilitation sessions for the perpetrator. The main two measures with the most discrepancies in the jurisprudence reviewed are the amount of financial support imposed on the perpetrator and the timeframe for the survivor to use of the marital home.

I. The financial payment to the survivor for food, clothing, children's education, and other expenses.

In most protective orders issued, the JUMs ordered additional measures to protect the survivor, in addition to the no-contact requirement to ensure the survivors' safety. The amount of financial support to cover various expenses of the survivor and/or children varied greatly, ranging from L.L. /200,000.00/ to over L.L. /1,500,000.00/, payable either as a lump sum or as a monthly payment, depending on the facts at hand and on the judges' estimation, relying on their discretionary powers. The variation in the amounts can be justified by:

- The extreme difficulty survivors face in proving the gross or monthly income of the perpetrator, especially considering the unavailability of formal tax documents (income tax or other) in most cases, combined with the banking secrecy rules in Lebanon. The JUMs have no option but to use their discretionary power to determine the actual amount based on a subjective assessment, which results in similar cases being treated differently
- The lack of any guidelines assisting the JUMs in estimating the proper amount, even when proof of income of the perpetrator is available.

At this level, the main recommendation would be first to provide the JUMs with a set of guidelines to facilitate calculating the amount and guide in determining the recurrence of payment (e.g., a one-time lump sum or recurrent payment at regular intervals). Attorneys should also go the extra mile in providing proof-of-income of the perpetrator, or at least proof of financial status, when petitioning for a protective order. Moreover, attorneys should also strive to have medical psychological expenses also covered, along with other regular medical expenses.

II. Sole use of the marital home by the survivor for a specific period of time.

In the cases reviewed, some JUMs ordered the perpetrator to vacate the marital home for over a month to allow the survivor enough time to find another residence, while others gave the survivor only a few days before the perpetrator regained access to the marital home. Confronted with this situation, the JUMs have to rule on the direct conflict between the human rights of the survivor and the property rights of the perpetrator, especially if the perpetrator is the sole owner of the marital home or if the property is shared by both. This conflict requires a fine balancing act between two competing interests on the part of JUMs, especially when considering that

perpetrators may retaliate with more violence against survivors, if they consider the justice system was unfair to them by depriving them of the ability to exercise their ownership prerogatives.

The recommendation at this level would be to apply the Court of Cassation's legal principle of human safety being above all other considerations, which was reaffirmed in 2017, in a judgment issued by the Court in a case involving domestic violence.⁷⁸ In this case, looking at the perpetrator/husband's right to access and use his property as protected by the Lebanese Constitution, and weighing it against the safety of the wife/survivor and her daughter who were still living in the marital home, the Court concluded again that human safety preempts the right to property.⁷⁹ The Court of Cassation's position also aligns with the UN's approach⁸⁰ and prioritize the safety of the survivor and her children over any other consideration, including property rights, because protective orders in Lebanon are temporary. As they do so using their discretionary power, the JUMs should afford the survivor reasonable time to find another dwelling before the perpetrator is allowed back into the marital home, reasonable being legally defined as "just, rational, appropriate, ordinary, or usual under the circumstances".⁸¹

⁷⁸ Lebanese Court of Cassation, judgment issued on 13/7/2017, case no. 16/2017, www.idrel.com

⁷⁹ *Id.*

⁸⁰ UN Department of Economic and Social Affairs, *supra* n. 62, at 47.

⁸¹ Legal Information Institute, Cornell Law School, Wex legal dictionary and legal encyclopedia, <https://www.law.cornell.edu/wex/reasonable>, accessed Jan. 2, 2021.

CHAPTER II.

ACCESS TO JUSTICE FOR

DOMESTIC  C
VI  LENCE

BEFORE LEBANESE

RELIGIOUS

COURTS

As discussed in Chapter I, domestic violence does not exist in a vacuum and is usually an indicative element of an abusive relationship that is usually doomed to end. Legally ending the marital bond is usually done through dissolution proceedings before competent courts. In Lebanon, if a marriage is conducted before a given Lebanese religious authority, the religious courts generally have subject-matter jurisdiction over dissolution of marriages, based on the religious denominations of the parties involved and applying relevant personal status laws. This Chapter will focus on domestic violence cases within the context of marriage, under the various personal status laws. It will examine whether domestic violence is taken into consideration by Druze, Sunni, Shiia, and Christian courts in cases of dissolution of marriage or other, and whether elements of domestic violence impact the outcome of the case and access to justice for women survivors.

It must be noted that the terms “wife”, “husband”, and “marital home” are used in this chapter in their legal sense within the framework of the legal bond of marriage and of the jurisprudence analyzed, and therefore, these terms do not carry any derogatory, pejorative, or reductionist connotation on the part of EU4WE.

Protected by Article 9 of the Lebanese Constitution (see Chapter I) and by Decision No. 30 L.R. issued in 1936, personal status laws are the set of laws, particular to the 18 religious denominations in Lebanon, that religious authorities have adopted and that competent religious courts apply in matters related to marriage, dissolution of marriage, alimony, and other family matters, including children matters, such as custody, guardianship, child support, and other. The Lebanese religious courts operate autonomously in parallel to the civil courts system, with hardly any oversight from higher judicial authorities, such as the Court of Cassation or the Constitutional Council. The 18 Lebanese religious denominations and respective court systems can be further grouped into distinct categories (see below), and there are 15 official personal status laws covering these denominations.

The Christian Catholic denominations are (1) Maronite; (2) Greek Catholic, also referred to as Melkite; (3) Armenian Catholic; (4) Syriac Catholic; (5) Chaldean; and (6) Latin. The personal status laws of the Catholic denominations are mostly based on the *Motu Proprio* of his Holiness Pope Pius XII of 1949, which enacted a Code of Laws that governs marriages and family relationships for all the Catholic denominations above. These laws are also based on the 1990 Code of Canons of the Eastern Churches, except for the Latin denomination, which is governed by its own Code of Canons issued in 1983. The court system for these Catholic denominations is best described as *“for each catholic rite there is a unified first instance tribunal for the entire Lebanese territory and only one court of appeal. It is however possible to appeal first instance decisions directly before the Rota courts in Vatican. The cassation appeal can be presented either before the Court of Cassation (Civil Chamber) or before the Rota in the Vatican.”*⁸²

The Christian Orthodox denominations are: (7) Greek Orthodox; (8) Syriac Orthodox; (9) Armenian Orthodox; (10) Assyriac; and (11) Coptic. The court system for these Orthodox denominations is composed of “a first instance tribunal in each archdiocese, and one single court of appeal for the entire Lebanese territory. The cassation appeal can be presented before the Civil Chamber of the Court of Cassation.”⁸³

⁸² Euro-Mediterranean Human Rights Network, Lebanon, The Independence and Impartiality of the Judiciary Report, 2010, p. 15, <https://euromedrights.org/wp-content/uploads/2018/03/LEBANON-The-Independence-and-Impartiality-of-the-Judiciary-EN.pdf> (accessed Nov. 10, 2020).

⁸³ *Id.*

The other two non-Muslim denominations are: (12) Evangelical; and (13) Jewish denominations.

Catholic, Orthodox, and Jewish court systems constitute what is known as “the ecclesiastical court system” regulated by the law enacted in April 1952 for non-Muslims. *“These courts are not part of the judicial structure of the Lebanese State. They are established by decrees issued by the high authorities of each of those religions who exercise direct control over them.”*⁸⁴

The Muslim denominations are: (14) Sunni; (15) Shiia; (16) Druze; (17) Alawite; and (18) Ismaili.

The courts for Sunni, Shiia, and Druze are called Shariaa Courts and “are regulated by the Law of 16 July 1962 for the Sunnis and Shiites and by Decree No. 3473 of 5 March 1960 for the Druze. The organisation of the Islamic judiciary is considered to be indivisible from the State, which obliges them to abide by the legislation issued by the Chamber of Deputies. Thus, the law on the Druze personal status was created by that Chamber.”⁸⁵

The Sunni and Shiia courts each have a *“first instance tribunal in each district (Casas) and a Supreme tribunal in Beirut which renders appeal decisions. Cassation appeals are presented before the Plenary Assembly (assemblée plénière) of the Civil Court of Cassation.”*⁸⁶

The Druze courts have *“one first instance tribunal in each district (Casas) and one Supreme Court of appeal in Beirut. The Plenary Assembly (assemblée plénière) of the Civil Court of Cassation has jurisdiction over cassation appeals.”*⁸⁷

Despite the aforementioned legal texts, little to no oversight is exercised over religious courts. According to Human Rights Watch, state-funded Islamic Courts operate independently with barely any oversight on the part of the State, while Christian courts (funded independently from the State) also operate with minimal to no oversight from the State.⁸⁸

This pluralism in personal status laws and court systems creates a de facto discrimination amongst Lebanese themselves, simply because various differing laws are applied by various tribunals to various Lebanese individuals, depending on each individual’s religious affiliation. Preserving the autonomy and associated powers of these religious denominations is the main reason for Lebanon’s reservation on CEDAW Article 16. However, and irrespective of Lebanon’s reservation to Article 16, CEDAW has recognized the existence of plural justice systems in GR 33, which expressly states, under its recommendations for specific justice systems and plural justice systems, that *“State parties have the obligations under article 2, 5 (a) and 15 of the Convention and under other international human rights instruments to ensure that women’s rights are equally respected and that women are protected against violations of their human rights by all components of plural justice systems.”*⁸⁹ The GR 33 Committee further observed that *“practices embedded in plural justice systems can be harmonized with the Convention in order to minimize conflicts of laws and guarantee that women have*

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

⁸⁷ Id. at 16.

⁸⁸ Human Rights Watch, *Unequal and Unprotected*, p. 28, (2015).

⁸⁹ Committee on the Elimination of Discrimination Against Women, *supra* n. 42, at ¶ 61.

*access to justice.*⁹⁰ Based on these observations, and to enhance access to justice for women, the GR 33 Committee recommended that State parties with plural justice systems ensure that *“religious justice systems harmonize their norms, procedures and practices with the human rights standards enshrined in the Convention and other human rights instruments.”*⁹¹ By application of these provisions (and especially of articles 2, 5 and 15, to which Lebanon has made no reservations), Lebanon has the obligation to harmonize its various justice systems to ensure greater access to justice for all Lebanese women, irrespective of the court before which they are standing.

The following sections of this Chapter will look at how to improve access to justice for survivors of domestic violence, by identifying legal gaps of the various religious courts and by providing recommendations for harmonizing legal practices of religious courts with international conventions despite Lebanon’s reservations on CEDAW article 16.

SECTION I. DOMESTIC VIOLENCE BEFORE LEBANESE DRUZE COURTS

Druze personal status laws are codified in a Code enacted in 1948 by the Lebanese Parliament (Chamber of Deputies). In 2017, some provisions of this Code were revised, bringing the Code closer to the principle of equality between men and women, as stated in the Lebanese Constitution and international conventions.

Marriage under Druze law is a free-will contract between a woman and a man, based in trust and security, love and affection, compassion and mercy. Violence in a marriage is not recognized and the concept of a wife’s duty of obedience is rejected because it is an infringement of her humanity and her equality to man. A wife is, therefore, considered as “entrusted” to her husband, who in turn has a duty of care and safeguarding and of respect and protection. The wife is a full equal partner in the household and a decision-maker along with her husband.

Based on equality, both husband and wife have the equal right to divorce and marital life cannot be imposed on either. Divorce is valid and will take effect only through a court order. The procedural aspects of divorce are governed by articles 47, 48, and 49 of the Druze Code. Much like Sunni personal status law, articles 47 and 48 require parties of a divorce to go through a specific mediation process, whereby the judge selects an “arbitrator” (usually a next-of-kin, a family member, or a close friend) to assist the court and the parties with the divorce proceedings. The arbitrators will mediate the dispute in an attempt for reconciliation, will help the court in determining the facts and reasons for divorce when reconciliation fails, and will recommend specific courses of action, including assigning fault (or not) and the percentage of fault to each party. Article 48 expressly empowers the judge to award the full Mahr⁹² or portions thereof

⁹⁰ Id. at ¶ 63.

⁹¹ Id. at ¶ 64 (a).

⁹² The Mahr is an amount of money or other agreed-on property in an Islamic marriage that becomes payable to the wife as an effect of marriage. The Mahr is usually divided in two portions: the prompt Mahr that is payable at the conclusion/formation of the marriage and the deferred Mahr that is payable at the dissolution of the marriage. See *infra* n. 102.

to the wife in proportion to fault. Druze law rejects all forms of violence, be it physical, verbal and emotional, psychological, or financial, against the wife and children alike. A husband guilty of violence is considered to be at fault, giving the wife the right to unilaterally end the marriage with all legal consequences, including payment of her Mahr⁹³ in total, in addition to damages as determined by the Druze court, based on articles 48 and 49. By the same token, the wife is not considered to be "Nashez" (the concept of "Nushuz" being the disobedience of the wife and the disruption of marital harmony⁹⁴) and retains all her marital rights, if she leaves the marital home because of her husband's violence against her.

Druze judges are required to hold a national law degree. In courts of first instance, they are also Sheikhs/religious figures. However, at the appellate level, the court is presided by a non-religious president, assisted by two advisors, one of whom is usually a Sheikh. As far as appointment of judges, the process is as follows: *"Judges in Druze courts are appointed based on the recommendation of the minister of justice after consultation with the Initiates Council (Mashyakhah al-`Aql), which is the Supreme Druze Council comprised of one president (Sheikh al-`Aql) elected by the Druze national assembly and four Druze religious authorities appointed by him, with the mission of representing the Druze confession, overseeing its affairs, and defending their rights and privileges."*⁹⁵

Despite the legal principle of total rejection of violence, domestic violence is pervasive in many Druze households, as it is in any other community. When faced with elements of domestic violence in a divorce case, the weight given to these elements in granting the divorce, determining and assigning "fault", awarding payment of Mahr and damages, and awarding custody of children is directly tied to the opinions of arbitrators and judges (who are men); this is exemplified in the following judgments.

JUDGEMENT #1.

The husband and wife were married in 2010 and had an only child in 2013. From the beginning of the marriage, the wife/survivor was subjected to physical and psychological violence. On May 29, 2015, the husband savagely assaulted her, causing broken bones and extensive bruising she left the marital home that same night.

On June 11, 2015, the husband petitioned for divorce before the Druze court, claiming his wife suffered from psychological problems, including mood swings, depression, and excessive aggression towards others. He also claimed that she was constantly attempting to bring him down emotionally in addition to straining his relationship with the child. He requested:

- The revocation of the marriage contract (i.e. divorce).
- The wife to pay him damages for harm incurred.
- To be awarded sole custody of the child.

In her answer filed before the court, the wife rejected all the husband's claims, explained that he regularly beat her, and presented a forensic medical report to that extent. In turn, she demanded that:

⁹³ Musawah, CEDAW and Muslim Family Laws, In Search of Common Grounds, Annex I, Glossary of Key Terms, Sisters in Islam, 2011, www.musawah.org.

⁹⁴ Id.

⁹⁵ Euro-Mediterranean Human Rights Network, supra n. 82, at 30.

- She be awarded custody of the child until the age of seven (legal age).
- The husband pays her the Mahr and damages.
- The husband pays her monthly child support.

The wife's arbitrator submitted his report, and without assigning any percentage of fault to either party, he stated that the main reason behind the couple's dispute was disagreement on raising the child. The husband's arbitrator did not assign fault either. The judge issued the divorce decree on November 7, 2016, ruling that:

- Both parties were equally at fault (50% of fault each).
- The husband must pay the wife the amount of the Mahr that is proportionate to the percentage of his fault.
- The wife be awarded custody of the child until the legal age of seven.
- The husband must pay the wife a monthly amount of \$/200.00/ as child support, in addition to covering education and medical expenses.
- Court fees and expenses must be divided equally and paid by both parties.

The wife appealed the judgment before the Druze Appellate court. Looking at the elements of the case, particularly at the wife's claim of domestic violence, which was substantiated with a forensic medical report, the Appellate Court reversed the judgement with respect to the wife's Mahr and share of fault. Applying Druze personal status laws, and relying on the forensic medical report and deeming it proof of violence, the Appellate Court ruled that:

- The husband was responsible for the dissolution of the marital bond and was 70% at fault.
- The husband must pay the full amount of the prompt Mahr and 70% of the deferred Mahr as well as give her all her belongings.
- The husband must also pay the monthly amount of L.L. /300,000.00/ to the wife, in addition to the amount of U.S. \$/200.00/ as child support, plus other education and medical expenses.
- Child custody is awarded to the wife until the age of seven.
- Court fees and expenses be paid by both parties according to the percentage of fault of each.

JUDGEMENT #2.

Husband and wife were married on June 29, 2018; soon afterwards, the husband began using physical violence against his wife. After one particularly violent incident, the wife obtained a forensic medical report documenting the injuries and recommending a week of sick leave.

On June 12, 2019, the wife filed for a protection order before the JUM, which was granted. On Sept. 11, 2019, the wife petitioned for divorce, requesting that:

- The husband pays her a monthly alimony of at least L.L. 750,000.00;
- The husband pays her the full amount of the prompt Mahr.
- The husband be deemed as 100% at fault for the dissolution of the marriage and ordered to pay 100% of the deferred Mahr.
- The husband pays her damages for harm suffered based on article 49 of the Druze Personal Status Code.

On Feb. 20, 2020, the lower Druze Court issued a divorce decree, ruling that:

- The divorce is granted.
- The husband must pay the wife the portion of the deferred Mahr equivalent to 60 gold coins (or the equivalent in Lebanese pounds). The court waived the rest of the deferred Mahr.
- Damages to the wife were denied.

SUBSECTION A.

EVIDENCE OF DOMESTIC VIOLENCE: FINDINGS AND RECOMMENDATIONS

1. FINDINGS.

In the judgements #1 and #2 cited above, the lower Druze courts totally disregarded evidence of domestic violence substantiated by forensic medical reports and a JUM's protective order, in direct violation of Druze personal status laws. Even if Druze judges are well aware of the legal repercussions of such erroneous rulings, they still persist in their course of action based on patriarchal personal beliefs and social motivations. Within the Lebanese Druze community, which is a relatively small community, strong social ties between Druze families and communal considerations of cohesion have a direct negative impact on access to justice for women survivors of domestic violence. These women survivors are reluctant to seek protective orders under Law 293 and to seek redress before Druze judges. More often than not, to avoid lengthy proceedings and social stigma, Druze women are pressured to waive their legal rights and reluctantly agree to "amicable" divorce proceedings, through which they often lose financial support rights (Mahr or alimony), child custody, and other rights.

2. RECOMMENDATIONS.

In cases of domestic violence, when violence is proven through medical reports, temporary protective orders or other evidence, Druze judges should not dismiss the findings of violence and should properly apply Druze law, providing protection to women. Even if they are not bound by CEDAW article 16 because of Lebanon's reservation, such a step would reinforce the equality of husband and wife as adopted in the Druze Code itself and would align judicial practices with the ICCPR article 23(4) imposing on State parties, such as Lebanon, the duty to take measures *"to ensure equality of rights and duties as to marriage, in the marriage, and at its dissolution"*. Applying Druze law in domestic violence cases, whether established through a temporary protection order or a final judgment, also aligns Druze courts and jurisprudence with CEDAW's Article 2 (c)⁹⁶ requirement of equality and with GR 19, GR 33, and GR 35. By doing so, Druze courts would also be directly upholding GR 33's recommendation of establishing a justice system with good quality and of harmonizing plural parallel justice systems, in addition to protecting the human rights of women.

⁹⁶ Convention on the Elimination of All Forms of Discrimination Against Women, supra n. 32.

SUBSECTION B.

PAYMENT OF DAMAGES AND MAHR: FINDINGS AND RECOMMENDATIONS

1. FINDINGS.

In the judgements #1 and #2 cited above, Druze courts did not award damages to the survivor of domestic violence, despite the clear language of articles 48 and 49 of the Druze Code: a wife is entitled to her full Mahr when the husband is the main culprit for the failure of the marriage and, in the event the husband does not have a legitimate reason for divorce, the judge shall *“award the wife damages for physical and mental harm suffered, in addition to her Mahr”*⁹⁷ (unofficial English translation). Instead, the judges completely ignored the finding of violence and awarded the payment of the deferred Mahr in proportion to the fault percentage of the husband, per the arbitrators’ report. The root cause of this course of action is based in patriarchy and on the fact that Druze arbitrators and judges are reluctant to impose a heavy financial burden on one Druze family to the benefit of another. Such an act is perceived as disruptive to the Druze communal cohesion.

2. RECOMMENDATIONS.

While safeguarding social communal cohesion is a valid concern, upholding the rights of Druze women under Druze law can only strengthen this cohesion, as Druze judges would be empowering Druze women to become partners and equal right-holders in the Druze community, based on Druze law. Awarding damages as recommended by article 49 above will also align the practices of Druze courts with the recommendation of CEDAW GR 33, ¶ 19 (b), which provides that State parties to CEDAW should ensure that remedies provided are adequate, effective, and proportionate to the harm suffered. Such remedies should include, among others, compensation (whether provided in the form of money, goods or services).⁹⁸ As for the Mahr, it is a contractual provision agreed upon by both parties at the time of formation of the marriage contract, as required by article 19 of the Druze Code. According to article 21 of the Code, a Mahr becomes payable in full either at the death of the husband or at the time of divorce, when the marriage has been consummated. Using his discretionary power, and based on the interpretation of Article 48 of the Druze Code, when confronted with a case of domestic violence, and to further ensure the protection of the survivor, a Druze judge should consider the Mahr as a legal entitlement, which is defined as a “right to a monetary benefit, granted immediately upon meeting a legal requirement,”⁹⁹ and should order the payment of the full deferred Mahr to the survivor. Upholding the payment of the full deferred Mahr, without prorating it based on fault, would also be in line with CEDAW article 15(2), which states that women shall be accorded in civil matters the same legal capacity as men to conclude contracts and shall be treated *“equally in all stages of procedure in courts and tribunals.”*¹⁰⁰ Moreover, this practice would also be in line with CEDAW GR 33 as it enhances the performance of the Druze justice system, especially as it pertains to the justiciability, good quality, and access to remedies components of the system.

⁹⁷ Druze Code of Personal Status Laws, articles 48, 49, <https://druzecourts.gov.lb> (accessed Jan. 18, 2021).

⁹⁸ Committee on the Elimination of Discrimination Against Women, *supra* n. 42, at ¶ 19 (b).

⁹⁹ Black’s Law Dictionary, p. 225, Pocket Edition, West Group (1996).

¹⁰⁰ Convention On the Elimination of All Forms of Discrimination Against Women, *supra* n. 32.

SECTION II. DOMESTIC VIOLENCE BEFORE LEBANESE SUNNI COURTS

Sunni personal status laws are found in the 1917 Ottoman Law of Family Rights (OLFR), the Law of 1962 on the Organization of the Islamic Judiciary, and the Rulings issued by the Sunni Supreme Islamic Council. The most updated ruling is the “Family Ruling”, issued in 2011 (decision No. 46 dated Oct. 1, 2011) and published in the Official Journal/Gazette of Jan. 12, 2012, volume no. 2.

For Sunnis, marriage is a legal and social contract between a man and a woman that creates reciprocity of rights and obligations, under which the husband’s main duty is to provide and protect his wife and the wife’s main duty is to follow and obey her husband.

Upon the formation of marriage, the husband must pay the prompt portion of the Mahr (the Mahr being the same concept adopted by the Druze Code as explained earlier), financially provide/maintain his wife, and provide a decent home/residence for the couple. Once he has met these main obligations, the husband has the right to ask his wife for obedience in authorized matters, the right to cohabitation, and the right to accompany him wherever he wishes to live (if not otherwise provided in the marriage contract).¹⁰¹

Once married, a wife has the right to ask for the portion of her prompt Mahr, the right to sufficient financial maintenance and a decent marital home, and the right to a fulfilling sexual relationship. In return for these rights, the wife must obey her husband and live with him.¹⁰² Once a valid marriage is formed, the Mahr becomes payable and the wife is entitled to it:

*“The dower (mahr) is another right of the wife, again regardless of her own wealth. As I have already explained, the dower is a sum of money or other property which becomes payable to a man’s wife simply as an effect of marriage.”*¹⁰³ The Mahr is not a price nor is it the Western concept of dowry. Instead it is “a token of the affection, esteem and respect that the man feels for the woman he is about to marry.”¹⁰⁴ It must be noted that the Mahr is considered a debt, contracted by the husband to the benefit of the wife¹⁰⁵, with the first portion of the debt, the prompt Mahr, paid upon the formation of the contract.

Dissolution of marriage under Sunni law can happen in one of three ways: *Talaq*, the equivalent of repudiation; *Tafriq*, a court-ordered dissolution; and *Khulu’*, the equivalent of divorce by mutual agreement. The amount of deferred Mahr to be paid upon dissolution will vary according to the means of dissolution.

¹⁰¹ Musawah, Lebanon, Overview of Muslim Family Law & Practices, Sisters In Islam, <http://arabic.musawah.org/sites/default/files/Lebanon%20-%20Overview%20Table%2003.18.pdf> (accessed Jan. 19, 2021).

¹⁰² Jamal J. Ahmad Nasir, *The Status of Women Under Islamic Law and Modern Islamic Legislation*, p. 137, (3d edition 2009).

¹⁰³ *Id.* at 34-35.

¹⁰⁴ *Id.*

¹⁰⁵ Oman, Nathan B, “Bargaining in the Shadow of God’s Law: Islamic Mahr Contracts and the Perils of Legal Specialization” p. 591, (2010). Faculty Publications. 1126. <https://scholarship.law.wm.edu/facpubs/1126> (accessed Jan. 27, 2021).

Repudiation or *Talaq* under Sunni law is usually a husband's unilateral power and privilege. Once a husband "throws" a *Talaq* upon his wife, he must pay her the deferred portion of the *Mahr* in full.

Article 337 of the 1962 law codifies the principle of *Tafriq* by which a wife can seek divorce before a judge under article 337¹⁰⁶, based on harm suffered from discord or injury such as hitting, using foul language against a spouse, or coercing a spouse to commit an unauthorized/unholy acts. The principle of *Tafriq* is rooted in the following Quranic rulings, as explained by Muslim scholar Jamal N. Ahmad Nassir:

*"There are two Qur'anic rulings upon which most Islamic jurists and modern Arab laws rely in this respect. "And if you fear a breach between them twain [the man and his wife], appoint [two] arbitrators, one from his family and the other from hers; if they both wish for peace, Allah cause their reconciliation . . ." (4:35), and "The divorce is twice, after that, either you retain her on reasonable terms or release her with kindness . . ." (2:229)."*¹⁰⁷

Referring to the arbitration process, Jamal Nassir explains that *"the arbitrators will have examined the alleged injury, and if it is considered to be wholly or mainly caused by the husband, they will award an irrevocable divorce. If the cause lies wholly or mainly with the wife, or if the cause is considered to be equally down to both of them, they will award an irrevocable divorce, and order the full dower or a commensurate part of it to the injured party. If the arbitrators do not, or cannot, establish the source of the injury, then they may still award a divorce, releasing the husband of a part of the wife's rights, provided she is in agreement. In the event the arbitrators disagree, then the judge can replace them"*.¹⁰⁸

Mirroring the procedure described above, the *Tafriq* procedure before Lebanese Sunni courts is the following: Once the wife's petition for divorce is filed with the court, the court will appoint two arbitrators (usually religious Sheiks) to try to mediate between the parties for a possible reconciliation. The arbitrators will also assist the court in determining the level of fault and liability/responsibility of each party if reconciliation fails. The language of article 337 is express and clear as to discord and injury being legally accepted grounds for divorce. Guidance on the concept of fault is found in article 343, which states that if the arbitrators, in their report, find that the harm to the relationship is totally or mostly caused by the husband, the judge shall grant the requested divorce with all legal obligations imposed on the husband. If, however, the arbitrators find the harm was totally or mostly caused by the wife, the judge shall order separation/divorce, with the wife losing all or a portion of her deferred *Mahr*, in proportion to the harm she caused.

Divorce by mutual consent or *Khulu'* is the third avenue for women to escape from an unwanted relationship. Once husband and wife agree to it, the wife must provide the husband with some sort of consideration/compensation in exchange for the dissolution of the marriage. Such consideration is usually provided by her relinquishing the deferred portion of the *Mahr* and any maintenance owed.¹⁰⁹

¹⁰⁶ Law on the Organization of the Islamic Judiciary of 1962, <http://www.legallaw.ul.edu.lb/> (accessed Jan. 22, 2021).

¹⁰⁷ Jamal J. Ahmad Nassir, *supra* n. 102.

¹⁰⁷ *Id.* at 137-138.

¹⁰⁹ Oman B. Nathan, *supra* n. 105.

One main issue that could also negatively impact and reduce the amount of the deferred Mahr is the claim of disobedience filed by a husband against his wife. Is considered "Nashiza" (noun or adjective from the word "Nushuz" meaning disobedience) under Shariaa law "the wife who leaves the matrimonial home without a lawful reason or denies her husband access to the home which she owns without first requesting him to accommodate her elsewhere."¹¹⁰ Thus, if the husband fulfills his obligations and the wife leaves the marital home and refuses to live with him for an invalid reason, she could be considered "Nashiza/Nashez" or disobedient. The husband can then file an "obedience" claim before the Sunni court, asking the court to order his disobedient partner to return to the family home, under penalty of losing her right to maintenance or penalty of being considered as at fault in the event of divorce, which in turn will reduce the amount of the deferred Mahr originally agreed upon. Discord and injury are considered valid reasons for a woman to leave an abusive home and do not affect the maintenance owed to her. Also, Sunni courts will reject an obedience claim filed by the husband when they establish the existence of discord and injury as grounds for a divorce petition filed by the wife.

The judges who sit on Sunni courts in Lebanon are usually trained in Shariaa law and hold certificates and degrees from recognized religious colleges, such as the Al Azhar University for Sunni Islamic Learning in Egypt. However, the overwhelming majority of judges do not hold a Lebanese law degree or have any professional legal training outside the scope of Shariaa law. When issuing a judgment in family law matters, judges will mostly rely on the legal texts below, in the following hierarchy:

1. The Rulings of the Supreme Islamic Council, especially Ruling No.46.
2. The 1917 Ottoman Law of Family Rights.
3. The Law of 1962 on the Organization of the Islamic Judiciary.
4. The principles of the Hanafi Fiqh or doctrine, which were compiled by the Egyptian scholar Muhammad Qadri Pasha, in 1875.

A closer look at a few judgments issued in cases of divorce with elements of domestic violence shows that Sunni courts are falling short of properly dealing with matters involving discord and injury.

JUDGEMENT #1.

On Dec. 28, 2016, the wife filed for divorce based on article 337. She stated in her petition that her husband subjected her to domestic violence, took all her jewelry and money, and stopped providing her with maintenance, which forced her to leave the marital home and live with her parents. She also stated that she was fearful for her life because, while she was residing with her parents, her husband came to her place of residence armed with weapons to reconcile with her. Instead, he killed one of her brothers by shooting him, and injured another brother with a knife. When the husband appeared before the court, he confirmed the killing, described it as an accident, and stated that he did not want to separate from his wife. The Sunni court, recognizing the potential grounds for divorce, appointed two arbitrators to assess the percentage of fault and to assign liability accordingly. In their report submitted to the court, the arbitrators confirmed the existence of discord and injury/domestic violence, recommended granting the divorce and assigned 65% of fault to the husband and

¹¹⁰ Musawah, supra n. 101.

35% of fault to the wife. Affirming the report, the Sunni court granted the divorce and ordered the husband to pay 65% of the deferred Mahr to his wife.

JUDGEMENT #2.

In 2016, the wife filed for divorce based on article 337 of the 1962 law and abusive marital relationship. In her petition, she stated that i) her husband was physically and emotionally abusive; ii) he had been arrested and imprisoned on charges of fraud and theft; iii) he had not supported her financially for over two years as required by law; and iv) she was also suffering psychologically, as his crimes had tarnished her reputation and burdened her in her social circle. She requested that the divorce be granted, with her husband bearing full responsibility for the failure of the marriage. She substantiated her claims with the testimony of witnesses. On May 5, 2016, after recognizing valid grounds for divorce, the court appointed two arbitrators, tasking them to assign percentage of fault and liability. The arbitrators' report assigned 90% of fault to the husband and the court affirmed.

JUDGEMENT #3.

The husband and wife were married and moved to Dubai at some point during their marriage. Soon after, marital problems started and the wife decided to move back to Lebanon for work purposes, without her husband's approval. On June, 5, 2017, the wife filed a petition for divorce before the Tripoli Sunni court based on discord and injury, while the husband still rejected the idea of divorce, had refused a Khulu' proposal from his wife's attorney and had filed an obedience claim against his wife. As the court established discord, it appointed two arbitrators to evaluate the issues at hand. As evidence of discord and injury, the wife submitted written WhatsApp conversations showing elements of violence and photographs showing bruises. The arbitrators, looking closely into the matters of the dispute and after interviewing both parties, attributed 60% of fault to the husband and 40% of fault to the wife. The court, relying on the judge's discretionary power, accepted the finding of discord and injury, but reversed the arbitrators' percentage of fault, and assigned 80% of blame/fault to the wife. The reasoning provided by the court was that WhatsApp conversations/texts were not admissible evidence because they could be easily manipulated and modified.

SUBSECTION A.

ASSIGNMENT OF FAULT AFTER A FINDING OF DISCORD AND INJURY/DOMESTIC VIOLENCE AND PRORATING OF MAHR: FINDINGS AND RECOMMENDATIONS

1. FINDINGS.

In the first two judgements above, both husbands were guilty of crimes, with one of them serving a prison term. In both cases, the arbitrators were fully aware of the criminal record of the husbands and of the abusive behavior (physically, emotionally, and financially), as both wives/survivors had provided ample evidence substantiating

the abuse and other crimes committed by the husbands. Instead of providing full protection to the survivors, the arbitrators and the court still partially blamed them, with a finding of fault of 35% and 10% in the first and second judgements respectively. In both cases, the arbitrators and the court turned a blind eye to the fact that the acts of domestic violence amounted to additional crimes committed by the husbands, and assigned liability based on the damaging patriarchal stereotype of considering both the perpetrator and the survivor at fault in the marital relationship. In other words, the arbitrators and courts have adopted an unfounded victim-blaming approach. Such an approach is nothing but discrimination and is in violation of article 343 of the 1962 law, which clearly states that if the husband is mostly at fault for the divorce, he is liable for all legal obligations stemming from the dissolution of the marriage. This approach also diminishes the wife's financial rights under the 1917 Family Rights law. Article 55 of the 1917 law expressly states that the Mahr is the wife's asset/property and article 100 confirms the approach of article 343 above as to the wife's fault in the marriage dissolution.

In addition, the third judgement shows that the court also digressed from the Shariaa rule that states that *"If the cause lies wholly or mainly with the wife, or if the cause is considered to be equally down to both of them, they will award an irrevocable divorce, and order the full dower or a commensurate part of it to the injured party. If the arbitrators do not, or cannot, establish the source of the injury, then they may still award a divorce, releasing the husband of a part of the wife's rights, provided she is in agreement. In the event the arbitrators disagree, then the judge can replace them."* In fact, in this judgement, the court completely ignored not only the WhatsApp messages and the photographs of bruises, but also the investigation of the arbitrators who had concluded that both parties were almost equally at fault. For the sake of argument, while it could hold true that text messages and photographs can be easily manipulated/modified and may be inadmissible evidence, the arbitrators' findings should have enough probative value as to the degree of fault attributable to the husband. Instead, the court dismissed the arbitrators' findings and deducted 80% of the wife's Mahr, after considering her almost completely at fault for the dissolution of the marriage. Such a derogation from the arbitrators' findings can only be explained by the fact that the court, relying on the husband's claim, tacitly considered the wife as disobedient.

2. RECOMMENDATIONS.

Sunni courts should properly apply article 337 in combination with article 343 of the 1962 law in cases of domestic violence. By upholding these articles and granting the divorce to the wife along with her full rights under Sunni law, Sunni courts would be providing added physical and emotional/psychological protection as well as financial protection to the survivor of domestic violence. This approach was applied by the Sunni Court in a 2016 case, based on similar facts. In this case, the wife filed for divorce based on discord and abusive relationship and the fact that her husband was a convicted murderer. She claimed physical, emotional, and reputational harm, and substantiated her claim with her own testimony and testimony of family members. Following the required arbitration process and relying on the facts at hand, the Sunni court granted the divorce while assigning 100% liability to the husband and granting the wife her full Mahr. Such a ruling is in line with CEDAW Article 2 (c) and (d) as the court refrained from engaging in discrimination against the wife and acted in conformity with CEDAW's obligation on State parties to eliminate discrimination against women and provide appropriate measures against it. By doing so, Sunni courts would also

be improving the quality, accessibility and access to remedies components of their justice system as recommended by CEDAW G33.

Additionally, in the event that violence cannot be established nor proven by admissible evidence in a case of discord and injury, courts should refrain from automatically considering the wife as disobedient and assigning her the higher degree of fault for leaving the marital home because this amounts to direct discrimination against her. Instead, Sunni courts should consider both parties equally at fault, especially when validated by the arbitrators' findings. By doing so, they would be upholding Sunni law as well as upholding the principle of equality stated in the international conventions signed by Lebanon, specifically CEDAW article 2(d) and improving their justice system as explained above.

SUBSECTION B.

WIFE'S DUTY OF OBEDIENCE: FINDING AND RECOMMENDATION

1. FINDING.

The wife duty of obedience is stated in the 1917 Family law Rights and is a consequence of the marriage contract under Sunni law. Once a wife leaves the marital home without her husband's permission, the husband can petition the court to force her to "obey" him and come back to the marital home. However, if the wife files a divorce petition based on discord and injury/abusive relationship, the court will reject the husband's obedience claim.

2. RECOMMENDATION.

The reasoning behind the duty to obey is originally based in the reciprocity of duties created by the marriage contract, which are mainly the husband's financial duty to provide for his wife as the sole bread winner of the home, in exchange for his wife's duty to obey. It is for this reason that a disobedient wife will lose her right to maintenance.

While Lebanon's Sunni courts have kept the same approach with respect to the duty of obedience, a study conducted in 2003 in Algeria and Morocco, comparing them to Tunisia, noted that:

"However, this model for distributing the duties and roles of the two spouses in the family is now outdated. In the three Maghreb countries, factors related to modernization (education, urbanization, paid employment, family planning, etc.) have drastically changed the roles of women and the relationship between men and women. Women are helping support the family through both their productive (paid or unpaid) and reproductive work. Reproductive work, which includes not only motherhood, but also all the tasks and responsibilities required for family maintenance and cohesion (caring for children and elderly family members, household tasks, supporting children in their schooling, etc.), is neither counted nor socially valued. In the end, only the contribution of the husband, which is easy to quantify, is taken into account while the woman's contribution continues to be overshadowed in an attempt to impose the duty to obey on her. This logic contributes to legitimizing the duty to obey the husband, who is considered to be the main, if not the sole provider

*for the family. The unbalanced relationship created by the duty to obey is often a source of marital conflict and can result in the use of violence against women.*¹¹¹

Tunisia and Morocco, both Muslim Sunni countries where family laws are based on Shariaa law, have modernized their approach and laws, leaving behind the “duty of obedience” of the Hanafi traditional doctrine. The duty of obedience was abolished in 1993 in Tunisia. In 2004, Morocco followed in the Tunisian footsteps. To reach this consensus, both countries changed their outlook on marriage: Tunisia’s article 23 of the personal status laws currently views marriage as a partnership in which *(1) Each spouse must treat the other with kindness, live in harmony and refrain from harming the other; (2) The husband and wife must fulfill their marital duties pursuant to customs and common practices; and (3) They shall cooperate in matters related to the family, the proper upbringing of their children and the management of their children’s affairs, including schooling, travel and financial transactions.*¹¹²

The new article 51 of the Moroccan Moudawana expands on the duties of husbands and wives, stating that both parties owe the following duties:

- 1. Lawful cohabitation on the basis of good conjugal relations, justice, equality in case of polygamy, mutual fidelity, virtue, and the preservation of family honour and their children;*
- 2. Cohabitation, mutual respect, affection, and the preservation of the family interests;*
- 3. The wife’s assuming with the husband the responsibility of managing and protecting household affairs and the children’s education;*
- 4. Consultation on decisions concerning the management of family affairs, children, and family planning;*
- 5. Good relations with each other’s parents and close relatives, respecting, visiting and hosting them within accepted standards;*
- 6. The right to inherit from each other.*¹¹³

Lebanese Sunni courts should consider the abrogation of the wife’s obedience duty to align with the new social realities of Lebanese Sunnis and of Lebanon, especially when considering that Lebanese women and men have similar education rates and educational level¹¹⁴, and that women make up over 23% of the Lebanese workforce.¹¹⁵ The abrogation of the duty to obey is line with upholding both husband and wife’s human rights, protected CEDAW article 2 (see above) and in the ICCPR article 23(4) imposing on State parties, such as Lebanon, the duty to take measures to *“ensure equality of rights and duties as to marriage, in the marriage, and at its dissolution”*.¹¹⁶

¹¹¹ Collectif 95 Maghreb-Egalité, Guide to Equality in the Family in the Maghreb, 2003, English Edition 2005 by Women’s Learning Partnership for Rights, Development and Peace (WLP), p. 75, <https://learningpartnership.org/sites/default/files/resources/pdfs/Final%20Guide%20to%20Equality%20-%20English.pdf> (accessed Jan. 25, 2021).

¹¹² Id.

¹¹³ Global Rights, The Moroccan Family Code (Moudawana), https://web.archive.org/web/20101230212206/http://www.globalrights.org/site/DocServer/Moudawana-English_Translation.pdf?docID=3106 (accessed Jan. 25, 2021).

¹¹⁴ McKinsey & Company, Women at Work: Job opportunities in the Middle East set to double with the Fourth Industrial Revolution, www.mckinsey.com (accessed Jan. 29, 2021)

¹¹⁵ The World Bank, Labor Force Participation Rate, <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS?locations=1A> (accessed Feb. 1, 2021).

¹¹⁶ International Covenant on Civil and Political Rights, supra n. 25.

As for the controversial right to corporal punishment, authorized under the rules of Muhammad Qadri Pasha, upon which some Sunni courts may implicitly rely to justify a husband beating his wife (without explicitly referring to it in the body of the judgment), the following excerpts of holy Ahadith speak to its condemnation.¹¹⁷

AHADITH THAT CONDEMN CORPORAL PUNISHMENT FOR WIVES

Several respectable ahadith condemn wife beating.

The Prophet says, "Are you not ashamed to beat your wives by day and to make love to them by night?"

In another version, he says: "No one should beat his wife or manhandle her like a camel during the day and make love to her at night."

The Prophet also says: "Do not beat women; they are creatures of God" (recorded by Abu Daoud, Al-Sunan, chapter "Al-Nikah", no. 43 and Al-Darimi, chapter "Al-Nikah", no. 34-65).

He also says: "The worthiest among you is he who treats his relatives the best, and I am the worthiest for my relatives" (Ibn Maja, Marriage, page 50, Al-Darimi, Marriage, page 55).

SECTION III. DOMESTIC VIOLENCE BEFORE LEBANESE JAAFARI SHIIA COURTS

The 1917 Ottoman Law of Family Rights and the Law of 1962 on the Organization of the Islamic Judiciary both apply to the Shiiia religious denomination in Lebanon, in addition to Decisions 318 and 336 of 1920 and Decision 1034 of 1922.

Marriage for the Jaafari Shiiias of Lebanon is also a legal and social contract between a man and a woman that creates reciprocity of rights and obligations. Similar to the Sunni doctrine, the Mahr is also an effect of marriage to which the wife is entitled. Even more for the Shiiias, a husband cannot evade the payment of the Mahr by including a provision in the marriage contract to that extent; while the contract remains valid, such a Mahr provision is deemed null and void.¹¹⁸ The Mahr is also paid in two portions, prompt and deferred. The husband's obligation under the contract is also one of maintenance (food and clothing and reasonable expenses) and dwelling or a residence in which the couple will live. The wife's obligations under the contract are living with husband (not leaving the marital home) and having sexual relations with him. If the wife does not fulfill her obligations, she will lose her right to maintenance.

¹¹⁷ Global Rights, supra n. 113.

¹¹⁸ Jamal J. Ahmad Nassir, supra n. 102, at 88.

The concept of Nushuz or disobedience is directly tied to the fulfillment of obligations. Thus, a wife who leaves the marital home without her husband's consent, or does not avail herself to him sexually risks losing her maintenance based on disobedience.¹¹⁹ If any one of the disobedience conditions is met, the husband can file a disobedience claim before the court to force her to return to him or face severe financial consequences or potential marriage dissolution.

Marriage dissolution under Jaafari law is similar to Sunni law with Talaq, *Khulu*, and court ordered dissolution, with notable differences. Similar to Sunnis, the husband has the absolute right to unilaterally divorce his wife through the *Talaq* or repudiation, which takes effect immediately when in the presence of two witnesses. The wife and husband can also agree to divorce by *Khulu*, upon which the wife owes the husband consideration/compensation, usually by relinquishing the deferred portion of her Mahr and other rights she may have, such as maintenance owed.¹²⁰

The third way to dissolve a marriage is through court-ordered dissolution, also known as *Tafriq* under Sunni law. The grounds upon which a wife may resort to this process are also similar to Sunni law and consist of abandonment of the wife by the husband, poor conjugal relationships with harm and injustice, and non-payment of maintenance.¹²¹ The main difference with Sunni law is in the process followed for such dissolution. Under Sunni law, the wife has direct access to the Sunni court; in contrast, under Jaafari law, the wife must request the dissolution on behalf of her husband from the higher Jaafari religious authority, the Supreme Islamic Shii'a Council in Lebanon, in what is known as *Talaq el Hakem* (Divorce of the Ruler).¹²² If issued by the Ruler/highest religious authority, the dissolution order must then be approved by Jaafari courts to become officially valid.¹²³ Practically speaking in Lebanon, obtaining a Ruler's divorce is a tedious and lengthy process (that can extend over four years), and the most accepted grounds for obtaining such a divorce is non-payment of maintenance. Judges in Jaafari courts are usually trained in Shari'ah law and hold certificates and degrees from recognized religious colleges, such as the Islamic University of Najaf in Iraq for Shii'a Islamic learning. However, the overwhelming majority neither hold a Lebanese law degree nor have any professional legal training outside the scope of Shari'ah law. In issuing judgments in matters of family law, Jaafari judges will rely on the following legal text, in hierarchical order:

1. The Jaafari Fiqh/doctrine.
2. The provisions of the 1917 Ottoman law that are in line with the Jaafari doctrine and the legal opinions/fatwas on a specific topic issued by religious authorities, even if foreign (such as from Iran or Iraq).¹²⁴
3. The Guide to Jaafari Justice issued in 1994 by the President of the Supreme Jaafari Court. However, this guide is not binding authority and Jaafari judges can still diverge in their legal interpretations.¹²⁵

A closer look at judgments issued from these courts reveals the difficulties survivors

¹¹⁹ Id. at 110.

¹²⁰ Musawah, supra n. 101.

¹²¹ Id.

¹²² Office of His Eminence, Al Sayyid Ali Al-Husseini Al-Sistani, <https://www.sistani.org/english/> (accessed Feb. 1, 2021).

¹²³ Id.

¹²⁴ Musawah, supra n. 101.

¹²⁵ Id.

of violence encounter in accessing justice before Jaafari courts and in seeking proper redress in cases of divorce with elements of domestic violence.

JUDGEMENT #1.

In 2016, the wife filed a claim for maintenance and payment of rent against the husband after having left the marital home because of domestic violence. In her complaint, the wife stated she left the marital home in 2015, after three years of marriage because of persistent acts of physical violence and because of the husband's addiction to cocaine. To substantiate her claim of violence, the wife submitted voice recordings of beatings and verbal abuse, as well as a CD containing medical reports evidencing physical violence. She asked the court for divorce and for her Mahr. The husband counter-claimed with an obedience claim against his wife based on availability of a proper marital home (or otherwise that she be deemed disobedient). He also denied any violence or cocaine use (and submitted a negative drug blood test to that extent). The court rejected the wife's claim for divorce, stating that the wife should return to the marital home or be deemed disobedient and lose her maintenance. The court further elaborated that the wife had not provided enough probative evidence of domestic violence (such as filing a criminal complaint against her husband), that the CD and voice recordings did not prove that the husband was the perpetrator and that allegations of the husband's cocaine use remained unsubstantiated given the negative results of the drug test.

JUDGEMENT #2.

The husband and wife were married in July 2014 and moved together to Germany. Soon after, the couple faced marital problems, including domestic violence by the husband. In July 2015, the wife left the marital home for Lebanon without any warning. The husband followed the wife, refused to grant her a dissolution of marriage, and filed an obedience claim against her before the Jaafari court, in South Lebanon. During a hearing, the wife admitted leaving the marital home and stated that she had filed a claim for maintenance against the husband, which she requested to be joined to her first claim. During the hearing, she explained to the court that marital life was impossible because of the recurring violence, and she submitted medical reports, along with a temporary protective order from the JUM against the husband, to substantiate the physical and emotional violence. As for the husband, he reiterated his refusal to divorce, insisted on living together, and stated that he owned a legitimate/adequate home in which the couple could live together. Following the hearing, the court ordered that said home be inspected for adequacy as a marital home. After the inspection, which deemed the home to be adequate, the court issued its judgment ordering the wife to live with the husband or to be deemed as "disobedient" and lose her right to maintenance.

JUDGEMENT #3.

The husband and wife were married and had a son. In 2016, the wife and four-year old child left the marital home because of domestic violence. She filed a maintenance and a child support claim before the Jaafari court, explaining that she left the home because she was in fear for her life after the husband threatened her with murder before the internal security forces (literally saying he would put 30 bullets into her). She also

demanded to be divorced from him. In a hearing held in 2018, and upon questioning of the judge, the husband refused to pay any maintenance based on the fact that she had voluntarily left the marital home and stated that he was not able to see his child. In turn, the wife explained that the criminal court had ordered that custody of the child be awarded to her. The Jaafari court, completely ignoring element of domestic violence and the judgment of the criminal court, denied both claims of maintenance and child support. The underlying reasoning behind denying maintenance was based on the fact that the wife had left the marital home. Denying child support was justified by the fact that only the Jaafari court was the competent court to award custody, and not the criminal court, and therefore the wife's willful payment of her child's expenses is a voluntary donation.

SUBSECTION A.

LOSS OF THE RIGHT TO MAINTENANCE AND DUTY OF OBEDIENCE: FINDINGS AND RECOMMENDATIONS

1. FINDINGS.

Under Jaafari law, a wife cannot obtain a dissolution of marriage or divorce from the Jaafari court based on domestic violence, without the consent of her husband. It is for this reason that women, survivors of domestic violence, usually leave the marital home and file for a maintenance claim. The wife's spousal maintenance when she is out of the marital home depends, not only on the evidence presented to prove domestic violence, but also on the judge. In the cases cited above, the Jaafari judges ignored evidence of domestic violence including official medical reports, recordings of beatings, as well as protection orders issued by JUMs. In judgement #3, the judge went even further and rejected the judgment issued by the criminal court that awarded custody of the child to the mother, totally ignoring Law 1962. Under article 444 of the 1962 Law, in the absence of a specific text, Islamic courts must follow the regular rules of civil and criminal procedure. Article 8 of the Lebanese Code of Criminal Procedure states that criminal law takes precedence over civil law, and that existing criminal proceedings take precedence over civil proceedings and will stay civil actions. In this case, the judge overruled the criminal judgment that awarded custody of the child to the mother (outside of the marital home), did not stay the custody claim in total disrespect of Law 1962, and awarded custody the child to an abusive father against the child's best interests. Such case outcomes can only be explained by the use of the discretionary power of Jaafari judges based on a patriarchal perceptions and values that lead to discriminatory practices against women and children.

In contrast, other very similar cases handled by other Jaafari courts had quite different outcomes:

- The husband and wife were married in the summer of 2018. In Oct. 2018, the wife left the marital home because of domestic violence and obtained a protection order from the JUM against the husband. The husband then filed an obedience claim before the Jaafari court. The wife counterclaimed with a maintenance action before the Jaafari court and submitted medical reports as well as the protective order as evidence of violence. The court, in its ruling of 2019, rejected the husband's obedience claim, awarded maintenance to the wife based on the evidence

presented by her, and agreed that “fear for one’s life” is a valid and legitimate reason to leave the marital home.

- In another similar case, the wife left the marital home and the husband filed a disobedience claim before the Jaafari court in 2018. She counterclaimed with a maintenance action and stated that she did not want to live with him anymore because he was violent and she feared for her life. To prove domestic violence, the wife submitted a complaint filed before the police. The wife went a step further, requesting to be divorced through Khulu’ and agreeing to pay the husband proper compensation, which he rejected. In 2020, the court, looking at all elements of the case, including evidence of domestic violence, rejected the husband’s action for disobedience and awarded maintenance to the wife. The judge considered that violence and abuse are legitimate causes for leaving the marital home and refusing marital life altogether, and stated that a wife cannot be forced to live with her husband in a harmful environment

2. RECOMMENDATIONS.

While it is obvious that the Jaafari courts have fallen short of dissolving the marriage in the judgements cited above, it cannot be denied that allowing the survivor of domestic violence to leave the marital home and imposing on the husband to pay maintenance, provides a higher degree of protection and financial stability to the wife/survivor. The courts that reached this conclusion are also aligned with current Iranian law, which considers maintenance still owed to the wife in the event she leaves the marital home because of fear of grave physical or financial injury.¹²⁶ In addition, for purposes of comparative legal analysis with other nations that follow Jaafari law, Iranian law currently allows its family courts to grant women divorces based on a fatwa/legal opinion and the subsequent changes to the Civil Code that took place in 1982:

“Moreover, in 1982, the jurists of the Guardian Council requested a fatwa from Ayatollah Khomeini. The question posed was: “Does the court have the right to grant a divorce to a woman when it is clear to the court that his behavior towards her in unbearable?” The text of the fatwa that was issued is: “In the name of the Exalted, the cautious way is to convince the husband to divorce his wife, but if he is not willing, the court can issue the divorce.”¹²⁷

“[...] Ultimately, in 1982, Article 1130 of the Civil Code was amended to give judges the authority to grant or withhold divorce requested by women. Article 1130 was again amended in 2002, further empowering judges to issue a divorce requested by the woman if she could establish that the continuation of the marriage would cause intolerable suffering or hardship.”¹²⁸

Also, under the current Iraqi Personal Status Law (originally enacted in 1959 and subsequently amended), both husband and wife have the right to file for legal separation for specific reasons listed in articles 40 and 41, one of which is *“If one of the spouses injured the other or the children in a way that makes marital life impossible to continue.”¹²⁹*

¹²⁶ Jamal J. Ahmad Nassir, supra n. 102, at 109.

¹²⁷ Mehrangiz Kar and Azadeh Pourzand, Iran, in *Feminist Advocacy, Family Law and Violence Against Women*, International Perspectives, p. 83-84, (1, ed. Routledge, 2019).

¹²⁸ Id.

¹²⁹ American Bar Association Iraq Legal Development Project, Law No (188) of the year 1959 Personal Status Law1 and amendments, https://www.peacewomen.org/sites/default/files/lawref_iraqpersonalstatuslaw1959_aba_0.pdf (accessed Feb. 5, 2021).

In summary, even under Jaafari law and through jurisprudence, women survivors of domestic violence can be afforded a higher degree of protection. Lebanese Jaafari courts should consistently adopt practices that protect women survivors, by ordering maintenance and by granting divorce in domestic violence cases. By doing so, Lebanese Jaafari courts would enhance access to justice for women under their own set of laws. Jaafari courts would also be taking a step that will bring them closer to meeting CEDAW Article 2, to refraining from discrimination against survivors of violence, and to improving the quality, accessibility and access to remedies components of their justice system, as recommended by CEDAW G33 and explained above.

With respect to the abrogation of the duty of obedience and corporal punishment, the arguments presented are the same as for Sunni law.

SUBSECTION B.

THE MARRIAGE CONTRACT FORM: RECOMMENDATION

RECOMMENDATION.

To avoid being left at the mercy of existing court practices, women willing to be married under Jaafari law can negotiate contractual terms of marriage with the future husband, within the bounds of Islamic law. Contract negotiation will provide enhanced protection because women will be empowered to negotiate their fate and will be fully aware of their rights and obligations at the onset of the marriage. Iranian authorities have adopted this practice through a marriage contract form that contains about twelve conditions, which are all in accordance with Islamic rules.¹³⁰ A similar form is currently being used, on a trial and voluntary basis, by the Lebanese Jaafari court. The form provides options in a check-the-box election format. It addresses issues such as the marital home, the marital relationship, conditions for filing divorce by the wife or the husband, with or without discord, and custody of children etc. The possibility for a woman to divorce herself, without the need for a court order, is also provided in the form under specific conditions, including domestic violence. Award of custody of children until the age of 18 to the mother is also allowed under this form, and the best interests of the child is the standard adopted. It must be noted that many options provided under this form are in alignment with CEDAW Article (16), (d), (f) and (g). Examples of such options are the possibility to award the mother custody of children until the age of 18 in the event of divorce, even if she remarries and the possibility for the woman to freely chose her profession and work at and after the formation of the marriage.

¹³⁰ Mehrangiz Kar and Azadeh Pourzand, *supra* n. 127, at 83.

SECTION IV. DOMESTIC VIOLENCE BEFORE LEBANESE CHRISTIAN COURTS, SAMPLES OF JURISPRUDENCE

Because of the multitude of denominations in the Christian faith, this section provides samples of judgments issued by tribunals, mainly from the Catholic and Orthodox Christian faiths. The judgments selected involve elements of domestic violence existing during the marriage and dissolution of marriage proceedings before the competent religious court.

For the Catholic faith in Lebanon (including all denominations), the main rules governing matters of family law of Lebanese Catholics are found in the Motu Proprio of February 1949, which became the main Code of Canon Law governing the Eastern Rites, the Code of Canons of the Eastern Churches of 1990 (updating the Code of 1949), and the Code of Canon Law of the Western Churches of 1983 that is applicable to the Latin denomination in Lebanon. In addition to the aforementioned texts of the Vatican, the Lebanese Parliament passed, on April 2, 1951, the main law governing personal status matters for non-Muslims, which covers Christian denominations and the Israelite/Jewish denomination.¹³¹ Based on these legal texts, the Lebanese Catholic Church adopted its own set of personal status laws, which was last amended in 2006 (Personal Status and Civil Procedure Law for the Catholic Denominations, applicable to the Maronite, Melkite, Latin, Armenian, Chaldean, and Syriac Catholics, as stated in article 1 of the Law).

Unlike Islamic courts, Christian courts are financially independent from the State, which renders oversight over them even more negligible. Judges in Christian courts (including Catholic) do not need to hold a national law degree or license. *“They are appointed by the spiritual authorities of the Christian confessions. Many judges combine their judicial position with a clerical one. Under the Law Regulating Sects, patriarchs, metropolitans, and bishops possess judicial prerogatives as part of their authorities, which permit them to appoint members of the judicial corps and judicial aids.”*¹³²

The topic of marriage and all related issues, such as the marriage bond, dissolution of marriage, alimony, children’s custody, and child support are addressed through the provisions of the above-mentioned codes and laws. However, from a practical perspective, Lebanese Catholic courts are currently applying the provisions of the Personal Status Law, last amended in 2006.

Marriage for Christians (Catholics and Orthodox alike) is not a legal and social contract, but one of the seven sacraments of the Church. According to the Catechism of the Catholic Church, sacraments are channels or gifts instituted by Jesus Christ and through which God has given grace to his people. The 1990 Code of the Eastern Churches describes marriage as follows:

¹³¹ المحامي ابراهيم طرابلسي، الزواج ومفاعيله، ص 17-16، المطبعة البولسية، 1994

¹³² Human Rights Watch, supra n. 88, at 31.

“Chapter VII. Marriage

Canon 776 - §1. The matrimonial covenant, established by the Creator and ordered by His laws, by which a man and woman by an irrevocable personal consent establish between themselves a partnership of the whole of life, is by its nature ordered toward the good of the spouses and the generation and education of the offspring.

§2. From the institution of Christ, a valid marriage between baptized persons is by that very fact a sacrament, by which the spouses, in the image of an indefectible union of Christ with the Church, are united by God and, as it were, consecrated and strengthened by sacramental grace.

§3. The essential properties of marriage are unity and indissolubility, which in a marriage between baptized persons obtain a special firmness in virtue of the sacrament.

Canon 777 - From marriage each of the spouses has equal obligations and rights to those things which pertain to the partnership of conjugal life.

Canon 778 - All persons can enter into marriage who are not prohibited by law.

Canon 779 - Marriage enjoys the favor of the law; consequently, in doubt, the validity of a marriage is to be upheld until the contrary is proven.”¹³³

Canon 777 expressly states that both the husband and wife have equal rights and obligations as it pertains to the partnership that is created by marriage and living together. Thus, it is safe to infer that equality exists for family matters, including equality in conjugal life, in the husband’s and the wife’s duty of care to each other, child custody, and other matters.

Marriage is based in the exchange of consent between a man and a woman, who cannot be ignorant of the fact that marriage is a permanent “consortium” whose ultimate goal is the procreation of children through sexual cooperation (Canon 819).¹³⁴ Canon 818 describes the conditions under which the consent of one or both spouses is invalid due to incapacity, thus rendering the marriage invalid.

“Canon 818 - They are incapable of contracting marriage:

1° who lack the sufficient use of reason;

2° who suffer from grave lack of discretion of judgment concerning essential matrimonial rights and duties which are to be mutually given and accepted;

3° who are not capable of assuming the essential obligations of matrimony due to causes of a psychic [sic] nature.”¹³⁵

¹³³ Catholic Church, Code of Canons of the Eastern Churches, unofficial English translation, https://orthocath.files.wordpress.com/2010/01/1990_code_of_canons_of_the_eastern_churches.pdf (accessed Feb. 10, 2021).

¹³⁴ Id.

¹³⁵ Id.

Death and the annulment of the marriage by a Catholic court are the only ways a valid marriage can end. Invalid consent is one of the legal grounds to obtain annulment by the Catholic court. While it is not specifically mentioned as a valid legal reason to obtain an annulment, domestic violence comes into play through Canon 818(3) as a manifestation or symptom of a "cause of psychic [sic] nature" that will invalidate a marriage and annul it based on lack of proper consent (the term psychic is to be understood as psychological/mental). On the other hand, Canon 864 considers harm and violence between the spouses as a legitimate cause for separation: *"If either of the spouses causes serious danger to the other spouse or to the children, or renders common life too hard, that spouse gives the other a 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 delay."*¹³⁶

The Church's official stance is to reject domestic violence because it is against the core of the Catholic faith and to help survivors on their way to recovery, as evidenced by the excerpts of Papal Teachings, the Compendium of the Social Doctrine of the Catholic Church, and the Catechism of the Catholic Church.

"PAPAL TEACHING

Pope St John Paul II, Mulieris Dignitatem #15

Christ's way of acting, the Gospel of his words and deeds, is a consistent protest against whatever offends the dignity of women.

Pope St John XXIII, Pacem in Terris #41

Women are gaining an increasing awareness of their natural dignity. Far from being content with a purely passive role or allowing themselves to be regarded as a kind of instrument, they are demanding both in domestic and in public life the rights and duties which belong to them as human persons.

Pope Francis, Amoris Laetitia #54

I think particularly of the shameful ill-treatment to which women are sometimes subjected, domestic violence and various forms of enslavement which, rather than a show of masculine power, are craven acts of cowardice. The verbal, physical and sexual violence that women endure in some marriages contradicts the very nature of the conjugal union.

Pope Francis, Amoris Laetitia #204

Good pastoral training is important "especially in light of particular emergency situations arising from cases of domestic violence and sexual abuse". All this in no way diminishes, but rather complements, the fundamental value of spiritual direction, the rich spiritual treasures of the Church, and sacramental Reconciliation.

Pope Francis, Amoris Laetitia #229

Parishes, movements, schools and other Church institutions can help in a variety of ways to support families and help them grow. These might include...talks by experts on concrete issues facing families, marriage counselling, home missionaries who help couples discuss their difficulties and desires, social services dealing with family problems like addiction, infidelity and domestic violence, programmes of spiritual growth, workshops for parents with troubled children and family meetings.

¹³⁶ Id.

Pope Francis, World Day Peace Message 2017 – Non-violence: A Style of Politics for Peace #5

If violence has its source in the human heart, then it is fundamental that nonviolence be practised before all else within families...The family is the indispensable crucible in which spouses, parents and children, brothers and sisters, learn to communicate and to show generous concern for one another, and in which frictions and even conflicts have to be resolved not by force but by dialogue, respect, concern for the good of the other, mercy and forgiveness...I plead for disarmament and for the prohibition and abolition of nuclear weapons...I plead with equal urgency for an end to domestic violence and to the abuse of women and children.

Compendium of the Social Doctrine of the Church

Violence is anti-ethical to Christianity and the Good News it proclaims. The social doctrine of the Church teaches us that violence is not an acceptable solution to any problem, it is unworthy of any human being, and it “destroys what it claims to defend”.

#488

Violence made its appearance in interpersonal relationships (cf. Genesis 4:1-16) and in social relationships (cf. Genesis 11:1-9). Peace and violence cannot dwell together, and where there is violence, God cannot be present (cf. 1 Chronicles 22:8-9).

#496

Violence is never a proper response. With the conviction of her faith in Christ and with the awareness of her mission, the Church proclaims “that violence is evil, that violence is unacceptable as a solution to problems, that violence is unworthy of man. Violence is a lie, for it goes against the truth of our faith, the truth of our humanity. Violence destroys what it claims to defend: the dignity, the life, the freedom of human beings.”

CATECHISM OF THE CATHOLIC CHURCH

#369

Man and woman are both with one and the same dignity “in the image of God”.

#1931

Respect for the human person proceeds by way of respect for the principle that “everyone should look upon his neighbour (without any exception) as ‘another self,’ above all bearing in mind his life and the means necessary for living it with dignity.”¹³⁷

In comparison, and also based on the 1951 Law, the Lebanese Orthodox Church also adopted its own personal status laws, with the most updated law in 2003, the “Personal Status and Civil Procedure Law for the Greek Patriarchate of Antioch and All the East”. The Lebanese Orthodox Church has not taken any official stance on domestic violence. While divorce and dissolution/rescission of the marital bond are allowed under specific reasons and conditions, domestic violence is not one of them. Only the Armenian Orthodox Church considers that ill and violent treatment of one spouse against the other that makes conjugal life unbearable is grounds for dissolution/rescission (article 62 of the Armenian Orthodox Personal Status Law). Beatings, physical harm, addiction to alcohol and drugs, or facilitation of prostitution fall under article

¹³⁷ Christina Gomez, Catholic Diocese of Broken Bay, A Catholic Response to Domestic Violence, (2020), <https://www.bbcatholic.org.au/parish-community/catholic-life-faith-formation/social-justice/domestic-violence/domestic-violence-response> (accessed Feb. 10, 2021).

62. All things being equal, and regardless of the availability of any legal provisions, domestic violence remains contrary to the Christian faith and its teachings as well as to the concept of marriage in the Orthodox Church as evidenced below:

"The Orthodox marriage is not a property or subservience relationship. It is a relationship built on love. It is a domestic church. The Epistle to the Ephesians, Ch. 5, read at each Orthodox wedding, contains the essence of the Orthodox view on marriage. The relevant lines are:

Husbands, love your wives, just as Christ loved the church and gave himself up for her to make her holy... In this same way, husbands ought to love their wives as their own bodies. He who loves his wife loves himself. After all, no one ever hated their own body, but they feed and care for their body, just as Christ does the church—for we are members of his body. "For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh." This is a profound mystery—but I am talking about Christ and the church. However, each one of you also must love his wife as he loves himself, and the wife must respect her husband. What sort of satisfaction could a husband himself have, if he lives with his wife as if she were a slave, and not with a woman by her own free will? Suffer anything for her sake, but never disgrace her, for Christ never did this with the Church.

The essence of marriage is love and self-sacrifice. Family violence of any sort is clearly contrary to this objective. A man who loves his wife as his own body cannot subject her to physical or mental abuse. This point was made centuries ago by one of the most revered church Fathers, St. John Chrysostom, who in his famous homilies on marriage forbid men to hit their wives, and pointed out that even pagan laws forbid this. "But one's partner for life, the mother of one's children, the source of one's every joy, should never be fettered with fear and threats, but with love and patience. What kind of marriage can there be if the wife is afraid of her husband?"¹³⁸

In Nov. 2019, four Metropolitan bishops of the Greek Orthodox Church and three Sunni Muftis of the region of Thrace, in Greece, officially recognized domestic violence as a pervasive unresolved societal problem and signed a declaration against domestic violence.¹³⁹

Under the Catholic and Orthodox Lebanese personal status laws, and for Lebanese Christian denominations, the father is the legal guardian of children and the mother has custody until the child reaches a certain age, which varies for each denomination depending on the gender of the child. The mother can be awarded permanent maternal custody only if the father is deemed unfit and she is deemed fit for it. The judges will use their discretionary power to assess maternal fitness, sometimes keeping in mind the best interests of the child. Joint custody of children is expressly provided for under some personal status laws (Article 151 of the Personal Status Law for Armenian Orthodox) and has also been adopted by various judges without an express legal text, based on discretionary power and taking into consideration fitness of both parents

¹³⁸ Lena Zezulina, The Russian Orthodox Church, the law, and family violence, Feb. 9, 2016, <https://www.wheeljournal.com/blog/2016/2/9/lena-zezulina-the-russian-orthodox-church-the-law-and-family-violence> (accessed Feb. 26, 2021).

¹³⁹ Orthodox Times, <https://orthodoxtimes.com/declaration-against-domestic-violence-signed-by-metropolitans-and-muftis-of-thrace/> (accessed Mar. 15, 2021).

and the best interests of the children, as expressly provided in both the Catholic and Orthodox personal status laws

A closer look at a few selected judgements of Lebanese Christian courts still portrays a grim picture, despite notable improvements.

JUDGEMENT #1.

The husband and wife were married in 2001 and soon after, the husband became physically and emotionally violent with his wife. After having miscarried the first child, the violent incidents against the wife from the husband as well as from his family escalated. After the wife became pregnant again and gave birth to twins, the husband's behavior changed and he became calmer and loving. However, he reverted to violence after the children were diagnosed with hemophilia. Violence went on for years, rising to the level of threats with an armed gun and inciting the children to do the same. Based on these incidents, the wife submitted an official complaint to the police, upon which the husband signed a commitment, pledging not to hurt her again. As years passed, the husband had an extramarital affair with a woman, who visited him at the marital home. After one specific incident of domestic violence, the husband threw his wife out of the marital home, keeping the children with him.

In Dec. 2015, the wife filed for legal desertion/separation before the Melkite Catholic court and the man counterclaimed, asking the court to annul his marriage based on "psychic"/psychological reasons (as stated in Canon 818 above) and to hold the wife responsible for the failure of the marriage. The wife then modified her complaint for annulment instead of desertion/separation, based on the husband's fault and demanded damages. The wife and the husband submitted to the psychiatric/psychological examination, which is part of the formal process of the Melkite court, and the husband was diagnosed with obsessive personality disorder while the wife was diagnosed with histrionic personality disorder. Upon questioning of the couple and of witnesses of each, and upon analysis of the testimonies and facts, the court granted the annulment of the marriage based on Canon 818 (3) or the incapacity of the husband and wife to assume the essential obligations of marriage for "psychic"/psychological causes. It must be noted that the court in its analysis did not give much weight to the elements of domestic violence against the wife, especially as it considered that both parties were equally responsible and at fault for the failure of the marriage. The court rejected any award of damages to the wife.

JUDGEMENT #2.

The husband and wife were married in 2004 and had a son in 2006. Extreme violence against the wife began in 2014, and by July 2015, the wife left the marital home with her son. In Oct. 2015, the wife petitioned the JUM for a protective order based on Law 293, requesting that i) the husband be ordered to refrain from contacting her; she be granted sole custody of the child; and iii) the husband pay the monthly amount of \$/2000.00/ to cover expenses for her and her child. The protective order against the husband was issued on Oct. 29, 2015. In Mar. 2016, the wife filed for permanent separation/desertion before the Maronite Court, requesting sole custody of her child, alimony and child support including housing, education, and medical expenses. The husband counterclaimed with an annulment of marriage based on Canon 818 (3), to which the wife agreed and demanded damages. Following the regular process before the Maronite Court, both husband and wife were evaluated by a psychologist; the wife

was diagnosed with emotional disturbance/disorder with dominant depressive traits and the husband with a lack of self-assurance combined with avoidant dependent personality traits. After interrogating the couple and respective witnesses, and after reviewing the facts of the case, the court granted the annulment of the marriage based on Canon 818 (3), and awarded the wife custody of the child with visitation rights to the father, as well as child support including educational and medical expenses. The court rejected the demand for alimony and damages after considering that the parties were equally at fault for the failure of the marriage and stating that both parties had the means to financially support themselves.

JUDGEMENT #3.

The husband and wife (a minor) were married and were living with the husband's family, who was abusive towards the wife (with incidents of sexual harassment by the father-in-law and brother-in-law). After complaining multiple times to her husband and seeking his protection to no avail, the wife left the marital home and filed an action for dissolution of the marriage before the Orthodox Court. In her complaint, the wife detailed the violence she was subjected to and demanded alimony and damages from her husband for failure of the marriage. After a single hearing, the Court dissolved the marriage, rejected the wife's additional demands, and granted legal aid to the husband while forbidding him to remarry again in the Orthodox Church.

JUDGEMENT #4.

The husband and wife were married with three children. The wife filed a dissolution/rescission of marriage action before the Armenian Orthodox court based on the fact that her husband was a drug addict who was physically and emotionally violent against her. She also stated that he was incapable of providing the basic needs of the family. In her complaint, the wife demanded sole custody of her children and to remain in the marital home. To substantiate her claim, the wife submitted photographs showing drug addiction and extramarital relationship of the husband. In 2018, the court granted the dissolution of the marriage and awarded custody and legal guardianship to the mother. Soon after, the husband filed a petition before the court requesting the modification of the judgment as to the children's custody and legal guardianship. The court, without even notifying the mother, modified its previous decision and granted full legal guardianship to the father.

DOMESTIC VIOLENCE FACTS: FINDINGS AND RECOMMENDATIONS

1. FINDINGS.

In the judgements reviewed, Christian judges did neither acknowledge nor give much weight to the existence of domestic violence, whether physical, emotional, psychological, or other. In the judgements issued by the Catholic courts, domestic violence was given weight only to the extent that it was a symptom of a psychic/psychological cause that justified annulment of the marriage as stated in Canon 818 (3). The judgements of the Orthodox courts granted the dissolution of marriage, without any additional consideration for damages for harm done and custody of children, despite personal status laws that consider violence as a valid cause for dissolution of marriage.

2. RECOMMENDATIONS.

Taking into consideration the Catholic and the Orthodox fundamental concept of marriage, which is a relationship built on love, affection and mutual respect and consideration, as well the express provisions of legal texts and other religious teachings, Christian courts should give, at a minimum, probative weight to elements of domestic violence and should consider it as contrary to the core concept of the matrimonial bond. By doing so, the courts would be first upholding their own Christian teachings and second properly applying the provisions of personal status laws.

Properly addressing and recognizing domestic violence facts in judgments would have a direct legal impact on award of damages as stated by the 1951 Law article 5(3) and the Catholic and Orthodox personal status laws, and most importantly, on the award of custody of children.

I. Damages. For Catholics and Orthodox alike, damages are awarded by the party responsible for ending the marriage to the other party, in light of material and emotional harm done, and the status/circumstances and situation of both parties.¹⁴⁰ Based on this rule, damages should be awarded to the wife when domestic violence against her is established through substantiating evidence, such as a JUMs' protective order or photographs. Not awarding damages to the survivor of domestic violence would equate to depriving the survivor of a pecuniary/monetary right to which she is legally entitled. Depriving the wife, who is a domestic violence survivor, of a financial right in turn is an additional direct financial violence against her, which can only be explained by a patriarchal approach and a certain laissez-faire attitude.

II. Custody of children. Custody of children should be awarded to the fit parent(s), under the Lebanese Catholic and Orthodox Churches' standard of safeguarding the best interests of the children at the dissolution of a marriage. Thus, a father who has attempted to kill the mother, or a father who is a drug addict, should not be deemed fit to be the legal custodian and guardian of the children, based on the bests interest of the child. In such cases, the mother should be awarded sole legal custody of the children, with either no visitation rights or with supervised visitation rights to the father.

¹⁴⁰ Ibrahim Traboulsi, *supra* n. 131, at 158.

In fact, an award of custody to an unfit father would be additional direct emotional and psychological violence exercised by the Christian courts against both the mother and the children, and would equate to endangerment of the children. By the same token, both parents, when fit, should be awarded joint custody, as is already being done by various judgments issued from different Christian courts. Child support, including housing, educational and medical expenses, should also be evaluated and awarded based on the financial capabilities of each parent.

By doing so, Lebanese Christian courts would be enhancing access to justice to women under their own set of laws. Courts would also be taking a step that will bring them closer to meeting the requirements of the ICCPR article 23(4) imposing on State parties, such as Lebanon, the duty to take measures *“to ensure equality of rights and duties as to marriage, in the marriage, and at its dissolution”*, and the requirements of CEDAW Article 2(c) and (d), i.e. providing legal protection to women through competent national tribunals and refraining from discrimination against women survivors of domestic violence. This step would be considered a harmonization step of the religious justice system under GR 33 as well as an improvement of the quality, accessibility, and access to remedies components of their justice system as recommended by CEDAW G33. They would also be upholding the CRC principles and standards and enhancing the protection of children within their own justice system.

CONCLUSION

Addressing domestic violence and enhancing access to justice for its survivors before Lebanese courts through judicial practices without actual amendments of legal texts is a daunting but rewarding mission. More realistically, it is currently the only available solution, and any improvement of the condition of survivors of domestic violence is better than none.

Women survivors cannot be left at the mercy of their abusers. Help must be made available through existing resources, including legal and judicial. For this reason, enhancing access to justice—by having attorneys with extensive practical knowledge on international and Lebanese legal texts, procedures and tools—is a crucial step for improving legal representation of survivors before Lebanese authorities. But it is not enough. Lebanese courts and judges, both civil and religious, also have a major role to play in enhancing access to justice because they are the ultimate protectors of rights, especially human rights. At present, the Lebanese judicial apparatus, in its civil and religious courts, can definitely improve such access to justice through a concerted effort that starts with effective survivor protection through proper interpretation and application of existing laws as well as harmonization with human rights approaches and human rights legal texts. Only then, would access to justice be really enhanced. Below is a list of general recommendations for the JUMs and religious courts, suggested by all legal experts involved in this study; if implemented, these recommendations would make a positive difference in the lives of women, children and men who are survivors of violence.

GENERAL RECOMMENDATIONS	
Judges of Urgent Matters	Religious Courts
Prioritize and ensure safety of survivors above all other rights, especially property rights.	Prioritize and ensure the safety of survivors above all other rights.
Expand the definition of domestic violence to consistently allow for findings of violence in the absence of physical violence.	Recognize domestic violence as a key consideration when ruling on family law matters (including divorce, alimony and/or damages) and protect survivors by granting divorce or separation.
Respect the 48-hour timeframe imposed by Law 293 for survivor’s protection	Rely on the best interests of the child when ruling on child custody matters and child protection
Adopt more flexible rules of evidence that would allow findings of violence from available evidence at face value.	Consider judgments issued by other Lebanese courts in domestic violence cases as irrefutable evidence of violence.
Consistently grant all available reliefs under Law 293/2014, independently of the survivor’s requests.	Consistently grant available reliefs, such as damages, to survivors of violence.

GENERAL RECOMMENDATIONS	
Judges of Urgent Matters	Religious Courts
Consistently order perpetrators to seek help and enroll in assistance and rehabilitation programs.	Create capacity-building programs for religious judges to enhance their legal understanding and legal skills beyond the application of religious laws.
Coordinate with other official entities to ensure proper implementation of protective orders and penalize perpetrators in case of non-compliance.	Require that religious judges be holders of a Lebanese law degree, in the event judges do not have access to capacity-building programs.
Refrain from mediating cases of domestic violence, which is done to keep the family together at the expense of survivors	Refrain from mediating cases of domestic violence, which is done to keep the family together at the expense of survivors
Interpret and apply available legal texts, international and Lebanese consistently to ensure added protection and well-being of survivors (without disregarding the perpetrators' afforded rights), especially human rights conventions and CEDAW.	Interpret and apply religious laws consistently to ensure added protection and well-being of survivors (without disregarding perpetrators' afforded rights).
Coordinate and cooperate with other courts, mainly religious courts, for a better case outcome and life outcome for survivors of violence.	Coordinate and cooperate with other courts, for a better case outcome and life outcome for survivors of violence.

The adoption of a unified civil personal status code applicable to all citizens to regulate personal status matters, such as marriage, divorce, and child custody matters, along with inheritance and other rights, is the way forward for Lebanon to fast-track gender equality, women's empowerment, and the Rule of Law. It is also the only way to truly eradicate discrimination, including GBV and domestic violence.

However, adopting a civil code for personal status matters and implementing better judicial practices is not the ultimate solution because domestic violence is not only a legal problem. Reducing domestic violence and improving the lives of people affected by it is not solely the mission of legislators, courts, and judges. Survivors of domestic violence, and even perpetrators, will always find themselves at a disadvantage, if there is no solid socio-economic, political, and legal infrastructure and networks to support and assist women on their way to self-reliance and empowerment and perpetrators on their way to rehabilitation. States, public and private institutions, for profit and not-for-profit organizations and entities and individuals all have a role to play and duties to fulfill. Change starts first by acknowledging the existence of a problem; as social norms then change, based on awareness and a community effort, the laws and legal and judiciary efficacy to deal with domestic violence will also improve. Domestic violence is not just a legal matter for courts—it is a concern for us all.

GLOSSARY

CONCURRENT JURISDICTION:

Power of two or more courts to hear and adjudicate a case before them.¹⁴¹

EVIDENCE:

The collective mass of things, especially testimony and exhibits, that are presented before a tribunal in a given dispute.¹⁴²

GENDER:

Gender refers to the roles, behaviors, activities, and attributes that a given society at a given time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, gender also refers to the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context/ time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies there are differences and inequalities between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as decision-making opportunities. Gender is part of the broader socio-cultural context, as are other important criteria for socio-cultural analysis including class, race, poverty level, ethnic group, sexual orientation, age, etc.¹⁴³

GENDER-BASED VIOLENCE:

Gender-based violence refers to harmful acts directed at an individual or a group of individuals based on their gender. It is rooted in gender inequality, the abuse of power and harmful norms. The term is primarily used to underscore the fact that structural, gender-based power differentials place women and girls at risk for multiple forms of violence. While women and girls suffer disproportionately from GBV, men and boys can also be targeted. The term is also sometimes used to describe targeted violence against LGBTQI+ populations, when referencing violence related to norms of masculinity/femininity and/or gender norms.¹⁴⁴

JURISDICTION:

Power of a court to adjudicate cases and issue orders.¹⁴⁵

¹⁴¹ Legal Information Institute, *supra* n. 81.

¹⁴² Black's Law Dictionary, *supra* n. 99, at 235.

¹⁴³ UN Women, Gender Equality Glossary, <https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=G&sortkey=&sortorder> (accessed May 8, 2021).

¹⁴⁴ *Id.*

¹⁴⁵ Legal Information Institute, *supra* n. 81.

LEGAL ANALYSIS:

Legal analysis in the broad sense refers to a statement by a court, judicial officer, or legal expert as to the legality or illegality of an action, condition, or intent. It can be a written document in which an attorney provides his or her understanding of the law as applied to assumed facts.¹⁴⁶

STANDING:

A party's right to make a legal claim or seek judicial enforcement of a duty or right.¹⁴⁷

SUBJECT-MATTER JURISDICTION:

Power of a court to adjudicate a particular type of matter and provide the remedy demanded.¹⁴⁸

¹⁴⁶ USLegal, legal definitions, <https://definitions.uslegal.com/l/legal-analysis/> (accessed May 8, 2021).

¹⁴⁷ Black's Law Dictionary, *supra* n. 99, at 590.

¹⁴⁸ Legal Information Institute, *supra* n. 81.

BIBLIOGRAPHY

INTERNATIONAL TREATIES

- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
- The Convention on the Elimination of All Forms of Discrimination Against Women
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The Convention on the Rights of the Child

LEGAL TEXTS/LAWS

- Constitution of Lebanon (1990)
- Lebanese Code of Civil Procedure (1983)
- Law 293/2014 (2014 with latest amendments in 2020)
- Druze Code of Personal Status Laws (2017)
- Law on the Organization of the Islamic Judiciary of 1962
- Code of Canons of the Eastern Churches

JURISPRUDENCE

- Lebanese Court of Cassation, judgment issued on 23/2/2006, case no. 34/2006
- Lebanese Court of Cassation, judgment issued on 24/5/2012, published in the Adel Journal/العدل/ p. 208 (2013).
- Lebanese Court of Cassation, judgment issued by the General Assembly of the Court on 23/4/2007, case no. 22/2007.

LEGAL PUBLICATIONS

- Tarek Majzoub, Le Juge Libanais et le Droit International des Droits de L'Homme: Le Droit International Public et le Juge Libanais de la Constitutionnalite, Etudes, Annuaire International de Justice Constitutionnelle (2009-2010).
- Issam Sleiman, La justice constitutionnelle et les droits de l'homme: Quelle hiérarchie de normes dans le monde arabe, Annuaire du Conseil Constitutionnel 2011, www.cc.gov.lb

UN HUMAN RIGHTS BODIES, AGENCIES, SECRETARIAT AND INDEPENDENT HUMAN RIGHTS EXPERTS

Committee on the Elimination of All Forms of Discrimination Against Women

- General Recommendation No. 19, "Violence against women", UN Doc/A/47/38 (1992)
- General Recommendation No. 33, "General recommendation on women's access to justice", UN DOC CEDAW/C/GC/33 (2015)

- General Recommendation No. 35, “General recommendation on gender-based violence against women, updating general recommendation No. 19”, UN Doc CEDAW/C/GC/35 (2017)

Committee on the Rights of Child

- General Recommendation No. 13, “The right of child to freedom from all forms of violence”, UN Doc CRC/C/GC/13 (2011)

UN High Commissioner for Human Rights

- Office of the High Commissioner for Human Rights, “Faith For Rights Framework” and the “Beirut Declaration and 18 Commitments on Faith For Rights” (2017), www.ohchr.org/EN/issues/freedomreligion/pages/faithforrights.aspx

Inter-agency

- Interagency Gender-Based Violence Case Management Guidelines: Providing Care and case management services to gender-based violence survivors in humanitarian settings.

UN Women

- Frequently Asked Questions, types of violence, key terms, www.unwomen.org/en/what-we-do/ending-violence-against-women/faqs/types-of-violence

ESCWA

- Shelters for Women Survivors, Availability and Accessibility in the Arab Region, E/ESCWA/ECW/2019/5, E/ESCWA/EW/2019/5, www.unescwa.org
- Policy Brief, Due Diligence Standard, Violence against Women and Protection Orders in the Arab Region, E/ESCWA/ECW/2018/Brief.2, www.unescwa.org/publications/protection-orders-due-diligence
- Beyond Boundaries, Utilizing Protection Orders to Cultivate a Holistic Response to Domestic Violence in The Arab Region, E/ESCWA/ECW/2019/1.

UNFPA

- Human Rights Principles, www.unfpa.org/resources/human-rights-principles

UN Department of Economic and Social Affairs

- Handbook Legislation on Violence Against Women, ST/ESA/329, [www.un.org/womenwatch/daw/vaw/handbook/Handbook%](http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20on%20Violence%20Against%20Women.pdf)

Special Rapporteur on violence against women, its causes and consequences

- Report of the Special Rapporteur on violence against women, its causes and consequences, “Integration of the Human Rights of women and the gender perspective: violence against women, the due diligence standard as a tool for the elimination of violence against women”, UN Doc E/CN.4/2006/.61

EUROPEAN COMMISSION

- EU Gender Action Plan III: An Ambitious Vision on Gender Equality and Women’s Empowerment for EU External Action 2021-2025, SWD2020 284 final (2020).

NATIONAL COMMISSION FOR LEBANESE WOMEN

- Gender Alert on COVID-19 (June 2020)

BOOKS

- Mark W. Janis & William F. Farr, An Introduction to International Law, 249 (3 ed. Aspen Law & Business 1999)
- Routledge & IDRC, Feminist Advocacy, Family Law and Violence Against Women, International Perspectives, p. 83-84, (1, ed. Routledge, 2019)
- Black Law's Dictionary, Pocket Edition, West Group (1996).
- Jamal J. Ahmad Nasir, The Status of Women Under Islamic Law and Modern Islamic Legislation (3d edition 2009)
 - المحامي ابراهيم طرابلسي، الزواج ومفاعيله، المطبعة البولسية، (1994)
 - محمود عدنان مكّيّة، الدليل الى قضاء الأمور المستعجلة، الطبعة الأولى، منشورات الحلبي الحقوقية (2009)

CIVIL SOCIETY ORGANIZATION/ NON-GOVERNMENTAL ORGANIZATION/ PROFESSIONAL BODIES

- International Commission of Jurists, Women's Access to Justice for Gender-Based Violence, A Practitioners' Guide, Practitioners' Guide No.12, (ICJ 2016)
- Duluth Domestic Abuse Intervention Project, Power and Control Wheel, adapted by "SAVE: Stop Abusive and Violent Environments" (2009), www.saveservices.org
- Human Rights Watch, Unequal and Unprotected (2015), www.hrw.org
- Musawah, CEDAW and Muslim Family Laws, In Search of Common Grounds, Annex I, Glossary of Key Terms, Sisters in Islam, www.musawah.org
- Musawah, Lebanon Overview of Muslim Family Law & Practices, Sisters In Islam, www.musawah.org
- Euro-Mediterranean Human Rights Network, Lebanon, The Independence and Impartiality of the Judiciary Report (2010), www.euromedrights.org
- Collectif 95 Maghreb-Egalité, Guide to Equality in the Family in the Maghreb, 2003 (English Edition 2005 by Women's Learning Partnership for Rights, Development and Peace), www.learningpartnership.org
- Global Rights, The Moroccan Family Code (Moudawana), www.globalrights.org
- Legal Information Institute, Cornell Law School, Wex legal dictionary and legal encyclopedia, www.law.cornell.edu
- American Bar Association Iraq Legal Development Project, Law No (188) of the year 1959 Personal Status Law¹ and amendments, www.aba.org
- McKinsey & Company, Women at Work: Job opportunities in the Middle East set to double with the Fourth Industrial Revolution, www.mckinsey.com
- The World Bank, Labor Force Participation Rate, www.worldbank.org
- Christina Gomez, Catholic Diocese of Broken Bay, A Catholic Response to Domestic Violence (Papal Teaching, Compendium of the Social Doctrine of the Church, and Catechism of the Catholic Church) (2020), www.bbcatholic.org
- Office of His Eminence, Al Sayyid Ali Al-Husseini Al-Sistani, www.sistani.org

VARIOUS PUBLICATIONS

- Oman, Nathan B, "Bargaining in the Shadow of God's Law: Islamic Mahr Contracts and the Perils of Legal Specialization" (2010). Faculty Publications, William and Mary Law School, www.law.wm.edu
- Lena Zezulin, The Russian Orthodox Church, the law, and family violence (Feb. 9, 2016), www.wheeljournal.com
- Orthodox Times, Declaration against Domestic Violence (Nov. 29, 2019), www.orthodoxtimes.com

