

Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies



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Cover photo sign on left: "No to excuses for penalty reduction. Yes to the amendment article 252 of the Penal Code."

Cover photo sign on right: "Anger is not an excuse. No to the reduction of penalties. Yes to amending article 252 of the Penal Code."

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INTRODUCTION AND EXECUTIVE SUMMARY

Gender-based violence (GBV) is a pervasive human rights and public-health problem in Lebanon, which jeopardises women's development. KAFA (Enough Violence Against Women) (KAFA)—a Lebanese NGO seeking to *inter alia* eliminate violence against women—reported on 8 January 2018 that the number of documented cases of women being killed as a result of GBV since mid-2014 was 40 women.¹ According to the United Nations Population Fund (UNFPA), “[a]n average of 1 in 2 persons reported that they personally know someone subjected to domestic violence,” with 65% of reported incidents being committed by family members and 71% taking place on the perpetrator's household.²

Following its review of the situation in Lebanon in 2008, the Committee on the Elimination of Discrimination against Women (CEDAW Committee)—the body of independent experts monitoring implementation of the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)—expressed concerns about “the persistence of violence against women and girls, including domestic violence, rape and crimes committed in the name of honour.” The Committee urged Lebanon to “place high priority on establishing and implementing comprehensive measures to address all forms of violence against women and girls,” and to “enact, without delay, legislation on violence against women, including domestic violence, so as to ensure that violence against women constitutes a criminal offence, that women and girls who are victims of violence have access to immediate means of redress and protection and that perpetrators are prosecuted and punished.”³

In subsequent years, Lebanon adopted new laws and policies aiming at protecting women's rights against GBV and other human rights violations, including Law No. 164/2011 prohibiting human trafficking and Law No. 293/2014 on combatting domestic violence. Despite these positive developments, major obstacles continue to undermine women's rights. In a country deeply divided by politics and torn by conflicts operating along sectarian and religious divisions, women's access to justice for and protection from GBV is often impeded by obstacles in Lebanon's legal framework and the administration of justice, as well as economic, social and cultural barriers that affect women differently than men and pose a barrier to reform necessary to reduce the occurrence of GBV. Until they are removed, GBV will remain a pervasive human rights problem in the country over which impunity will continue to prevail.

In this report, the International Commission of Jurists (ICJ) analyses three main obstacles affecting women's access to justice for GBV in Lebanon in light of international law and standards:

- Legal obstacles comprise laws that fail to fully criminalise certain violations of women's rights, mainly due to inadequate or absent definitions of the relevant crimes, such as rape and marital rape, sexual assault, and sexual harassment, as well as laws that discriminate against women, including the Criminal Code, the Nationality Law and the Personal Status Laws.
- Women's access to justice is also impeded by obstacles in the administration of justice, such as the lack of effective gender-sensitive investigations, lack of coherent and effective prosecutions, and lack of adequate competences and resources, as well as discriminatory policies, practices and gender stereotypes on the part of justice sector actors.
- Women also encounter economic, social and cultural barriers, including gender stereotyping, a perception that GBV is a social rather than criminal matter and social stigma and family pressure associated with bringing legal claims, which is worsened at times by victims' limited awareness of their own rights.

Given previous research undertaken by other organizations on some of those obstacles, including

¹ KAFA, *KAFA's Clarifications on "Dissecting Lebanese Law 293 on Domestic Violence: Are Women Protected? IFI Policy Brief,"* 8 January 2018 (“KAFA Clarifications on Dissecting Lebanese Law 293 on Domestic Violence”), available at <http://www.kafa.org.lb/StudiesPublicationPDF/PRpdf-102-636510265940280395.pdf> (accessed 16 October 2018).

² United Nations Population Fund, *Lebanon Scorecard on Gender-based Violence*, 16 May 2017, available at <https://arabstates.unfpa.org/en/publications/lebanon-fact-sheet-gender-based-violence> (accessed 29 November 2018).

³ CEDAW Committee, *Concluding comments of the Committee on the Elimination of Discrimination against Women*, paras. 26-27, UN Doc. CEDAW/C/LBN/CO/3 (8 April 2008).

Personal Status Laws,⁴ this report does not intend to address all of these barriers in depth. Rather, it focuses on assessing the content and application of relevant Lebanese laws, particularly Law No. 293/2014 on domestic violence in conjunction with the Criminal Code, with regard to the guarantees provided in the legal framework and the structural and practical obstacles related to their enforcement and the administration of justice. It also briefly addresses economic, social and cultural barriers mentioned above which undermine women's ability and/or willingness to seek justice.

In conducting the research for this report, the ICJ analysed 30 judicial decisions on GBV, including 26 protection orders issued by judges for urgent matters under Law No. 293/2014. The protection orders represent just a small sample of the more than 500 orders issued pursuant to Law No. 293/2014 reported by KAFA as at 8 January 2018;⁵ such orders are not ordinarily published and the ICJ was limited to reviewing anonymized orders made available by judges.

The ICJ formulates recommendations for reforming laws, policies and practices that undermine women's rights in Lebanon, including with a view to ensuring their full, unrestricted access to justice for GBV in accordance with international law and standards. Key recommendations made by the ICJ are that the Lebanese authorities:

- Ensure that laws fully comply with international law and standards on access to justice, including by amending Law No. 293/2014 and the Criminal Code, in particular to comprehensively criminalize all forms of GBV against women, acts of rape, other forms of sexual violence in line with international law and standards, and establish adequate and accessible legal protection from discrimination;
- Reform the current religious personal status system in Lebanon by removing all discriminatory legal provisions, consistent with international law and standards and respecting the principles of human rights;
- Remove Lebanon's reservations to CEDAW, including in particular articles 9(2) and 16 (c, d, f, and g); and
- Remove all obstacles related to societal norms, gender stereotypes and economic and social realities in Lebanon, including by raising awareness among all Lebanese justice actors and citizens through an official public campaign to reject violence, discrimination, and stereotypes against women, and providing adequate training to all law enforcement officials, including judges, prosecutors, police officers, lawyers, social workers, and forensic doctors, amongst other measures.

⁴ These studies were undertaken largely by KAFA, available at: <http://www.kafa.org.lb/studies-publications/0/2/studies>.

⁵ KAFA Clarifications on Dissecting Lebanese Law 293 on Domestic Violence. The number of protection orders issued since January 2018 is unknown.

ACCESS TO JUSTICE FOR GENDER-BASED VIOLENCE: LEBANON'S COMMITMENTS UNDER INTERNATIONAL LAW

According to the CEDAW Committee, GBV is defined as "violence that is directed against a woman because she is a woman or that affects women disproportionately."⁶ It includes a wide range of acts "that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."⁷

The CEDAW Committee further considers GBV against women "as a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."⁸ Such discrimination is defined as "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."⁹ As such, it constitutes a violation of the International Convention on Civil and Political Rights (ICCPR).¹⁰

Under both the ICCPR and CEDAW, States have obligations to prevent and address all forms and manifestations of GBV against women, including by adopting legislative, judicial, administrative, educative and other appropriate measures.¹¹ According to the CEDAW Committee, over the past 25 years "the prohibition of gender-based violence against women has evolved into a principle of customary international law,"¹² and is therefore applicable to all States whether or not they are party to any particular treaty.

Lebanon is a State party to core human rights treaties, including the Universal Declaration of Human Rights (UDHR),¹³ ICCPR,¹⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁵ the International Convention on the Elimination of All Forms of Racial Discrimination (CERD),¹⁶ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),¹⁷ the Convention on the Rights of the Child (CRC) and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,¹⁸ the International

⁶ United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee), *General Recommendation No. 35: on gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35 (2017) ("CEDAW Committee, General Recommendation No. 35"), para. 1.

⁷ CEDAW Committee, *General Recommendation No. 19: Violence against Women*, UN Doc. A/47/38 (1992) ("CEDAW Committee, General Recommendation No. 19"), para. 6.

⁸ *Ibid.*, para. 1. See also General Recommendation 12.

⁹ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), art. 1.

¹⁰ United Nations General Assembly, *International Covenant on Civil and Political Rights (ICCPR)*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, art. 26.

¹¹ United Nations Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004) ("HRC, General Comment No. 31"), paras. 7-8.

¹² CEDAW Committee, General Recommendation No. 35, para. 2. See also Ian Brownlie, *Principles of Public International Law* (Oxford: Oxford University Press, 8th edition, 2012), p. 645, which cites: the United Nations Charter, arts. 55 and 56; the practice and organs of the United Nations (including General Assembly resolutions); the Universal Declaration of Human Rights; international and regional human rights conventions, especially CEDAW; United Nations Human Rights Committee, *General Comment No. 28: The Equality of Rights between Men and Women (Article 3)*, UN Doc. CCPR/C/21/Rev.1/Add.10 (2000).

¹³ Lebanon became a State party to the Universal Declaration of Human Rights in 1948.

¹⁴ Lebanon became a State party to the ICCPR on 3 November 1972.

¹⁵ Lebanon became a State party to the ICESCR on 3 November 1972.

¹⁶ Lebanon became a State party to the CERD on 12 November 1971.

¹⁷ Lebanon became a State party to the CAT on 5 October 2000.

¹⁸ Lebanon became a State party to the CRC on 14 May 1991 and its Optional Protocol on 8 November 2004.

Convention for the Protection of All Persons from Enforced Disappearances (ICPED),¹⁹ and CEDAW.²⁰ With the exception of CEDAW, these conventions were ratified by Lebanon without reservations. Lebanon issued a reservation to article 9(2) of CEDAW, which provides that States Parties shall grant women equal rights with men with respect to the nationality of their children. It also issued a reservation to article 16(c), (d), (f) and (g), which provides that States Parties must take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a the basis of equality of men and women:

- ...
- (c) The same rights and responsibilities during marriage and at its dissolution;
 - (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- ...
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount; and
 - (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.

International human rights treaties recognise a set of obligations and rights that require States to ensure access to justice, even if the term “access to justice” does not itself necessarily appear in them. As noted by the UN Special Rapporteur on the independence of judges and lawyers, the right of access to justice is both a right in itself, and also includes, *inter alia*, the right to an effective remedy and the right to equality.”²¹

1. Lebanon’s obligations to respect, protect and fulfil human rights

International human rights treaties require the adoption of legislative, judicial, administrative, educational and other appropriate measures to respect, protect and fulfil the human rights of all.²²

The **obligation to respect** means that all State officials and personnel, including government agents, public authorities and those who act under the government’s instructions, direction or control or through delegation of governmental authority, must refrain from any unlawful interference in the enjoyment of human rights. Expressly, Lebanon must not commit or be involved in human rights violations. With regard to GBV, this obligation means that Lebanon (including State officials) must not commit GBV. Furthermore, the obligation to respect refers to ensuring equal treatment in law and practice. Lebanon, like other States, must “refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights.”²³

Lebanon is also responsible for certain conduct of non-State actors, including where they are acting on the instructions, or under the direction or control of the State.²⁴ In such cases, this behaviour is

¹⁹ Lebanon became a State party to the ICPED on 6 February 2007.

²⁰ Lebanon became a State party to the CEDAW on 16 April 1997.

²¹ Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/17/30 (29 April 2011) para. 37.

²² HRC, General Comment No. 31, paras. 7 and 8.

²³ CEDAW Committee, *General Recommendation No. 28: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28 (16 December 2010) (“CEDAW Committee, General Recommendation No. 28”), para. 9.

²⁴ Articles on Responsibility of States for Internationally Wrongful Acts, adopted under General Assembly resolution 56/83 (2001), art. 8. See also CEDAW Committee, General Recommendation No. 28, para. 13 (“In some cases, a private actor’s acts or omission of acts may be attributed to the State under international law”).

attributable to the State. The same goes for actors who are empowered by the State to exercise elements of governmental authority. Where their conduct may constitute violence against women, such as in cases of acts of violence against women committed by private military or security agents contracted by the State to run prisons or conduct security or military operations, this conduct may be attributed to the State. In this regard, the CEDAW Committee recognized that “States parties are responsible for preventing [...] acts or omissions by their own organs and agents –including through training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct – and to investigate, prosecute and apply appropriate legal or disciplinary sanctions as well as provide reparation in all cases of gender-based violence against women, including those constituting international crimes, as well as in cases of failure, negligence or omission on the part of public authorities.”²⁵

The additional **obligation to protect** ensures that other actors or individuals are not interfering with the enjoyment of the human rights of others. It requires State authorities to take all necessary measures to protect individuals from the impairment or nullification of their human rights by third parties, including non-State actors such as business enterprises and private individuals.²⁶ As explained by the CEDAW Committee, the obligation to protect requires that State Parties “protect women from discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women.”²⁷ The Committee has also emphasized that States could be held 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.”²⁸ Therefore, Lebanon must take the appropriate steps to prevent, investigate and prosecute acts of GBV committed by private individuals, and provide appropriate compensation to victims. Where Lebanon fails to exercise due diligence to prevent, investigate and prosecute violence, particularly GBV, including rape, committed by private individuals, it breaches its obligations under international law and standards. Under these standards, it is the responsibility of the State to take appropriate measures to ensure that all persons, under its jurisdiction, are fully protected and that perpetrators are held accountable for their acts.

Finally, the **obligation to fulfil** human rights means that States must take affirmative actions to ensure the realization of human rights. This means that the State must not only ensure the existence of a legal framework that gives effect to the human rights obligations by which it is bound,²⁹ but it must also enable the realization of rights in practice, including by taking effective and appropriate implementation measures to ensure the ability of individuals to fully enjoy their rights.³⁰

This is in line with the CEDAW Committee’s affirmation that the obligation to fulfil requires that State parties “take a wide variety of steps to ensure that women and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, the adoption of temporary special measures in line with article 4, paragraph 1, of the Convention and General Recommendation No. 25 on article 4, paragraph 1, of the Convention. These steps should include monitoring and gathering of data on the prevalence of violence against women; assessing the effectiveness of remedies and reparation; training agents and officials, such as lawyers, judges, police officers, teachers and medical professionals to understand

²⁵ CEDAW Committee, General Recommendation No. 35, para. 23.

²⁶ HRC, General Comment No. 31, para. 8.

²⁷ CEDAW Committee, General Recommendation No. 28, para. 9.

²⁸ CEDAW Committee, General Recommendation No. 19, paragraph 9; CEDAW Committee, General Recommendation No. 28, para. 13. See also HRC, General Comment No. 31, para. 8.

²⁹ See for example ICCPR, art. 2(2); CEDAW, art. 2(a)-(g).

³⁰ United Nations Human Rights Committee, *General Comment No. 3: Implementation at the National Level (Article 2)*, UN Doc. HRI/GEN/1/Rev.1 (1981) (“HRC, General Comment No. 3”); HRC General Comment No. 31, para. 7; CEDAW Committee, General Recommendation No. 28, paras. 9, 20. See also United Nations Committee Against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, UN Doc. CAT/C/GC/2 (24 January 2008) (“CAT Committee, General Comment No. 2”); Committee on the Rights of the Child, *General Comment No. 5: General Measures of Implementation of CRC*, UN Doc. CRC/GC/2003/5 (27 November 2003).

discrimination and violence against women, and promoting good practices in dealing with such situations. It should also encompass an official public stand to reject violence, discrimination, and stereotypes against women.

2. The implications of international standards on women's access to justice for Lebanon

The obligations to respect, protect and fulfil human rights require Lebanon to enable access to justice and remove obstacles impeding such access. Lebanon's failure to enable women to redress GBV puts women in danger and threatens their lives. Lebanon is, therefore, required to take specific steps to address the wide range of particular obstacles women face when exercising their right to access to justice.

First, human rights obligations binding on Lebanon must be recognised and incorporated into the domestic legal order.³¹ This is a pre-condition for individuals to claim and seek to enforce their human rights as entitlements under the law, especially women's rights to equality and non-discrimination.³² According to article 2 of Lebanon's Code of Civil Procedure, international treaties ratified by the Lebanese parliament take precedence over domestic laws.³³

Secondly, Lebanon's legal system must provide effective legal protection against harmful conduct of public and private actors to prevent abuses and ensure accountability when they do occur.³⁴ This means that certain conduct must be prohibited in law, and systems and mechanisms put in place to ensure consistent enforcement, accountability and sanctions. For example, Lebanon is required to protect the rights to life, personal integrity and freedom from torture and other forms of ill treatment through the enactment of criminal laws prohibiting certain forms of violence and by establishing effective procedures and mechanisms for law enforcement, investigation, prosecution, and punishment commensurate with the gravity of the relevant offence.³⁵

Thirdly, individuals must be guaranteed the right to effective remedies and reparation to redress violations. This means that victims must be enabled to use available mechanisms, whether judicial or non-judicial, to redress GBV.

The right to an effective remedy was first acknowledged in article 8 of the Universal Declaration of Human Rights. International treaties, to which Lebanon is a party, further recognise and give legal effect to this right.³⁶ For cases of GBV, the CEDAW Committee stressed that States must ensure that "all forms of gender-based violence against women in all spheres, which amount to a violation of their physical, sexual, or psychological integrity, are criminalised and introduced, without delay, or strengthen legal sanctions commensurate with the gravity of the offence as well as civil remedies."³⁷

The right to an effective remedy and reparation guarantees, essentially, the right to bring allegations of human rights violations before an independent and impartial body which is capable of confirming whether human rights violations took place, protecting victims, ordering that the said violations come to an end if they are continuing, and ensuring that victims receive adequate reparation in all its

³¹ See for example: HRC, General Comment No. 31, para. 13; See also CEDAW, art. 2(a)-(g); CEDAW Committee, General Recommendation 28.

³² These rights are protected in international law, mainly in CEDAW.

³³ Article 2 also provides that "[c]ourts shall not declare null the legislative authority's activities on the grounds of inconsistency of ordinary laws with the Constitution or international treaties."

³⁴ CEDAW, art. 2(b)-(f); CEDAW Committee, General Recommendation 28, paras. 17, 31 and 36; HRC, General Comment No. 31, para. 8.

³⁵ See for example CAT, arts. 2, 4, 12 and 16; CAT Committee, General Comment No. 2. See also ICCPR, arts. 2, 6 and 7; HRC, General Comment No. 31, para. 8; CEDAW Committee, *General Recommendation 19: Violence Against Women*, UN Doc. CEDAW/C/1992/L.1/Add.15 (1992) ("CEDAW Committee, General Recommendation 19"), paras. 19, 24(b) and 24(t); CEDAW Committee, General Recommendation 28, para. 34.

³⁶ ICCPR, art. 2(3); CAT, arts. 13 and 14.

³⁷ CEDAW Committee, General Recommendation 35, para. 29.

forms. In the case of GBV, reparation through “restitution” cannot in itself be an adequate remedy, but requires “transformative reparation” to deal with the root causes of violence and by which special measures can be designed to remedy on-going violence and discrimination against women.³⁸ In addition, as is the case for other violations of human rights, compensation, rehabilitation, satisfaction and guarantees of non-repetition must all be adequately addressed if the right to effective remedy and reparation is to be fulfilled.

Even if Lebanon had a comprehensive legislative system and other measures to address GBV, it could still be held accountable for the occurrence of such violence if it failed to act with due diligence to enforce the system and to give practical realization to the measures.³⁹ Thus, Lebanon cannot avoid the legal responsibility for violence through establishing ineffective procedures, or effective procedures that are not implemented in practice.

It is also critical to address legal, practical and other barriers to access to justice. According to international Treaty Bodies, in particular the CEDAW Committee and the Human Rights Committee, measures addressing such obstacles include:⁴⁰

- Recognising women as equal rights bearers and granting them equal legal capacity and protection of the law in all spheres and circumstances;⁴¹
- Revising and removing all discriminatory laws and regulations;⁴²
- Establishing adequate and accessible legal protection from discrimination and unequal treatment in law and practice;⁴³
- Ensuring that the definition and content given to rights takes account of the particular needs of women as women, arising for instance from biological differences as well as socially and culturally constructed differences;⁴⁴
- Ensuring that laws and law-enforcement procedures effectively prohibit and safeguard against human rights abuses that women face as women in public and private spheres or which affect women in distinct or disproportionate ways;⁴⁵
- Establishing gender-sensitive legal procedures and processes and ensuring the forms of redress available are designed to respond to the particular needs of women;⁴⁶
- Taking steps to address the wide range of social and practical factors that often impede women’s ability to claim their rights, including the status of women, their lack of independent access to resources, and pejorative gender-based stereotypes, prejudices

³⁸ Report of the Special Rapporteur on violence against women, its causes and consequences, UN Doc. A/HRC/14/22 (2010), para. 85.

³⁹ *Yildirim v. Austria*, CEDAW Committee Communication No. 6/2005, Views of 1 October 2017 UN Doc. CEDAW/C/39/D/6/2005 (2007), para. 12.1.12.

⁴⁰ For an overview of States’ obligations and measures required see, ICJ report, *Women’s Access to Justice: Identifying the Obstacles & Need for Change – Thailand* (2012), available at: <http://www.icj.org/womens-access-to-justice-in-thailand-identifying-the-obstacles-and-need-for-change>; ICJ Report, *Women’s Access to Justice: Identifying the Obstacles & Need for Change – Botswana* (2013), available at <https://www.icj.org/meaningful-action-needed-to-advance-womens-access-to-justice-in-botswana/>.

⁴¹ See HRC, General Comment No. 32; United Nations Human Rights Committee, *General Comment 28: Article 3 – The Equality of Rights between Women and Men*, UN Doc. HRI/GEN/1/Rev.9 (2000) (“HRC, General Comment 28”), para. 19; CEDAW Committee, General Recommendation 28; CEDAW Committee, *General Recommendation 29: Economic consequences of marriage, family relations and their dissolution, General Recommendation on Article 16*, UN Doc. CEDAW/C/GC/29 (26 February 2013) (“CEDAW, General Recommendation 29”).

⁴² CEDAW Committee, General Recommendation 28, para. 35

⁴³ CEDAW Committee, General Recommendation 28, para.31

⁴⁴ CEDAW Committee, General Recommendation 25.

⁴⁵ CEDAW Committee, General Recommendation 28, paras. 10 and 17.

⁴⁶ See CEDAW, art. 2; CEDAW Committee, General Recommendation 28; *VK v. Bulgaria*, CEDAW Committee Communication No. 20/2008, View of 25 July 2011, para. 9.9 and 9.11-9.16; *Vertido v. Philippines*, CEDAW Committee, Communication No. 18/2008, Views of 16 July 2010, paras. 8.5-8.9; See also CAT Committee, General Comment No. 2.

and norms in operation in a society.⁴⁷

Under international law, further detailed measures have also been considered and recommended to address a wider range of issues and obstacles that arise as a result of and in connection with gender inequality and discrimination, including additional grounds of discrimination against women such as race, ethnicity, religion, marital status, social and economic status and sexual orientation, the existence of discriminatory customary law, the need for adequate resources and institutional capacity to address violations of women's rights, child maintenance, and GBV.

In the interests of ensuring that women genuinely have access to justice, the CEDAW Committee outlined six interrelated and fundamental components that are essential to establish functional justice systems that enforce women's human rights: justiciability, availability, accessibility, good quality, accountability and the provision of remedies for victims.⁴⁸ Lebanon, like other States Parties, has an obligation to ensure that those critical elements of women's right of access to justice are realised, including by protecting women against all forms of discrimination.⁴⁹ The CEDAW Committee has found that this obligation extends to exposing and removing obstacles that prevent women from exercising and seeking to enforce their rights and that impair or otherwise restrict their ability to access effective remedies for violations of their human rights.⁵⁰

⁴⁷ CEDAW, art. 5; CEDAW Committee, General Recommendation 28.

⁴⁸ Ibid., para.14.

⁴⁹ Ibid., para.2.

⁵⁰ Ibid., para.7.

OBSTACLES WITHIN LEBANON'S LEGAL FRAMEWORK

Obstacles to women's access to justice in Lebanon impede their ability to seek justice in different ways. These include legal frameworks that explicitly discriminate on the basis of sex or gender or that do not adequately define or address women's rights, combined with inadequate procedural barriers to obtain legal remedies for or protection from discrimination or violence against women.

1. Laws failing to criminalise certain violations of women's rights adequately, and related legal barriers

On 7 May 2014, the Lebanese Parliament adopted Law No. 293/2014 "on the protection of women and other family members from domestic violence." The law is a positive step towards addressing GBV in Lebanon. It enables a woman to obtain temporary protection measures from the judicial police (article 11) while waiting for a protection (restraining) order against a perpetrator (articles 12-14); assigns a public prosecutor in each governorate to receive complaints and investigate domestic violence (article 4); and establishes specialised units within Lebanon's police, the Internal Security Forces (ISF), to process complaints on domestic violence (article 5). However, the ICJ is concerned that numerous provisions of Law No. 293/2014, both substantive and procedural, fall short of international standards.

Narrow definition of GBV

Law No. 293/2014 fails to protect victims from all crimes that constitute GBV. It defines domestic violence narrowly as "an act, act of omission, or threat of an act committed by any family member against one or more family members... related to one of the crimes stipulated in this law, and that results in killing, harming, or physical, psychological, sexual, or economic harm" (article 2). The crimes stipulated in the law, listed in article 3 amending the Criminal Code and set out below, are forced begging, indecency, prostitution, homicide, adultery and causing or threatening harm to a spouse when "obtaining a marital right to intercourse."

Article 3 Offences	Criminal Code Article(s)	Offence Classification	Sentence	Aggravation of sentence if committed against a family member
Beggary of minors (mendicity)	618	Misdemeanour	6 months to 2 years' imprisonment & fine between minimum wage and double the minimum wage	Not applicable
Encouraging, facilitating or assisting debauchery or corruption	523	Misdemeanour	1 month to 1 year imprisonment & fine between minimum wage and triple the minimum wage	Increase of imprisonment period from third to half and double fine
Relying on the prostitution of other persons	527	Misdemeanour	6 months to 2 years' imprisonment & fine between minimum wage and double the minimum wage	Increase of imprisonment period from third to half and double fine Sentence further doubled if offence accompanied by threats or acts of violence

Intentional homicide	547	Felony	15 to 20 years hard labour	20 to 25 years hard labour if committed against spouse
Premeditated homicide	549	Felony	Death penalty	Not applicable
Adultery	487-489	Misdemeanour	3 months to 2 years' imprisonment for married adulterers; 1 month to 1 year for an unmarried partner to adultery (art.487)	Not applicable
			1 month to 1 year imprisonment if one spouse "takes a lover openly" (art.488)	
Causing harm to the spouse when "obtaining marital rights"	554-559	Misdemeanour	Resulting in less than 10 days incapacitation (art.554): maximum of 6 months' imprisonment & US\$7-35 fine	In case of recidivism: increase imprisonment period from third to half and double fine
		Misdemeanour	Resulting in incapacitation exceeding 10 days (art.555): maximum of 1-year imprisonment & fine of US\$65 or one of these sanctions	

		Misdemeanour	Resulting in incapacitation exceeding 20 days (art.556): 3 months to 3 years' imprisonment & a minimum US\$65 fine	
		Felony	Resulting in permanent disability (art.557): 10 years of hard labour	
		Felony	Resulting in the abortion of a woman (art.558): 10 years of hard labour	
Threatening the spouse when "obtaining marital rights"	573-578	Misdemeanour	Maximum of 2 years' imprisonment	In case of recidivism: increase of sanction period from third to half and double fine

This definition is problematic for several reasons. Articles 2 and 3 of Law No. 293/2014, taken together with existing provisions of the Criminal Code and other Lebanese laws, do not provide adequate protection from all forms of abuse that are considered GBV under international human rights law. Among the acts of GBV not covered are rape, assault, threats of assault, sexual harassment, and non-physical harm such as psychological and economic harms not based on acts defined in article 3. Acts that draw their source from some of the most deeply entrenched patriarchal traditions, such as forcing girls to marry and preventing women from leaving the house, are also not included. This gap has caused some judicial incoherence in the application of Law No. 293/2014 insofar as some, but not all, judges have extended the definition of GBV to moral and psychological violence.⁵¹

Articles 487 to 489 of the Penal Code, as amended by article 3 of Law No. 293/2014, criminalize adultery by a man or woman.⁵²

Article 3 of Law No. 293/2014 also amends article 523 of the Penal Code to criminalize "encourag[ing] one or more persons who have not reached twenty-one years of age to engage in prostitution and debauchery, facilitate for them, or assist in the performance of such acts." It further states that "[a]nyone who deals in or facilitates secret prostitution shall be subject to the same penalty."⁵³ In Lebanon, debauchery may include consensual sexual relations outside of marriage, "homosexuality" and prostitution.⁵⁴ While women involved in and facilitators of prostitution are both penalized, "male-buy-

⁵¹ See section titled "Lack of Judicial Incoherence in addressing GBV cases."

⁵² Article 489 provides that (i) adultery cannot be prosecuted unless the spouse files a complaint as a personal plaintiff; (ii) the "accomplice or intervening party" is to be prosecuted along with the adulterer; and (iii) complaint cannot be accepted if the spouse consented to the adultery, after the passage of three months from the time the spouse had knowledge of the crime or if the male spouse consents to "resume shared life."

⁵³ The terms "facilitates" and "deals in" are not defined in the Law.

⁵⁴ Article 527 of the Penal Code, amended by article 3 of Law No. 293/2014, also criminalizes relying on the prostitution of other persons to gain a living, or a portion thereof.

ers” are exempted from any punishment.

As noted above, criminalization of adult consensual sexual relations outside marriage, including adultery, consensual same-sex sexual conduct and consensual sex work,⁵⁵ depending on the circumstances, violates a range of human rights, including all or some of the following rights: the rights to equality and non-discrimination; the right to liberty and security of person; the right to be free from torture or to cruel, inhumane or degrading treatment or punishment; the right to privacy; the right of all persons, free of coercion, discrimination and violence, to the highest attainable standard of sexual health, including access to sexual and reproductive health care services, to seek, receive and impart information related to sexuality, to respect for bodily integrity, individual autonomy and self-determination including to choose one’s partner, to decide to be sexually active or not, to consensual sexual relations, to pursue a satisfying, safe and pleasurable sexual life; the rights to freedom of opinion and expression; the right to just and favourable conditions of work; and the right to an effective remedy for violations of fundamental rights. The criminalization of adultery in particular has been found to constitute sex discrimination.⁵⁶ The CEDAW Committee has emphasized, in particular, that the criminalization of prostitution, such as exists under the Lebanese law, is a barrier to access to justice for women.⁵⁷

Finally, the limited scope of the definition of GBV under the 2014 Law means that not all acts of GBV are criminalized and that other measures to protect victims, such as protection orders, do not apply to some forms of GBV.

Extramarital relationships

As concluded by ICJ’s report, *Obstacles to Women’s and Girls’ Access to Justice for Gender-based Violence in Morocco*, the criminalization of extramarital relationship reinforces archaic gender stereotypes, stigma and discrimination against women. Its enduring currency is evidenced by the fact that Law 293/2014 maintained rather than repealed provisions criminalizing it. The problems presented by articles 487 to 489 of the Penal Code are fourfold.

First, criminalizing all consensual extramarital sexual relations has the effect of rendering women who engage in such relations consensually criminal. It is based on the notion that women need protection from predatory men, and that women must be virtuous and only engage in sexual relations with their lawfully wedded husbands. Such a notion, in turn, denies women their right to self-determination and sexual autonomy, as explored above.

⁵⁵ While the CEDAW Convention uses the term “prostitution” (art. 6), another commonly used term by those advocating for prostitution to be considered as legitimate work and to be subject to legislation regarding health and safety at work, including the ICJ, OHCHR, the UN Secretary General and the World Health Organisation, is “sex work.” UNAIDS, for example, advocates for using the latter term because it is less stigmatizing. See UNAIDS Technical Update, “Sex work and HIV/AIDS” (June 2002), p. 3.

⁵⁶ OHCHR, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, UN Doc. A/HRC/29/23 (2015); OHCHR, *Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law [hereinafter “Born Free and Equal”]* (2012), p. 30; United Nations Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice, A/HRC/29/40, 2 April 2015, para.49; CEDAW Committee, *General Recommendation No. 33: General recommendation on women’s access to justice*, UN Doc CEDAW/C/GC/33 (2015) (“CEDAW Committee General Recommendation No. 33”), para. 9; CEDAW Committee, *Concluding Observations: Fiji*, UN Doc. A/57/38 (2002), paras. 64-65; *Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (1994) (HR Committee), para. 8.5; *Dudgeon v UK*, Application No. 7525/76, Judgement of 22 October 1981 (European Court of Human Rights); *Norris v. Ireland*, Application No. 10581/83, Judgment of 26 October 1988 (European Court of Human Rights); *Modinos v. Cyprus*, Application No. 15070/89, Judgment of 22 April 1993 (European Court of Human Rights); HR Committee, *General Comment No. 35* (CCPR/C/GC/35); HR Committee, *Concluding observations: Kuwait* (CCPR/C/KWT/CO/2), para. 30. See also ICCPR, arts. 2, 7, 9, 17, 19, 26; CEDAW, in particular, arts. 2, 11, 12, 16; Covenant on Economic, Social and Cultural Rights, arts. 2, 7, 12, ; Convention on the Rights of the Child, arts. 2, 13, 16, 34, 37.

⁵⁷ CEDAW Committee, *General Recommendation No. 33: General recommendation on women’s access to justice*, UN Doc. CEDAW/C/GC/33 (2015), para. 9.

Second, the criminalization of consensual extramarital sex has a disproportionately negative impact on women, as it is often women who are charged or liable to be charged with consensual extramarital sex. This holds particularly true for victims of SGBV who are trying to escape abusive domestic relationships because the criminalization of consensual extramarital sex places them at greater risk than men of false accusations, or even counter-accusations of extramarital sex.

Third, and linked with the second point above, criminalizing consensual extramarital sex can discourage and deter women from seeking justice in cases of physical or sexual abuse of which they may be victims at the hands of individuals with whom they are not married, whether the women themselves are married to someone else or not. In any event, a woman who chooses not to enter into a commitment of marriage should, under no circumstances, be susceptible to unpunished abuse. A woman's behaviour and actions should not grant the aggressor impunity for violating her right to both physical and psychological integrity.

Fourth, the existence of such legislation is particularly invidious to women who fall pregnant out of wedlock as their pregnancy may be used as corroborating evidence to support a particular set of facts, whether the sexual conduct that led to the pregnancy was consensual or otherwise. This can have particularly devastating effects, *a fortiori*, in circumstances where the pregnancy is the by-product of an incident of rape.

Rape and sexual assault

The CEDAW Committee has repeatedly stressed that States must address, prevent and redress sexual violence against women, including, in particular, through effective criminal justice responses. This requires that criminal laws and procedures and practice appropriately and adequately define and prohibit all forms of sexual violence and provide for dissuasive sanctions and punishments commensurate with the gravity of the offence.⁵⁸ A key component of this is ensuring that legal definitions of rape, sexual assault and consent to sexual intimacy do not embody wrongful stereotypes.⁵⁹

The ICJ is concerned that the definition of rape is inadequate. In 2008, the CEDAW Committee called on Lebanon to ensure "that marital rape is criminalised and that marriage to the victim does not exempt a sexual offender from punishment."⁶⁰ Law No. 293/2014 does not mention marital rape and articles 503 and 504 of the Criminal Code relating to rape explicitly exclude the spouse from their scope. Article 503 of the Lebanese Criminal Code defines the crime of rape as forced sexual intercourse against someone "other than the spouse" by violence or threat, sanctioned by 5 years of hard labour, or 7 years if the victim is under 15 years' of age. Article 504 also criminalises sexual intercourse committed against a person "other than the spouse" unable to resist due to physical or mental retardation or because of deceiving means used by the offender against them, punishable by temporary hard labour. Article 505 criminalises rape when committed against a minor, punishable by a minimum of 5 years' imprisonment if the victim is less than 12 years old and between 2 months and 2 years' imprisonment if the victim is between 15 and 18 years of age. Article 506 criminalises rape committed by a relative, a religious leader or an official who takes advantage of their power, punishable by temporary hard labour.

An earlier draft of Law No. 293/2014 (submitted by local NGOs) included marital rape as a crime, but the provision was removed by the Parliament under pressure from religious authorities. As a form of compromise, the law criminalises a spouse's use of threats or violence to claim a "marital

⁵⁸ CEDAW Committee, General Recommendation 19, para. 24; United Nations Human Rights Committee, *General Comment No. 28: Article 3, The equality of rights between men and women*, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (29 March 2000) ("HRC, General Comment No. 28"), para. 11.

⁵⁹ See *Vertido v. The Philippines*, CEDAW Committee Communication No. 18/2008, Views of 16 July 2010, UN Doc. CEDAW/C/46/D/18/2008; CEDAW, art. 5.

⁶⁰ CEDAW Committee, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Lebanon*, UN Doc. CEDAW/C/LBN/CO/3 (2008), para. 27.

right to intercourse" (article 7) but does not criminalise the non-consensual violation of physical integrity itself. The ICJ is concerned that there is a risk that the reference in Law No. 293/2014 to a "marital right of intercourse," a concept not otherwise recognised by Lebanese criminal law (other than indirectly through the exclusion of spouses from the rape provisions), will itself be invoked to further entrench and legitimise marital rape.

These provisions fall short of international standards on various grounds. First, rape in general is not properly defined in the Lebanese Criminal Code as a form of sexual assault that is a physical invasion of a sexual nature without consent or under coercive circumstances. The flaws in the definition of rape, particularly when combined with other legal provisions, such as the religious personal status laws in Lebanon which recognise the husband's right to obtain his marital rights without consent, undermine women's rights.

The prohibition of sexual violence, including rape, is absolute. Both regional and universal human rights treaties contain explicit prohibitions of rape or other violations committed through rape, such as discrimination, torture and femicide.⁶¹ Among them, the African Charter on Human and Peoples' Rights of Women in Africa (Maputo Protocol) explicitly prohibits forcible sex, stipulating that:

Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment or treatment shall be prohibited. States Parties shall take appropriate and effective measure to enact and enforce laws to prohibit all forms of sexual violence against women, including unwanted or forced sex whether the violence takes place in private or public.⁶²

Similar definitions are replicated in the Convention on the Rights of the Child⁶³ and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.⁶⁴ Furthermore, the CEDAW Committee has identified GBV, including rape and sexual violence, as a form of discrimination infringing on fundamental rights and freedoms.⁶⁵

⁶¹ See, for instance, ICCPR, arts. 6, 7, 26; *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)*, 04 November 1950, ETS 5, arts. 2, 3, 14; *American Convention on Human Rights (ACHR)*, 22 November 1969, art. 4, 5; Organisation of African Unity, *African Charter on Human and Peoples' Rights (ACHPR)*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, arts. 2, 4, 5; CEDAW, arts. 1, 2. See also United Nations Committee on the Elimination of Discrimination against Women, General Recommendation No. 19: Violence against Women, UN Doc A/47/38 (1992), paras. 6 & 7. Sexual violence may violate the right to freedom from discrimination against women in their economic and social life and in marriage and family life. See, e.g. CEDAW, art. 16; United Nations Committee on the Elimination of Discrimination against Women, General Recommendation No. 19: Violence against Women, UN Doc A/47/38 (1992), paras. 23; African Union, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), 11 July 2003, art. 6.

⁶² African Union, *Protocol of the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)* (11 July 2003), arts. 4(1) & (2) (a).

⁶³ See, for example, arts. 19(1) & 34.

⁶⁴ *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, 09 June 1994, art. 2 reads: "Violence against women shall be understood to include physical, sexual and psychological violence: (a) that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse; (b) that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and (c) that is perpetrated or condoned by the State or its agents regardless of where it occurs."

⁶⁵ CEDAW Committee, General Recommendation No. 19, para. 7 specifies these rights and freedoms as including, "the right to life; the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; the right to equal protection according to humanitarian norms in time of international or internal armed conflict; the right to liberty and security of person; the right to equal protection under the law; the right to equality in the family; the right to the highest standard attainable of physical and mental health; the right to just and favourable conditions of work."

The absolute and non-derogable prohibition of torture or other cruel, inhuman or degrading treatment or punishment,⁶⁶ which is a well-established rule of customary international law, provides a strong basis for the prohibition of all forms of sexual violence, including rape, at all times.⁶⁷ The notion of rape as a form of torture has been upheld at the international level by various human rights bodies and criminal tribunals.⁶⁸ The International Criminal Tribunal for Rwanda (ICTR) first defined rape in the *Akayesu* case as “a physical invasion of a sexual nature, committed under circumstances which are coercive.”⁶⁹ More refined and precise definitions were articulated by the International Criminal Tribunal for the former Yugoslavia (ICTY),⁷⁰ identifying the various elements, which combined, amount to a criminal offence under international law.

The jurisprudence of the ICTR and ICTY ultimately culminated in the International Criminal Court (ICC) *Elements of Crimes*, which offers a more robust definition of rape⁷¹ and is viewed as the most authoritative in international law to date. According to the Rome Statute, an act is considered rape if:

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.⁷²

The Lebanese Criminal Code also fails to define other forms of sexual violence such as sexual assault. Indeed, it does not clearly characterise sexual assault as a violation of bodily integrity and sexual autonomy, although such acts could be prosecuted as “indecent assaults” under articles 507 to 510. These articles refer to violent acts of “indecenty”, sanctioned by 4 years of hard labour. However, “indecenty” is ill-defined, and it should instead be replaced or supplemented with specific reference to sexual assault that is not penetrative rape.

The ICJ is also concerned that the repeal of article 522 of the Criminal Code in August 2017, which enabled the authorities to cease a prosecution or suspend a conviction if a perpetrator of sexual assault under articles 503 to 521 married the victim, is an incomplete step towards adequately addressing GBV against minors. Article 505 provides that it is an offence for anyone to have sexual intercourse with a minor under the age of 15, punishable by a minimum of five years of temporary hard labour.

⁶⁶ See, United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p.85, art. 1.

⁶⁷ See, United Nations Human Rights Council, *Report of the Special Rapporteur on Torture*, UN Doc. E/CN.4/1986/15 (1986), para. 119, for the view that sexual abuse, including rape, constitutes a method of physical torture.

⁶⁸ See, for example, *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, ICTY Case IT-96-23 & IT-96-23/1-A, Appeal Judgment (12 June 2002), para. 150, where the Appeals Chamber held, “Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterization as an act of torture.” Similarly see, *Prosecutor v Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, ICTY Case IT-96-21-T, Trial Judgment (16 November 1998), para.496. For the view that rape amounts to torture, see also, *Fernando and Raquel Mejia v. Peru*, Inter-American Commission on Human Rights, Case No. 10.970, Report No. 5/96, Annual Report 1995, OEA/Ser. L/V/II.91 Doc. 7 rev. (1996), p. 185; and *Aydin v Turkey*, ECtHR, Application No. 57/1996/676/866, Judgment of 25 September 1997, paras. 83-86.

⁶⁹ *Prosecutor v Jean-Paul Akayesu*, Case No. ICTR-96-4, Trial Judgment (2 September 1998), para. 597.

⁷⁰ See *Prosecutor v Anto Furundžija*, ICTY Case No. IT-95-17-1, Trial Judgment (10 December 1998), para. 185; and *Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, ICTY Case IT-96-23 & IT-96-23/1-A, Trial Judgment (12 June 2002), para. 438.

⁷¹ The International Criminal Court derived this definition from the *Akayesu*, *Furundžija* and *Kunarac* judgments.

⁷² International Criminal Court, *Elements of Crimes*, 2011, ISBN No. 92-9227-232-2, art. 8(2)(b)(xxii)-1.

If the minor is between 15 and 18 years, the sentence is 2 months to 2 years' imprisonment. In the latter case, a valid marriage would prevent the prosecution or imprisonment of the perpetrator. Under article 518, if the perpetrator promised to marry a minor who is between 15 and 18 years and the minor lost her virginity as a result of the sexual act, the sentence is a minimum of five years' imprisonment. As it is the case with article 505, a valid marriage would prevent the prosecution or imprisonment of the perpetrator.

These provisions run counter to Lebanon's obligations under international law, including human rights law. They perpetuate patriarchal, archaic norms about the so-called "honour" of the victims and their families being repaired and restored through marriage. They shield the perpetrators of sexual offences from accountability, entrench impunity, and subject the GBV victims to re-victimisation. They address GBV as a breach of social norms and an attack against the society, rather than a serious violation of the rights of victim' human rights to privacy, to physical and psychological integrity, and to be free from all forms of ill treatment, including GBV. They also exemplify discriminatory laws, policies and practices against girls and women in Lebanon.

In addition, it is generally accepted that a child under the age of 18 years has limited if any capacity to provide free and informed consent to a sexual act with an adult. Early marriage, or child marriage, has accordingly come to be recognized as purported marriage involving children under 18 years of age, although there are exceptions. A joint General Recommendation and Comment on harmful practices from the Committee on the Rights of the Child and the CEDAW Committee stated that:

A child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent. As a matter of respecting the child's evolving capacities and autonomy in making decisions that affect her or his life, a marriage of a mature, capable child below 18 years of age may be allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to culture and tradition.⁷³

The forced (where free and informed consent is lacking) or early marriage of girls incontrovertibly undermines a number of rights guaranteed by the Convention on the Rights of the Child.⁷⁴ Moreover, early marriage exposes minors to threats of unpunished sexual abuse and increases the risk of maternal mortality in the event of pregnancy at an early age, as well as premature birth.

The ICJ is also concerned that rape and sexual assault continue to fall under the chapter titled "crimes against decency and public morality" in the Lebanese Criminal Code, as opposed to "serious crimes against the person and physical integrity." This stigmatisation reflects a discriminatory attitude by the Lebanese legislator vis-à-vis crimes committed against and violence suffered by women, which is incompatible with Lebanon's obligations under international human rights law

In September 2017, the Lebanese Minister for Women Affairs submitted to the Council of Ministers a draft law amending articles 505 and 518, providing for the aggravation of sentence when the sexual assault is committed against a minor or any girl after a promise of marriage. These amendments are yet to be adopted.

Sexual harassment

In Lebanon, there is no single legal text to define, criminalise and punish sexual harassment, including in public spaces or in the workplace.

⁷³ CEDAW Committee & United Nations Committee on the Rights of the Child, *Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women / General Comment No.18 of the Committee on the Rights of the Child on Harmful Practices*, UN Doc CEDAW/C/GC/31-CRC/C/GC18 (14 November 2014), para. 20.

⁷⁴ United Nations Children's Fund, *Child Marriage and the Law: Legislative Reform Initiative Paper Series* (New York: Division of Policy and Planning, 2008), p. 7.

Under international standards, sexual harassment should be addressed through “effective legal measures, including penal sanctions, civil remedies, and compensatory provisions” both generally as well as specifically in the field of employment.⁷⁵ In its 2015 Concluding Observations on Lebanon, the CEDAW Committee expressed concern about the absence of such legislation, and specifically called on Lebanon “[t]o adopt legislation criminalizing sexual harassment in the workplace.”⁷⁶ As noted by the Committee, sexual harassment is “discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”⁷⁷

For Lebanon to comply with its international human rights law obligations, all forms of sexual harassment, irrespective of the gender of the victim or perpetrator, must be adequately criminalised, and subject to effective preventative measures, investigations, prosecutions, punishment and reparation.

In March 2017, the Lebanese Cabinet approved a draft law criminalising sexual harassment presented by Minister of State for Women’s Affairs.

Under article 1 of the draft law, which would amend article 49(1) of the Labor Code, an employee or employer is prohibited from “harassing orally, in writing or by any means of communication or by pressuring or by giving orders with a view to obtaining services of a sexual nature, either for oneself or for others.”

Article 2, which would amend article 535 of the Penal Code under the heading “public morals and ethics,” defines sexual harassment as the use, either orally, in writing or by any means of communication, of anything that has a sexual connotation that undermines the honour and dignity of the victim or creates towards her a hostile and degrading environment.” It is also sexual harassment to exercise all kinds of pressure, including threats, with a view to establishing a sexual relationship either with oneself or with others.

Under the draft law, victims should not be subject to discrimination, promotion or termination for refusing to engage in sexual activities and whistle-blowers cannot be subject to disciplinary proceedings. Anyone perpetrating sexual harassment should be subjected to disciplinary proceedings including suspension and be subject to criminal prosecution. Article 2, which would amend article 536 Penal Code, provides that perpetrators, associates, contributors and inciters of sexual harassment are subject to imprisonment from one to two years and/or a fine of 10-15 million Lebanese Pound. If the perpetrator is a public official or they are a public official and they abused their power, if the victim is a minor under 18 years of age, or if the victim suffers physical incapacity or a complicated illness and the perpetrator exploited this incapacity, under article 350 of the Penal Code they are subject to two to three years’ imprisonment and/or a 15-20 million Lebanese Pound fine. There are no mitigating circumstances in cases of sexual harassment.

The bill has been referred to Parliament but is yet to be passed. While the bill is positive step towards addressing the prevalence of sexual harassment in Lebanon, the ICJ is concerned that it does not fully comply with international standards.

The Istanbul Convention defines sexual harassment as unwanted behaviour that has the purpose or effect of:

- Violating a person’s dignity; or
- Creating for that person an intimidating, hostile, degrading, humiliating or offensive

⁷⁵ CEDAW Committee, General Recommendation No. 19, para. 24(t)(i). See also CEDAW Committee, General Recommendation No. 35, paras. 14 and 32(a). See further International Labour Organization Convention No. 111 concerning Discrimination in Respect of Employment and Occupation on 25 June 1958; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Equal Value (29 June 1951).

⁷⁶ CEDAW Committee Concluding Observations on Lebanon of 2015, paras. 35 and 36(c).

⁷⁷ CEDAW Committee, General Recommendation No. 19, para. 18.

environment.⁷⁸

Although sexual harassment law has been traditionally associated with labour-related offences, over time States have recognized the harms caused by analogous behaviour in a variety of situations, resulting in legislation applicable in other contexts. The United Nations Handbook for Legislation on Violence against Women notes that sexual harassment takes place in a variety of situations and should be made a criminal offence or subject to other sanction in all situations, including educational institutions, employment, receipt of goods/services, renting accommodation, buying or selling land, sport, administration of public office and provision of public services.⁷⁹ Sexual harassment in public places, including on the street, especially when it is being used to intimidate women and girls, threaten them, limit their activities and reduce their presence in the public space, must be adequately addressed through legislative and other measures.

Victims of Trafficking

Prior to Law No. 164/2011 “on punishment for the crime of trafficking in persons,” the Lebanese Criminal Code criminalised some aspects of trafficking, including: abduction through deceit or violence for the purposes of marriage (article 514) or prostitution (article 516); inciting, facilitating or assisting in the prostitution of person under the age of 21 (previous article 523); inciting the prostitution of a girl or a women under the age of 21 even with her consent (previous article 524); inciting the prostitution of a girl or a women at age of 21 through deceit, violence , threats or other coercion means (previous article 524), and use deceit, violence , threats or other coercion means to force a person into prostitution or to remain in a house of prostitution (previous article 525).. The Code did not cover all acts of trafficking defined in the Palermo Protocol, ratified by Lebanon, for example, all forms of forced labour, slavery or servitude or the removal of organs, or the “transportation, transfer, harbouring or receipt of persons” for the purpose of exploitation generally.⁸⁰

The adoption of Law No. 164/2011, which defines trafficking in persons broadly as the “luring, transporting, receiving, detaining, or finding shelter for a person” by a broad range of means “for the purpose of exploiting said other person or facilitating his exploitation by others,”⁸¹ is a positive development towards ensuring protection against trafficking in persons in Lebanon. However, in its 2015 concluding observations, the CEDAW Committee noted with concern that “the artist visa scheme of 1962,” in which artists can obtain visas to work in Lebanon, “facilitates the sexual exploitation of women migrant workers in the entertainment sector.” It was also concerned “that Law No. 164 [on trafficking in persons] is not being enforced effectively, [and] that it criminalizes [trafficking] victims.”⁸² Indeed, Law No. 164/2011 criminalizes engagement in sex work by victims of trafficking⁸³ who engage in prostitution unless the “victim [...] proves that she was compelled to commit acts that are punishable by law or that she was compelled to violate the terms of residency or work [permit],” in which case the victim could “be given amnesty from punishment.”⁸⁴ This places the undue attention on the victim and an onus to prove that she was a victim of trafficking, rather than attention on the trafficker and the onus on prosecution to prove the victim was trafficked.

⁷⁸ Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) of 11 May 2011, art. 40.

⁷⁹ United Nations Division for the Advancement of Women, Department for Economic and Social Affairs, *Handbook for Legislation on Violence against Women*, UN Doc. ST/ESA/329 (2010) (“UN Handbook for Legislation on Violence against Women”), p. 28.

⁸⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 3.

⁸¹ Law No. 164/2011, art. 1, amending Criminal Code, art. 586(1).

⁸² CEDAW Concluding Observations on Lebanon of 2015, para. 29

⁸³ According to this law, “a victim of trafficking means any natural person who was the subject of trafficking in persons or who is reasonably considered by the competent authorities to be a victim of trafficking in persons, regardless of whether the perpetrator of the crime was identified, arrested, tried, or convicted.”

⁸⁴ Cf. Lebanese Criminal Code as amended by Law No.164/2011, art. 586.8.

While expressing its concerns about “the absence of an early identification and referral system for victims of trafficking, who are frequently arrested, detained and deported without adequate protection and assistance for victims, and weak coordination between government security, justice and social services entities, as well as their lack of cooperation with civil society”, the CEDAW Committee called on the Lebanese authorities to: “(a) review and revise the artist visa scheme to ensure that it is not misused for the sexual exploitation of women and take appropriate steps to decrease the demand side of prostitution; (b) amend article 523 of the Criminal Code as necessary to ensure that victims of trafficking are not prosecuted; and (c) provide mandatory gender-sensitive capacity-building for judges, prosecutors, the border police, the immigration authorities and other law enforcement officials to ensure the strict enforcement of the Law No. 164 to combat trafficking by promptly prosecuting all cases of trafficking in women and girls and adequately punishing traffickers.”⁸⁵

2. Laws discriminating against women

The legal system in Lebanon discriminates against women in a number of additional ways, either through laws that expressly discriminate against women, that have a discriminatory impact or that otherwise prevent women from seeking justice, or through the selective enforcement of the law. The ICJ’s concern echoes the view of the CEDAW Committee that Lebanon’s Constitution and other relevant legislation does not contain provisions guaranteeing equality on the basis of sex as required under article 2(a) of the CEDAW.⁸⁶

The absence of full equality in the Lebanese Constitution

The Lebanese Constitution underlines the human rights obligations and enshrines the principle that all citizens are equal in rights and duties.⁸⁷ The Preamble states that Lebanon is “a founding active member of the United Nations Organisation 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.”⁸⁸ Notwithstanding that the Constitution includes the right to equality of all Lebanese citizens before the law without discrimination (article 7), the Constitution does not explicitly ensure the right to equality between men and women and explicitly excludes female foreigners (such as migrants, refugees and foreign workers) who are not citizens from constitutional protection against discrimination. This is in breach of Lebanon’s obligations under international law that require it to respect and ensure the respect of the human rights of all people within its territory and jurisdiction without discrimination, including, in particular, on the basis of sex and/or gender⁸⁹ and regardless of nationality.⁹⁰

⁸⁵ CEDAW Concluding Observations on Lebanon of 2015, para. 30

⁸⁶ CEDAW Committee, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of all Forms of Discrimination against Women*, UN Doc. CEDAW/C/LBN/2 (2005), para. 20.

⁸⁷ Article 7 of the Lebanese Constitution states: “All Lebanese are equal before the law. They equally enjoy civil and political rights, and assume obligations and public duties without any distinction among them.”

⁸⁸ Paragraph B of the Preamble of the Lebanese Constitution.

⁸⁹ ICCPR, art. 2 and 26; CEDAW art. 1 and 15.

⁹⁰ All women should be treated equally and enabled to exercise their rights without any distinction and regardless of their race, colour, ethnicity, religion, origins, or other attribute. These additional grounds may seriously increase women’s difficulty in accessing justice, in particular for GBV. The CEDAW Committee has outlined the need for States to recognize and respond to women’s intersectional identities through specific action to eliminate any occurrences of discrimination based upon these identities, including through the adoption and implementation of appropriate policies and programmes, as well as through removing all legal barriers that create obstacles to their access to justice. See CEDAW Committee, General Recommendation No. 28, para. 18. In its concluding observations on Lebanon, the CEDAW Committee underlined the high incidence of abuse against women migrant domestic workers and the persistence of practices such as the confiscation of passports by employers and the maintenance of the *Kafala* (guarantee) system. The CEDAW Committee pointed to this system as putting workers at particular risk of exploitation and making it difficult for them to leave abusive employers, as well as creating serious obstacles affecting domestic workers’ access to justice because of the fear of expulsion and insecurity of residence while judicial procedures are under way. CEDAW Committee Concluding Observations on Lebanon of 2015, para. 37.

In addition, article 9 of the Constitution, which provides for the right to freedom of conscience, specifies that the State “guarantees that the personal status and religious interests of the population, to whatever religious group they belong, shall be respected.” This article has had the effect, in practice, of allowing discriminatory laws to be applied. In particular, Lebanon’s personal status laws, which regulate marriage, divorce, succession and child custody, are based on each community’s religion, which contradict the principles of equality and non-discrimination. This will be discussed in more detail below.

These gaps demonstrate that the principle of equality, as provided for by the Lebanese legal framework, is inconsistent with the CEDAW,⁹¹ which requires States to “embody the principle of the equality of men and women in their national constitutions or other appropriate legislation [...]”⁹²

The discriminatory provisions of the Lebanese Criminal Code

The current Lebanese Criminal Code is more than 70 years old. Despite the fact that several amendments have been proposed to the Lebanese Parliament, there has not been to date any comprehensive review of the Criminal Code. Accordingly, it has not evolved to meet international human rights law and standards.

The Code not only fails to criminalise all forms of GBV (discussed above), but it legalises acts of discrimination against women. Although the provision on honour crimes (article 526), which mitigated a man’s sentence for killing or injuring his wife, daughter, or other relative to protect the family “honour” (e.g. if committed in the context of encountering the victim having sexual intercourse) was repealed, other articles still legitimize and shield the perpetrator of sexual offences from accountability to protect family “honour.” In practice, judges still consider “honour” a factor in mitigating sentences.

The discriminatory provisions of the Lebanese Personal Status Laws

There is no uniform personal status law applied to all Lebanese citizens. Instead, each Lebanese citizen is subject to the personal status laws and courts of one of the 18 recognised religious communities regulating matters such as marriage, divorce, parenthood, child custody, and inheritance, among other matters.⁹³ These personal status laws discriminate against women in several respects, and can make it hard for women to obtain a divorce or custody of their children, often trapping them in violent relationships with abusive husbands. This is particularly true since marital rape is not criminalised, but is, rather, treated in law or practice as a marital right.

The ICJ is particularly concerned that religious laws relating to child custody often enable and contribute to domestic violence and discrimination against women. As set out above, Lebanon filed a reservation to CEDAW excluding the application of equal rights relating to children and child custody. Expressly discriminatory provisions in these laws can deter women from filing domestic violence complaints if they risk losing child custody. Each religious group sets a maximum age for child custody ranging from 2 to 15 years old.⁹⁴ Under Law No. 293/2014, a victim of GBV only has the right to custody of her

⁹¹ Equality according to CEDAW is full equality with which the traditional roles held by women and men also change within society and within the family.

⁹² CEDAW, art. 2(a).

⁹³ There is no specific legislation governing unrecognized religious communities, atheists/agnostics, or persons intermarrying between different religious communities, so they are deemed to fall under one of the 18 recognized laws.

⁹⁴ The legal age of custody refers to the age of a child for which custody can be given to a mother in case of separation or divorce, after which custody goes to the father. This age varies between religions. For example, in the Catholic church the legal age of custody is the breastfeeding age (two years) and the religious court has a discretionary power to otherwise grant custody taking into account the best interests of the child; in the Greek Orthodox church, the age of custody is 14 for males and 15 for females; in the Armenian Orthodox, Syrian Orthodox and Assyrian churches, the age of custody is seven for males and nine for females; in the Evangelical church and for Sunni Muslims, the age of custody is 12 irrespective of gender (unless, for Sunni Muslims, custody is granted to the mother’s mother as a result of the mother’s death, in which case the age of custody is seven for males and nine for females); for Shiite Muslims, the legal

children when leaving the marital house or when seeking a protection order where such children are of custody age (article 12). While article 22 of Law No. 293/2014 provides that all provisions contrary to the Law are annulled, it makes an exception for personal status laws.⁹⁵ This means religious laws prescribing low ages for child custody continue to apply. Accordingly, a victim who does not have the right to custody of children over the age of custody may elect to stay in the marital home to stay with her children.

Article 22 of Law No. 293/2014 runs counter to the UN Handbook for Legislation on Violence against Women, which recommends that “where there are conflicts between customary and/or religious law and the formal justice system, the matter should be resolved with respect for the human rights of the survivor and in accordance with gender equality standards.”⁹⁶

Although some religious groups in Lebanon have amended their personal status laws to improve equality within the family, taking into account human rights in general and women’s rights in particular,⁹⁷ this evolution has not necessarily resulted in changes in practice, where authority and violence are still exercised against women.

Some religious courts operating in Lebanon continue to issue discriminatory decisions favouring men, including by only granting custody to a woman until a certain age, after which the father gets custody, but reserving guardianship rights for the father or his male relatives if the father dies.⁹⁸ These discriminatory practices go unchecked since religious courts are not governed by the same laws and procedures under which the Lebanese justice system operates.

Lebanon’s efforts to amend discriminatory legislation have proceeded on an *ad hoc* basis and focus on formal equality, which has left a lack of progress in achieving *de facto* equality in many sectors, including due to the absence of time-bound targets. The ICJ underlines that Lebanon’s obligation to respect human rights comprises the need to ensure equal treatment in law and in practice. The CEDAW Committee has stressed that:

States parties [should] refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights. The obligation to protect requires that States parties protect women against discrimination by private actors and take steps directly aimed at eliminating customary and all other practices that prejudice and perpetuate the notion of inferiority or superiority of either of the sexes, and of stereotyped roles for men and women. The obligation to fulfil requires that States parties take a wide variety of steps to ensure that women and men enjoy equal rights *de jure* and *de facto*, including, where appropriate, the adoption of temporary special measures in line with article 4(1) of the Convention and General Recommendation No. 25. This entails obligations of means or conduct and also obligations of results. States parties should consider that they have to fulfil their legal obligations to all women through designing public policies, programmes and institutional frameworks that are aimed at fulfilling the specific needs of women leading to the full development of their potential on an equal basis with men.⁹⁹

Hence, under international law, Lebanon is required to remove legal barriers that undermine access

age of custody is two years for males and seven years for females (provided the mother is Muslim).

⁹⁵ As well as Law No. 422/2002 on the Protection of Juvenile Offenders at Risk Law.

⁹⁶ Handbook for Legislation on Violence against Women, p. 36.

⁹⁷ For instance, both Sunni and Orthodox Personal Status Laws have amended the age of custody in women’s favor. Protestants also amended age of marriage, making it 18 years for both men and women.

⁹⁸ Human Rights Watch, *Equal and Unprotected: Women’s Rights under Lebanese Personal Status Laws*, January 2015, p. 66 *et seq*, available at https://www.hrw.org/sites/default/files/reports/lebanon0115_ForUpload.pdf (accessed 7 December 2018).

⁹⁹ CEDAW Committee, General Recommendation 28, para. 9.

to justice for women and prevent prosecution of perpetrators. These barriers include those identified above with respect to the flawed definitions of relevant crimes, as well as policing, investigative, forensic and prosecutorial practices that result in women not obtaining justice, addressed below.

3. Use of international law by the Lebanese courts

International treaties approved by the Parliament, and subsequently ratified, have a status superior to that of domestic legislation. The Lebanese Code of Civil Procedure recognises the supremacy of international law over domestic law and underlines the Lebanese courts' obligation to apply international treaties. Indeed, pursuant to article 2 of the Code, "the courts shall comply with the principle of the rules of hierarchy. In the event of conflict between the provisions of international treaties and those of ordinary law, the former shall take precedence over the latter." However, courts' powers are limited, since article 2 adds that "courts shall not declare null the legislative authority's activities on the grounds of inconsistency of ordinary laws with the Constitution or international treaties."

As a result, there is no consistent practice with respect to the application of international law domestically. Although recently some judges for urgent matters have referred to international conventions such as the CRC and CEDAW when issuing protection orders under Law No. 293/2014,¹⁰⁰ there is rarely any reference by judges or in court decisions to CEDAW or other human rights treaties ratified by Lebanon. The application of relevant international treaties to uphold women's human rights and fill gaps in domestic law is therefore limited in practice.

When issuing **Protection Decision No. 208** on 30 May 2016, the Judge for Urgent Matters in Jdeideh referred to the UDHR, CEDAW and the CRC. Relying on medical and psychiatric reports, photographic evidence and victim testimony showing that the suspect attempted to strangle his wife and stab one of their daughters, and threatened his wife and forced her and their two daughters to leave their house after she filed for divorce, the judge determined the man had inflicted physical and psychological violence. The Judge prohibited the man from entering his marital house for one month (renewable once) and ordered him to pay USD 1000 and other expenses to his wife and two daughters

Recommendations

In light of the above, the ICJ calls on Lebanese authorities to remove the legal obstacles to women's access to justice, including by:

i) Ensuring that laws fully comply with international law and standards on access to justice, including by adequately defining and fully criminalising all forms of GBV, most significantly by:

- **Amending Law No. 293/2014 on domestic violence to ensure that it comprehensively criminalises all forms of GBV against women, including by:**
 - **Criminalising all forms of violence *per se*;**
 - **Providing for the aggravation of punishment for all domestic violence crimes.**
- **Ensuring that all acts of rape are criminalised, including by:**
 - **Explicitly criminalising marital rape, including by abolishing paragraph 7 of article 3 of Law No. 293/2014 that provides for a religion-based right to claim marital rights;**
 - **Properly defining rape as a form of sexual assault that is a physical invasion of a sexual nature without consent or under coercive circumstances. Physical invasion includes penetration, however slight, of any part of the body of the victim – or of the rapist by the victim – with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.**

¹⁰⁰ E.g. Decision No. 288\2017 of 26 September 2017 and Decision No. 208/2016 of 30 May 2016 by the Judge for Urgent Matters in Jdeideh, in which the Judge referred to the Universal Declaration of Human Rights, CEDAW and Convention on Rights of the Child

- **Criminalising other forms of sexual violence, such as sexual assaults, in line with international standards, including:**
 - Amending articles 503 to 521 of the Lebanese Criminal Code;
 - Properly and comprehensively defining sexual assault as a violation of bodily integrity and sexual autonomy.
- **Criminalising sexual harassment in line with international standards, including:**
 - Adopting legislation that specifically defines, criminalises and provides for appropriate punishment for sexual exploitation and harassment, especially committed in public spaces or in the workplace;
 - Adopting specific provisions in the Lebanese Criminal Code and/or other relevant laws regarding any form of harassment, including verbal harassment.

ii) Ensuring that laws and policies fully comply with international law and standards on access to justice, through prohibiting discrimination and upholding the principle of gender equality, taking into account both barriers common to men and women and specific obstacles, experiences and needs of women, including by:

- **Revising the current Criminal Code in order to meet international law and standards and ensure the principles of human rights, in particular by:**
 - Repealing all discriminatory provisions against women, particularly those concerning adultery and prostitution;
- **Reforming the current religious personal status system in Lebanon by removing all discriminatory legal provisions, consistent with international law and standards, and respecting the principles of human rights, including by:**
 - Adopting a unified civil personal status law for all religious groups, where all traditions and customs inconsistent with human rights, including particularly the rights of women to equality and equal access to justice, and the prohibition of discrimination against women, are overridden in accordance with article 2(f) of CEDAW;
 - Incorporating international provisions and standards relating to women's rights in the personal status law, including by removing any provisions providing for a "right" to intercourse;
 - Ensuring that issues covered by this law, such as divorce, inheritance and custody, are adjudicated before ordinary, civilian courts acting in accordance with international human rights law and standards;
 - Revising Law No. 293/2014, in particular article 22, by abolishing the paragraph preserving the application of religious personal status law provisions on child custody;
 - Amending paragraph 3 of article 12 of Law No. 293/2014 so as to allow orders for the protection of children regardless of the age of custody.
- **More generally, ensuring that legal provisions do not have a discriminatory effect, including by:**
 - Adopting legislation guaranteeing equality and prohibiting discrimination in all fields of women's lives, both in public and private spheres;
 - Taking effective measures to prevent and address discrimination in practice and to guarantee substantive equality in the enjoyment of rights;
 - Removing Lebanon's reservations to CEDAW, including in particular articles 9(2) and 16 (c, d, f, and g).
- **Recognising women as equal rights bearers and granting women equal legal capacity, equality before the law and protection of the law in all spheres and circumstances;**
- **Ensuring that women who are not nationals of Lebanon have equal access to justice and protection from GBV to that available for Lebanese women.**

iii) Ensuring that international human rights law and standards can be consistently used and invoked in court proceedings, including by:

- **Implementing international treaties in domestic laws;**
- **Providing adequate training to all law enforcement officials, including judges,**

- **prosecutors, judicial police and lawyers, on the application of international treaties; Organising community engagement and public awareness campaigns about international norms and standards.**

OBSTACLES LINKED TO THE ADMINISTRATION OF JUSTICE

It is not enough for the domestic legal framework to be in line with international standards to guarantee and protect women's full enjoyment of their right to access justice. In practice, the administration of justice is fundamental to giving effect to women's rights under relevant international human rights law and standards.

Lebanon is responsible for the protection and promotion of the safety of those subject to or potentially subject to GBV, as well as for the investigation, prosecution and punishment of perpetrators of GBV.¹⁰¹ The procedural frameworks and protective mechanisms must be sufficient to afford real protection from GBV and accountability of the perpetrators.

Additionally, women must be enabled to access fair, proper, and effective criminal justice before criminal courts. Police, investigators, prosecutors, lawyers and judges undermine women's equality before the law when they view a case through pre-conceived cultural beliefs and social stereotypes that are biased against women, rather than the facts of the case.¹⁰² Criminal proceedings and decision-making, including but not limited to cases that involve GBV, must be conducted free from bias, prejudice, or stereotypes.¹⁰³

Despite some reforms, a number of significant structural obstacles, as well as barriers related to the knowledge and attitude of justice sector actors, continue to undermine women's access to justice in Lebanon.

1. Lack of effective, gender-sensitive investigations

In its 2015 concluding observations, the CEDAW committee called on the Lebanese authorities to ensure "that all allegations of sexual harassment are recorded, that all allegations of assault and rape are duly investigated, prosecuted and sanctioned, that victims have access to appropriate redress, including compensation, and that all allegations of assault and rape by members of the security forces are investigated by an independent judicial authority."¹⁰⁴

In 2013, the General Directorate of Internal Security Forces (the ISF) launched a campaign in collaboration with Lebanese civil society organisations aimed at strengthening the role of the ISF in combatting domestic violence. On 20 May 2013, the ISF issued a service memorandum governing "communication and treatment by ISF officers in relation to complaints of domestic violence," setting standards for ISF officers to be followed when they receive or encounter victims of domestic violence.

This memorandum provided for a hotline for women victims of violence to call an ISF officer in a 24/7 operation room, who must guide the victim, if she has already left the house, to the closest police station or to the Public Prosecutor (depending on whether or not the violence occurred more than 24 hours ago).¹⁰⁵ The ISF officer must also inform the relevant police station to attend the victim's house if she is locked inside and the Lebanese Red Cross if the victim needs to be transported to hospital. When needed, the victim must be guided to associations that can provide her with legal, psychological and social assistance, including a shelter when she has left or wishes to leave the marital house. ISF officers can also accompany the victim to the police station to press charges, or take her to a hospital

¹⁰¹ General Assembly, *Resolution 65/228 (2010): Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice*, UN Doc. A/RES/65/228 (31 March 2011) ("Updated Model Strategies on the Elimination of Violence Against Women"), para. 12.

¹⁰² CEDAW, art. 5.

¹⁰³ ICJ, *Women's Access to Justice for Gender-Based Violence - A Practitioners' Guide* (2016), p. 127, available at <https://www.icj.org/womens-access-to-justice-for-gender-based-violence-icj-practitioners-guide-n-12-launched/>.

¹⁰⁴ CEDAW Committee, *Concluding observations on the combined fourth and fifth periodic reports of Lebanon*, UN Doc. CEDAW/C/LBN/CO/4-5 (24 November 2015), para. 28.

¹⁰⁵ Failure to do so risks disciplinary measures under Service Memo No. 164/204 (May 2013) and Law No. 293/2014, art. 8.

if needed.

If the victim attends a police station to file a complaint, ISF officers must receive them in a separate interrogation room to ensure their privacy and treat them with respect. ISF officers must listen to the victim's story without resorting to preaching to or blaming the complainant, and refrain from influencing them to reconsider filing a complaint. The victim must be informed of her right to request a protection order, as well as her right to request the presence of a social assistant while at the police station. If necessary, ISF officers shall go to the place where violence occurred.

Upon receiving a complaint, the ISF officer must contact the Public Prosecutor if the victim wishes to make a formal complaint, and the Public Prosecutor shall give full instructions as to the protection measure(s) that must be taken. In this respect, all necessary facilities must be provided, within the available means, to allow the victim to file her complaint, if she is unable to do so by her own means. The investigation must be confidential.

Most of the memorandum's provisions were incorporated in Law No. 293/2014.¹⁰⁶ The Law further established a specialised division for domestic violence crimes within the ISF, which must include female officers who are professionally trained in "conflict resolution and social guidance." Further, "[d]ivision members must conduct their investigations in the presence of social assistants knowledgeable about family affairs and conflict resolution," who are selected from a list established by the Ministry of Social Affairs.¹⁰⁷ Additionally, Law No. 293/2014 provides that judicial police officers

must attend the location of GBV in cases of flagrant crime or if they are informed a protection order is being violated.¹⁰⁸

The ICJ is concerned that, despite these positive steps, significant obstacles to enhancing the justice system's capacity to address GBV remain. Some of these obstacles arise because of the lack of effective gender-sensitive investigations.

According to international standards and best practices, the investigating police must respond promptly to every request for assistance in cases of GBV. According to the UN Handbook for Legislation on Violence against Women, police officers must, upon receiving a complaint, conduct a risk assessment of the crime scene and respond accordingly, including by:

- Interviewing the parties and witnesses, including children, in separate rooms to ensure there is an opportunity to speak freely.
- Recording the complaint in detail.
- Advising the complainant/survivor of her rights.
- Filling out and filing an official report on the complaint.
- Providing or arranging transport for the complainant/survivor to the nearest hospital or medical facility for treatment.
- Providing or arranging transport for the complainant/survivor and the complainant/survivor's children or dependents.
- Providing protection to the reporter of the violence.¹⁰⁹

While Law No. 293/2014 provides for most of these elements, there are still concerns about investigating police officers' gender-sensitivity when dealing with violence against women, particularly those who are first responders. Legislative amendments should be coupled with adequate training to investigators and others responsible for responding to GBV complaints.

When domestic violence occurs, many women flee the marital house for a safe place to temporarily escape the violence. Article 6 of Law No. 293/2014 grants the victim the right to choose whether to

¹⁰⁶ Law No. 293/2014, arts. 5-9.

¹⁰⁷ Law No. 293/2014, art. 5.

¹⁰⁸ Law No. 293/2014, art. 7.

¹⁰⁹ UN Handbook for Legislation on Violence against Women, pp. 35-36.

initiate proceedings in her temporary or permanent residence. However, past practices indicate that there's a risk that ISF might not respond to the victim's complaint when it is filed within the scope of her temporary residence for lack of geographic jurisdiction. Therefore, prosecutors should give clear directions to members of the judicial police to accept the complaint filed by the victim irrespective of where the victim resides.

Law No. 293/2014 does not contain dedicated procedures for collecting evidence, such that the general provisions of the Code of Criminal Procedure apply. Article 34 of the Code does not necessitate the timely testing of collecting medical and forensic evidence. This is contrary to the United Nations Handbook for Legislation on Violence against Women,¹¹⁰ and the United Nations General Assembly call for States to "ensure that adequate medical, legal and social services sensitive to the needs of victims are in place to enhance the criminal justice management of cases involving violence against women."¹¹¹ Law No. 293/2014 and the Code of Criminal Procedure consequently falls short of international law and standards.

In one high-profile case in which a woman who was regularly beaten by her husband died after being found unconscious at her home covered in bruises, the authorities refused to proceed to prosecution for lack of evidence. After public protests, an expanded investigation found there was sufficient evidence to proceed. Although Law No. 293/2014 provides for some sanctions in case law enforcement officers (e.g. article 8) fail to accomplish efficiently their role in the context of GBV, the ICJ is concerned that such omissions still occur in practice without necessarily entailing any sanctions.

Roula Yaacoub Case

Roula Yaacoub, a 33 year old mother of five daughters, was allegedly beaten to death by her husband on July 7, 2013. She was found unconscious at her house by neighbours who testified that she had bruises on her body. She died upon arrival at the hospital.

On January 25, 2014, the Investigating Judge in Northern Lebanon determined there was insufficient evidence to prosecute and released the defendant. The evidence before the Investigating Judge included statements by Roula's relatives and neighbors that Roula's husband regularly beat her as well as their daughters, by two of the daughters—a three-year old and another minor—that their father was beating their mother with a stick on the day of her death, and by another daughter that her father threatened to kill if her she revealed what she saw. The judge, however, relied without reservation on statements by two of the deceased's daughters rejecting the claim that their father was beating their mother with a stick and that they had begged their neighbors to help their mother. One of the girls stated that their mother was beating them with a stick, and had lost consciousness when their father intervened by yelling at everyone and breaking the stick.

The Investigating Judge's decision does not reveal whether further investigation was conducted to verify whether the daughters' statements were provided under the duress of their father or their father's parents with whom they had been living since their mother's death, or whether the girls were heard in the presence of a social representative at the police station or before the judge. The judge also did not deal with the daughters' evidence that their father had beaten their mother three days before her death, or the forensic report which showed the bruises on the daughters' chests and backs were inflicted more than 24 hours before their mother's death.

Following protests by women activists (including the KAFA association) in the victim's hometown in northern Lebanon, the Higher Judicial Council confirmed that there was insufficient evidence to believe that the defendant caused the death of his wife.

However, the North-Lebanon Accusation Committee ordered an expanded investigation into the

¹¹⁰ UN Handbook for Legislation on Violence against Women, 41.

¹¹¹ Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, adopted by the General Assembly under its resolution 65/228 (2010), paragraph 19(g).

victim's death in July 2014. In May 2016, the Committee quashed the Investigating Judge's decision, issued an indictment order accusing the husband of murdering his wife, and referred the case to the Criminal Court in North Lebanon, which issued a warrant for his arrest. On 1 November 2018, the North Lebanon Criminal Court acquitted the accused. The State Prosecutor has since appealed the decision.

2. Lack of coherent and effective prosecution

Prior to the adoption of Law No. 293/2014, GBV victims were subject to ordinary criminal procedures set out in the Code of Criminal Procedure. Under Law No. 293/2014, the general provisions of the Code of Criminal Procedure continue to apply, with one additional protective mechanism. The Public Prosecutor is assisted by specialised Public Attorneys who supervise the receipt of complaints and the initiation of investigations by the ISF, which is intended to speed up the response to GBV.

Victims have limited rights to seek review of decisions made with respect to the investigation and prosecution of GBV pursuant to the Code of Criminal Procedure. Under article 50 of the Code of Criminal Procedure, the Public Prosecutor has the power to close preliminary investigations if he or she concludes that the act does not constitute a crime or the available evidence is insufficient. The decision is not subject to objection or appeal, although the victim may request that the investigation be re-opened upon the submission of new documents.

If the Public Prosecutor decides to transfer the case to the Investigating Judge for further investigation, the Investigating Judge is compelled to carry out a substantive investigation into the crime.¹¹² In accordance with article 130 of the Code of Criminal Procedure, after receiving the report of the Investigating Judge, the Public Prosecutor must decide whether to refer the case to the Indictment Authority in order to appropriately characterise the crime and decide whether to pursue criminal proceedings against the alleged perpetrator/s. The decision of the Investigating Judge is subject to appeal before the Indictment Authority,¹¹³ however decisions of the Charging Authority are subject to a more limited scope of review. Civil parties may appeal decisions that civil actions are inadmissible, and the Public Prosecutor may appeal decisions to stay proceedings against a defendant. More generally an appeal right exists "where there was a discrepancy in the legal qualification of the act between the Investigating Judge and the Indictment Chamber, and on one of the following grounds:

1. A breach of law or an error in the interpretation or application of law;
2. Non-compliance with the applicable rules entailing nullity, or infringement of fundamental rules in investigations
3. Distortion of the facts or of the content of the documents contained in the case file
4. Failure to rule on a motion or ground of defence or an application filed by a party to the case
5. Lack of a legal basis or defective reasoning."¹¹⁴

Lebanon should grant victims the right to seek review of any decision not to proceed with their cases, whether taken by police officers, the Public Prosecutor, an Investigating Judge, or the Charging Authority. These mechanisms should be "clear and transparent and not overly bureaucratic to ensure that victims can request the review without legal representation."¹¹⁵ To enable victims to exercise this

¹¹² Code of Criminal Procedure, arts. 51-52. The investigating judge may investigate a felony discovered flagrante delicto without waiting for it to be referred by the Public Prosecutor. See arts. 55-56.

¹¹³ Code of Criminal Procedure, arts. 52, 65, 73, 121, 125, 135, 143.

¹¹⁴ Code of Criminal Procedure, arts. 306-307.

¹¹⁵ European Commission, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (December 2013), p. 31. See also ICJ, *Women's Access to Justice for Gender-Based Violence - A Practitioners' Guide* (March 2016), pp. 224-225, available at <https://www.icj.org/wp-content/uploads/2016/03/Universal-Womens-access-to-justice-Publications-Practitioners-Guide-Series-2016-ENG.pdf>.

right, legislation should also require “that any prosecutor who discontinues a case of violence against women explain to the complainant/survivor why the case was dropped.”¹¹⁶

Another procedural issue is that, for relevant crimes (e.g. causing harm), charges are automatically dismissed if the victim revokes her personal rights in the case at any stage of the litigation process.¹¹⁷ Victims usually revoke their rights as a result of coercion by the family or due to social stigma. The ICJ is concerned that this not only weakens the rule of law, but also reduces the ability of the Public Prosecutor to protect the victim and to deter offenders from further violence. The ICJ is also concerned that the automatic dismissal of charges constitutes a violation of the State’s independent obligation under international law to ensure investigation, prosecution and punishment for GBV, and an unjustified indulgence towards the perpetrator of domestic violence.¹¹⁸ According to the UN General Assembly, “the primary responsibility for initiating investigations and prosecutions lies with the police and the prosecution authorities, and does not rest with those subjected to violence, regardless of the level or form of violence”.¹¹⁹ The Lebanese legal framework must be amended so that a withdrawal by the victim of the civil action in GBV cases does not automatically lead to an end to the prosecution.

3. Lack of effective measures for protecting against GBV

Law No. 293/2014 sets out a framework for granting temporary protective measures to a victim of GBV. Depending upon the purpose and context, these may be granted by public prosecutors, by judges for urgent matters or by single criminal judges and investigating judges. The framework contains procedural and substantive limitations that impact the effectiveness of the measures for protecting victims from further GBV.

According to article 11,¹²⁰ prosecutors in charge of GBV cases can adopt temporary protective measures to give a victim time to request a longer-term protection order from the Judge for Urgent Matters. Measures may include obtaining a promise from the offender to refrain from confrontation or instigating a confrontation with the victim or members of the family and, if the victim is in danger, preventing the offender from entering the marital house for a period of 48 hours (renewable once), arresting the accused, and moving the victim to a secure location and/or transferring them to a hospital for medical treatment, if necessary, at the accused’s expense.¹²¹

The ICJ is concerned that the pledge not to further aggress the victim, a measure that applied prior to the adoption of Law No. 293/2014,¹²² does not constitute a real deterrent to violence. Practice shows that many offenders have violated pledges repeatedly without being subject to any punishment. The ICJ is also concerned that the preventative measures imposed by the protection order are not

¹¹⁶ UN Handbook for Legislation on Violence against Women, p. 36.

¹¹⁷ This right is granted by Law No. 293/2014, art. 3(7)(b).

¹¹⁸ The draft amendment to the Penal Code proposed by the Law Reform Committee would change article 133 in a manner that limits the circumstances to which it can be applied.

¹¹⁹ Updated Model Strategies on the Elimination of Violence Against Women, para. 15(b).

¹²⁰ Article 11 provides that in the event of a danger to persons:

Preventing the respondent from entering the family home for 48 hours, possibly extended once, if there is no other means to provide protection for the victim and her children and all other persons enumerated in article 12 of this law. Detention of the respondent in accordance with article 47 of the Code of Criminal Procedure.

Transferring the victim and other persons enumerated in article 12, if they wish, to a safe place at the expense of the respondent according to his financial capacities.

The purpose for which the Public Prosecutor decides to keep the offender away or arrest him for 48 hours, even when the damage incurred does not necessitate arrest, is to give the victim the time necessary to obtain a protection order from the Judge for Urgent Matters.

¹²¹ Law No. 293/2014, art. 11. If the accused does not pay the required expenses, they can be subject to enforcement provisions in the Code of Civil Procedure and the Public Prosecutor can issue a warrant for their arrest.

¹²² These undertakings were not introduced by Law no. 293/2014, as they were applied prior to its adoption under criminal law. However, practice revealed that these pledges are mere formalities that have no real effectiveness, since the Criminal Code does not require punishment for violating such an undertaking.

effective in practice, since they do not put an end to GBV and victims are reliant upon obtaining a more durable protection order from a Judge for Urgent Matters in a timely manner, which for the reasons set out below has limitations.

A GBV victim may then file a request for a more durable protection order from an investigating magistrate, where a criminal complaint has been made, or in any event an Judge for Urgent Matters,¹²³ to which the victim must submit proof of violence and that they risk its recurrence.¹²⁴ If the victim has filed a complaint to the Public Attorney for the purpose of pressing charges, the victim can request a copy of the complaint minutes to support the application. Based on judicial practice, a statement by the offender in the investigation report is sometimes sufficient to issue a protection order rather than summoning him to hear his testimony, which would lead to deferring the protection decision, at risk to the victim. The testimony of the victim in the absence of a statement by the perpetrator can also be accepted as sufficient evidence of violence, with or without other documentary or witness evidence.

When issuing **Protection Decision No. 608** on 20 June 2014, the Judge for Urgent Matters in Beirut deemed it necessary to conduct an investigation and hear from the offender as well as the victims before issuing the protection order. The request for protection was submitted by two women who were being beaten by their brother, who they lived with and who suffers from psychological problems, as a result of which they left the house to live in another apartment in the same building. The Judge issued an order *inter alia* prohibiting the offender from aggressing the victims as well as from instigating aggression against them.

In reaching a decision, the Judge for Urgent Matters is guided by several priorities: the need to protect the victim and her children from violence; the need to preserve the family's stability and unity; and adopting measures that suits both parties' interests, where possible.

Under article 14 of Law No. 293/2014, a protection order must include one or more of the following measures:

- Prohibiting the offender from attacking or intimidating the victim or any of the persons residing with her;
- Keeping the offender away from home for a period designated by the judge, possibly renewable;
- Transporting the victim and whoever is included in the protection order to a safe place at the offender's expenses;
- Compelling the offender to pay an advance for food and clothing to the victim and her children;
- Compelling the offender to pay an advance for the medical treatment necessitated as a result of the violence;
- Prohibiting the offender from having common funds and properties at his disposal;
- Binding the offender to hand the victim her personal belongings.

While this list is limited, including in ways set out below, some judges have not limited the measures imposed to those enumerated in article 14, which they have approached as an illustrative list of guidelines that can be expanded at need, case by case.

Pursuant to article 18 of Law No. 293/2014, breaching any of the protection decision clauses is punishable by three months' imprisonment and a fine, which increases when the violation involves violence or recidivism.

¹²³ According to article 579 of the Lebanese Code of Civil Procedure, the Judge for Urgent Matters has jurisdiction when: (1) the case is urgent and there is a fear that regular court procedures may take too long, thus making the matter moot, and (2) an injunction issued in the case would serve as a temporary measure, rather than a ruling on the substance of the case or right involved.

¹²⁴ This can include medical/forensic doctor's reports, previously submitted complaints, an investigation report, registered threats, and statements / testimony of witnesses.

The Judge for Urgent Matters can reject a protection order request when he/she considers that the allegations are false or that their claimant does not suffer from any danger, upon which an appeal may be lodged before the Court of Appeal.¹²⁵ Single criminal judges and investigating judges can also issue protection orders when requested by a victim who has filed by a criminal complaint with the ISF or Public Prosecutor against a perpetrator of GBV.

The ICJ is concerned about several limitations in the system for issuing temporary measures to protect a victim of GBV. Protection orders by the Judge for Urgent Matters cannot always be issued in a timely manner. A judge is not always available, which means that a woman in a situation of emergency may have to wait before requesting a protection order. The judge then has 48 hours to make a decision to issue a protection order,¹²⁶ during which time the victim is still in danger. Urgent Matters Judges have other responsibilities and have become overwhelmed with a large caseload. When the offender may not be able to pay for shelter and other expenses, the enforceability of the protection order is also at risk.

Protection orders have also been ineffective in preventing on-going GBV against the victims they aim to protect. In several cases reviewed by the ICJ, perpetrators violated protection orders compelling them not to repeat violence against the victim. Multiple factors could contribute to this problem.

Nisrine Rouhana Case

On 25 November 2014, Nisrine Rouhana, a 38-year old mother of two boys, was abducted by her husband as she travelled to work and shot dead before being thrown in the Nahr Ibrahim Valley in Mount Lebanon. Nisrine had previously obtained a protection order against her husband, which he breached without consequence.

Nisrine's husband allegedly abused her for the 15 years prior to her death. In 2013, Nisrine fled her husband after being beaten and threatened to death, but returned to the marital home one week later after several interventions by family members and the offender's promise to stop being violent. In the first half of 2014 (before the issuance of the Law No. 293/2014), Nisrine filed a criminal complaint against her husband, supported by a forensic report, for beating and threatening to kill her with a knife. Nisrine moved to her parents' home and sought a protection order from a Judge for Urgent Matters, who granted her custody of her children and the right to reside in the marital house, and ordered her husband to pay her expenses. However, the husband refused to comply, expelling Nisrine from the house and preventing her from seeing their children.

During the investigation, the husband confessed that he had planned revenge and that, after committing the murder, he went home, informed his mother about the crime, took a shower, shaved, and then turned himself in.

On 3 February 2017, the Criminal Court of Mount Lebanon convicted the husband of premeditated murder and sentenced him to twenty-five years' imprisonment with hard labor. In reducing his sentence from the death penalty, in mitigation the Court took into account the long and tense marital relationship between the couple and the numerous judicial complaints between them, a written confession allegedly given by Nisrine to her husband in May 2014 stating that she had an affair with another person from 2001 to 2011, and the fact that the husband was a cocaine user.

Sarah Al-Amine Case

On 19 May 2015, Sarah Al-Amine, 47-year-old mother of six children, died after her husband shot her 17 times with a Kalashnikov in front of their children in their Mount Lebanon home. Sarah had previously moved to her parent's house with her children because of her husband's

¹²⁵ Law No. 293/2014, art. 13.

¹²⁶ Law No. 293/2014, art. 13.

continuous violence against her. According to the victim's family attorney, the husband lured his wife to their marital house to celebrate the birthday of one of their daughters after promising to change and expressing regret. Two weeks prior to the crime, Al-Amine had obtained a protection order against her husband after filing a complaint against him. Security Forces arrested the husband several hours after he left the crime scene. On 20 December 2017, Mount Lebanon's Investigating Judge issued an indictment requesting the death penalty and, in January 2018, the Accusation Commission issued a decision requesting the death penalty for murder pursuant to article 549 of the Criminal Code. The case is currently pending before the Criminal Court.

Protection orders are ordinarily imposed for a short time period (sometimes as short as 1 week) despite the history of violence against the victim (e.g. which can span tens of years). While Law No. 293/2014 provides that protection orders are temporary measures, it does not specify their duration. Some judges have imposed measures that aim to provide more effective protection, tethered to evidence that the basis for the order has changed. This includes imposing the order until the marital situation is resolved by divorce; or requiring a social worker to submit a report on the execution of the protection decision or a counsellor or other psychiatric professional to issue a report on the perpetrator's rehabilitation, based on which the judge would decide whether to renew, amend or cease the protection order.

In addition, protection orders are (largely) not subject to monitoring by law enforcement authorities. Any monitoring is, rather, undertaken by NGOs (e.g. KAFA), which can put the victim at ongoing risk given NGOs do not have law enforcement powers and are reliant on notifying the appropriate law enforcement authorities.¹²⁷ An undertaking by the perpetrator not to reoffend is insufficient. If the police were responsible for monitoring compliance, and had the power to arrest upon a reasonable suspicion that the perpetrator reoffended, this may serve as more of a deterrent than a report by an NGO to the court.

On 9 June 2014, the Judge for Urgent Matters in Baabda issued **Protection Decision No. 243**, which provides an example of a protection order with provision for monitoring. The Decision aimed to protect a woman whose husband was beating and insulting her. In addition to prohibiting the offender from aggressing the victim, her daughter, her parents and any other member of her family residing with her, and from causing damage to the victims' properties, the order compelled the abusive husband to pay 1 600 000 LBP (USD 1100) for food, clothing, accommodation and for education fees, and allowed the victim to reside in the marital house or enter it whenever she pleased. The Judge imposed several measures aimed at ensuring the order was enforced. These were:

- Allowing the victim to contact the Court by phone whenever necessary;
- Notifying the Public Prosecutor's Office of the decision so that they could refer it to the competent authorities to execute;
- Requesting the Public Prosecutor's Office to monitor for violations of the order; and
- Requesting the NGO KAFA to suggest any additional protective measures.

Third, even where a breach can be established, the consequences of failing to comply with a protection order are minimal in comparison to the harm that may be inflicted. More serious consequences are needed, particularly if the case is pending a criminal prosecution (e.g. detention pending trial). With exception, penalties for non-compliance are rarely mentioned in protection orders. As illustrated in the above-mentioned cases, indeed, the sanctions provided for by the law for violating protection orders do not have a deterrent effect on perpetrators. The Lebanese authorities should remedy this situation by ensuring that protection orders constitute binding and enforceable legal orders, violations of which are punishable with commensurate sanctions.

In **Protection Decision No. 179** issued on 22 July 2014, the Judge for Urgent Matters in Jdeideh reminded the perpetrator that he would be subject to penalty for non-compliance with

¹²⁷ This points to GBV being treated as a social justice rather than criminal justice issue. See section on Obstacles related to societal and cultural norms, gender stereotypes and economic and social realities in Lebanon

the order and ordered him to undergo therapy. The woman requesting protection reported that her husband was a drug addict who beat and insulted her, and threatened to kill her every time she refused to provide him with money to buy drugs. After he threatened her with a knife, she submitted a complaint to the Public Prosecutor, and her husband fled with their minor children to an unknown location. A forensic report confirmed she had been subjected to severe violence. In addition to measures aimed at ensuring the victim and her children could live in the marital home with expenses paid, the Judge required the perpetrator to undergo 15 hours of therapy at KAFA at his own expense, extendable upon the recommendation of the supervising doctor, who was required to submit a report to the Court at the end of the rehabilitation period, based on which the Court would decide if the offender could return to the marital house. The Judge also reminded the offender that breaching the protection decision was punishable by three months' imprisonment and/or a fine.

Further, while article 20 of Law No. 293/2014 states that "the court may oblige the perpetrator of a domestic violence crime to undergo anti- violence rehabilitation courses at specialized centers," measures for rehabilitation are not mandatory. The small sample of protection orders reviewed by the ICJ show that reform-oriented measures are imposed in a small proportion of cases.¹²⁸

On 31 May 2014, the Urgent Matters Judge in Beirut issued the first protection order under Law No. 293/2014 to protect a woman subjected to violence by her abusive husband, imposing protective measures beyond those prescribed by the Law on the basis that he could rely upon general powers accorded to him under article 579 of the Code of Civil Procedure. The judge ordered the husband to undergo a rehabilitation program at a centre affiliated with KAFA at his own expense, and assigned "a social worker to make regular visits to the plaintiff's home, for a period of six months following the ruling, extendable at need or upon the plaintiff's request; so that the social worker may verify that the ruling is being properly carried out, provided that the husband does not hold prejudice against the assigned social worker." The Judge justified assigning the social worker such a role on the basis that the applicant might not be able to file a complaint every time the ruling is breached.

Finally, the protective measures listed in article 14 of Law No. 293/2014 only include temporary solutions.¹²⁹ Victims often abandon or decline to initiate criminal proceedings once a protection order has been obtained, especially for economic or social reasons, such as a lack of financial resources or family intervention, leaving them with short-term protection which is difficult to enforce and does not seek to rectify the behaviour of the perpetrator.

4. Lack of judicial coherence in addressing GBV cases

As discussed above, Law No. 293/2014 has a restrictive definition of GBV that applies only to acts that are related to the commission of offences under article 3. It also defers to religious personal status laws determining the legal age of custody, which can limit women's custody of their children when

¹²⁸ Protection Decision No. 179 by Judge for Urgent Matters in Jdeideh, 22 July 2014 (15 hours of therapy at KAFA at his own expense, which may be extended by the judge at the recommendation of the supervising doctor); Protection Decision No. 264 by Judge for Urgent Matters in Jdeideh, 22 October 2014 (15 hours of therapy at KAFA); Protection Decision No. 417 by Judge for Urgent Matters in Jdeideh, 9 September 2016 (15 hours of rehabilitation at a psychiatrist at his own expense); Protection Decision No. 78 by Judge for Urgent Matters in Jdeideh, 2 March 2016 (rehabilitation at KAFA). The absence of measures to rehabilitate offenders is also found in cases in which perpetrators of GBV are convicted and sentenced. In the *Manal Assi* case, the Court did not pair the sentence with any other measures, such as depriving the accused of his civil rights; precautionary punishments compelling him to attend anti-domestic violence sessions or workshops; or, subjecting him to judicial monitoring upon release because of the danger he represents to society and his own children.

¹²⁹ Such as preventing physical aggression; preventing the victims from not being allowed to continue occupying the home; expelling the husband from the home for a week; requiring him to pay an allowance; preventing him from causing damage to the victims' private property or home furniture; and preventing him from seizing or making use of shared funds.

they have been a victim of GBV. Lebanese judges have dealt with these limitations in different ways.

Some judges have adopted a strict textual interpretation of Law No. 293/2014, limiting GBV to acts committed in the context of crimes set out in article 3. Others have interpreted article 3 as a non-exhaustive list of offences that give rise to GBV, finding that its purpose is only to specify that aggravating punishments apply to the crimes it enumerates (crimes under articles 547 to 549 of the Criminal Code). Under this approach, GBV includes verbal, psychological, sexual, economic and “moral” violence.

An expansive definition of violence

The Judge for Urgent Matters in Beirut found on 31 May 2014 (protection decision number unknown) that GBV is not restricted to violence explicitly mentioned in article 3 of the Law, but includes other forms of violence, including non-physical violence such as verbal abuse, humiliation, confiscating a person’s identification documents and mobile phone, or preventing them from leaving the house.

In this case, the applicant requested protection for herself and her eight-month-old daughter from her husband. The Beirut Public Prosecutor had already issued an arrest warrant against the husband following a police investigation which concluded that he had beaten the applicant, and threatened and attempted to kill her. Statements by the applicant and her husband’s brother submitted as evidence in the application for protection alleged that the applicant’s husband also verbally abused his wife, prevented her from leaving the house, except for a few hours per month, and confiscated her identification documents and mobile phone.

The judge found:

“Violence is not just limited to physical aggression. The evidence available in the present case shows that the plaintiff was also subjected by her husband to various other forms of violence, no less severe than physical violence. He abused her verbally, insulted her and humiliated her, in addition to preventing her from leaving the conjugal home except for a few hours per month, without any justification. This constitutes a violation of her most basic rights, which doubtless falls under the definition of domestic violence, as stated in Law No. 293/2014. Indeed, what is meant by violence is that which causes psychological harm as well. And one can only admit to the seriousness and severity of psychological harm resulting from restricting the wife’s freedom of movement without justification or verbally abusing her.”

In a subsequent decision, in Protection Decision No. 225 on 20 August 2017 the Judge for Urgent Matters in Jdeideh determined that “moral violence” constituted GBV. The victim, who had converted from Islam to Christianity, alleged that her husband insulted her because she had been a Muslim and confiscated her salary. As a result, she decided to leave the marital house. Her husband refused to let her take their minor children, and exercised “psychological pressure on them” by telling them their mother has a bad reputation and calling her a prostitute. He also filed a complaint against his wife accusing her of theft. After referring to the principle of respect for human dignity as well as physical and moral integrity, the Judge determined the husband’s acts constituted moral violence pursuant to article 2 of the Law No. 293/2014, granted child custody to the mother, assigned KAFA to follow up on the children’s psychological and physical well-being and conciliate between the couple, and ordered the husband to pay the wife US\$1,000 monthly for expenses.

Judges have also included children older than the age prescribed for minors in religious personal status laws as “victims” to grant custody over children not of custodial age to their mothers. Article 12 of Law No. 293/2014 states that protection orders are to protect the victim and their children who are of legal custody age, and that other descendants and all those living with the victim, as well as any witnesses or persons providing assistance to the person, are only protected if they are “exposed

to danger.” Some judges have ordered that children over whom a father has a legal right to custody are to stay with their mother until the religious courts rule on custody.¹³⁰ Some have also interpreted the “exposed to danger” broadly to include children who have witnessed violence by their father against their mother, rather than being the target of violence themselves, consistent with the notion that such witnesses are secondary victims and in such circumstances, at risk of violence when left with an abusive parent.

Complete Authority to Protect the Children

The Judge for Urgent Matters in Beirut issued a protection order on 31 May 2014 following the victim’s application to protect her and her eight-month old daughter against the husband’s abuse. The judge extended protection to her husband’s ten-year old son on the basis that he was “residing with the woman concerned” and that, as he had witnessed the violence he was “exposed to danger.” The Judge commented that witnessing such violence “in itself constitutes domestic violence that causes psychological harm.”

As rulings on protection orders have no precedential value, expansive readings of the text only benefit the applicant in that case. The outcome for other women in similar circumstances is determined by the judge assigned to handle their case, thereby limiting the impact the above decisions can have and protection that may be accorded victims of GBV.

5. Lack of adequate capacity and resources

Some obstacles to women’s access to justice arise because of the scarcity of resources dedicated to addressing violence against women within the justice system. In particular, various barriers undermine the ability of law enforcement officials to effectively collect evidence of violence against women.

As Law No. 293/2014 is silent on the collection and admissibility of evidence, the ordinary provisions of the Code of Criminal Procedure apply. The general rule in Lebanese law is that, in civil matters, the burden of proof rests on the victim, and in criminal matters the burden of proof rests on the prosecution (making the victim dependent on the prosecution to properly present the evidence).¹³¹ This runs counter to the recommendation of the CEDAW Committee, which obligates States to “revise the rules on the burden of proof in order to ensure equality between the parties, in all fields where power relationships deprive women of the chance for a fair judicial treatment of their case.”¹³²

The Code of Criminal Procedure does not include special procedures and standards for GBV crimes. To obtain a protection order, the victim must satisfy the Judge that a protective order is necessary by submitting appropriate evidence proving she (and others) have been subject to violence. Practice shows that a variety of evidence has been relied upon by judges, including: the victim’s testimony;¹³³ the

¹³⁰ In Protection Decision No. 510 on 27 November 2014, the Judge for Urgent Matters in Kesserwan stated that the protection order is applicable until the Court issues a decision or a religious court issues a decision on alimony and custody and on settlement of the marital situation.

¹³¹ Code of Civil Procedure, art. 132.

¹³² CEDAW Committee, General Recommendation No. 33, para. 15(g).

¹³³ Judge for Urgent Matters in Beirut, Protection Decision No. 543, 5/6/2014; Judge for Urgent Matters in Baabda, Protection Decision No. 243, 9 June 2014; Judge for Urgent Matters in Baabda, Protection Decision No. 686, 24 June 2014; Judge for Urgent Matters in Jdeideh, Protection Decision No. 179, 22 July 2014; Judge for Urgent Matters in Kesserwan, Protection Decision No. 333, 24 July 2014; Judge for Urgent Matters in Jdeideh, Protection Decision No. 225, 20 August 2017; Judge for Urgent Matters in Jdeideh, Protection Decision No. 288, 26 September 2017.

children's testimony;¹³⁴ a forensic report;¹³⁵ investigation report at the Police Station;¹³⁶ photographic evidence of wounds;¹³⁷ and the criminal complaint against the offender.¹³⁸

The availability of forensic evidence can play a decisive role in a decision to grant protective measures and convict an accused of GBV. The ICJ is concerned that there is a very limited number of forensic specialists across the country and that these forensic doctors are not provided with the adequate equipment to ensure the proper examination of GBV victims, such as an evidence collection kit containing labels with blanks for identifying information and documenting the chain of custody.

In addition, while the General Directorate of ISF allocated rooms within their investigation units (around 16 rooms in all of Lebanon) to examine women subjected to GBV, these rooms only contain an examination bed and lack specialised forensic equipment (such as an alternate light source to examine patients' bodies, hair, and clothing and scan for evidence or an anoscope) and specialised nurses and forensic doctors. The ICJ is also concerned that such rooms are placed in security settings rather than specialised healthcare centres or units. They also afford limited privacy, since access is through the same public entrance used by other members of the public, including victims of other crimes and accused or convicted persons.

In the **Roula Yaacoub Case** (discussed above), on the day of the victim's death the Public Prosecutor commissioned two forensic doctors to examine her body, who concluded that her death was the result of an aneurysm caused by a congenital deformity and not violence. After protests, two other forensic doctors examined the body and reached the same conclusion. Ultimately, a judge requested verification committees at the Lebanese Orders of Physicians in Beirut and Tripoli to provide another opinion. They reported that the original examinations were flawed because: (i) the forensic doctors failed to take sufficient images and dissect organs appropriately (including the brain), which led to the loss of scientific evidence; (ii) the images upon which the forensic doctors relied were insufficient to reach a conclusion that the victim died of an aneurysm; (iii) gaps in the forensic reports made it impossible to determine with certainty the cause of death, particularly given the decay of the tissues two months after death; but that (iv) the death likely resulted from violence given that most of the cerebral hemorrhage was at the lower part of the brain.

Moreover, there is nothing in the law or other guidance requiring the police, prosecutors, hospitals or doctors to afford special treatment to victims of GBV. In cases of rape, for instance, women are not provided with special care *vis-à-vis* the collection of medical and forensic evidence. Article 34 of the Code of Criminal Procedure merely provides that the Public Prosecutor can appoint a forensic doctor or a competent physician if they require the assistance of a technical expert, without requiring that person to have particular expertise in GBV. When admitted to a hospital, victims of GBV are not required to be treated as priority patients and the examination and/or medical treatment must be covered at their own expenses or, if ordered by a judge, at the offender's expense. To meet international standards, Lebanese laws should ensure female survivors have access to medical and forensic examination free of charge. The UN Handbook recommends that States provide for immediate access to services for female survivors of GBV, especially sexual violence, at the expense of the State, and that the victim

¹³⁴ Judge for Urgent Matters in Beirut, Protection Decision No. 543, 5 June 2014.

¹³⁵ Judge for Urgent Matters in Beirut, Protection Decision No. 543, 5 June 2014; Judge for Urgent Matters in Baabda, Protection Decision No. 686, 24 June 2014; Judge for Urgent Matters in Jdeideh, Protection Decision No. 179, 22 July 2014; Judge for Urgent Matters in Kesserwan, Protection Decision No. 333, 24 July 2014; Judge for Urgent Matters in Kesserwan, Protection Decision No. 355, 18 August 2014; Judge for Urgent Matters in Jdeideh, Protection Decision No. 288, 26 September 2017.

¹³⁶ Judge for Urgent Matters in Kesserwan, Protection Decision No. 333, 24 July 2014; Judge for Urgent Matters in Kesserwan, Protection Decision No. 355, 18 August 2014.

¹³⁷ Judge for Urgent Matters in Jdeideh, Protection Decision No. 208, 30 May 2016; Judge for Urgent Matters in Jdeideh, Protection Decision No. 294, 14 October 2017; Judge for Urgent Matters in Jdeideh, Protection Decision No. 264, 22 June 2016; Judge for Urgent Matters in Jdeideh, Protection Decision No. 530, 29 December 2016.

¹³⁸ Judge for Urgent Matters in Jdeideh, Protection Decision No. 367, 18 August 2016.

must benefit from these services even if she decides not to file a complaint against the offender.¹³⁹

The ICJ is also concerned that other services necessary to protect victims of GBV, such as emergency shelters run by the authorities and medical services other than for forensic examinations, are not available or are inaccessible because of cost or the victim's geographic remoteness. Law No. 293/2014 does not provide for the establishment of such centres for GBV victims. The CEDAW Committee has emphasised the importance of States taking on the responsibility to ensure that women have, among many other things, financial aid, crisis centres, shelters and medical services available to them.¹⁴⁰

6. Lack of awareness and inaccessibility of appropriate justice related-services and facilities

Lebanon's obligations under CEDAW require that women are made aware of their human rights, so that they can be empowered to enforce them and gain access to justice. In this respect, legal aid is critical, as it allows victims to access and understand the justice system and the remedies to which they are entitled.

Although article 13 of Law No. 293/2014 states a victim of GBV can file a written request for a protection order herself, the assistance of a lawyer may be necessary for the victim to understand their right to obtain a protection order and the related procedure and evidentiary requirements, or to appeal an unfavourable decision by a Judge for Urgent Matters. The ICJ is concerned that the Lebanese authorities have not taken steps to ensure victims have access to legal aid for representation before the courts, or for other related matters. The National Fund provided for in article 21 of Law No. 293/2014—established as a financially and administratively independent legal entity to assist and care for domestic violence victims, provide ways to reduce and prevent domestic violence crimes, and rehabilitate perpetrators—has not yet been established. The ICJ is also concerned that the exemption from paying the fee for requesting a protection order does not apply to an appeal against an unfavourable decision filed by the victim. The only alternative available to a victim, other than privately funding legal expenses, is to submit a judicial assistance request to the Bar Association in Beirut or Tripoli.

The ICJ is also concerned that Lebanon fails to ensure the availability of and accessibility to appropriate court services for GBV victims. The CEDAW Committee has observed that the "concentration of courts and quasi-judicial bodies in the main cities, their non-availability in rural and remote regions, the time and money needed to gain access to them, the complexity of proceedings [...], the lack of access to [...] legal aid, as well as the often-noted deficiencies in the quality of justice systems (e.g., gender-insensitive judgments or decisions owing to a lack of training, delays and excessive length of proceedings, corruption) all prevent women from gaining access to justice."¹⁴¹ The CEDAW Committee recommended that State parties "ensure the creation, maintenance and development of courts, tribunals and other entities, as needed, that guarantee women's right to access to justice without discrimination on the whole territory of the State party, including in remote, rural and isolated areas[, giving consideration] to the establishment of mobile courts, particularly for women living in those areas..."¹⁴²

According to information available to the ICJ, court buildings are not necessarily designed to protect victims of GBV from exposure to the risk of further violence or harassment. In particular, there are limited measures for ensuring that complainants are not required to sit in the same waiting rooms as the alleged perpetrator of violence against them. In this regard, the CEDAW Committee recommends that States "ensure that the physical environment and location of judicial and quasi-judicial institutions

¹³⁹ UN Handbook for Legislation on Violence against Women, p. 36.

¹⁴⁰ CEDAW Committee, General Comment No. 33, para. 16(b).

¹⁴¹ CEDAW Committee, General Recommendation No. 33, para. 13.

¹⁴² CEDAW Committee, General Recommendation No. 33, para. 16(a).

and other services are welcoming, secure and accessible to all women.”¹⁴³ The CEDAW Committee recommends that State Parties should protect women complainants, witnesses, defendants and prisoners against threats, harassment and other harm during legal proceedings (as well as before and after) and provide the budgets, resources, guidelines and monitoring, and legislative frameworks necessary to ensure that protective measures function effectively.¹⁴⁴

The Committee also recommends that State Parties protect women’s privacy, safety, and other human rights, including by, when necessary, ensuring that, in a manner consistent with due process and fair proceedings, legal proceedings can be held privately in whole or in part, such that only the concerned parties are able to access their content.¹⁴⁵ The recommendations add that women should also be allowed to use pseudonyms or to take other measures to protect their identities during all stages of the judicial process. State parties should moreover guarantee the possibility of taking measures in order to protect the victims’ privacy and image by the prohibition of image capturing and broadcasting, in cases where this may violate the dignity, emotional condition and security of girls and women.¹⁴⁶

Recommendations

In light of the above, the ICJ calls on the Lebanese authorities to remove all obstacles to women’s access to justice related to the administration of justice, both at the structural and institutional levels and with regard to knowledge and attitudes of justice sector actors, including through:

i) Exercising effective due diligence in order to prevent, investigate, prosecute, sanction and ensure access to remedies in instances of GBV by public and private actors.

ii) Establishing gender-sensitive legal procedures and processes and ensuring that the forms of redress are designed to respond to the particular needs of women, including by:

- **Amending the Criminal Code, the Code of Criminal Procedure and Law No. 293/2014 to include gender-sensitive investigations and evidence-gathering procedures in order to enable women to report violence against them, and to enhance their access to justice;**
- **Amending laws and regulations governing law enforcement officials to give priority to dealing with GBV in a timely manner without undue delays, and ensuring that legal, and social needs are sufficiently provided for women during investigations and prosecutions;**
- **Providing adequate training to all law enforcement officials on dealing with victims of GBV.**

iii) Ensuring that the Lebanese legal framework, particularly Law No. 293/2014 on domestic violence, ensures that GBV cases can be effectively and consistently brought to trial, including by:

- **Ensuring that the prosecuting authorities investigate GBV diligently and prosecute such cases effectively whenever warranted by the evidence, even where no formal complaint has been lodged;**
- **Revising the Lebanese legal framework and Law No. 293/2014 to make the Public Prosecutor more effective and to enable more efficient sanctions for GBV crimes, including by:**
 - o **Ensuring the Public Prosecutor can continue to prosecute GBV even where the victim withdraws their complaint, including by repealing article 3(7)(b) of Law No. 293/2014;**

¹⁴³ CEDAW Committee, General Recommendation No. 33, para.17(e).

¹⁴⁴ CEDAW Committee, General Recommendation No. 33, para. 18(g).

¹⁴⁵ CEDAW Committee, General Recommendation No. 33, para.18(f).

¹⁴⁶ CEDAW Committee, General Recommendation No. 33, para. 18(f).

- **Ensuring the Public Prosecutor take measures, on an interim and longer-term basis, to adequately protect women against GBV, including by extending the period during which the Prosecutor can order exclusion of an alleged perpetrator from the home (subject to judicial review).**

iv) Revising the Lebanese legal framework and policies to ensure effective judicial measures for addressing and preventing GBV, including by:

- **Amending Law No. 293/2014 to ensure its application to children in line with international standards;**
- **Adopting guidelines for calculating the value of expenses granted to victims of GBV;**
- **Amending Law No. 293/2014 to ensure women's effective access to justice in GBV cases, including by exempting the appeal of protection orders from judicial fees and costs before all authorities;**
- **To increase the overall capacity of the justice system to respond rapidly and effectively to the protection needs of GBV victims;**
 - **Increasing the duration of protection measures issued by the Public Prosecutor, subject to judicial review;**
 - **Establishing specialised courts and appointing specialised judges as the competent authorities in GBV cases;**
 - **Establishing a family mediation centre.**

v) Enhancing justice actors' capacity, logistics and resources to ensure that women can enjoy their full right to access justice in GBV cases, including by:

- **Revising Lebanese law, in particular Law No. 293/2014, to provide clear evidential rules and procedures in cases of GBV, including by:**
 - **Increasing the number of forensic experts and providing them with adequate equipment to ensure the proper examination of GBV victims and an updated model report and an evidence collection kit containing labels with blanks for identifying information and documenting the chain of custody;**
 - **Establishing governmental specialised medico-legal centres for forensic tests and examination independent from Police stations;**
 - **Ensuring that GBV survivors are able to access competent and free forensic documentation and evidence to enable them to seek protection and justice;**
- **Establishing shelters run or fully funded by the government providing primary and free services including legal assistance, counselling, health care services and psychosocial support to victims, as well as empowerment services, to enable GBV survivors to overcome their physical and psychological injuries;**
- **Ensuring that when admitted to a hospital, victims of GBV violence are given priority;**
- **Amending Law No. 293/2014 to ensure that medical expenses for treatment of GBV victims are paid by the Government.**

vi) Taking measures to address the social and practical factors that impede women's access to justice, including a lack of financial independence, including by:

- **Establishing a National Fund to support victims of GBV pursuant to article 21 of Law No. 293/2014;**
- **Establishing well-equipped shelters for GBV victims in all regions to ensure access to justice-related services in more remote areas;**
- **Establishing medical centres with free medical treatment as well as other health, legal and financial services.**
- **Providing free, professional and immediate legal aid for all victims of GBV, including by:**
 - **Removing restrictions on access to legal aid and increasing financial and human resources to make it accessible to all women in need;**
 - **Creating a special section for GBV victims within both the Beirut and Tripoli Bar Associations legal aid sections.**

OBSTACLES RELATED TO SOCIAL AND CULTURAL NORMS, GENDER STEREOTYPES AND ECONOMIC AND SOCIAL REALITIES IN LEBANON

Stereotypes and gender-based social norms can often prevent women from accessing justice. Normalising discrimination and social pressure at women's expense in the name of so-called honour and in order to avoid "shame" constitutes a critical obstacle to the realisation of women's right of access to justice.

Despite efforts, mainly by civil society organisations, to combat discrimination against women and to address stereotypical roles of women, social gender norms still exist in Lebanon, whether in marital and family relations or in public spheres. The CEDAW Committee expressed its concern at the pervasiveness of patriarchal attitudes and deep-rooted traditional and cultural stereotypes in Lebanon regarding the roles and responsibilities of women and men in the family, in the workplace and in society, as constituting serious obstacles to women's enjoyment of their human rights and impeding the full implementation of the Convention.¹⁴⁷

This applies to religious personal status laws that result in a hierarchical structure in which the man is the only one who has the privilege to be a decision-maker and enjoys some prerogatives based only on the fact that he is a man, depriving the woman of some of her fundamental rights simply because she is a woman. This structure gives the man the right to dominate the woman, requiring her obedience, and consequently, grants him the right to discipline her when she is disobedient. Moreover, this structure results in the social and economic marginalisation of women.

Furthermore, cultural frameworks and religious beliefs are significant factors influencing women's roles and responsibilities within society. Victims are left to believe that the violations of their rights, especially GBV, are normal, and are, thus, pressured not to complain about these violations in order to protect their "honour" and family reputation, regardless of the abuse they suffered.¹⁴⁸ In particular, family pressure continues to emerge as an obstacle in various ways: certain issues are seen as "private matters" that do not require public (or judicial) interference, all of which results in a normalisation of violence. Victims are also expected to protect the "interest of the family," including through the fear of repudiation and shame.¹⁴⁹ The harmful gender stereotyping also negatively impacts women on the psychological level, when they absorb these stereotypes.¹⁵⁰

Stereotyping is particularly prevalent in rape and sexual assault cases. Women are often blamed for being dressed in a certain manner, socializing, drinking alcohol or being out late at night, for example. When they report rape and sexual assault allegations, women victims open themselves up to suspicions of engaging in prostitution (article 523 of the Criminal Code) or to charges of having committed an "affront to public decency" (articles 531-534 of the Criminal Code). Because of the underlying assumption that women should be chaste or have a "good reputation" in order to access the protection of criminal law, the proper focus on the criminal responsibility of the perpetrator shifts to the behaviour of the victim. Such attitudes on the part of law-enforcement officials have a disproportionate and detrimental impact on women, deterring some rape victims from reporting the crime because they fear prosecution if their complaint does not result in the successful prosecution of the alleged perpetrator.

The ICJ is particularly concerned that these gender stereotypes and discriminatory attitudes extend

¹⁴⁷ CEDAW Committee, Recommendation for Lebanon, para. 28, UN Doc. CEDAW/C/LBN/CO/2 (2005).

¹⁴⁸ Judge for Urgent Matters in Kesserwan, Protection Decision No. 505, 20 November 2014 (the decision underlined the role and pressure by the family discouraging the victim from filing a complaint against her abusive husband).

¹⁴⁹ Judge for Urgent Matters in Jdeideh, Protection Decision No. 297, 14 October 2014 (the decision emphasized the fear felt by women preventing them from filing complaints against their abusive husbands, and emphasizing how long the criminal process is).

¹⁵⁰ See, generally, ICJ, *Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions* in Law and Practice (2015) ("ICJ report, Harmful Stereotypes and Assumptions"), available at: <https://www.icj.org/icj-addresses-harmful-gender-stereotypes-and-assumptions/>.

to other justice sector actors in Lebanon, in particular judges. Despite a significant number of women within the judiciary, discriminatory attitudes persist, including from female judges, in GBV cases. For example, although article 526 of the Criminal Code was repealed by the Lebanese Parliament, until November 2017 some criminal courts still considered “honour” as a mitigating circumstance in their decisions, granting reduced sentences pursuant to article 252 of the Criminal Code to abusive men who claim that they committed violence in a “fit of fury” provoked by the victim’s acts or behaviour (suspicions of marital infidelity, irreconcilable conflicts in a marriage, suspicions of premarital sex and elopement) to protect the honour of their family.¹⁵¹ Article 252 allows for reduced punishment if a crime occurred as a result of extreme rage caused by “dangerous and wrongful action committed by the victim.” Such practices by the courts, in fact, circumvent the protections provided for by the law and shift the occurrence of honour killings from the idea of cleansing the family of its “shame” to the existence of outrage. Yet, the result of both qualifications of crimes remains the same.

Manal Assi Case

In February 2014, Manal Assi, a mother of two daughters, died after being beaten and tortured by her husband for more than five hours following a quarrel between them. According to the evidence, Manal Assi’s husband threw a boiling pressure cooker at her, causing burns, kicked her all over the body, trampled her head, and tore her lips so that he could suck her blood and spit it in her mother’s face, who arrived at the house after the husband called her to come and “get her daughter.” Manal Assi’s husband afterwards left the house to visit his mother and have coffee with a friend, locking the door so that the victim was left unconscious and drowning in her own blood in the presence of her mother. When he returned two hours later, he allowed an ambulance to transport the victim to hospital where she died hours later. Assi’s two daughters and other family members witnessed the murder.

During trial, the perpetrator alleged that he committed his crime in a fit of fury after discovering his wife’s infidelity (act of adultery) with another man. On 14 July 2016, the Beirut Criminal Court convicted the accused of intentional homicide under article 549 of the Criminal Code, punishable by death. The Court reduced his sentence from death to five years’ imprisonment¹⁵² based on article 252 because the victim committed adultery and the offender was in a state of extreme rage at the time of the murder, as well as other mitigating factors including that: (i) the victim’s family waived their personal right to reparation in 2016 after a conciliation agreement was signed between the perpetrator’s family and the victim’s family, according to which they agreed to return to being on good terms, in return for money paid to the latter’s family; and (ii) the accused’s two daughters appealed to the Court in the final trial hearing “because they are in critical need of their father for care and in order to complete their education.”¹⁵³ The Court did not give any regard to the fact that the perpetrator’s actions spanned several hours, and appeared to disregard its finding that the perpetrator’s reputation was one of being a “strongly-built, impulsive man, and a tough-guy who breaks up fights and is feared by the neighborhood. He is also passionate and quick to agitate and he cannot hold his nerves.” Even the head of the police

¹⁵¹ Under article 193 of the Criminal Code, the motive is deemed honourable if it is of a chivalrous, magnanimous and unselfish nature and is free of any personal interest and financial gain. Article 193 states that, if a court judge deems the motive to have been honourable, the following sentences can be applied:

- Life imprisonment instead of the death penalty;
 - Life imprisonment or 15 years’ imprisonment with hard labor;
 - Limited imprisonment instead of limited imprisonment with hard labor; or
 - A simple jail term instead of a jail term with hard labor.
- The judge also has the right to make the sentence confidential.

¹⁵² In reality, the perpetrator would only have served three years and nine months because Law No. 216/2012 (issued on 30 March 2012) provides that if the judicial penalty is imprisonment for one year or more, the judicial prison year shall be counted as 9 months (rather than 12 months).

¹⁵³ This possibility is made more likely by the poor state of care institutions, the absence of an alternative care law and, more generally, the State’s inadequate monitoring of the status of children being raised outside their family environment. In certain cases, some courts may prefer to keep children with an abusive father, as the abuse may do less damage than the dangers that they could face outside of his care.

detachment in the neighborhood testified that he did not dare intervene when he learnt that the accused was beating his wife; instead, he called one of the accused's friends and asked him to intervene and calm the accused down. The Court also overlooked the accused's antecedents of violence against Manal Assi throughout the years prior to her death, that appeared in testimonies in the case file.

The Prosecution appealed the Criminal Court's sentence to the Court of Cassation, which sentenced the perpetrator to 18 years imprisonment with hard labor on 2 November 2017. The Court of Cassation found that article 252 is inapplicable to all cases of murder of women justified by honor. The Court emphasized that by abolishing article 562 of the Criminal Code pertaining to honor crimes, the Lebanese legislature followed a clear, incremental policy, eventually abolishing the availability of a suspicion of adultery by a spouse, sister, ancestor or descendant, or finding such person in the act of intercourse, as a mitigating circumstance for murder or injury.¹⁵⁴

After reaching this conclusion, the Court declared that it would nevertheless explore the validity of associating the accused's actions to a "fit of rage" given the case circumstances. While the Court found that the offender could justify his violent reaction in the moment he learned of his wife's (supposed) infidelity, it held that he could not link his subsequent prolonged actions (such as not aiding his wife, preventing others from doing so, locking the door on her and her family, and beating her extensively) to this rage. The Court found that after beating the victim, the perpetrator had plenty of time to think carefully and realize that his wife's condition might lead to death, but intentionally refrained from returning to help her or allowing her to receive aid.

Nevertheless, the Cassation Court took into consideration "the society in which the defendant lives and its well-established social traditions related to the husband's honour, the fact that the victim committed adultery, the defendant's personality, the fact that victim's family waived their personal rights, and the testimonies of the defendant's daughters" to grant the defendant mitigating factors and to sentence him to 18 years imprisonment.

The ICJ is concerned that the decision of the Cassation Court, while addressing the inadequacy of the sentence imposed by the lower court, still maintains scope for notions of "honour" to give rise to mitigation of sentence in GBV cases.

The ICJ is also concerned that stereotypes and gender biases against women by justice system actors lead to direct and indirect discrimination against women. The impartiality of the justice system is key for judges to be able to deliver effective remedies that are not compromised with biased assumptions.

CEDAW provides that States parties should take measures to "modify the social and structural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women..."¹⁵⁵ In justice systems influenced by stereotypes, professionals, including judges, prosecutors and police officers, often adopt rigid standards about what is considered acceptable behaviour for women and penalise whoever does not conform to these standards. This not only affects the interpretation and application of law but also has far-reaching consequences on women's full enjoyment of their human rights.¹⁵⁶ They impede women's access to justice in all areas of law, and may particularly impact on women victims and survivors of

¹⁵⁴ In August 2011 the Lebanese Parliament abolished article 526 of the Criminal Code, which used to grant a mitigating excuse to a man who catches his wife (or any other female relative) in the act of intercourse and then kills her or her partner. The repeal of this provision occurred gradually: in 1999, the excuse that completely pardoned injury or murder in the case that the offender caught his spouse, sister, ancestors or descendants having illegitimate intercourse was abolished and replaced by a mitigating excuse; then, in 2011, the mitigating excuse was abolished in all cases of injuring women for reasons of honour, whether they were caught in the act or merely suspected.

¹⁵⁵ CEDAW, art. 5.

¹⁵⁶ See ICJ report, Harmful Stereotypes and Assumptions.

violence. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. Stereotyping also affects the credibility given to women's voices, arguments and testimonies, as parties and witnesses. In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the re-victimization of complainants.¹⁵⁷ The CEDAW Committee has therefore called on States to ensure all legal and quasi-judicial procedures are free from gender stereotypes and/or prejudice.¹⁵⁸

Lebanon must thus combat persistent gender stereotypes not only in the law but also in practice. The Lebanese Government should lay down a clear policy to combat gender stereotyping, including taking effective measures to address gender-based discrimination and stereotypes, as well as training judges, lawyers, and police forces.

Recommendations

In light of the above, the ICJ calls on the Lebanese authorities to remove all obstacles related to societal norms, gender stereotypes and economic and social realities in Lebanon, including through:

i) Taking steps to address the social and practical factors that impede women's access to justice such as discriminatory attitudes, gender-based stereotypes and prejudices that operate in society, including by:

- **Addressing all discriminatory practices and eliminating all types of stereotypes and bias against women that undermine criminal investigations and prosecutions in GBV cases, including by:**
 - **Amending Law No. 293/2014 and the Criminal Code to establish adequate and accessible legal protection from discrimination;**
 - **Enacting new laws that prohibit discriminatory behaviours against women;**
 - **Removing additional barriers that undermine criminal investigations and prosecutions of GBV, such as the unreasoned preference accorded to the evidence of the alleged perpetrators of violence against women over that of their victims, without undermining fair trial standards and the presumption of innocence;**
- **Raising awareness among all Lebanese justice actors and citizens, including by:**
 - **Conducting an official public campaign to reject violence, discrimination, and stereotypes against women, also including efforts towards educating people to reject discrimination and GBV from a young age;**
 - **Providing adequate training to all law enforcement officials, including judges, prosecutors, police officers, lawyers, social workers, and forensic doctors on gender equality and non-discrimination in law and practice;**
 - **Ensuring that where law enforcement officers fail to ensure an effective investigation into an incident of GBV, through negligence or by intimidating or otherwise trying to persuade the victim not to pursue the matter, their omissions and actions be actionable as a breach of their duties, including where justified by imposing appropriate disciplinary measures;**
 - **Providing capacity building training to judges, prosecutors, lawyers and law enforcement officials on the application of international legal instruments related to human rights, including CEDAW and related jurisprudence, and on the application of legislation prohibiting discrimination against women;**
 - **Limiting the application of article 252 of the Lebanese Criminal Code that allows mitigating circumstances for crimes committed in a "fit of fury" in cases of GBV;**
 - **Training judges to take into consideration the socio-psychological aspects of any case when interpreting and applying statutory or other legal provisions;**
 - **Providing adequate financial and human resources to support women's engagement with the Lebanese justice system, including by recruiting and**

¹⁵⁷ CEDAW Committee, General Comment No. 33, paras. 26 and 27.

¹⁵⁸ CEDAW Committee, General Recommendation No. 33, para. 18(e).

training more female police officers and ensuring they are in charge of registering complaints of violence against women;

- o **Inclusion of training on gender-sensitivity in judicial, prosecutorial and law enforcement training programmes.¹⁵⁹**
- **Revising existing accountability mechanisms for public officials, such as through the establishment of effective oversight and monitoring mechanisms, the elaboration of clear codes of conduct, guidelines and directives and the initiation of proceedings or other measures in relation to officials who discriminate or otherwise do not adhere to the applicable codes of conduct, guidelines and directives.**

ii) Implementing measures to address the social and practical factors that impede women's access to justice such as women's status in society, including by:

- **Increasing efforts to design and implement comprehensive awareness-raising and capacity-building programmes to foster a better understanding of and support for equality between women and men at all levels of society, aimed at modifying stereotypical attitudes and traditional norms about the responsibilities and roles of women and men in the family, the workplace and in society, as required under articles 2(f) and 5(a) of CEDAW, and to strengthen societal support for equality between women and men;**
- **Promoting a dialogue on the negative impact of stereotyping and gender bias in society and especially in the justice system and the need for improved justice outcomes for women victims and survivors of violence.**

iii) Developing awareness programmes to improve women's knowledge of their rights and available services, including by:

- o **Improving access to education and information regarding women's human rights, including on the realisation of women's right of access to justice in law and practice;**
- o **Disseminating information on women's guarantees of equality through easily accessible formats such as radio broadcasts and in cooperation with civil society organisations and experts.**

¹⁵⁹ See ICJ, *Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia* (25 June 2016), available at <https://www.icj.org/wp-content/uploads/2016/09/Southeast-Asia-Bangkok-Guidance-Advocacy-2016-ENG.pdf>

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