



From Theory to Practice

CEDAW before the lebanese courts

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Introduction

The subject of this study is to examine the application of the rules of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by the Criminal Courts in Lebanon. This study will proceed with a review of ten¹ criminal court decisions and rulings issued in the year 2009, and will examine the sensitivities shown by the Lebanese courts with regard to the basic principle of equality between men and women. It will further proceed to review the extent to which these courts and their jurisprudence have worked towards bridging the prevailing gap between the provisions and principles stipulated by the Lebanese Constitution and CEDAW, on the one hand, and those stipulated by the Lebanese Penal Code, on the other.

¹The United Nations Convention on the Elimination of All Forms of Discrimination against Women; adopted and opened to signature, ratification and accession by Resolution 34/180 passed by the United Nations General Assembly on December 18, 1979.

Chapter One: CEDAW in the Lebanese Legal System

Entering into force as an international treaty on September 3, 1981, CEDAW has come to represent a global legal reference in codifying comprehensively international legal standards with regard to women, especially as this Convention is binding upon all the states that signed, ratified or acceded to it.

Lebanon ratified and acceded to this Convention in 1997, subject to reservations with regard to three specific Articles: Article 9³ (Paragraph 2) which calls for equality in **nationality**², and certain paragraphs of Article 16³ related to personal status (matters related to family affairs and marriage), as well as Article 29 of the Convention regarding arbitration.

Part 1: CEDAW: Conformity to the Provisions of the Lebanese Constitution

The Convention on the Elimination of All Forms of Discrimination against Women conforms to provisions in the Lebanese Constitution which declare the state's commitment and obligation to human rights and which enshrine the principle that all citizens are equal.

- The Preamble of the Lebanese Constitution

The Preamble of the Lebanese Constitution states that, "Lebanon is a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception." This being with the knowledge that the United Nations Charter sets as one of the Organization's central goals "the reaffirmation of faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women".

The Universal Declaration of Human Rights also affirms the prohibition of all forms of discrimination and declares that, "All human beings are born free and equal in dignity and rights" [...] ⁴ and that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex language,⁵ religion, political or other opinion, national or social origin, property, birth or other status."⁶

² Paragraph 2 of Article 9 of the Convention states: Parties shall grant women equal rights with men with respect to the nationality of their children.

³ Lebanon's reservations related to Articles 9 and 16 of the Convention contravene the object and purpose of the convention, and violate Paragraph 2 of Article 28, which states: "A reservation incompatible with the object and purpose of the present Convention shall not be permitted."

⁴ From Article 1 of the Universal Declaration of Human Rights.

⁵ Also in the Preamble of CEDAW.

⁶ From Article 2 of the Universal Declaration of Human Rights.

- The Principle of Equality in the Lebanese Constitution

The Lebanese Constitution affirms the principle of equality in a number of articles; for example, Article 7, states that, “All Lebanese shall be equal before the law. They shall equally enjoy civil and political rights and shall equally be bound by public obligations and duties without any distinction.” CEDAW defines the term discrimination against women, in Article 1 of the convention 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”.

Part 2: CEDAW: A Reference for those Seeking to Eliminate Discrimination

Lebanon’s accession to CEDAW crowned the efforts of civil society organizations aimed at achieving equality for all citizens. Indeed, civil society has adopted this Convention as a frame of reference for its agenda and as the foundation for its set of demands related to purging Lebanese laws of any form of discrimination against women.⁷

In fact, since then, several laws have been amended while other laws are currently under consideration, particularly laws related to the Lebanese Penal Code.

- Discrimination against Women in the Lebanese Penal Code

The Lebanese Penal Code was enacted by Legislative Decree No. 340 issued on March 1, 1943; and it is considered the main bastion of discrimination against women in the Lebanese legal system. Consequently, amending the Lebanese Penal Code has become one of the fundamental tenets of the set of reforms demanded by Lebanese civil society of the state. And, despite the fact that several draft laws have been prepared and submitted to the Lebanese Parliament, there has been no comprehensive review of the Penal Code to date.

⁷ Article 2 of CEDAW states the following:

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

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

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

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

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

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

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

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

- Targeting Personal Freedoms and Privacy

Of the most significant subjects of discrimination against women in the Lebanese Penal Code are linked to issues related to women's personal freedom and their privacy; for example, and to name just a few: honor crimes; rulings and provisions related to adultery and the manner in which either this criminal offense is investigated or is proven; the non-criminalization of marital rape; and the lack of measures adopted to protect women from domestic violence or from harassment, and so on.

A set of draft legislation proposing amendments to the Penal Code was presented before the Lebanese Parliament. However, upon reviewing the legal texts amended and adopted by the committee formed for modernizing these laws in 2009 – which have not yet been endorsed – , it becomes clear that despite the fact that several articles have been amended, these measures still fall short of meeting human rights standards. For example, the aforementioned committee adopted the proposed amendment of Article 487 and all that followed in this Article with regard to adultery and the forms of discrimination related therein; however, it did not adopt a proposal to abolish Article 503 so that marital rape becomes a punishable criminal offense; and, it did not adopt abolishing Article 562 related to so-called “honor crimes”.

Part 3: Concepts of Equality: Gaps in the Lebanese Legal System

The fact that the Lebanese authorities have rejected the amendment or repeal of certain articles in the Penal Code poses serious questions about the state's legislative policy. It also points to the fact that, on the one hand, the principle of equality is not a fundamental given and, on the other hand, the understanding that Lebanese legislators have with regard to the concept of equality differs from that of CEDAW's understanding of this concept.

- Equality with Reservation

Despite the fact that Lebanon signed CEDAW, and despite the fact that Lebanon has adopted the principle that all citizens are equal, the Lebanese state remains stringently reserved about the concept of full equality, which impacts upon the concept of **“lifting oppression from the lives of women”**, as it is keen to safeguard the continuity of the traditional roles of women and men.⁸

⁸ On the one hand, the position of the Lebanese state and its legislative policy regarding full equality is apparent in its reservations (to CEDAW) and, on the other hand, in the remarks appended to the agreement by the Ministry of Justice, and especially those made Dr. Wajih Khater, which affect the notion that achieving full equality as being different from the idea of “lifting oppression from the lives of women”. This position is also clearly evident in the consultative opinion presented by Judge Shukri Sadek during the signing ceremony of the optional protocol, in which Judge Sadek proposed that Lebanon not sign the protocol.

- Equality according to CEDAW

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. In its preamble CEDAW declares that states must be “aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women”. Moreover, Article 4⁹ of CEDAW considers that positive discrimination favoring women is not considered discrimination as defined by the Convention, as these measures are considered temporary measures aimed at accelerating the elimination of the gender based discrimination.

The Conceptual Gap

Certain Lebanese laws are rooted in discriminating against women and in preserving the traditional roles held by women and men. The most prominent forms of this kind of legislation exist in the Personal Status Laws and in the Penal Code. Indeed, and noting that their very nature is inherently discriminatory, Lebanese Personal Status Laws represent a comprehensive system whose impact does not stop at discriminating within the family structure but also extends to restricting the movement, rights and freedoms of individuals within society as a whole. On the other hand, the Lebanese Penal Code discriminates against women and represents a proverbial “big stick” used against women, who violate these provisions – even if they are exercising rights enshrined in and guaranteed by the Lebanese Constitution as well as rights enshrined in and guaranteed by CEDAW.

The gap that exists between the provisions of the Lebanese Constitution and CEDAW and the Lebanese Law, in certain cases, is representative of a gap between the law and justice. And, yet at other times, it is representative of a gap between two different concepts of equality that, in practice, is equivalent to reinforcing discrimination.

In the face of such discrimination, protected by the law, the judiciary remains a reference before which litigants hope for justice and redress. But, can the judiciary, which is entrusted with the task of applying and enforcing the law, undertake the task of rooting out discrimination from the law?

The legal system is an integrated and sequential system. When provisions of the domestic law contravene provisions stipulated by international conventions, signed and endorsed by Lebanon, priority goes to the laws stipulated by international agreement pursuant to the principle of sequence rules. CEDAW has put in place general provisions and comprehensive principles for a legislative policy that the Lebanese state has committed to translating into law. In fact, Lebanon has initiated certain changes and amendments. The question that poses itself, however, is what does Lebanon’s accession to CEDAW mean for litigants and the position of the judiciary towards these litigants: Has the Convention been raised before the courts? Are judges and the courts obliged to invoke the application of CEDAW, automatically?

⁹ 1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory

Chapter Two: Women before the Courts in Beirut

As this study represents the first review of penal provisions in the Lebanese legal system from a “CEDAW” perspective, it was decided that it would focus on rulings and decisions issued by the Court of Criminal Appeals and the **Criminal Courts in Beirut**, respectively, based on the **assumption** that the cases tried before the capital’s courts are the most realistic expression and representation of the kinds of cases tried before Lebanese courts, in general.¹⁰

1. Sampling of Cases

In the year 2009, the Criminal Court of Appeals and the Criminal Court in Beirut issued 70 rulings and decisions in cases in which a woman was a party to the case tried. Forty rulings were issued by the Criminal Court of Appeals and 30 decisions were issued by the Criminal Court.¹¹

With regard to these rulings, the following observations should be duly noted:

o Not a single ruling or decision issued by the Court of Appeals or the Criminal Court makes mention of CEDAW, despite the fact that this Convention provides the main framework and reference for the public debate around the subject of “equality”.

o Court decisions and rulings that are based on flagrantly discriminatory provisions – which have come to represent the focus of civil society organizations – are rare; which raises the question of the extent to which legal references and the judiciary have become marginalized with regard to such matters.

o **On the other hand, we notice an absence of gender sensitivity in these court decisions and rulings; and, this is despite the fact that the numbers of female judges appointed to the courts have grown¹², which poses the question of the disparity between the concepts of equality as articulated by CEDAW compared to the Lebanese Penal Code.**

- Rulings issued by the Court of Criminal Appeals in Beirut, 2009

In 2009, the Court of Criminal Appeals in Beirut issued 40 rulings in cases where women were represented. Some of these rulings were issued in relation to the more general subjects of defamation, libel, verbal abuse, car accidents, bearing false witness or slander, disturbing the peace and theft or, in other words, cases where no gender specificities emerge on the level of the incidents in question or on the level of the application of the law in these matters. Other rulings were linked to subjects of a more economic nature, for example, related to issuing a check without an available balance (a bounced check), or credit cards and bank accounts...

¹⁰ Even if this premise is logical and plausible, obviously, it requires further corroboration and validation by reviewing court rulings and decisions issued in other areas in Lebanon.

¹¹ The rulings and decisions that are the subject of this sampling, in principle, and according to the statements made by the employee responsible for the Courts’ archives, are comprehensive and representative of all the rulings and decisions issued in 2009, with the exception of unintentional omissions and error.

¹² The numbers of Lebanese female judges have increased over recent years; indeed, today, female judges represent 40% of all the judges appointed to the Lebanese courts.

Yet other rulings were linked to matters of organized check fraud or checks and monies transacted by women for their husbands' businesses or work, or installments signed by both spouses, as well as other types of cases where the Court of Criminal Appeals ruled against the women represented. Two rulings issued in relation to acts of prostitution and to facilitating prostitution ended with opinions and sentencing¹³ that were particularly **surprising** and open to question.

Of these 40 rulings, we focused on five due to their particular nature¹⁴ and shall briefly present the circumstances surrounding these cases and the juridical solutions presented therein. Please refer to Annex 1.

- Decisions issued by the Criminal Court in Beirut, 2009

Decisions issued by the Criminal Court in Beirut were also varied; but they did not include the kinds of issues related to (legal) discrimination that would give rise to or instigate a broad legal debate. Here, we offer a summary of five of these rulings in Annex 2.

¹³ A large part of the amendments introduced into the Lebanese Penal Code, and particularly those introduced by Law No. 239, enacted on May 27, 1993, are linked to revising the value of fines especially after the dramatic devaluation of the Lebanese currency. What is worth noting is that the value of the Lebanese Pound (Lebanese Lira or LL) against the United States Dollar was quite high before the Civil War began in 1975, where one United State's dollar was equivalent to 3 Lebanese Pounds (LL) whereas by the early 1990s this exchange value went up to LL3,000 to the dollar, before it finally stabilized at LL1,500, which is the current value and has been since the mid-1990s.

¹⁴ We deliberately changed the names of persons and certain circumstances surrounding these cases in order to protect the privacy of those individuals concerned or involved in these lawsuits.

Chapter Three: What Remains Unsaid in Decisions and Rulings Issued by the Lebanese Courts

A review of the aforementioned court decisions and rulings reveals that the reality reflected by these rulings differs from the reality within which the Lebanese live and that which Lebanese society actually experiences.

Part 1: The Gap between the Crises that Exist and the Number of Complaints Actually Referred to the Courts

The number of actual crises that exist and the number of complaints submitted are completely inconsistent with the number of court decisions and rulings actually issued. Indeed, a lower number of court decisions and rulings is usually indicative of respect for the rule of law and social stability. However, this particular principle does not apply in the Lebanese case. The city of Beirut is one of the most densely populated and congested cities. It includes almost half the Lebanese population during the day and 40% of its residents at night. If we were to review records issued by the Internal Security Forces (ISF) and based on the number of complaints submitted to the ISF, we would find that a competition exists between the Cazas of Mount Lebanon and Beirut over the highest crime rates in Lebanon. This means that the numbers of resolutions put forth by the courts are absolutely disproportionate to the numbers and levels of crises that the city lives, and which continue to augment.

Charter sets as one of the Organization's central goals "the reaffirmation of faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women".

The Universal Declaration of Human Rights also affirms the prohibition of all forms of discrimination and declares that, "All human beings are born free and equal in dignity and rights" [...] and that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as [race, colour,] sex ... [language, religion, political or other opinion, national or social origin, property, birth or other status]".

Part 2: Do Court Rulings Reflect the True Nature of the Crises

An examination of the court decisions and rulings issued in a country reflects the kinds of values that are safeguarded by its society and that are guaranteed protection by that country's penal code. These also reflect the patterns and ways that social relations are coordinated as well as the patterns and ways that crises are dealt with. Thus, do the nature of the court decisions and ruling issued in Lebanon, and the issues that these decisions and rulings were meant to resolve, represent the nature of the types of crises we witness or hear of in Lebanon?

- Protecting Values/Protecting the Social Status Quo

In the case of the woman, Awatef, and her husband, who facilitated her prostitution, the court sentenced Awatef's husband to a fine only, while Awatef was sentenced to both a fine and a prison term.

The decision by the court in this case and the sentencing therein are a violation of the Penal Code, which clearly applies the same penalties and punishments to both those who practice clandestine prostitution and those who facilitate it. Similarly, this court decision violates all universal and basic norms and common values which consider facilitating the prostitution of one's wife as challenging one of the standing tenets of a social value system. Indeed, this court decision neither reflects universal or basic social norms and values, nor does it apply the rule of law; however, it does reflect a common stance taken by the prevailing Lebanese social order when it comes to maintaining the status quo of social roles; i.e. showing leniency towards the man, because he is a man, and stringency towards the woman, because she is a woman.

- Protecting Values/Protecting the Class Structure

It is common knowledge that a large number of foreign female domestic workers are subjected to violence and abuse by those who employ them, as it is common knowledge that some of these foreign female domestic workers also commit crimes themselves – some of which are quite heinous. However, there was not one single court ruling or decision issued with regard to foreign female domestic workers who were the victims of violence or abuse. On the contrary, the only instances in which these domestic workers emerge in cases are when they appear before the courts as offenders.

Three cases were referred to the Criminal Court where foreign female domestic workers appear as offenders; two of these domestic workers were charged with the attempted murder of their employers, the third was acquitted of charges of attempted murder of her fetus.

What is interesting to note is that there is not one single case in which a foreign female domestic worker appears as the victim. This is particularly interesting as, in the last few years, foreign female domestic workers have made claims that they have actually thrown themselves from windows or from balconies.¹⁵

- Cases of Domestic Violence

Domestic violence is rampant in Lebanon. And, this violence is an example of the kinds of discrimination practiced against women that are condemned by international conventions, by CEDAW and by the General Recommendations put forth by its Committee [The Committee on the Elimination of Discrimination against Women].¹⁶

¹⁵ Newspapers continuously publish stories about foreign female domestic workers, who allegedly have thrown themselves off balconies. What is remarkable is that all these stories make the assumption that these women have committed suicide. And, outcomes of investigations carried out in these cases always confirm the assumption of suicide, a day after these news stories are published. In August of 2010, records show that there were nine cases of suicide of domestic female workers. In all these cases, not one case presents evidence that any of these women were abused and aggressed.

¹⁶ Particularly General Recommendation No. 12, issued in 1989, and General Recommendation No. 19, issued in 1992, notwithstanding certain resolutions taken by the UN General Assembly, and those taken at international conferences, amongst others. [For the exact text of the General Recommendations issued by CEDAW, refer to the following links:<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom12> and <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>]

In 2009, there was only one case of domestic violence referred to the Court of Criminal Appeals. And, in this case, the husband was acquitted of all charges despite the fact that the wife presented a report by an official medical examiner who ordered that the wife be allowed a one-week leave of absence from work **to recover from her injuries**. Perhaps, the year 2009 is exceptional as, in the past, tens of cases have been referred to the courts related to domestic violence and in which certain court decisions, rulings and sentencing were fair¹⁷. Also, in the past, other cases of domestic violence were put forward by women against other women or by relatives **of offenders** who were still minors.¹⁸ **One of these court decisions was exceptional in terms of the** circumstances of the case and the decision issued, which was sympathetic to the woman.¹⁹

One cannot conclude that the incidence of domestic violence has diminished to the point where it no longer exists. Instead, seeking redress in the judicial system or continuing with a complaint during the course of a domestic violence case is what has actually waned. Indeed, it is common knowledge that the greater proportion of complaints put forward in cases of violence against women never go beyond the stage of the preliminary investigation; and, very few cases regarding these complaints ever reach the courts. Of the cases that eventually reach the courts, the majority end before Judges of the Courts of First Instance with either acquittals or suspended sentences.

¹⁷ Where the accused proceeded to strike his wife in the face with a knife during a confrontation that took place between him and her, and the result of which led to the permanent disfigurement of her face, damage to her facial nerves and damage to the nerves in her lower lip: Felony pursuant to Article No. 557 of the Lebanese Penal Code; Law Review [Cassandre]; Article 557 Felony, 2001, Issue No. 6; p. [law] 810.

¹⁸ Where the [female] accused proceeded to subject the [female] plaintiff to battery and harm; and of binding her hands with rope; and of placing rope around her neck; and of placing pressure on and constricting her neck; and of placing a container filled with a gallon of water on her stomach, during a medically critical period of pregnancy. In this case, the intent to kill the victim/plaintiff on the part of the accused was not proven, as the accused could have easily achieved this end by virtue of her ability to easily overpower the plaintiff. Therefore the acts committed by the accused do not represent the felonies pursuant to Articles 201/549 of the Penal Code, but represent the criminal offenses [misdemeanors] stipulated in Article 555 of the Penal Code. Where the accused proceeded to attempt to abort the plaintiff's fetus after placing a container filled with a gallon of water on her stomach and putting pressure on the container over her stomach with the intention of inducing an abortion, the charges represent the criminal offenses [misdemeanors] stipulated in Articles 201/549 of the Penal Code; Law Review [Cassandre] 2001; Issue No. 2; p. [law] 247.
rejected, as the plaintiff did not personally suffer psychological damages for the harm and maltreatment inflicted upon his daughter; Law Review [Cassandre] 2001; Issue No. 1; p. [law] 54.

¹⁹ Returning to court rulings and decisions issued in previous years, it appears clear that the numbers of court rulings and decisions made were greater and the nature of these rulings were more varied; for example: The plaintiff entered his marital domicile where the man accused of being the lover of the plaintiff's wife was present with the plaintiff's wife, who asked him [her lover] to hide in the bathroom. An argument ensued between the plaintiff and his wife; the wife proceeded to put a sleeping pill in her husband's cup of tea; the husband calmed down and decided to go to sleep, after which the two lovers proceeded to attack the husband [the plaintiff]. The accused grabbed the plaintiff by the throat and restricted his arms while the wife deliberately stabbed the plaintiff in the chest with a knife, in light stabbing motions, causing him certain superficial injuries. The accused wife testified that, from this act, she wanted him to feel some of the torment and agony she suffered from her husband's harsh treatment of her. The court was convinced by the wife's testimony, due to the absence of any telling signs of the stab wounds inflicted upon the plaintiff's chest as a result of the incident, which was the subject of the claim; and also due to the fact that the plaintiff remained in his marital domicile with his accused wife for the rest of the hours of the same night in which the incident took place. The court acquitted the two defendants of charges of the felony of attempted murder due to lack of evidence and also of charges of the criminal offense [misdemeanor] of intent to deliberately harm for lack of proof that the plaintiff was unable to work as a result of the incident that was the subject of the claim; Law Review [Cassandre] 2001, Issue No. 5, p. [law] 675.

In a review of 15 rulings issued by the Court of First Instance in Beirut in cases of domestic violence, 14 ended in the acquittal of the defendant or in a suspended sentence for the defendant as an outcome of the Public Prosecution dismissing charges after the plaintiff chose to revoke her personal rights in the claim.

There is no doubt that the judiciary is not responsible for the disparity between the conflicts that actually exist in reality and those that are presented before its courts. For, the courts can only deliberate over complaints brought before them; and, these courts are not responsible for cases that are not presented before them or for cases that are withdrawn before they ever reach the courts. This is notwithstanding the disparity and gap that exists between the practical and lived reality and the reality reflected in case files – which raise more than one question regarding the causes behind the neglect in seeking redress in the courts and in the law, and the reasons behind the lack of trust people have shown in resorting to the law and to legal channels.

Part 3: Seeking Redress in the Judiciary

The lack of seeking redress in the courts and in the law leads one to conclude that conflicts are resolved outside the courts and outside the law. Even under circumstances where a case does reach the courts, it is often reversed or the charges are dismissed before the case can come to a conclusion.²⁰

- Women's Vulnerability in Seeking Redress in the Judiciary

Practice reveals the vulnerability of women in their ability to seek justice and redress through the **Lebanese** legal system:

The right to justice and fair access to the judicial system are two of the basic civil rights of citizenship, which is based upon the principle of women being equal to men before the law – a right enshrined by Article 7 of the Lebanese Constitution.²¹ In addition to the fact that the prevailing social reality in Lebanon with respect to women is governed by a traditional socio-cultural structure, which is not grounded in the rights of citizenship, the pursuit of women of their rights as citizens by seeking redress through the law before the justice system (or, i.e. resorting to the state) is translated by some traditional quarters as a form of rebellion against society and, in some cases, entails a loss of social protection and exposes women to further exclusion .

²⁰ In a study conducted by KAFA “Enough Violence and Exploitation” on the matter of complaints submitted in Mount Lebanon, it is clear that most complaints do not go beyond the preliminary stage of investigation.

²¹ Article 7 of the Lebanese Constitution states: All Lebanese shall be equal before the law. They shall equally enjoy civil and political rights and shall equally be bound by public obligations and duties without any distinction.

- Marginalization of the Law and of Rights

A just legal system is the guarantee which allows the law to become the reference that citizens will turn to and appeal to for recourse and redress. And, the law is not limited to the rules it enacts, but also includes an enabling environment and mechanisms which contribute to the application of these rules. If an environment is not conducive to the application of the law, people will resort to deliberating and resolving conflicts outside the law through what they call “customs and traditions”, which, in reality, represent a power struggle that rules in favor of the strongest, and more often than not, for preserving and safeguarding the traditional status quo and distribution of roles.

When the law is marginalized, women lose. Some women believe they are obliged to submit to the **traditional** balances of power because they are unable to afford the costs of going to trial, socially and psychologically, in addition to financially. And, the assumption here is that the intervention of the law is to clearly safeguard those who are right. Indeed, this is what the constitution guarantees every Lebanese citizen in its preamble, and what CEDAW affirms.

- Rights Stipulated by CEDAW that, if Exercised, are Punishable by the Lebanese Penal Code.

Women are liable to incriminate themselves if they exercise **certain** rights guaranteed by CEDAW but not endorsed by domestic laws. Indeed, if the provisions of CEDAW were applied in Lebanon, many cases would never reach the criminal courts:

- o Sonya’s crime lay in the fact that she violated a court decision and practiced her right to custody over her children²²; and this is a right stipulated in CEDAW and also guaranteed by the Lebanese Constitution, at least, in its preamble. However, the sectarian personal status system in Lebanon, which Sonya is subject to, does not grant this right to her. In her violation of the court decision issued by the Religious Court, Sonya became liable to a fine and imprisonment.

- o A number of crimes adjudicated by the courts in 2009 were the direct outcome of the discrimination practiced against women pursuant to the Nationality Law: A Lebanese woman living in Lebanon; married and had children in Lebanon, was unable to grant Lebanese citizenship to her children. This woman consequently forged identity papers and documents for her children. Certainly, nothing justifies forgery, and without a doubt, this act constitutes a crime of grave consequences. However, had the law respected her right to grant her children citizenship, this woman would never have been imprisoned.

²²The right of both parents in custody over their children is one of the rights guaranteed by Article 16 of CEDAW – one of the articles to which the Government of the Lebanese Republic entered a reservation upon ratification of the CEDAW agreement.

Chapter Four: Discrimination in Court Decisions and Rulings, Discrimination in the Law

Judges apply the law. This is the function of a judge and a judge is obliged to fulfill this task. However, this does not mean that a judge's options are non-existent. Indeed, a judge has the right to practice jurisprudence; however, at the same time, it requires an exceptional effort for a judge to try to attain justice without putting him or herself at odds with the law. The Lebanese Penal Code was enacted over 70 years ago, with only minor amendments entered into this code. It has, thus, remained fixed, captive to a social reality that does not resemble today's rapidly changing and evolving reality. It also does not bear a semblance to any of the new concepts which have become part of the legal gains we have achieved, and which society has come to accept. And, in this context particularly, this means issues related to human rights.

It is the right of a judge, and even the duty of a judge, to strive in his or her jurisprudence to achieve what is right: When legal texts and provisions are vague and ambiguous, and where their meanings are unclear or undefined, and lend to more than one interpretation, it is the duty of a judge to strive in his or her jurisprudence to contemporize the law, and to strive in his or her jurisprudence to define its scope, its broader dimensions and its implications. And, a judge must also strive in his or her jurisprudence when the law is silent, incomplete or oblivious to certain realistic cases and circumstances. A judge, in civil cases particularly, must strive to derive solutions from legislation, where solutions are not provided, or to revert to and measure against other standing legislation, such as international agreements or conventions, including CEDAW.

Finally, it is important to note that there are many approaches²³ to jurisprudence²⁴ and thus, many different schools of jurisprudence. But, the centrality of the concept of justice, the vitality and dynamics of its scope testify to the fact that the law has not yet uttered its last word. For, the culture of the law is a culture that accommodates vast expanses and horizons that is nourished by debate²⁵.

The absence of any reference to CEDAW by the courts and in court decisions and rulings: Not one of the court decisions or rulings reviewed for this study made mention of CEDAW, as is the case with any reference to universal principles and to the Lebanese Constitution. Moreover, lawyers and litigants themselves do not make mention of any such references. What is also remarkable is that all the court decisions and rulings issued were unanimous decisions, a fact indicative of the weakness of the legal debate that takes place during the application of the Penal Code.

²³ Pour l'essentiel, la clé de la méthode interprétative contemporaine réside non pas dans la lettre du texte, mais dans la prise en considération du contexte, à savoir principalement le cas d'espèce, les principes généraux du droit et le but social de la loi. C'est une approche fondamentale de l'interprétation ...Richard Tremblay, éditions Yvon Blais 2004.

²⁴ Interprétation des lois, 4eme édition Pierre-André Cote éditions Themis 2009.

²⁵ Parce que la controverse juridique est par nature interminable, il n'est jamais vrai que tout a été dit et écrit sur un sujet quelconque... Dans le savoir juridique, il y a toujours de multiples positions disponibles pour être respectées plus ou moins directement dans la recherche d'une solution juste ou pour être mises en réserve dans la mémoire collective ou dans un principe ou une théorie", Christian Atali, *Savoir des juges et savoir des juristes*, " Mes premiers regards sur la culture juridique Québécoise" Montréal, centre de recherché en droit privé et compare du Québec, 1990-Page 105.

Part 1: The Criminal Court of Appeals: A Traditional Approach and Literal Application of the Law

- The Public Prosecution in the Service of the Traditional Status Quo (and Distribution of Social Roles)

The mother's right to custody **over her children** before the Criminal Court Judge: A foreign woman married a Lebanese man and had two children with him. The father of the two children passed away. As a result of the father's death, the paternal grandfather sued for custody over the children; and, the **Religious Court, which has jurisdiction over matters of Personal Status**, granted the paternal grandfather this right, despite the objections of the children's mother. The mother was allowed to travel with her children to visit her parents, after seeking permission from the paternal grandfather, who agreed on condition that she returns with the children at a specific time. The mother travelled with her children, but did not return at the designated time (in 2006). At that point, the paternal grandfather submitted a complaint against the mother, which went before the Single Criminal Judge. Thereafter, the paternal grandfather changed his mind and revoked his personal rights to custody over the children. The Single Criminal Judge considered that, as the grandfather revoked his personal rights in the case, the charges pressed against the mother by the Public Prosecution would be considered automatically dismissed as well, pursuant to Article 133²⁶ of the Penal Code. However, the Public Prosecution objected to the Single Criminal Judge's decision and appealed to the Court of Appeals, which then ruled that Article 133 did not apply to the mother in this case. Based on this ruling, the Court of Appeals ruled to sentence the mother to a fine and a prison term.

It is useful to present a reading of this legislation in order to show the injustice done to this mother due to the closed and constricted reading of it by the Court, which does not make any mention of the exclusive circumstances to which its application is restricted, especially as this legislation includes circumstances that are more threatening than the act committed by Sonya, which was justified in light of the extenuating circumstances that marked the year 2006 **(i.e. the July War)**.

Article 133 of the Penal Code, upon which the Public Prosecution based its appeal and upon which the Court of Appeals ruled stipulates the following:

"Charges laid by the Public Prosecution shall be dismissed if a person **(plaintiff)** chooses to revoke his/her personal right **to press charges**, if this personal right is revoked prior to a ruling being issued... in the following crimes:

1. In cases of contemptuous behavior against individuals or their monies.
2. In criminal offenses related to defamation and libel against individuals other than employees of public institutions, public administrations and departments, municipalities, the military, official committees and judicial authorities, due to their positions of employment and their functions, in addition to Members of Parliament, Ministers and the Head of State under all circumstances.

²⁶The draft amendment to the Penal Code proposed by the Law Reform Committee amends Article 133 in a manner that limits the circumstances in which it can be applied.

3. In the criminal offenses of assault, battery and harm against individuals if the act in question does not lead to a disruption or leads to a disruption of the individual's employment that does not exceed ten days.

4. In all misdemeanors occurring between spouses prior to their legal separation or occurring between ascendants and descendants, or between the father and mother and the adopted child.

5. In misdemeanors stipulated by Articles 647, 651, 650, 658, 670, 671, 673; and, in criminal offenses set forth in the preceding paragraph and where there are several defendants, personal rights against one of the defendants being revoked shall lead to the dismissal of charges pressed by the Public Prosecution against all defendants charged with the same criminal offense..."

The text of Article 133 of the Penal Code does not indicate, in any of its clauses, that the circumstances enumerated above are exclusive, which allows the court a certain margin for interpretation of Article 133 in a manner that would include the case of the mother (Sonya) – especially as this understanding of Article 133 is more in line with the obligations of the Lebanese state towards the Lebanese Constitution and towards CEDAW.

The fact that the Public Prosecution appealed the court decision in Sonya's case is odd. This is especially the case, if one compares the position held by the Public Prosecution in other legal actions where the Public Prosecution did not appeal rulings despite the presence of more than one justifying cause for an appeal; for example, the ruling issued by the Court of First Instance in the case of Awatef, her husband and their friend Huda.

- The Case of Awatef, Her Husband and Their Friend Huda: Incomplete Knowledge of the Facts and Transgressing the Law in Sentencing

The Public Prosecution pressed charges against Awatef and her husband and against a woman named Huda. The Single Criminal Judge ruled against Awatef on charges of prostitution and sentenced her to a fine and to a prison term, and sentenced her husband to a fine for facilitating the prostitution of his wife, Awatef. It also fined their friend, Huda, on charges of prostitution.

The Public Prosecution did not appeal this court decision and remained silent about the clear injustice done to Huda, who the Court ruled against based solely on the testimony of Awatef: "Awatef implicated Huda in the case even though she had nothing to do with the matter". And, despite Huda's denial, and despite the lack of evidence against her, the allegations made against her were taken as a presumption of her guilt!

Huda appealed the decision. And, the Court of Appeals overturned the decision made by the Court of First Instance. It declared Huda's innocence and dismissed the charges of prostitution made against her based on reasonable doubt and lack of evidence.

However, the fact that the Public Prosecutor did not appeal the way the court decision discriminated between Awatef and her husband is odd indeed: Returning to the facts of the case, the charges of prostitution were proven in Awatef's case, and the charges of facilitating prostitution of his wife were proven in her husband's case.

The law is clear in terms of the parity in meting out penalties for such criminal offenses: “The punishment is the same for those who practice clandestine prostitution and for those who facilitate prostitution”. Nevertheless, Awatef was convicted and sentenced to a fine and a prison term whereas her husband was sentenced to a fine only after being convicted of facilitating prostitution!

The court in this case went even further than the law in its discrimination between the man and the woman. This legal violation constitutes a violation of the provisions of CEDAW, and particularly Article 6 of CEDAW, which stipulates that, “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.

On the other hand, the investigation did not reveal all the facts: There was no indication in the investigation that Awatef was in fact involved in prostitution against her will and under coercion from her husband. This possibility was not put forward at any stage of the trial.

The Court of First Instance goes further than the law in its discrimination, and by not appealing this court’s decision, the Public Prosecution endorsed the facilitation of prostitution, and reduced the cost of facilitating prostitution so that it would no longer act as a deterrent for the husband.

- The Law, the Public Prosecution and the Judiciary: Siding with the Rich

Jamila prepared a check for the purposes of her husband’s business; and, the husband co-signed this check with his wife. When the check went to the bank, there was not enough money in their account to cover the check. The bank called in both spouses. After investigating the matter, penalties in the sentence against the husband were suspended but Jamila was sentenced to a fine and a prison term, in addition to being obliged to redeem the amount of the bounced check. The Public Prosecution did not appeal this court decision. However, Jamila did.

The Court of Appeals endorsed the ruling issued by the Court of First Instance and upheld the suspended sentence against the husband and upheld the sentence against the wife of a fine and prison term; and, it decided to suspend the sentence of the wife having to redeem the value of the bounced check.

There is no doubt that the court applied Article 666 of the Penal Code in this case; and, in this context, we are not debating the legitimacy of this article. However, the ruling would have been different if the court looked into the presence of the intent to commit a crime or even into the facts of the case themselves. If it had, the court would have found that the wife was subjected to violence, in whatever form that violence may be, which forced and coerced her into writing that check – a fact not mentioned in the ruling.

- Evaluating Evidence of Spousal Abuse in the Appeal in the Wahib Case

Maysoun took her husband, Wahib, to court on charges of the criminal offense of battery and harm pursuant to Article 544 of the Penal Code.

A medical report by an official medical examiner was submitted to the court, proving that she had been beaten to the point that she was unable to go to work for one week. And, although the Single Criminal Judge considered that there was enough proof to convict the husband for the offense of battery and harm, he sentenced Wahib to a fine of only Lebanese Pounds (or Lebanese Lira or LL) 200,000 (equivalent to approximately US \$133.00) and LL500,000 (equivalent to approximately US \$333.00) in compensation for damages suffered.

The Public Prosecution did not appeal this ruling to increase the fine or the compensation, for example; instead, Wahib appealed the sentence.

The Court of Appeals dismissed the decision issued by the Court of First Instance and ruled to acquit Wahib of all charges. The court justified its ruling on the basis that after the incident, the wife went to the airport and then to the Bekaa Valley before going to the medical examiner, in which case, she may have been beaten by someone else other than her husband. This is with the knowledge that the ruling made no reference to the relationship that existed between the defendant and the plaintiff, at any point; and, it did not show any sensitivity towards ascertaining any proof that the beating took place in the marital domicile by the husband. It also did not take the relationship into account at any point during the course of the presentation of the facts and circumstances surrounding the case, or during the course of the presentation of evidence, or during the course of determining sentencing. What is also important to note is that the official medical examiner, who is an experienced forensic expert in these matters, was capable of identifying and determining the signs of domestic violence and of distinguishing these from other forms of abuse, battery and harm.

An exemplary case dealing with domestic violence in Lebanon, which helps explain the reason why women do not submit complaints and press personal charges: A complaint was submitted on February 4, 2004; and, after five years of suffering, the Court of Appeals ruled on February 23, 2009, to acquit the husband for lack of evidence and ruled that the wife would be obliged to bear the burden of all the costs incurred during the five years of the trial proceedings in that case.

Part 2: The Criminal Court's Approach

The cases presented before the Criminal Court are not a realistic or comprehensive reflection of the felonies actually committed, which we hear about, see with the naked eye or even read about in the obituary pages of local newspapers: We hear about women, who suddenly pass away by the will of God, and whose deaths are considered "natural". And, we are overcome by doubt when we find out that these women were in good shape and health, but were involved in a conflict or power struggle with their husbands or relatives over a certain inheritance or property.

There is no insistence to investigate many suspicious deaths. It is possible to write off a "natural" death that occurred in the home by issuing a death certificate without a doctor's affidavit or without an investigation into the cause of death. We also here rumors of forged medical reports and rumors about deaths which, in reality, were murders. Perhaps the perpetrators are persons of influence. But, whatever the case, these matters never reach the chambers of the Criminal Court. These crimes, which are enveloped in a shroud of silence, hide in their folds the stories of many women who are now gone forever.

Decisions issued by the Criminal Court are characterized by the fact that they are meticulously constructed, and there is a benefit to presenting the facts that dictate these decisions. But certain aspects of these decisions reflect discrimination against women or, against certain women.

- Is Discrimination against Women a Matter of Class?

Rima claimed that her Filipina maid, Michella, tried to kill her by beating her repeatedly on the head and body with a baseball bat and then tried to strangle her. The crime was proven in court; and the court found Michella guilty, sentencing her to a reduced sentence of three years imprisonment with hard labor and a fine of LL15 million (equivalent to approximately US \$10,000) for damages incurred.

However, the court decision in this case did not reveal the grounds upon which the reduced sentence was based. Was Michella abused or did she suffer from certain psychological problems? Many questions perhaps could have been answered by the case file; but, such clarifications did not emerge anywhere in the court decision: According to the case file, the investigation and the affidavit of the other maid serving in the household, Mary Ann – who was present at the scene of the crime and who tried to help her employer – Mary Ann believed that Michella had also tried to poison her. Evidence of that was the fact that Mary Ann did indeed throw up in the house and in the ambulance while she was being transported to the hospital, where her stomach was pumped... But, there was nothing in the case file in reference to charges being pressed by Mary Ann, or by the Public Prosecution or by Rima in relation to this crime, nor was any legal action taken to hold Michella accountable for it! Mary Ann's affidavit and testimony was without effect, as if she did not exist!

In this court decision, it appears that Mary Ann, the domestic worker, was the object of discrimination. Perhaps she was ignorant of certain procedures or was unaware of her personal right to press charges in such a case. In the meantime, the Public Prosecution, itself, did not take the initiative to take any legal action or press charges against Michella for the crime that she allegedly committed against Mary Ann.

- Discrimination in Evidence

In the case of Ingrid (an Ethiopian domestic worker), who attempted to kill her employer, Anahid, by stabbing her in the back while she was sleeping: The charges of attempted murder were proven. However, during the course of the trial, it became evident that Ingrid was unaware of her actions; but no evidence was presented regarding the fact that there were signs that she was unstable. An official medical examiner was not appointed to diagnose Ingrid's psychological state and she was convicted. Ingrid received a reduced sentence of time served and was deported from Lebanon, especially as Ingrid's employer revoked her personal right to press charges against Ingrid.

- Flagrant Discrimination between a Lebanese Fetus and an Ethiopian Fetus

An Ethiopian woman, Cosette, worked as a domestic worker at the residence of Wafiq. Wafiq recruited the services of Cosette through a recruitment office only two months prior to the incident in question. Cosette was taken to a hospital, suffering from severe hemorrhaging.

Later, it became clear that she had given birth to a fetus, which was found dead under her bed in the kitchen, where she slept.

Did Cosette kill her fetus or was it stillborn? Despite the fact that she changed her affidavit several times, despite the discrepancies found in the medical examiner's report and despite the discrepancies found in the explanations provided by the medical examiner about this report, Cosette was acquitted of murdering her fetus and returned to work in the home of her employer, Wafiq.

Would the court decision have been different if the fetus was of another nationality?

- Protecting Girls from Scandal

Nada was having sexual relations with Walid, a boy from her school. It was proven that Nada lost her virginity with Walid. Soon after, Nada began another relationship with Jihad. Walid and Jihad both photographed having sexual intercourse with Nada without her knowledge. The two boys distributed these images by Bluetooth and CD-ROM, inside and outside their school, sparking a major scandal.

Walid and Jihad were convicted in absentia for committing acts that posed an affront to public morals and ethics, and were convicted of having sexual intercourse with a minor (statutory rape). They were sentenced to two years in prison and to pay a fine of LL50 million (equivalent to US approximately \$33,000) to compensate Nada for psychological damages suffered. The attorney representing the Public Prosecution asked that Article 505 of the Penal Code (severity) be applied in sentencing. However and instead, the court decided to apply Article 504, because the intercourse took place with the consent and agreement of the girl in question.

The court's decision affirmed the protective position taken to safeguard the girl from that which may pose an affront to her reputation. It also confirmed that when a moral scandal erupts, it means that public morals and ethics have been subjected to an affront. Discrimination against women exists in the very structure of the Penal Code, because it reinforces the traditional status quo and social postures, and sometimes even despite these. Moreover, this discrimination is embodied by the culture which governs its application.

Chapter Five: Gender Sensitivities and the Presence of Women in the Lebanese Courts

The ratio of women to men in the Court of Appeals and in the Criminal Court is disproportionate; and, this disparity reflects upon the gender sensitivity of both courts. At the same time, it is also important to recognize that other factors and variables are linked to the age of judges, their personal choices and particularly, their commitment to human rights and their sensitivity to the injustices suffered by women. These other factors and variables are ones we were unable to examine, despite the great impact they have had on the course of justice.

Indeed, a male presence dominates Court of Appeals' rulings, whereas, in the Criminal Court, the voices of women weigh up to those of men.

This disparity in male to female presence is reflected in the rulings issued by the Court of Criminal Appeals, which appear to be more biased towards favoring males, particularly when it comes to maintaining the traditional social structure and distribution of roles. Meanwhile and on the other hand, the presence of women does not translate into a bias towards favoring women or towards showing sensitivity towards the complicity of social roles and structures on criminal behavior.

Rulings reached by the Court of Appeals in Lebanon could have afforded more than one solution; and, "perhaps" the outcome could have been different had the composition of the court been different:

o In Sonya's Case:

Justice for the mother: In Sonya's case (custody between the paternal grandfather vs. the natural mother), it is important to remember that the Single Criminal Judge (a female judge in this case) issued a decision that was in favor of the mother, and that the judge decided that, pursuant to the application of Article 133 of the Penal Code, the charges pressed by the Public Prosecution against the mother were considered dismissed by the court as soon as the paternal grandfather, himself revoked his personal right to sue for custody.

However, the Public Prosecution (represented by a male attorney in this case) appealed the Single Criminal Judge's decision based on the consideration that the mother's case was not included under the provisions stipulated by Article 133. The Court of Appeals overturned the original decision, and ruled to imprison the mother for two months and subjected her to a fine of LL200,000 (equivalent to approximately US \$133.00).

If the Public Prosecution enjoyed a certain degree of gender sensitivity, it too would have interpreted Article 133 of the Penal Code in the same manner as the Single Criminal Judge (where the Prosecution's charges were considered automatically dismissed when the grandfather revoked his personal right to sue for custody).

o In Huda's Case:

Showing less empathy for the husband: In Huda's case, the Single Criminal Judge was a man; and, this judge was more severe towards Huda and Awatef and more forgiving of Awatef's husband. The Public Prosecution (represented by a male attorney) did not appeal the ruling, as Awatef did not appeal the ruling and, obviously, neither did her husband. Meanwhile, Huda did appeal the decision with the aim of exonerating herself from the conviction of practicing clandestine prostitution. And, in fact, a panel of two (male) judges and one (woman) judge would acquit Huda on appeal, based on lack of evidence.

o In Jamila's Case:

The court decision issued against Jamila for the crime of writing a check without an available balance (a bounced check), pursuant to Article 666 of the Penal Code, is also indicative of a total absence of gender sensitivity by the courts. Jamila had written the check in question to meet the needs of her husband's trade; and, her husband co-signed the check.

The decision issued by the Court of First Instance suspended the husband's sentence and sentenced the wife to a prison term, a fine and an obligation to redeem the full value of the check. The decision issued by the Court of First Instance (presided over by a male judge in this case) made no reference to any investigation into the extent to which the wife had a choice when she signed the check on her husband's behalf. And, it made no mention of the extent to which criminal intent existed on the part of the wife. The Public Prosecution did not appeal the decision. And, the Court of Criminal Appeals (presided over by a panel of three male judges in this case) upheld the Court of First Instance's decision to suspend the husband's sentence, and upheld the sentence passed on the wife of a prison term and a fine, and stayed the order requiring the wife to redeem the value of the check.

There is no doubt that both courts applied Article 666 of the Penal Code in their respective decision and ruling. And, we are not questioning the propriety of this article, but rather that the Court of First Instance's decision and the Court of Appeal's ruling would surely have been different if the courts had investigated further into the facts and circumstances surrounding the case – which, for example, would have shown that the wife was actually coerced into writing the check.

o Predominance of Females in the Impartiality of the Criminal Court

It is clear that the Criminal Court's application of the law does not reflect any gender sensitivity. Obviously, it showed sympathy with Nada, who was the object of a moral scandal that tarnished her reputation. But, this position taken by the Criminal Court does not fall into the category of gender sensitivity, but rather represents the law's position on protecting a minor, and especially the court's tough stand in cases dealing with sexually related scandals.

Discrimination or bias favoring the girl-victim is nothing new: In a court decision issued in 1946 (where the panel of judges presiding over the court consisted of three male judges) and in the course of recounting the circumstances of the crime and in determining sentencing and the financial settlement required to compensate the victim, the following was stated:

“The wound inflicted to the face and which has led to permanent scarring, can be considered serious and grave disfigurement requiring criminal punishment in the case that this disfigurement has been inflicted upon a female virgin; and, this cannot be considered the same as the disfigurement inflicted upon the face of a married man” (22/5/46; “Judicial Review”; page 368).

The courts take a similarly tough stand when it comes to acts of immorality and indecency, especially when these acts are committed against a minor.²⁷

Lately, the courts have also come to show certain sensitivity when it comes to cases of sexual harassment: In 2003, a court decision was issued that used the term “sexual harassment” for the first time, as far as we know.²⁸ This is with the knowledge that sexual harassment covers a spectrum of acts and crimes which are not mentioned in the law.

Moreover, after reviewing the decisions issued by the Single Criminal Judge (a male judge) in Beirut, in 2008, we randomly selected ten rulings in which the term sexual harassment is applied, where decisions were issued convicting the defendants and sentencing them to prison terms and fines. Nine out of these ten rulings also mentioned that personal compensation would not be ruled out merely by virtue of the fact that the (female) plaintiffs chose to revoke their personal rights to press charges against the defendants.

The ratio of the presence of women to men in the court system does not necessarily represent a decisive factor in the matter of the gender sensitivity shown by the courts. And, court decisions and rulings have been issued based on considerations that have little to do with this ratio of female to male presence in the judiciary. What reinforces this view is that certain court decisions and rulings issued lately, which have been just and which have ruled in favor of women, have been issued by male judges. Cases in point include the decisions issued by Judge John Kazzi, which have had a positive impact on bringing the concept of justice back into the forum of public debate.

²⁷ Acts of Indecency. Handling and fondling a female child’s private parts. Misdemeanor pursuant to Article 519 of the Penal Code ruled out. Felony pursuant to Article 509 of the Penal Code. Private parts include members of the body which a person covers, safeguards, protects and conceals from the sight and handling of other persons. Sexual intercourse is not a condition required for the crime of committing an act of indecency. (Decision No. 142/98; July 21, 1998; Criminal Appeal, 6th Chamber); Law Review (Cassandre); Issue No. 7. p. (law) 795; 1998.

²⁸ The plaintiff had harassed the daughter of the defendant and slapped her. The defendant stabbed the plaintiff with a knife after a fistfight took place. The defendant benefited from a reduced sentence pursuant to Article 252 of the Penal Code (Law Review (Cassandre); Issue No. 2; p (law) 291; 2003.

Conclusion

The Convention on the Elimination of All Forms of Discrimination against Women is completely absent from the court decisions and rulings issued in the year 2009 by both the Criminal Court and the Court of Criminal Appeals in Beirut. True, in Lebanon, the fundamental obstacle that CEDAW and total gender equality face is embodied by the law. However, this problem is also present in the general legal culture that exists in Lebanon, and is present in the injustice of placing the responsibility of eradicating the discrimination against **women inherent in the Penal Code** on judges, who are obliged to apply the law.

Discrimination against women and discrimination amongst women are of the many forms of discrimination that are common and accepted by **the Lebanese**, which is in accordance with the prevailing social structure and distribution of roles that will continue as long as the law encourages it; or, at least, as long as the law does not condemn it or does not hold those who practice it accountable. It is a derogation of human rights and a vilification of justice that will continue if the principle that every human being is equal to the other does not penetrate the public and legal culture, and will remain until there is a determination and a resolve shown to deal with the law on the basis that it is not etched in stone.

Annex One

Appellant	Appellee	Offense	Ruling issued	Court
Public Prosecution The paternal and custodial grandfather and plaintiff, who subsequently revoked his personal right to sue the mother for custody	The mother, who travelled with her children	496/497 of the Penal Code: Not complying with an order to ensure the presence of a minor	Decision by the first judge overturned where the first judge dismissed charges against the mother) on the basis that charges pressed by the Public Prosecution are automatically dismissed if the plaintiff revokes his/her personal rights to press charges	Presided over by a panel of three male judges
Jamila	Public Prosecution	Article 666 of the Penal Code: Issuing a check without credit or an available balance made for the purposes of her husband's business; the check was co-signed by the husband	Decision upheld: Suspended sentence against husband upheld; sentence against the wife of a two month prison term and a fine upheld; the order that the wife must redeem the full value of the check overturned and suspended	Presided over by a panel of three male judges
Lour	Public Prosecution	Article 534 of the Penal Code: Prostitution	Decision upheld: One month prison term and a LL300,000 fine (equivalent to approximately US \$200.00)	Presided over by a panel of two male judges and one female judge
Wahib (domestic abuse against his wife, Maysoun)	Public Prosecution and the wife, Maysoun, who was subjected to battery and harm	Article 554 of the Penal Code: Battery and harm; official medical report attesting to the fact that she required one week off from work to recover from her injuries	Court of First Instance decision overturned: Husband acquitted and the sentence against the husband to pay a fine of LL200,000 (equivalent to approximately US \$133.00) and compensation of LL500,000 (equivalent to approximately US \$333.00) for damages incurred, also overturned".	Presided over by a panel of three male judges
Huda	Public Prosecution	Practicing Clandestine Prostitution	Court of First Instance decision overturned: Huda acquitted of charges due to lack of evidence; fine of LL500,000 (equivalent to approximately US \$333.00) overturned Awatef: to continue prison term and pay a fine of LL500,000 Awatef's husband: Convicted of facilitating prostitution; sentenced only to a fine of LL1 million (equivalent to approximately US \$667.00)	Presided over by a panel of two male judges and one female judge

Annex Two

Prosecution	Defendant	Criminal Offense	Ruling issued	Court
Public Appeals Prosecution; Nada's mother	Walid; Jihad	Felony pursuant to Article 504 of the Penal Code 2 misdemeanors pursuant to Article 518 of the Penal Code; and Article 333 (related to Walid), and Article 533 (related to Jihad) (Inciting a moral scandal)	Two year prison terms for both defendants Fine of LL50 million (equivalent to approximately US \$33,000) for psychological damages suffered by Nada	Presided over by a panel of two female judges and one male judge
Public Appeals Prosecution Rima	Michella (Filipina)	Article 547 of the Penal Code: Attempted murder (of her employer)	15 years imprisonment with hard labor reduced to 8 years for attempted murder; Sentence reduced to three years pursuant to Article 253 of the Penal Code; Fine of LL15 million (equivalent to approximately US \$10,000) for damages and injury suffered	Presided over by a panel of two female judges and one male judge
Public Appeals Prosecution Plaintiff Anahid, who revoked her personal right to press charges	Ingrid (Ethiopian domestic worker)	Felony pursuant to Article 547 and 201 of the Penal Code; attempted murder (of her employer)	7 and ½ years imprisonment with hard labor Sentence reduced to time served while in detention pursuant to Article 253 of the Penal Code Defendant's immediate release if she is not being held on any other charges Deportation from Lebanon	Presided over by a panel of two male judges and one female judge
Public Appeals Prosecution Wafiqa	Cosette (Ethiopian domestic worker)	Felony pursuant to Article 549, Paragraph 3 of the Penal Code: Killing a fetus	Defendant acquitted of charges due to lack of evidence; Immediate release of defendant	Presided over by a panel of two male judges and one female judge
Public Appeals	Accused: Hassan and Hassanein (Egyptian) Suspects: Khaled, Mohammad, Nahida and Amina	Article 126: Illegal substance/ drug trafficking; Article 127: Illegal substance/ drug abuse	Hassan: 14 months imprisonment and a LL2 million fine (equivalent to approximately US \$13,330.00) Hassanein: 3-months imprisonment and a LL2 million fine; sentence reduced to time served and fine reduced to LL300,000 (US \$200) Hassan: 3-months imprisonment; and a LL2 million fine; sentence reduced to time served and a LL500,000 fine (equivalent to approximately US \$333.00)	Presided over by a panel of two female judges and one male judge

Annex Two

			<p>Nahida and Amina: 3-months imprisonment for both defendants; both fined LL2 million; sentences reduced to time served by both defendants; both defendants' fines reduced to LL800,000 [equivalent to approximately US \$533.00]</p>	
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References

(Titles of references translated from Arabic):

- The Lebanese Constitution
- The Convention for the Elimination of All Forms of Discrimination against Women (CEDAW)
- The Lebanese Legislative Code
- The Lebanese Penal Code
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“ This publication has been produced with the support of the European Union. The contents of this publication are the sole responsibility of the author and Kafa (enough) Violence & Exploitation and can in no way be taken to reflect the views of the European Union ”.