



HUMAN  
RIGHTS  
WATCH

## UNEQUAL AND UNPROTECTED

Women's Rights Under Lebanese Personal Status Laws



# **Unequal and Unprotected**

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# Glossary

<b>Alimony</b>	An allowance for support to a person by the former spouse, which is also known as post-dissolution maintenance.
<b>Annulment</b>	The invalidation of a marriage according to Christian personal status laws.
<b>Community of property</b>	A community of property regime typically involves a legal regime where all property acquired during marriage is presumptively owned jointly by both spouses. Community of property systems usually recognize that property that is owned before the marriage, inherited, or received as a gift remains separate property.
<b>Compensation</b>	According to Christian and Druze personal status laws, a spouse that a judge finds to be liable for an annulment, dissolution, or divorce is responsible for compensating the other spouse for damages at the termination of the marriage.
<b>Custody</b>	Custody as defined in the Lebanese context entails the preservation and care of a child and concern with his or her material and moral upbringing until such point as he or she no longer requires it. Custody is by definition of a limited duration and ends when the child no longer needs care. As long as the matrimonial bond exists, custody is the duty of both spouses. If a marriage is terminated, however, most religious laws tend to favor maternal custody of children who are young (the custody age differs according to each confession).

<p><b>Desertion or abandonment</b></p>	<p>Under Christian personal status laws, desertion or abandonment is the separation of spouses and is annulled by reconciliation. When desertion or abandonment occurs the spouses are separated but the marital bond persists, precluding remarriage. There are two types of desertion or abandonment: permanent, which is justified by adultery and only recognized by the Catholic Church; and temporary, which is for a specific or undetermined period left to the court's discretion, until the grounds for the desertion or abandonment no longer exist, and is recognized by all Christian confessions.</p>
<p><b>Dissolution of marriage and divorce for Christians</b></p>	<p>Under Christian personal status laws, dissolution of marriage and divorce are legal concepts in which a legally valid marriage is terminated for causes specifically enumerated by law. For Catholic Confessions there is no divorce.</p>
<p><b>Divorce for Shias, Sunnis, Druze</b></p>	<p>Divorce in Shia and Sunni, personal status laws is the absolute, inalienable right of the husband but not the wife to terminate marriage unilaterally, without cause, and outside a court of law. Under Druze law, men also have an absolute right to unilaterally terminate a divorce at will and without cause but must do so in a court. If, however, a judge finds a Druze husband divorced his wife without legitimate cause he can compensate the wife. Additionally, Druze men and women can terminate their marriage before a Druze court if the spouses mutually consent to a divorce. Under Shia and Sunni personal status laws a husband can revoke a divorce within the waiting period (see below) without his wife's consent and without the need to conclude a new marriage. After this period or if the husband has pronounced it three times divorce becomes irrevocable and the marital bond is severed.</p>
<p><b>Guardianship</b></p>	<p>The concept of guardianship according to the religious personal status laws entails the preservation and upbringing of children and their assets until they reach adulthood. The right of guardianship under all personal status laws in Lebanon is the right of the father who is recognized as the peremptory moral and financial guardian of his children until they reach adulthood.</p>

<p><b><i>'Isma</i> or a woman's right to divorce herself under Sunni and Shia personal status laws</b></p>	<p>The <i>'isma</i> is a woman's right to divorce under Sunni personal status law. There is also an equivalent right for Shia women whereby they too can divorce themselves. In both cases the right should be specifically stipulated in the marriage contract in order for women to obtain it.</p>
<p><b><i>Mahr</i></b></p>	<p>A sum of moveable or non-moveable property payable by the husband to the wife prior to marriage and cohabitation; the value of which is determined in the marriage contract. The husband pays part of the <i>mahr</i>, known as the advance, when the marriage is concluded but not consummated.</p> <p>The second part, the deferred <i>mahr</i> (also referred to as <i>mu'akhar</i>), is payable in one of two cases: upon the death of the husband or the termination of the marriage by the husband. In Christian personal status laws <i>mahr</i> is optional, but it is a condition for a valid marriage in Shia, Sunni, and Druze personal status laws.</p>
<p><b>Obedience and cohabitation suits</b></p>	<p>A lawsuit filed before Sunni or Ja`fari courts by a husband against a wife who has deserted him and made herself unavailable to him sexually, to demand that she return or to force her to live with him. If a wife refuses to comply with the court decision, she is considered legally recalcitrant (see below).</p>
<p><b>Quittance (<i>khul</i>)</b></p>	<p>A means of dissolving a marriage under Shia and Sunni, personal status laws whereby the wife is released from the marriage in exchange for financial compensation to the husband. In these cases a wife typically forfeits all or part of her legal rights to <i>mahr</i> and spousal maintenance (see below) in exchange for the husband divorcing the wife. In some cases a wife also pays an additional sum of money to the husband.</p>
<p><b>Recalcitrance</b></p>	<p>A wife can be found legally recalcitrant under all personal status laws in Lebanon if she leaves the marital home and refuses to cohabit with her husband without a reason that the religious courts consider legitimate. A recalcitrant wife is not entitled to spousal maintenance, and a finding of recalcitrance may hinder her custodial rights vis à vis her children.</p>

<p><b>Severance</b></p>	<p>Under Sunni and Druze personal status laws, severance is the dissolution of the marriage by religious judicial order pursuant to a request from either spouse and for reasons specifically enumerated by law. Severance is not recognized under Shia personal status law.</p>
<p><b>Sovereign divorce</b></p>	<p>A sovereign divorce is an order issued by a Shia religious authority divorcing a Shia woman from her husband, either due to non-payment of spousal maintenance, harm and ill treatment, or abandonment.</p>
<p><b>Spousal maintenance</b></p>	<p>Under Shia, Sunni, Druze, and Christian personal status laws, spousal maintenance refers to the husband’s obligation to meet his wife’s needs for food, clothing, shelter, and other living expenses during marriage. This responsibility expires at the end of the marriage with the exception of the following:</p> <ul style="list-style-type: none"> <li>a) Under Shia and Sunni personal status laws the husband must continue to pay maintenance after divorce during the waiting period (see below) during which the divorce is still revocable;</li> <li>b) Under Christian personal status laws maintenance is still paid in temporary and/or permanent desertion cases. Spousal maintenance is distinct from child maintenance or support. The husband is obliged to pay the latter to his wife throughout the period in which she maintains custody of the children.</li> </ul>
<p><b>Waiting period</b></p>	<p>Under Shia and Sunni personal status laws, the legally prescribed period during which a recently widowed or divorced woman may not remarry; in divorce, the period within which the divorce is revocable. The term is defined as three menstrual periods or three months.</p>

## Summary

Lebanon does not have a civil code regulating personal status matters. Instead, there are 15 separate personal status laws for the country's different recognized religious communities including twelve Christian, four Muslim, the Druze, and Jewish confessions, which are administered by separate religious courts.

Religious authorities often promoted this judicial pluralism as being essential to protecting Lebanon's religious diversity. In reality, the multiplicity of laws means that Lebanese citizens are treated differently when it comes to key aspects of their lives, including marriage, divorce, and custody of children.

This variation has prompted rights activists in Lebanon to advocate for civil personal status law that would guarantee that citizens are treated equally, while ensuring that their freedom of belief is respected.

This report focuses on one fundamental element of the problem with the current system of personal status laws: its discriminatory impact on women.

Our research—based on a review of all personal status laws in Lebanon, 447 recent legal judgments issued by the various religious courts, court sessions, and more than 70 interviews with women, lawyers, judges, social workers, and women's rights activists—reveals a clear pattern of women from all sects being treated worse than men when it comes to accessing divorce and primary care for their children (“custody”).

Across all confessions, women faced legal and other obstacles when terminating unhappy or abusive marriages; limitations on their pecuniary rights; and the risk of losing their children if they remarry or when the so-called maternal custody period (determined by the child's age) ends. Women were also systematically denied adequate spousal support during and after marriage—with religious courts often unfairly denying or reducing payments, including if a judge found a woman to be “recalcitrant” by leaving the marital home and refusing to cohabit with her husband or filing for severance.

Children also face violations of their rights, most importantly the right to have their best interest considered in all judicial decisions concerning their welfare, including rulings regarding their primary care giver. However, these violations lie beyond the scope of this report.

Discrimination against women results not only from laws, but also courts procedures. All of the women whom Human Rights Watch interviewed said numerous procedural obstacles, including high fees, protracted lawsuits, and lack of legal and material assistance during legal proceedings kept them from accessing religious courts and enforcing even their limited rights. Further, while the courts and religious laws should comply with the provisions of the Lebanese Constitution, the Court of Cassation, which is the highest civil court in the Lebanese judicial system, has very limited oversight over religious court proceedings and decisions, resulting in lack of oversight and accountability: Christian courts are administratively and financially independent and Muslim courts, although historically affiliated and funded by the state, are operationally independent of state institutions.

Religious institutions also provide little sustainable and appropriate legal or social support for women involved in court proceedings, a need that local NGOs have been unable to meet due to staff shortages and a dearth of material resources. In addition, women are often torn between numerous judicial authorities—criminal, civil, and religious— when attempting to resolve personal status-related disputes because they must often petition more than one of these courts to claim their rights.

Lebanon has ratified a number of international human rights covenants that protect and promote women’s equality during and after marriage, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), and has undertaken to implement other internationally recognized norms and standards on gender equality, including the Beijing Platform of Action and the Millennium Development Goals (MDGs). Many of these rights are also enshrined in the Lebanese constitution.

Lebanon’s host of religiously based personal status laws and court decisions that fail to guarantee equality in marriage and divorce fall foul of these obligations by permitting discrimination against women, and violating their human rights, including to non-discrimination, physical integrity and health.

## Unequal Divorce Laws

Across all confessions, Human Rights Watch found that personal status laws and religious courts give women lesser rights than men to access divorce.

Sunni and Shia laws in Lebanon grant men an absolute right to divorce while women only have a conditional right to divorce. Under these laws, spouses may agree to share the right to dissolve the marriage by giving the wife the *ʿisma*, or the power to divorce without her husband's consent. In practice, this is rarely done and largely rejected by society. Of 14 Muslim women interviewed, none had the *ʿisma* clause in their marriage contracts, and only 3 of the 150 reviewed divorce judgments before Jaʿfari and Sunni courts were issued based on the wife's exercise of the *ʿisma*. One court cleric said:

Because of hormonal changes due to their period, they [women] find it difficult to make the right choices. How, then, can they possess the power to divorce?

Without the *ʿisma*, Sunni women can only initiate a divorce by filing for severance—dissolution of the marriage by judicial order for reasons specifically enumerated under religious law.

Severance can only be issued, however, after the relevant religious court assesses fault for the marriage's failure and if the women requesting severance shows that it is for specific reasons, such as the husband not paying spousal maintenance (payments a husband is obliged to make during marriage to meet his wife's needs for food, clothing, shelter, and other living expenses) or being unable to have sexual relations due to impotence, contagious disease, insanity, or prolonged absence from the marital abode due to travel, disappearance, or imprisonment.

A review of 65 Sunni court cases where women successfully filed for severance shows that Sunni courts often find women partially culpable for the failure of the marriage—even when the husband beat them—thus reducing their pecuniary rights. As a result, many women bypassed the severance process and pre-emptively relinquished their pecuniary rights to maintenance and the deferred *mahr*, the sum a husband pays the wife when the marriage is terminated so their husband would agree to initiate a divorce.

Under Druze law, men also have an absolute right to unilaterally terminate a divorce at will and without cause but must do so in a court. Druze women can also be compensated if a judge finds that her husband is divorcing her absent a legitimate reason. Additionally, Druze men and women can terminate their marriage before a Druze court if the spouses mutually consent to a divorce. Severance is also grounds for divorce for Druze women.

**Shia** personal status law does not recognize severance, making Shia women's access to divorce without the power to divorce written into her marriage contract even more limited than that of Druze and Sunni women. In these cases, Shia women seeking divorce can only seek relief from a Ja`fari religious authority, outside the court, which can divorce her on behalf of her husband—a practice known as “sovereign divorce.” The process is lengthy, and two lawyers who spoke to Human Rights Watch said that it may take up to two years to receive the order, with no guarantee that a religious court will then verify it and the woman will obtain a divorce.

In **Christian** marriages, while it is difficult for both husband and wife to dissolve their marriages, there are instances that allow men more grounds for divorce or annulment than women. Moreover, there are two aspects of the laws that impact women differently and disproportionately.

First, all Christian personal status laws hold that spousal violence, which overwhelmingly affects women, is in itself insufficient to obtain a prompt end to marriage, except in attempted murder cases. Second, Christian men in Lebanon can unilaterally convert to Islam, which affords them the right to marry up to four women and allows them to enter into new marriages without obtaining divorces. No similar processes exist for Christian women to bypass Christian personal status laws after their marriages have been consummated. This subjects them, at best, to lengthy and costly termination processes, and at worst to imprisonment in bad and sometimes abusive marriages.

Across all confessions, Lebanon's religious laws and courts are not responsive to spousal domestic abuse. Under the Catholic personal status laws, domestic abuse is never sufficient grounds for obtaining an annulment, the only means by which Catholics in Lebanon can end their marriages unless a husband's violence is attributable to mental incapacity that existed prior to the marriage and this incapacity makes him incapable of assuming basic marital duties. In Orthodox and Evangelical confessions, either spouse

may petition to dissolve the marriage if he or she establishes that the other party attempted to kill him or her. Spousal abuse in and of itself is also not cause for dissolution, but only temporary desertion (which may later be grounds for dissolution if the couple does not reconcile within three years under Orthodox confessions or two years in Evangelical confession).

Shia and Sunni men in Lebanon also have the right to discipline and have intercourse with their wives. These rights, and the obligation of women to cohabit with their husbands across all confessions, endanger women's safety.

Not only are abused wives often unable to obtain relief from the religious courts, but Lebanese civil and criminal law also fail to provide them with adequate protection from domestic violence.

On April 1, 2014, Lebanon's parliament passed the Law on Protection of Women and Family Members from Domestic Violence. While establishing important protection measures and related policing and court reforms, the law still leaves women at risk of marital rape and other abuse. The law defines domestic violence narrowly, thus failing to provide adequate protection from all forms of abuse and falling short of United Nations guidelines on protection from domestic violence. Lebanese criminal law also still fails to criminalize marital rape.

Furthermore, the new domestic violence law states that in case of any conflict between the new law and personal status laws, personal status laws would take priority, even where they appear to tolerate violence against women. While the law does not include a provision that explicitly addresses how to resolve conflicts that may arise between civil court rulings over domestic violence and personal status court rulings, this article appears to be contrary to the recommendation of the UN Handbook for Legislation on Violence against Women, which states 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." Exempting matters governed by personal status laws from the domestic violence law undermines women's security in the home.

In a positive development however, at least two judges implementing the domestic violence law have interpreted the definition of the acts of violence banned by the law more broadly. However, court rulings over domestic violence do not override or have to be factored in during personal status court rulings.

## **Economic Consequences of Terminating Marriage**

Regardless of religious affiliation, women face discrimination in relation to distribution of marital property following the termination of the marriage and marginalization as a result of inadequate spousal maintenance payments during marriage.

The absence of any religious or civil law in Lebanon valuing women's non-monetary contributions to the marriage at the time of termination—including household and family care, lost economic opportunity and her contribution to her husbands' career—contributes to the discrimination against women.

Further, because Lebanese law does not recognize the legal concept of marital property, property reverts to the spouse in whose name it is registered (typically the husband), regardless of who has made contributions to it. In eight cases, women interviewed by Human Rights Watch said that they were not compensated for their financial contribution to the marital home or other joint expenses when the marriage ended because the property was registered under the husband's name.

In addition, under all personal status codes the man's obligation to support his spouse expires when the marriage is dissolved by a final court judgment (since a husband's duty to support his wife is conditioned on her duty to cohabit with him). During the court proceedings in cases of separation, spousal maintenance for all confessions, except in Christian abandonment cases, is typically only granted as a temporary measure when husbands fail to provide for their wives.

Even in these cases, maintenance might not be granted to wives that judges find are recalcitrant. In all cases where temporary maintenance is considered, the decision to grant it is based on the judge's discretion and the maintenance is frequently too low to cover basic living costs. In the Muslim confessions, court orders requiring husbands to pay

maintenance are in practice often very small amounts and do not reflect the wife's actual need or the husband's financial capability.

Under Sunni and Shia personal status laws, at the termination of the marriage, women are at most only entitled to deferred *mahr* payments—the amount stipulated in the marriage contract that the husband will pay upon divorce or death. If a judge finds the wife at fault for the divorce, *mahr* payments are reduced. In some cases, divorced women find themselves stripped of all financial resources after leaving their husbands.

Under Christian and Druze personal status laws, conditions for compensation—which is usually granted to a spouse when the other is at fault—are narrow, if they exist at all, and the sum awarded is usually not enough to allow women to support themselves until they can become financially independent.

### Care of Children (“Custody”)

Shia, Sunni, and Druze religious laws generally maintain that, in the event of divorce, the child's age, not their best interests, should determine with whom they reside. In a recent development, Sunni judges can, at their discretion, consider the best interest of the child in determining custody. Similarly, Christian personal status laws also use a child's age as a principle factor in determining custody but also allow judges, at their discretion, to make custody determinations based on the best interest of the child.

Alongside the concept of custody, religious courts recognize the concept of guardianship, which entails the preservation and upbringing of children and their assets until they reach adulthood. Across religious laws with the exception of the Armenian-Orthodox personal status law, the right of guardianship both during marriage and after is granted to the father who is recognized as the peremptory moral and financial guardian of his children.

This practice fails to adequately uphold the standard set forth by the Convention on the Rights of the Child, which instructs state parties that, in all matters concerning children, “the best interest of the child shall be a primary consideration.”

For women legally able to obtain a divorce, concerns about having their children reside with them often make them unable or unwilling to pursue a divorce.

Further, in some cases in which women tried to keep their children after the maternal custody period, or when fathers tried to take their children during the maternal custody period, Human Rights Watch's review of court cases found that some religious courts granted the father custody of the children because of certain criteria that were applied to women but not men, and without considering what was in the best interest of the child.

Women who spoke to Human Rights Watch were deemed to be unfit parents and lost their maternal custody rights for a host of reasons other than their inability to care for their child. These reasons include their (different) religious affiliation, lack of "proper religious education" for children, long work hours, getting remarried, or "questionable" social behaviors. A husband's right to maintain primary care of his children is not contingent on his remaining unmarried and he is less likely to be found to be an unfit parent, except for example in extreme cases when he could not care for the child due to alcoholism or drug addiction.

Human Rights Watch interviewed women who stayed in abusive marriages, gave up their monetary rights, and did not remarry to maintain primary care of their children in cases where judges did not consider the best interests of the child, or where they evaluated the best interests of a child using criteria that discriminated against women.

The cross-confessional child protection law that the Lebanese parliament adopted in 2002, Law 422 on Protection of Children in Conflict with the Law or at Risk, gives the juvenile civil court legal grounds to intervene if the civil judge considers that the child is in danger.

After years of rejecting petitions to review the content of religious judgments regarding custody cases that conflict with juvenile judge judgments, the court in 2009 acted as a brake on religious personal status codes, refusing to give civil recognition and force of law to any religious judgment that contravenes a basic component of the public order: child welfare and protection. In applying the 2002 law the Court of Cassation interpreted the law to give civil courts jurisdiction not just over procedural matters but, for the first time, over a substantive issue. Following these reforms, religious courts have in some cases also considered the best interest of the child when determining which parent will obtain primary care responsibility.

## A Way Forward

All interviewees, including the religious judges whom Human Rights Watch interviewed, agreed that fundamental personal status laws must be reformed to protect and end discrimination against women.

Religious and civil authorities have recently made some positive legal changes, including codifying the Coptic personal status law (2012); amending Evangelical and Orthodox personal status laws, including to admit non-clerical judges and give judges more latitude in awarding damages during termination of marriage lawsuits; and implementing the Law 422 on Protection of Children in Conflict with the Law or at Risk (2002).

Yet while these piecemeal reforms have resulted in some modest improvements *via-a-vis* the rights of children and women, they are insufficient to address the systemic discrimination against women under personal status laws in Lebanon, or the failure of the courts to prioritize the best interest of the child.

One solution is to adopt a civil code that would ensure equal rights for all Lebanese, regardless of gender or religion. Current efforts to adopt a civil code have focused on making it optional for people. In that sense, it would operate alongside religious laws.

This report affirms the right and need for an optional civil personal status law based on the principles of equality and non-discrimination and the right to choose one's religious affiliation (or none at all) in order to protect women and alleviate their legal, economic, and social marginalization.

Yet such a law alone will not be enough to end the discrimination in personal status that stem from existing religious personal status laws. Fundamental changes must also be made to existing religious legal codes, and state institutions must exercise oversight over religious courts and texts.

# Recommendations

## To the Government and Parliament

- Work towards comprehensive personal status law reform in consultation with religious authorities, civil society groups working on women's and children's rights and, experts.

### *With respect to a civil personal status code:*

- Launch a participatory process to enact an optional civil personal status code that does not discriminate based on religion, sex and gender.
- Pass an optional civil personal status code that guarantees equal rights for women and that is in compliance with Lebanon's international human rights obligations.

### *With respect to existing personal status laws and religious courts:*

- Require religious confessions that have yet to codify their laws to do so and submit them to the parliament for review to determine their conformance with Lebanon's constitution and its international human rights obligations. Any religious personal status laws not in compliance with Lebanon's constitution or international human rights obligations should be amended before being approved by parliament.
- Repeal Decree 53 of March 30, 1939, which states that the provisions of Decree 60LR requiring confessions to submit their laws and procedures for ratification by parliament after reviewing them for compliance with the Lebanese constitution and public security or morals does not apply to Muslims.
- Amend article 95 of the Code of Civil Procedure to give the plenary assembly of the Court of Cassation authority to consider judgments issued by the religious courts if they violate human rights.
- Establish minimum education and training requirements for judges in religious courts. Require judges in religious courts to obtain a law license and judicial training as a basic condition for appointment and incorporate them in the Ministry

of Justice's Academy of Judges. Require religious courts to actively recruit and encourage the appointment of female judges.

- Establish a monitoring mechanism to conduct oversight over personal status court proceedings to ensure judgments are non-discriminatory and in compliance with the constitution and Lebanon's international human rights obligations.
- Provide information to couples before they marry on the legal regime that will govern their marital life.

*Other legislation, measures and civil court jurisdiction:*

- Enact legislation that sets a minimum age for marriage at 18 years of age for both spouses.
- Fully affirm the concept of marital property and allow for its division on an equal basis between spouses at the time of dissolution of marriage for all communities, recognizing financial and non-financial contributions made by women.
- Establish a unified fund to temporarily provide spousal and/or child maintenance for the dependent spouse when their spouses fail to do so, to be disbursed according to financial need.
- Give civil courts the authority to rule for maintenance, compensation and post-dissolution alimony in consideration of financial need and contributions – both financial and non-financial - to the marriage.
- Provide legal representation for indigent spouses in all personal status lawsuits. Establish hotlines and social and legal consultations inside the religious and civil courts.
- Pass an explicit law specifying judicial jurisdiction over marriages celebrated before religious authorities and registered before civil authorities, making civil courts and civil law preponderant.
- Reform the Law on Protection of Women and Family Members from Domestic Violence to expand the definition of domestic violence to meet UN guidelines on protection from domestic violence. Establish a monitoring mechanism to ensure the law is being carried out, and craft national protocols and strategies relevant to all ministries involved in responding to domestic violence.

## To Religious Confessions

*With regard to legal and judicial training, selection, and oversight:*

- Establish minimum education and training requirements for judges in religious courts. Require judges in religious courts to obtain a law license as a basic condition for appointment and incorporate them in the Ministry of Justice's Academy of Judges.
- Actively recruit and encourage the appointment of female judges in the religious courts.

*With regard to Shia, Sunni and Druze marriage contracts and the termination of marriage:*

- Recognize a woman's right to a no-fault divorce whether or not this is stipulated in the marriage contract and without losing her pecuniary rights.
- Stipulate that care of children will be determined by the best interests of the child.
- Establish the concept of marital property that allows for its division on an equal basis including financial and non-financial contributions.
- Reform discriminatory provisions governing women and men's access to divorce in Shia and Sunni personal status laws including by:
  - Amending standard marriage contracts to include by default the *isma*, or her irrevocable right to divorce herself.
  - Abolishing a Muslim's husband unilateral right to divorce at will outside a courtroom.
  - Abolishing a Muslim husband's right to assign a third party to divorce his wife.
  - Abolishing a Muslim husband's right to discipline his wife and right to sexual intercourse.
- Under Christian personal status laws allow both men and women to obtain no-fault divorces.

*With regard to financial rights and obligations:*

- Abolish the legal concepts of obedience and forced cohabitation and reject related lawsuits.
- Separate the duty to provide maintenance and alimony from the conditions of fault or recalcitrance.
- Develop clear criteria for the determination of spousal maintenance and alimony. Maintenance levels should be assessed based on the financial capability of the spouse paying the maintenance and the financial needs, other means of support, health, age, and standard of living of the spouse requesting maintenance.
- During marriage, enable either dependent spouse to seek maintenance from the other party while specifying conditions and the duration of maintenance.
- At the termination of a marriage, consider the dependent spouse's material and non-material marital contributions including domestic labor and financial need when assessing the value of compensation and/or alimony to be paid. The criteria to assess this should include the duration of the relationship; the impact of childcare and household responsibilities on the education and earning capacity of the dependent spouse; current and likely future income of each spouse; the dependent spouse's capacity to support him or herself; the health and age of the spouses; the dependent spouse's needs and standard of living; other means of support; and contributions made by the dependent spouse to realize the other's career potential.
- In Muslim marriages, do not limit compensation to the amount stipulated as the deferred *mahr* in cases in which this amount does not adequately compensate women for their contributions or meet their financial needs. Judges should rule for the automatic release of the deferred *mahr* upon the dissolution of the marriage.
- Refrain from penalizing women economically for seeking termination of their marriages including through severance or quittance.

*With regard to care of children (custody):*

- Abandon reliance on the legal maternal custody age to determine who has primary care responsibility for children.
- Amend any laws that exclude joint custody by default.

- Allow both fathers and mothers to enjoy the right of guardianship without discrimination and in case of termination of marriage determine who maintains primary care responsibility for children based on their best interest including the option of joint custody.
- Apply one standard in assessing parental fitness for both mothers and fathers that is guided by the best interest of the child. Require judges to consult with psychologists and social workers and solicit the child's opinion when determining whether the child will reside with the mother, father, or both parents and that the views of the child will be given due weight in accordance with the age and maturity of the child.

## **To Donor States and Agencies supporting Civil Society and State Reforms in Lebanon**

- Support organizations providing legal representation, monetary and psychological support to women in personal status proceedings.
- Support organizations to conduct monitoring inside the religious courts throughout court proceedings.
- Support organizations lobbying for amendments of existing religious personal status laws and advocating for the adoption of a comprehensive civil system.
- Provide support for expansion of access to emergency temporary shelters for women and girls across Lebanon, including for divorced or separated women and women escaping domestic violence.
- Ensure donor support for justice sector reform supports research and advocacy to address discrimination in family laws and to amend family court procedures.

## Methodology

Human Rights Watch interviewed women who were in the process of, or had gone through, termination of marriage proceedings in Lebanon, as well as lawyers, judges, social workers, and women's rights activists who work on personal status cases or assist women facing personal status problems. Human Rights Watch also conducted legal research and an analysis of personal status judgments issued by various religious courts from 2009 to 2012.

In total, Human Rights Watch interviewed 72 individuals between May and July 2012 and February and March 2013:

- Twenty-seven women from various religious backgrounds, age groups, and economic status who faced discrimination due to personal status laws in Lebanon. Human Rights Watch identified these women through hotlines and shelters run by NGOs, through individuals and lawyers working on women's rights issues, and social workers at the Ministry of Social Affairs Service Development Centers (SDCs).
- Eleven lawyers, eight working on personal status cases before the courts and three human rights lawyers working at NGOs that specialize in women's and human rights who assist women who face discrimination.
- Twenty-two paralegals and activists working at NGOs specialized in women's and human rights, and which sponsor hotlines and shelters for battered women.
- Nine judges including three from Christian confessions, four from Sunni and Shia confessions, and two Lebanese civil judges who had presided over personal status cases following from civil marriages contracted abroad.
- Three social workers with the Ministry of Social Affairs SDCs.

To protect those we interviewed from adverse consequences or harassment resulting from the publication of this report, pseudonyms or professional titles without names have been used to identify all of the individuals interviewed.

All interviewees were informed of how information from the interview would be used and provided oral consent to participate in the interview and have information about their

cases included in the report. No interviewee received any payment or other inducement to participate in an interview.

Human Rights Watch also observed religious court proceedings in four religious courts and the work of employees and procedures in law clerks' offices.

This report is also based on analysis of 447 legal judgments issued by various religious courts across Lebanon in cases of divorce, custody, *mahr* rights, spousal maintenance, and child support; the rulings were issued by both first instance and appellate courts and cover the period 2009 to 2012.

The personal status legal judgments, which are not published in Lebanon, were collected from the following sources:

- The Sunni and Ja`fari first instance and Supreme Courts;
- Personal status lawyers;
- The archives of NGOs who had provided legal representation and psychosocial support to women before religious courts on personal status matters.

The cases taken from the courts, law clerk offices, personal status lawyers, and NGOs were selected at random and constitute a subset of the cases before the courts during 2009-2012.

Ja`fari and Sunni but not Christian nor Druze courts officially agreed to share case files and judgments with Human Rights Watch for the purpose of this research resulting in a greater sample of Shia and Sunni, cases. The cases affecting Christian and Druze women reviewed by Human Rights Watch were received solely by lawyers and local NGOs.

In all cases, Human Rights Watch has not disclosed identifying information contained in the court documents to protect the confidentiality of the parties to the litigation.

The following two tables summarize the sample of judgments analyzed according to type and degree of court, geographic distribution, and topic.

**Table 1: Number of judgments by geographic distribution**

AREA	BEIRUT	BAABDA	TRIPOLI	ʿAKKAR	SIDON	AL-NABATIYA	SUPREME COURTS <sup>1</sup>	TOTAL
Shia and Sunni judgments	206	33	10	8	36	11	39	343
Christian judgments <sup>2</sup>							17	104
<b>Total</b>							<b>56</b>	<b>447</b>

**Table 2: Number of cases by subject**

SUBJECT OF JUDGMENT	NUMBER OF JUDGMENTS	PERCENTAGE OF JUDGMENTS WITH WOMEN AS THE PLAINTIFF
<b>JAʿFARI AND SUNNI COURTS</b>		
Custody	91	42
Divorce	77 (62 before the Jaʿfari courts, 15 before the Sunni courts)	40 <sup>3</sup>
Severance (Sunni courts only)	87	75
Spousal maintenance	38	82 <sup>4</sup>
Obedience and cohabitation	40	15 <sup>5</sup>
<b>CHRISTIAN COURTS</b>		
Custody, guardianship, and contact	9	33
Spousal maintenance and child support	14	100
Maintenance, visitation, and guardianship	12	100
Desertion and annulment	65	70

<sup>1</sup> Located in Beirut for all confessions.

<sup>2</sup> These are not differentiated by location since most first instance Christian confessional courts—including the Catholic courts, Orthodox appellate courts, and the Evangelical courts—are unified and cover all Lebanese provinces.

<sup>3</sup> Most of these are cases in which the woman is seeking to certify the divorce.

<sup>4</sup> In the 18 percent of cases in which the husband has initiated the lawsuit, he is seeking the revocation or recalculation of spousal maintenance.

<sup>5</sup> These are cases in which the woman is appealing a first instance “obedience and cohabitation” judgment against her.

SUBJECT OF JUDGMENT	NUMBER OF JUDGMENTS	PERCENTAGE OF JUDGMENTS WITH WOMEN AS THE PLAINTIFF
Dissolution of marriage and divorce	4	50

Through a review of the case files and judgments and an analysis and comparison of legal opinions and practice, Human Rights Watch identified how personal status laws discriminate against women as well as the manifold legal issues and obstacles to access justice that compound this discrimination.

When available, information from the judgments and case files was extracted based on a set of criteria designed to assess whether women were discriminated against as a result of personal status legislation or court procedural rules. These criteria included, for example, whether women had legal counsel, whether judgments were issued while women were absent, grounds for the preclusion or revocation of custody, means of proof in divorce cases, and standards for the determination of the value of spousal maintenance or compensation used by judges in their rulings.

In this report, we address issues arising from divorce, child custody, spousal maintenance, and *mahr* laws. We also focused on the largest and most representative religious groups in Lebanese society, primarily the Shia, Sunni, and Druze confessions and the Catholic, Orthodox, and Evangelical Christian confessions.

## I. Background: Multiple Personal Status Laws

Lebanon does not have a civil code regulating personal status matters but rather 15 separate personal status laws for the country's different religious communities. This judicial pluralism has historical roots in the Ottoman and French Mandate period and is enshrined in Lebanon's constitution.<sup>6</sup> Article 9 of the constitution explicitly "guarantees that the personal status and religious interests of the population, to whatever religious sect they belong shall be respected."<sup>7</sup>

The constitutional guarantee that different religious groups are entitled to their own personal status laws is counterbalanced by another constitutional protection: freedom of belief, which is also enshrined in article 9 of the constitution and its preamble.<sup>8</sup> Local constitutional experts have long argued that this principle means that while various religious groups have the right to have their own personal status laws, the religious groups do not have an exclusive right to regulate a person's personal affairs.<sup>9</sup> In a recent decision, the Lebanese Supreme Council of the judiciary upheld this view by approving the registration of a civil marriage contracted in Lebanon between a couple who had removed their religious affiliation from their civil records. In the absence of a Lebanese civil personal status law, the couple's marriage is governed by a foreign civil code.

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<sup>6</sup> This pluralism emerged in the Ottoman period under the exemptions granted by Ottoman sultans permitting religious chiefs to govern members of their confessions in accordance with their own laws. In 1856, the sultan issued the Hamayuni Code, which set the broad outlines of the current personal status system in Lebanon. Article 6 of the French Mandate (1922), which succeeded the Ottoman Empire, obliged the state to respect and guarantee religious personal status codes. Protection for religious personal status codes was then enshrined in the Lebanese constitution. Article 9 of the constitution of June 26, 1926, states: "There shall be absolute freedom of conscience. The state in rendering homage to the Most High shall respect all religions and creeds and shall guarantee, under its protection, the free exercise of all religious sects provided that public order is not disturbed. It shall also guarantee that the personal status and religious interests of the population, to whatever religious sect they belong, shall be respected." This article has not since been amended. Then, under the French Mandate, in 1936 and 1948 Decrees 60LR/1936 and 146LR/1948 were issued, forming the essence of the personal status law system that exists today. The two decrees established the framework for relations between the state and religious confessions on one hand, and between the state and the individual on the other.

<sup>7</sup> Lebanese Constitution, 1926, art. 9, <https://lp.gov.lb/CustomPage.aspx?id=26&masterId=1> (accessed December 2014)

<sup>8</sup> *ibid.*, para.3 of the preamble.

<sup>9</sup> Pierre Gannagé, *Le principe d'égalité et le pluralisme des statuts personnels dans les États multiconfessionnels* (Mélanges Terré/PUF, 1999), p. 431; Léna Gannagé, *Law and Religion*, a colloquy at the Centre d'Etude des Droits du Monde Arabe, Beirut, May 2000, <http://www.cedroma.usj.edu.lb/files/droitreligion.htm> (accessed December 4, 2014); Marie-Claude Najm, *Principes directeurs du droit international privé et conflits de civilisations — Relations entre systèmes laïques et systèmes religieux* (Daloz Editions), p. 600.

## Foreign Civil Marriages, Codes

The 1936 decree, which established the basic personal status order in Lebanon (Decree 60LR/1936) and remains operational today, recognized the freedom of belief of each individual by granting the right of each to opt out of their religions' personal status laws.

While recognizing the ability of religious groups for which there is a codified personal status law (referred to as “historical sects” in the decree) to apply their own laws to their communities, it did not make affiliation to a particular religious group compulsory and gave every citizen the right to choose his or her religious affiliation, including to affiliate with a religion that has no personal status code in Lebanon (referred to as “ordinary sects” in the decree) or to choose to not affiliate with any religion.<sup>10</sup>

Under Decree 60LR and in keeping with the absolute freedom of faith guaranteed in the constitution, individuals who affiliate with “ordinary sects” or choose to not affiliate with any religion at all would be subject to a civil code in personal status matters.

Despite this and multiple local campaigns (for a brief overview of efforts in Lebanon to enact a civil code see “The Battle for a Civil Personal Status Law” below), Lebanon has yet to adopt a civil code since the enactment of the 1936 decree. Until recently, this has meant in practice that those who wish to marry under a civil code, either because they do not want to be subject to the laws of their religion or because they are from different religious backgrounds, have had to travel abroad to get married and have their foreign marriage recognized in Lebanon.

The Lebanese Court of Cassation, the country's highest court, has long recognized that article 25 of Decree 60LR permits Lebanese nationals to enter marriages in a foreign

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<sup>10</sup> The state recognizes ordinary sects on two conditions: 1) the sect's religious teachings and moral principles do not contravene public security, public morals, the constitutions of the state and confessions, and the provisions of decree 60LR/1936 and 2) provided the sect has a sufficient number of adherents and guarantees for perpetuity to justify the privilege of recognition. Adherents of ordinary sects celebrate marriages before their clerics, but marriage provisions are subject to civil law. The Bahai confession is an example of an ordinary sect in Lebanon. Christian confessions recognized as historical sects under Law 2 of April 1951 include: Maronite, Greek Orthodox, Roman Catholic, Gregorian Armenian Orthodox, Armenian Catholic, Syriac Orthodox, Syriac Catholic, Eastern Nestorian (Assyrian Eastern Orthodox), Chaldean, Latinate, Evangelical, and Coptic Orthodox. The following Islamic confessions are also considered historical sects: Sunni, Ja`fari Shia, `Alawite Shia and Ismailis. The Druze and Beirut Synagogue Jewish confession are also considered historical sects.

country in accordance with the civil code there.<sup>11</sup> In such cases, these marriages are governed by the laws of the country in which the marriage was concluded and Lebanese courts must apply this law in case of a dispute between the married parties.<sup>12</sup>

Lebanese couples have resorted to such foreign civil marriages with increasing frequency. According to media reports, data from the Cypriot embassy in Lebanon indicates that more than 800 Lebanese couples married in civil ceremonies in Cyprus in 2011. Couples are also increasingly travelling to France and Turkey to marry, according to local travel agencies.<sup>13</sup>

Despite its increasing popularity, the option of enacting a civil marriage abroad is fraught with limitations. Financially, it is available only to couples that can afford to travel abroad. In addition, it is only an option if the couple does not also hold a religious ceremony in Lebanon. The Lebanese Court of Cassation has ruled that if the couple holds both civil and religious ceremonies, the marriage and its legal consequences are subject to religious law.<sup>14</sup> Furthermore, if both spouses are Shia, Sunni or Druze, their foreign civil marriage will not be recognized by Lebanese Ja`fari, Sunni and Druze courts, which will apply their own rules if one of the spouses resorts to them even if they did not have a religious marriage in Lebanon.<sup>15</sup>

Difficulties also do arise when Lebanese courts hear disputes arising from civil marriages concluded abroad, as judges and disputants alike do not necessarily understand foreign law and its application, particularly when the marriage takes place in countries whose legal and judicial systems are very different to the systems in Lebanon.

In February 2013, a new avenue for enacting a civil marriage without leaving Lebanon opened up: despite the absence of an operative civil code, the Lebanese Supreme Council

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<sup>11</sup>Hatim, Court of Cassation, ruling no. 46, December 27, 1972, vol. 134, p. 18; Baz 1964, Court of Cassation, ruling no. 36, December 19, 1964, p. 149; Judicial Bulletin, ruling of February 11, 1967, 1968, p. 161.

<sup>12</sup>Hatim, Court of Cassation, ruling no. 46, December 27, 1972, vol. 134, p. 18; Baz 1964, Court of Cassation, ruling no. 36, December 19, 1964, p. 149; Judicial Bulletin, ruling of February 11, 1967, 1968, p. 161.

<sup>13</sup>Martin Armstrong, "More Lebanese Opting for Civil Marriage Abroad," *The Daily Star*, June 14, 2012, <http://www.dailystar.com.lb/News/Local-News/2012/Jun-14/176772-more-lebanese-opting-for-civil-marriage-abroad.ashx#ixzz2DQZBdFBo> (accessed December 4, 2014).

<sup>14</sup>Baz, 1965, Court of Cassation, June 25, 1965, p. 117; al-`Adl, 2001, ruling of March 29, 2001, p. 73.

<sup>15</sup>Lebanese Code of Civil Procedure, 1983, art. 79. For example, if a couple are both Muslims, even if they only contracted a civil marriage, either spouse may go before the Muslim court which will consider the civil marriage a presumption of a religious marriage and apply the Shari'a rules.

of the Judiciary headed by the minister of justice approved the registration of a civil marriage contracted in Lebanon between a couple that had removed their religious affiliation from their civil records.<sup>16</sup>

The couple, acting on the advice of a long-time activist for civil marriage, argued that by removing their religious affiliation from their civil records, they had the right under Decree 60LR to a civil marriage.<sup>17</sup> They argued that Lebanon's failure to enact such a law did not revoke that right. Given the absence of a law to govern their marriage, the couple notarized their marriage contract before a public notary and chose to have it governed by French civil law, which was the civil law in Lebanon in 1936 when Decree 60LR was enacted.

The Ministry of Interior sought legal advice from the Lebanese Supreme Council of the Judiciary which accepted the couple's reasoning and on April 25, 2013, the Lebanese Ministry of Interior officially registered the marriage to become the first civil marriage contracted in Lebanon.

While this development is an important step in the ongoing battle for the right of Lebanese citizens to choose which law governs their personal matters, many Lebanese are wary of the legal complications that may arise from removing one's affiliation from their civil records in the absence of local legislation.

## Personal Status Laws and the State's Constitutional Order

Under Decree 60LR issued in 1936, each religious group is required to submit its personal status code and trial procedures to the government and parliament for review and ratification.

Based on the decree, parliamentary ratification only follows if the personal status laws and trial procedures do not contain text "that contravenes public security or morals, the constitutions of the state and confessions, or the provisions of this decree."<sup>18</sup> While religious personal status laws are in principle required to comply with the constitution and

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<sup>16</sup>Rayan Majed, "Civil marriage is legitimate," *NOW*, February 3, 2013, [https://now.mmedia.me/lb/en/reportsfeatures/civil\\_marriage\\_is\\_legitimate](https://now.mmedia.me/lb/en/reportsfeatures/civil_marriage_is_legitimate) (accessed on December 4, 2014); Unknown author, "Lebanese judicial council approves civil marriage", *NOW*, February 12, 2013, <https://now.mmedia.me/lb/en/nownews/lebanese-judicial-council-approves-civil-marriage> (accessed on December 4, 2014).

<sup>17</sup>Talal Al Housseini, *Civil marriage: the Right and the Contract on Lebanese Soil*, (Dar El Saqi, 2013).

<sup>18</sup>Decree 60LR, 1936, art.5.

public order, in practice parliament has failed to ensure that they do. In the vast majority of cases the Court of Cassation, the country's highest court for all civil cases, also does not review the substantive decisions of the personal status courts (see Section "Court of Cassation Limited Oversight of Religious Courts" below for an exception to this general practice).

Law no. 2 of April 1951 defining the prerogatives of the **Christian and Jewish** groups confirms this obligation to have their personal status laws reviewed and ratified by parliament.<sup>19</sup> Article 33 of the law requires that the religious groups submit a copy of their personal status codes and trial procedures to the government within one year, to be approved by parliament within six months, provided they conform to the principles of the public order and basic laws of the state and religious groups.

Christian and Jewish confessions submitted their personal status laws and trial procedures to be reviewed in 1951.<sup>20</sup> The government appointed a committee to examine the laws and issued the report according to the deadline set in the law highlighting provisions of these codes that violate the Lebanese constitution, laws, and public order.<sup>21</sup> Ultimately, however the problematic provisions were not amended and parliament never ratified the laws. Nonetheless, the laws, as written in the 1951 code that the Christian and Jewish authorities submitted have been applied by the religious courts and continue to be enforced.

While the Christian and Jewish confessions submitted their laws for review, the Sunni confession objected to the provisions of Decree 60 LR, arguing that requiring it to seek recognition from the newly constituted Lebanese parliament in order to exercise its authorities, constituted interference in its religious affairs and an infringement of its historical privileges. Following this refusal by the Sunni confession, Decree 53 of March 30, 1939 was issued stating that the provisions of Decree 60LR did not apply to Muslims. In so doing, the Lebanese parliament abdicated its responsibility to ensure Muslim personal status laws were in compliance with the constitution.

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<sup>19</sup>Decree 60LR issued in 1936 recognized the Jewish confession, and a personal status law was developed, but it was never implemented as a Jewish court was never established.

<sup>20</sup>Article 33 of Law 2 of April 1951 requires Christian and Jewish confessions to submit a copy of their personal status codes and trial procedures within one year to the government, to be approved within six months, provided they conform to the principles of the public order and basic laws of the state and confessions.

<sup>21</sup>Bashir al-Bilani, *Personal Status Laws in Lebanon* (in Arabic), (Beirut, Lebanon: Dar al-'Ilmlil-Malayin: 1997), 5th ed., p. 2.

The Lebanese parliament did later issue laws regulating trial procedures in **Ja`fari, Sunni, and Druze** Courts which continue to be used.<sup>22</sup> However, when it came to specifying the substantive provisions governing personal status codes for Sunnis and Shias the parliamentary laws simply referred to the approved schools of jurisprudence in these confessions (the Hanafi and Ja`fari schools respectively) and the provisions of the Ottoman family law compatible with them rather than codifying the law or reviewing its contents (article 242 of the Law on the Regulation of Sunni and Ja`fari Justice).<sup>23</sup> Given the multiplicity of sources of Sunni and Shia law, this has left a wide discretion for religious judges to apply rules differently.<sup>24</sup>

The **Druze** personal status code was however codified by parliament on February 24, 1948, and continues to be implemented. The code addresses the fundamental issues of marriage, divorce, custody of children, and other relevant topics. The Sunni confession also took an important step toward codification of its personal status code when its Supreme Islamic Council issued the New Code of Family Provisions (Decree 46 of December 2011), which in several chapters addresses care of children cases, visitation, spousal maintenance, and *mahr*.<sup>25</sup> The New Code of Family Provisions is the first and only codification of Sunni personal status law in Lebanon since the Ottoman family law of 1917 and is still in place. Importantly, the New Code of Family Provisions does not address divorce which, as a result, is still subject to the few articles on the issue in the Ottoman family law of 1917.

The issuance of the Sunni New Code of Family Provisions again raised questions about parliament's authority to legislate personal status laws used in religious courts. The cabinet submitted a bill to the parliament amending some provisions on *mahr* and spousal maintenance and raising the custody age for the Sunni confession, but one Sunni parliamentarian objected that the bill could not be debated in the assembly by non-Sunni parliamentarians, as that would infringe upon the confession's legislative prerogatives.

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<sup>22</sup> Law on the Regulation of Druze Justice (1960) (1948) and Law on the Regulation of Sunni and Ja`fari Justice (1962).

<sup>23</sup> The Ottoman family law of October 25, 1917 is comprised of 157 articles addressing various rules of matrimonial engagement, conditions in the marriage contract, and issues of *mahr*, spousal maintenance, divorce, and severance in the Sunni confession. Several judges from the Sunni courts told Human Rights Watch that when the law does not address personal status issues that arise they typically refer Qadri Pasha's book on personal status law.

<sup>24</sup> Following complaints from lawyers about the lack of codification of Shia law, the president of the Supreme Ja`fari Court in 1994 drafted the *Guide to Ja`fari Justice*, which codified material related to issues of marriage, divorce, filiation, care of children, and other personal status matters. The guide merely codifies the principles and rules of the Shia confession and is not binding on Ja`fari judges.

<sup>25</sup> Cabinet decrees, *Official Gazette*, December 12, 2012.

This position won the day, and article 242 of the law on the Regulation of Sunni and Ja`fari Justice was amended to make the resolutions of the Supreme Islamic Council—which is under the mandate of the Council of Ministers—the principal source of reference for judges in Sunni courts. This development illustrates how the Lebanese parliament has relinquished its right to legislate and has granted religious authorities the power to legislate without oversight and in contravention of the public order and basic laws, including the constitution and Lebanon’s international commitments.

Shia personal status laws are still not codified. But following complaints from lawyers about the lack of codification, the president of the Supreme Ja`fari Court in 1994 drafted the *Guide to Ja`fari Justice*, which compiles and interprets material related to issues of marriage, divorce, affiliation, care of children, and other personal status matters. The guide however is not binding on Ja`fari judges who can revert to different interpretations of their choosing.

The examination of the substance of the laws is further complicated by the fact that even where laws are codified, additional sources of laws and foreign legal opinions are considered. For example, Christian personal status laws are not limited to the personal status code but also include the Code of Canons of the Eastern Churches issued on October 18, 1990, the new Latin Code of Canon Law issued on January 25, 1983, the Bible, apostolic writings, resolutions of the general or local synods, and edicts issued by the patriarchs.<sup>26</sup> In addition, legal opinions in Christian courts are not limited to those issued by Lebanese courts, but include those issued by high foreign tribunals, such as the Roman Rota.<sup>27</sup> As is the case in Muslim confessions, Ja`fari judges, for example, when interpreting legal provisions, must adhere to the scope of legal opinions (*fatwas*) issued by scholarly authorities, who may be foreign (*marja*).<sup>28</sup>

## The Battle for a Civil Personal Status Law

Civil society organizations and activists in Lebanon have long advocated for the adoption of an optional civil personal status law. Local human rights groups have launched dozens

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<sup>26</sup>For example, Paul’s First Epistle to the Corinthians, the Second Vatican Council of 1962, and the 1736 National Maronite Synod of Mount Lebanon.

<sup>27</sup> The Roman Rota is the highest appellate tribunal of the Roman Catholic Church.

<sup>28</sup>Law on the Regulation of the Affairs of the Shia Islamic Confession in Lebanon, 1967, art. 1.

of initiatives and campaigns and there have been several attempts to introduce legislation that would permit optional civil marriage, including in:

DATE(S)	ATTEMPT(S) TO INTRODUCE OPTIONAL CIVIL MARRIAGE
1951	Both Lebanese Bar Associations strike for nearly six months to demand an optional civil marriage law and to protest Law 2 of April 1951, which expands the prerogatives of the Christian courts.
1957	MP Raymond Eddé, the leader of the Lebanese National Bloc, submits a proposal to parliament to establish civil marriage in Lebanon and his party supports an optional personal status draft law. <sup>29</sup>
1972/1977	In 1972, the Democratic Party puts forward a proposal for a civil personal status law. In 1977 Democratic Party MP Auguste Bakhos proposes a bill which includes the draft law. <sup>30</sup>
1976	The National Movement puts forward a reform paper that proposes an optional civil personal status law. <sup>31</sup>
1977	The Syrian Social Nationalist Party also proposes an optional civil personal status law and submits its proposal to parliament. <sup>32</sup>
1998	President Elias Hrawi submits a bill for optional civil marriage that is met with fierce opposition from Christian and Muslim religious leaders. Then-Prime Minister Rafic Hariri refuses to refer it to parliament for a vote, although a majority of cabinet members approve it. <sup>33</sup>

<sup>29</sup> Mohammad Harfoush, “Civil marriage to mark anniversary of civil war”, *Al-Monitor*, April 12, 2013, <http://www.al-monitor.com/pulse/tr/originals/2013/02/lebanon-civil-marriage.html>

<sup>30</sup>Ibid; UNDP, *Lebanon National Human Development Report toward a citizen's state*, (2009) p.

76. [http://www.undp.org.lb/communication/publications/downloads/NHDR\\_Full\\_Report\\_En.pdf](http://www.undp.org.lb/communication/publications/downloads/NHDR_Full_Report_En.pdf) (accessed on December 5, 2014)

<sup>31</sup>United Nations Educational Social Cultural Organization, “Women in personal status laws: Iraq, Jordan, Lebanon, Palestine, Syria”, July, 2005, [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Women\\_in\\_Personal\\_Status\\_Laws.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Women_in_Personal_Status_Laws.pdf), (accessed December 5, 2014).

<sup>32</sup> Mohammad Harfoush, “Civil marriage to mark anniversary of civil war”, *Al-Monitor*.

<sup>33</sup> “Lebanon – Civil Marriage Proposals,” *Associated Press*, April 1, 1998, <http://www.aparchive.com/metadata/Lebanon-civil-marriage-proposals/8e90d5f1143e8398f8f3f3d680df862d?query=MIDDLE+EAST&current=1&orderBy=Relevance&hits=1&referrer=search&search=%2Fsearch%3Fquery%3DMIDDLE%2520EAST%26allFilters%3DLEBANON%3AKeyword%2CLifestyle%3ASubject%2CCABINET%2520MEETINGS%3AKeyword%2CReligious%2520issues%3ASubject&allFilters=LEBANON%3AKeyword%2CLifestyle%3ASubject%2CCABINET+MEETINGS%3AKeyword%2CReligious+issues%3ASubject&productType=IncludedProducts&page=1&b=df862d> (accessed on December 4, 2014); “Civil ‘I Do’s’ May Stay a ‘Don’t’ in Lebanon,” *The CS Monitor*, Edward Alan Yeranian, May 6, 1998, <http://www.csmonitor.com/1998/0506/050698.intl.intl.4.html> (accessed on December 4, 2014); “Cabinet backs Hrawi civil marriage plan,” Nafez Kawas, “Cabinet backs Hrawi civil marriage plan” *The Daily Star*, March 19, 1998, <http://www.dailystar.com.lb/News/Lebanon-News/1998/Mar-19/22268-cabinet-backs-hrawi-civil-marriage-plan.ashx> (accessed on December 4, 2014).

DATE(S)	ATTEMPT(S) TO INTRODUCE OPTIONAL CIVIL MARRIAGE
2011	The Chaml Association, in conjunction with 14 other local NGOs, submits a draft civil personal status bill to parliament. Some parliamentarians support the draft and put it on the agenda of the joint parliamentary committees on March 18, 2011. It has not been debated at time of writing.
January 2014	Minister of Justice Shakib Qortabwi submits a bill to the cabinet that would grant the right to Lebanese citizens to conduct optional civil marriages in Lebanon without removing their religious affiliations from their civil records; and allow couples to choose any foreign civil law by which to marry without having to go abroad, as long as the law does not contradict “public order and general morals.” To do so, each couple would have to pay the state the equivalent of \$333, to be disbursed to the religious courts of the husband’s religion. Lebanese civil society organizations criticize the initiative for not complying with constitutional requirements. <sup>34</sup>

Sectarianism within the cabinet and parliament has hindered the passage of an optional civil personal status law, despite these initiatives. Sectarian considerations determine the distribution of ministerial portfolios and members of parliament are elected based on their religious affiliation, and religious bodies hold enormous sway within the cabinet and parliament. Every religious group has its own supreme council, which in some confessions includes all past and present parliamentarians and ministers from that religious group, senior state officials, and the members and boards of the professional syndicates, as well as confessional judges and clerics.<sup>35</sup> The reach of these religious bodies into the heart of civil state institutions and their members’ subordination to them has made it difficult to break with the decades-long status quo.

<sup>34</sup>Talal Al Housseini, “Clarify the Blinding”, (“إيضاح في تعمية: تعليق على مشروع قانون الزواج المدني في لبنان”), Legal Agenda, March 4, 2014. <http://www.legal-agenda.com/article.php?id=674&folder=articles&lang=ar> (accessed November 25, 2014).

<sup>35</sup>The Supreme Islamic Council for the Sunni confession (1955), the Supreme Shia Council (1967), the Supreme `Alawite Council (1994), and the Supreme Druze Council (2006). All of these bodies were created by laws issued by parliament with the mission of representing their confessions, overseeing their affairs, and defending their rights and privileges. Also, the plenary assembly of the Supreme Evangelical Synod, which permits “issuing the invitation to attend meetings of the plenary assembly, as honorary members, former presidents of the Supreme Synod, past and present Evangelical members of parliament and ministers in Syria and Lebanon, and legal counselors, when they are not church representatives,” under article 5 of the charter of the Supreme Evangelical Synod in Syria and Lebanon.

## II. Religious Courts: Lack of Oversight and Inadequate Judicial Training

Lebanon's multiple personal status laws are principally administered by religious courts that enjoy a great deal of autonomy from the state and are subject to little or no oversight by state judicial bodies.

The qualification of religious judges varies across confessions, but generally does not include a requirement to hold a national law degree and women have been excluded from the bench with the exception of the Evangelical and Armenian Orthodox confessions. The absence of female judges; qualified judges, with limited to no knowledge of Lebanon's human rights obligations; and lack of oversight mechanisms has meant that women before personal status courts are vulnerable to discriminatory application of personal status laws. It has also interfered with the right to an independent and impartial tribunal as set out in article 14 of the International Covenant on Civil and Political Rights.<sup>36</sup>

In some cases, civil courts may also hear personal status matters. For example, individuals who marry under a civil code, usually by travelling abroad to marry, have their foreign marriage governed by the laws of the country in which they married and Lebanese civil courts apply this law if there is a dispute between the parties, except if the couple also holds a religious ceremony in Lebanon.

In such cases, in principle, the marriage and its legal consequences will be subject to religious law and courts.<sup>37</sup> Furthermore, if both spouses are Shia, Sunni or Druze, their foreign civil marriage will not be recognized by Lebanese Ja`fari, Sunni or Druze courts, which will apply their own rules if one of the spouses resorts to them—even if they did not have a religious marriage in Lebanon.<sup>38</sup> Civil courts may also hear personal status matters in cases involving children before the juvenile courts.

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<sup>36</sup>International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Georgia on August 3, 1994, art. 10.

<sup>37</sup>Baz, 1965, Court of Cassation, June 25, 1965, p. 117; al-`Adl, 2001, ruling of March 29, 2001, p. 73.

<sup>38</sup>Lebanese Code of Civil Procedure, art. 79.

## Structure of Courts, Appointment and Qualification of Judges

Most confessions in Lebanon have their own religious courts. Article 2 of Decree 60LR grants judicial prerogatives to the confessions recognized at the time of its passage in 1936.

Since Ottoman times, Islamic courts have been funded by the state. Several laws and legislative decrees issued by the Lebanese parliament and cabinet established a Supreme Islamic Authority for each of the Ja`fari, Sunni, and Druze confessions that oversees the administrative and financial affairs of their courts and which the state budget funds.

Despite this affiliation and funding, these courts operate independently of the state, which exercises little to no oversight over the courts.

Christian courts, which are financially and administratively independent of state judicial bodies are also independent from the state and receive little to no external oversight.

**Table 3: Lebanon’s Main Religious Courts**

RELIGIOUS COURTS	STRUCTURE
<b>Sunni and Ja`fari</b>	<p>First-instance courts are comprised of individual judges. There are 19 Sunni courts, and 20 Ja`fari courts across the country.</p> <p>There is also a Supreme Sunni Court and a Supreme Ja`fari Court comprised of a chief judge and two member judges and which act as appellate courts. Both courts are located in Beirut. The courts are funded by the state.</p>
<b>Druze</b>	<p>There are six first-instance Druze courts comprised of individual judges spread out across Lebanon.<sup>39</sup> There is also a Supreme Appellate Court comprised of two chambers, each with two judges, headed by one chief judge located in Beirut. The courts are state-funded.</p>
<b>Catholic Confessions</b>	<p>There are first-instance courts established in every diocese, a district under the supervision of a bishop, in Lebanon. First instance courts also include a first-instance collegiate tribunal for each of the Catholic confessions covering all provinces for each confession. This is made up of three members in addition to a</p>

<sup>39</sup> They are: Beirut Court, Aley Court, Baakline Court, Bekaa Court, Southern Court, and Metn Court.

RELIGIOUS COURTS	STRUCTURE
	<p>promoter of justice (to defend the public interest) and a defender of the bond (<i>defensor matrimonii</i>, to defend the marriage bond). This body hears annulment, separation, and status of persons cases. In exceptional cases, the Roman Rota, located in the Vatican, also hears first instance cases. There are two appellate courts, one local appellate court for each of the Catholic confessions covering all provinces for each confession. This is made up of three members in addition to a promoter of justice (to defend the public interest) and a defender of the bond (<i>defensor matrimonii</i>, to defend the marriage bond) and the Roman Rota, located in the Vatican, which both hear appeals of rulings issued by a first-instance court. The Roman Rota also hears appeals of rulings by the local appellate courts. Decrees and rulings issued by the Roman Rota can in turn be appealed before the Supreme Tribunal of the Apostolic Signatura. The courts are independently funded.</p>
<p><b>Orthodox Confessions</b></p>	<p>In general, first-instance courts are sections presided over by one judge or primary chambers comprised of a chief judge and two member judges, but the courts vary depending on the Orthodox confession. Appellate Courts for each Orthodox confession are comprised of a chief judge and two senior judges. The Appellate Court hears appeals of decrees and rulings issued by first-instance courts and judges. The rulings and decrees issued by the Appellate Court are not in general subject to appeal. The courts are independently funded</p>
<p><b>Evangelical</b></p>	<p>There is one first-instance court and one Appellate Court in Lebanon each comprised of a chief judge and two senior judges. The court panel also includes the legal counselor for the Supreme Synod, who must give his written opinion before the end of the trial and before the ruling is issued in cases of divorce, custody, adoption, and all other cases deemed necessary by the court. The legal counselor must file for a declaration of annulment from the competent court in the presence of both spouses or petition for the intervention of any other person. Rulings of the first-instance court may be appealed before the Evangelical Appellate Court. Rulings of the Appellate Court are final. The courts are independently funded.</p>

Religious bodies enjoy wide discretion in appointing judges. Judges in Christian courts are appointed by the spiritual authorities of the Christian confessions. Many judges combine their judicial position with a clerical one. Under the Law Regulating Sects, patriarchs, metropolitans, and bishops possess judicial prerogatives as part of their authorities, which permit them to appoint members of the judicial corps and judicial aids.

Judges in the Ja`fari and Sunni courts are appointed based on the recommendation of the Supreme Islamic Authority which is affiliated with the cabinet, pursuant to the approval of the Islamic Judiciary Council.<sup>40</sup>The Islamic Judiciary Council is composed of the Mufti of Lebanon, the heads of the Supreme courts, judges seconded to the general prosecution, and judicial inspectors.

Judges in Druze courts are appointed based on the recommendation of the minister of justice after consultation with the Initiates Council (Mashyakhat al-`Aql), which is the Supreme Druze Council comprised of one president (Sheikh al-`Aql) elected by the Druze national assembly and four Druze religious authorities appointed by him, with the mission of representing the Druze confession, overseeing its affairs, and defending their rights and privileges.<sup>41</sup>

The qualifications of religious judges vary between confessions but in all religious courts without exception, judges are not required to undergo judicial training as a condition of office, as is the case with civil judges in Lebanon. Confessional laws for all confessions require judges to be members of the relevant religious group and have a record of good conduct; judges in Sunni and Ja`fari Courts must hold degrees in the religious sciences. Across confessions, the majority of judges in the religious courts are clerics and they do not need to have a national law license to become judges except in the Evangelical and Druze confessions. Some confessions, including Sunnis and Shias, only require “experience,” or religious certificates to become a judge.

Lawyers practicing before the courts and women interviewed for this report told Human Rights Watch that the lack of female representation in the judicial corps has a negative impact on trial proceedings.<sup>42</sup> Many said that they were unable to articulate their concerns to male judges due to the sensitivity and the intimacy of certain issues. Although theoretically women are not barred from judicial appointments in religious courts, in practice, the link between judicial and clerical office excludes women, as religious office is reserved for men in most confessions.

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<sup>40</sup> Law on the Regulation of Sunni and Ja`fari Justice, art . 453.

<sup>41</sup>Law on the Regulation of Druze Justice, 1960, art. 13.

<sup>42</sup> Human Rights Watch interviews with three lawyers practicing before Christian Courts, Lebanon, May 17, 2012, May 18, 2012, and June 6, 2012; Brigitte, July 4, 2012; and Michelle, Evangelical Christian, Lebanon, July 27, 2012.

**Table 4: Appointment and Qualifications of Judges**

RELIGIOUS COURTS	APPOINTMENT OF JUDGES	QUALIFICATIONS/ REQUIREMENTS
<b>Catholic</b>	Judges are appointed by the Patriarch and the competent bishops' councils.	Must be a member of the relevant confession, have a record of good conduct, and be well versed in canon law. Judges do not need to have a national law license.
<b>Orthodox</b>	Generally speaking, a bishop is the president of the first-instance court, and he appoints advising judges while members of the appellate courts are appointed by the patriarch. <sup>43</sup>	Must be a member of the relevant confession and have a record of good conduct. Clerics can serve as judges without a national law license, but otherwise, a national law license and at least five years legal experience are required.
<b>Evangelical</b>	Evangelical judges are appointed by the executive committee of the Supreme Evangelical Synod. <sup>44</sup>	Must be at least 30 years old, a member of the relevant confession and have a record of good conduct. Court heads and members without national law licenses must take an exam before serving as judges. At least one judge on every court panel should have a national law license.
<b>Sunni</b>	Judges are appointed based on the recommendation of the Supreme Islamic Authority, pursuant to the approval of the Islamic Judiciary Council. <sup>45</sup>	Must be Lebanese, a member of the relevant confession, aged 25-48, and have a record of good conduct. Must hold a degree in the religious sciences and have passed the exam prepared by the Islamic Judiciary Council. "Experience" or religious certificates are sufficient qualifications and judges do not need to have a law license.
<b>Ja`fari</b>	Judges are appointed based on the recommendation of the Supreme Islamic Authority, pursuant to the approval of the Islamic Judiciary Council.	Must be Lebanese, a member of the relevant confession and have a record of good conduct. Must hold a degree in religious sciences and

<sup>43</sup>Personal status law and the Code of Procedure of the Greek Orthodox Patriarchate of Antioch and All the East, 2003, arts.3, 4, 5, and 6; Code of Procedure for the Armenian Orthodox Confession, 1949, art. 3.

<sup>44</sup>Code of Procedure for the Evangelical confession in Syria and Lebanon, 2005, arts.5 and 7; and Order of the Supreme Evangelical Synod in Syria and Lebanon, art. 13.

<sup>45</sup> Law on the Regulation of Sunni and Ja`fari Justice, art. 453.

RELIGIOUS COURTS	APPOINTMENT OF JUDGES	QUALIFICATIONS/ REQUIREMENTS
		have passed the exam prepared by the Islamic Judiciary Council. “Experience” or religious certificates are sufficient qualifications and judges do not need to have a law license.
<b>Druze</b>	Judges are appointed based on the recommendation of the minister of justice after consultation with the Initiates Council (Mashyakhat al-`Aql). <sup>46</sup>	Must be a member of the relevant confession and have a record of good conduct. Must have a law license.

## Lack of Adequate Oversight Mechanisms

Although there are some internal mechanisms for the oversight of judges presiding before the Druze, Sunni and Ja`fari courts, the 11 lawyers who spoke to Human Rights Watch stressed their ineffectiveness.<sup>47</sup> Similarly, oversight mechanisms in the Christian courts are deficient.

Issues with the oversight mechanisms include inadequacy of staffing, training, and the independence of inspectors. For example, in the Sunni and Ja`fari courts, inspectors are appointed from within the Supreme Islamic Judiciary Council, and the position of inspector is not a full-time, dedicated position.

Oversight mechanisms in the Christian courts also lack independence as they are exclusively the prerogatives of the religious authorities who are also responsible for the appointments of the judges in these courts.

<sup>46</sup>Law on the Regulation of Druze Justice, art. 13.

<sup>47</sup> Human Rights Watch interviews with three lawyers practicing before Christian Courts, May 17, 2012, May 18, 2012, and June 16, 2012; a lawyer practicing before the Ja`fari Courts, Lebanon, May 11, 2012; a lawyer practicing before the Sunni Courts, Lebanon, May 18, 2012; a lawyer practicing before the Druze Courts, Lebanon, July 6, 2012; three lawyers working with a local NGO to defend women against violence, June 5, 2012 and June 22, 2012.

**Table 5: Oversight Mechanisms**

RELIGIOUS COURTS	OVERSIGHT MECHANISMS
<b>Catholic</b>	The Synod of Bishops of the Patriarchal Church chooses one of its members, in a secret ballot, to a five-year term as the general supervisor of justice. He has the authority to inspect all courts and to recuse judges.
<b>Orthodox</b>	The patriarch considers motions for the recusal or removal of the chief judge of the Appellate Court. The chief judge of the Appellate Court considers motions for the recusal or removal of Appellate Court judges. The Appellate Court considers motions for the recusal or removal of the heads of first-instance courts. The diocesan bishop considers motions for the recusal or removal of judges he appoints.
<b>Evangelical</b>	<p>The Commission for Court Monitoring, under the presidency of the head of the Supreme Council of the Evangelical Community in Syria and Lebanon, with the two legal advisors in Syria and Lebanon as members, monitors the operations of all Evangelical courts.</p> <p>“[The Commission] is to instruct the courts on how best to conduct their operations.</p> <p>[The Commission] is to receive all complaints against judges or court procedures, consider and investigate them, and take appropriate action.</p> <p>[The Commission] is to submit a report to the Executive Committee on court operations, with recommendations [for improvements] as need arises.</p> <p>[The Commission] is to examine [the competency of] court heads and members before appointment.</p> <p>[The Commission] is to monitor the determination of payable fees and expenses, and their adjustment in all courts, after consultation with the heads of the courts.</p> <p>[The Commission] is to receive copies of annual court budgets, for advice and comment.</p> <p>The Commission shall have the right to appeal any final judgment handed down by an ecclesial Evangelical court, for the interest of the Community and its reputation, and for the upholding of the law, within the legal deadlines for appeal, calculated from the date when the Commission was notified of such judgments and decisions.”<sup>48</sup></p>
<b>Sunni and Ja`fari</b>	<p>A member of the Supreme Islamic Judiciary Council is appointed as inspector by cabinet decree after consultation with the Council.</p> <p>Inspectors file monthly reports to the Supreme Islamic Judiciary Council and have the right to recommend disciplinary penalties and other appropriate action. The Supreme Islamic Judiciary Council hears disciplinary matters for judges and other employees based on the inspectors’ reports.</p>
<b>Druze</b>	The inspection of the Druze courts is undertaken by a Druze judge, appointed by decree pursuant to

<sup>48</sup> Code of Procedure for the Evangelical Confession in Syria and Lebanon, 2005, art. 16.

RELIGIOUS COURTS	OVERSIGHT MECHANISMS
	<p>the recommendation of the minister of justice after the approval of the Initiates Council. The inspector reports to the Initiates Council and the minister of justice. Penalties are assessed by the minister of justice and a disciplinary council. The Supreme Appellate Court acts as the disciplinary council for judges and assistant judges. The disciplinary council for Supreme Appellate judges is comprised of three judges, appointed by decree, pursuant to the recommendation of the minister of justice and after consultation with the Initiates Council.</p> <p>Each court is inspected at least once a year. The inspector reviews all operations and files a report with the minister of justice and Initiates Council. In addition, the Initiates Council may ask the Ministry of Justice to inspect the Druze courts when it deems it necessary and to recommend disciplinary penalties. If the minister of justice believes that actions noted in the report require disciplinary penalties, he recommends that judges and assistant judges be referred to the disciplinary council. Penalties that do not require referral to the disciplinary board are assessed by the minister of justice.</p>

One lawyer who represented a party to a severance case before the Beirut Sunni Court told Human Rights Watch that he received notice of a judgment issued against his client in a spousal maintenance case following a proceeding that he did not know about and for which he was not present.<sup>49</sup> The lawyer filed a complaint against the judge with the relevant inspection body (see Table 5 “Oversight Mechanisms” above), but at the time of our interview, more than a year had passed and no action had been taken. The lawyer added that the judge had summoned him to his office to censure him for the complaint and for wasting his time.

None of the personal status law lawyers who spoke to Human Rights Watch could recall any action taken against a judge for malpractice.<sup>50</sup> All said the primary reason for this was that the bodies responsible for oversight and disciplinary action against negligent judges are overwhelmingly comprised of clerics and confessional judges who are keen to

<sup>49</sup> He said that he learned that the judge presiding over the case had simply removed the client’s power of attorney from the case file. The lawyer was thus not informed of the legal proceeding in his client’s case, the proceeding took place without his knowledge, and the court’s judgment was issued in his absence. Human Rights Watch interview with a lawyer working with a local NGO to defend women against violence, June 5, 2012.

<sup>50</sup> Human Rights Watch interviews with three lawyers practicing before Christian Courts, May 17, 2012, May 18, 2012, and June 16, 2012; a lawyer practicing before the Ja’fari Courts, May 11, 2012; a lawyer practicing before the Sunni Courts, May 18, 2012; a lawyer practicing before the Druze Courts, July 6, 2012; three lawyers working with a local NGO to defend women against violence, June 5, 2012 and June 22, 2012.

preserve the reputation of their peers, which ultimately reflects on the reputation of the religious group.

### *Court of Cassation Limited Oversight of Religious Courts*

The Lebanese Court of Cassation, Lebanon’s highest court, is the final arbiter of disputes and is responsible for examining the compatibility of religious codes with the public order. However, it has long interpreted this responsibility as being limited to examining jurisdictional and procedural, rather than substantive religious rules.<sup>51</sup>

This reflects a narrow understanding of the fundamental doctrines of the public order to only include trial procedures that guarantee the right of defense, excluding from its oversight whether the substance of confessional court judgments are consistent with human rights and constitutional guarantees.

Recently, however, the Court of Cassation has challenged decisions issued by religious courts when they conflicted with child protection measures. On July 7, 2009, it rejected challenges to orders issued by civil juvenile courts, by applying a cross confessional child protection law, Law 422 on Protection of Children in Conflict with the Law or at Risk (“Law 422”), and accordingly had ordered that a child remain in the mother’s care for protection reasons although a religious court had transferred custody to the father.<sup>52</sup>

This ruling has had a limited but positive impact, and has spurred some confessional judges across religious groups to consider the best interest of the child in custody cases before religious courts (see Section “Judges Deviate from Maternal Custody Ages” below).

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<sup>51</sup>The Court of Cassation justifies its position in light of article 95 of the Code of Civil Procedure, which states that the plenary assembly of the Court of Cassation may consider “challenges to a ruling issued by a Christian, Islamic and Druze court on the grounds of lack of jurisdiction or because it violates the fundamental doctrines related to the public order.” The court says this article gives it no authority to arbitrate the content of religious decrees, but limits its oversight to questions of jurisdiction and violations of the fundamental doctrines of the public order. al-Muhami, 1955, Court of Cassation, ruling of November 12, 1955, p. 50; al-Muhami, 1956, ruling of November 17, 1956, p. 131; Judicial Bulletin, 1962, ruling of February 13, 1962, p. 94; Judicial Bulletin, 1965, part 4, ruling of April 2, 1965, p. 270.

<sup>52</sup>Judge Fawzi Khamis in collaboration with Judge Fadi Al-Aridi, “Protecting Children at Risk in Light of the Law and Jurisprudence in Lebanon,” Friedrich Ebert Stiftung, 2nd edition, Lebanon, 2011.

## Financial Barriers to Access Religious Courts, Insufficient Legal Aid and Trained Lawyers

All Christian interviewees and lawyers working before the courts told Human Rights Watch that the high financial costs of accessing personal status courts was a serious impediment in accessing the courts.<sup>53</sup>

Unlike the Ja`fari, Sunni, and Druze courts, the Christian courts have total autonomy from the government, giving them the freedom to set the court fees for petitioners. A number of Christian procedural fees are therefore quite costly compared to the Sunni, Ja`fari and Druze court fees and can be prohibitively expensive for many petitioners.

For example, the average fee for an annulment case in Catholic courts is LBP1 million (US\$660), with an additional fee of LBP325,000(\$217) for every additional ground for annulment.<sup>54</sup> The average fee for a maintenance petition is LBP325,000 (\$217), while fees for a custody petition are LBP275,000 (\$190) on average. This is in addition to the relatively high rates lawyers charge in Christian lawsuits, at least \$8,000 according to lawyers who practice before Christian courts.<sup>55</sup>

While financial barriers can be partially mitigated by the court's granting fee exemptions to indigent parties who obtain a certificate of indigence from a local priest and the court's power to appoint a lawyer to represent them at no cost, these exemptions do not cover all legal expenses and are granted arbitrarily, the interviewees said.

Brigitte, a Catholic Christian woman in her fifties and a mother of three, left her home and went to stay with family after her husband assaulted her. Two years after leaving, she told Human Rights Watch she is struggling to live off of her monthly salary of LBP 750,000 (\$500) and to care for her children, and that she has not filed for a separation from her husband before the Christian courts because she cannot afford court costs and the first round of lawyers' fees.<sup>56</sup>

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<sup>53</sup> Human Rights Watch interviews with three lawyers practicing before Christian Courts, May 17, 2012, May 18, 2012, and June 16, 2012 and three lawyers working with a local NGO to defend women against violence, June 5, 2012 and June 22, 2012.

<sup>54</sup> Human Rights Watch interview with a lawyer practicing before Christian Courts, May 17, 2012.

<sup>55</sup> *Ibid.*; Human Rights Watch interview with two lawyers practicing before Christian Courts, May 18, 2012 and June 16, 2012.

<sup>56</sup> Human Rights Watch interview with Brigitte, July 4, 2012.

Hala, a member of the Sunni confession, married in the Catholic Church, lived with her husband for 23 years and did not work outside the home. She told Human Rights Watch that her husband, who controlled the family finances, constantly berated and insulted her. She finally left after her father offered her a job. She has not filed a lawsuit for spousal maintenance since she would need to pay about LBP 3,000,000 (\$2,000) plus the legal fees to receive a judgment for monthly maintenance of LBP300,000 (\$200). “What’s the point?” she asked.

To avoid paying up to \$15,000 in court costs and lawyers’ fees in the Maronite Court with no guarantee of an annulment, Hala agreed to give up her financial rights in exchange for her husband agreeing to change their confessional affiliation so they could get a dissolution before the Assyrian Court, another Christian court that has more lenient criteria for granting a termination of marriage.<sup>57</sup>

During court proceedings Human Rights Watch observed and interviewees said that women who were dealing with personal status matters faced a lack of legal aid and other types of much-needed assistance.<sup>58</sup>

The Ministry of Social Affairs limits itself to providing referral hotlines for women to ask basic questions and receive information about available NGO services. These hotlines do not offer legal assistance and the ministry is not equipped with the necessary staff and resources to offer support for women in court. For their part, bar associations, through the Ministry of Justice, do not provide legal aid to petitioners in personal status lawsuits and NGOs lack resources to provide the legal assistance, social work, and counseling that women require to reach just resolutions in their cases.

Human Rights Watch interviewed eleven lawyers and twenty-two paralegal and activists working at NGOs specialized in women’s and human rights. The interviews revealed that there is a lack of professional requirements among some lawyers practicing before the religious courts.<sup>59</sup>In Catholic confessions, for example, lawyers can practice without a law

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<sup>57</sup> Human Rights Watch interview with Hala, Sunni married in the Catholic Church, Lebanon, June 22, 2012.

<sup>58</sup> Human Rights Watch interviews with two lawyers working with a local NGO to defend women against violence, June 5, 2012 and June 22, 2012; a social worker affiliated with the Ministry of Social Affairs Service Development Centers, Lebanon, July 5, 2012; and the head of a local NGO working towards promoting and achieving gender equality, Lebanon, September 25, 2012.

<sup>59</sup> Human Rights Watch interviews with an activist running a domestic violence shelter for women, Lebanon, July 18, 2012; a human rights legal consultant, Lebanon, July 27, 2012; and Dina, Muslim Sunni married before the Ja’fari Court, Lebanon,

license if they have a Catholic canon law license.<sup>60</sup>In the Sunni and Ja`fari first instance Courts, a non-lawyer male relative is eligible to represent a female relative upon the permission of the judge.<sup>61</sup>

Women are particularly affected by the absence of qualified lawyers because the challenges they face before the religious courts due to discriminatory legislation often require them to pursue more complex and difficult legal arguments to safeguard their basic rights.

Human rights legal consultants and activists working at NGOs specialized in women's and human rights told Human Rights Watch that experienced, principled, and well-trained lawyers, especially those working with women's rights NGOs, were extremely reluctant to accept personal status cases, regardless of the type of case or the party being represented, because of the absence of basic human rights guarantees in the courts and under the laws. Unlike the civil courts, judges' discretionary authority in religious courts is too broad, they say, and in most cases the judges are clerics who lack legal training.

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September 20, 2012. Other women who spoke with Human Rights Watch recounted similar experiences before different courts. For example, Human Rights Watch interviews with Amina, Muslim Sunni, Lebanon, May 4, 2012 and Mireille, Christian Maronite, Lebanon, February 18, 2013.

<sup>60</sup>Personal status law and Code of Procedure for the Catholic confessions, art. 172.

<sup>61</sup>Law on the Regulation of Sunni and Ja`fari Justice, art.112.

### III. Unequal Divorce Laws

International human rights law guarantees women equality within the family, at the inception of marriage, during marriage and when it is dissolved.

Human Rights Watch found that personal status laws and the religious courts that apply them discriminated against women during divorce across all religious groups, based on our review of 447 court cases and 72 interviews with, lawyers, judges, social workers, women's rights activists, and women who faced discrimination due to personal status laws.

Each of the 27 women interviewed by Human Rights Watch who tried to terminate their marriages or were fighting for spousal maintenance or to keep their children with them described the detrimental impact that personal status laws and practices had on their lives.

In 14 of the cases, women described how they were disadvantaged or discriminated against during divorce proceedings because of elements of the personal status code.<sup>62</sup> In seven cases, women told Human Rights Watch that they did not approach religious courts for a divorce because they could not afford the costs of court proceedings or they feared losing their children.<sup>63</sup> In four cases, the women said they suffered physical and psychological abuse for several years; two of them only left the matrimonial home when their children became adults in order to avoid fighting for, or losing their children.<sup>64</sup>

Human Rights Watch's review of 243 courts cases related to ending marriage confirmed that women endured systematic discrimination, either because of their disadvantaged access to divorce or court procedures that burdened them financially and created barriers to accessing divorce, custody of their children or their financial rights.

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<sup>62</sup>Human Rights Watch interview with Nisrine, Christian Maronite, Lebanon, May 8, 2012. Other women who spoke with Human Rights Watch recounted similar experiences before different Courts. For example, Human Rights Watch interviews with Maria, Christian Maronite, Lebanon, May 17, 2012; Sabine, Christian Orthodox, Lebanon, June 7, 2012; and Dina, September 20, 2012.

<sup>63</sup>Human Rights Watch interview with Brigitte, July 4, 2012. Other women who spoke with Human Rights Watch recounted similar experiences. For example, Human Rights Watch interviews with Mireille, Christian Maronite, Lebanon, February 18, 2013; Hala, June 22, 2012; Josiane, Christian Maronite, Lebanon, July 13, 2012.

<sup>64</sup> Human Rights Watch interview with Mireille, February 18, 2013; Michelle, July 27, 2012; Monica, Christian Maronite, Lebanon, July 23, 2012; and Cyntia, Christian Maronite, Lebanon, March 3, 2013.

Human Rights Watch also found that Lebanon's laws and courts discriminate between women of different religions.

Women appearing before Ja`fari, Sunni, and Druze courts are better able to end their marriages than Christian women. Christian women and men can only end their marriages in very limited circumstances described later in this report. While Christian laws are generally more restrictive in their approach to divorce for both spouses, Christian women face additional hurdles to men when trying to terminate their marriages because of high court and legal representation fees, deficient protection measures against physical and emotional abuse, and unequal laws determining primary care responsibilities and residency locations for children.

Additionally, women appearing before Sunni and Druze courts have greater ability to end their marriages than women before Ja`fari Courts because they are able to initiate severance lawsuits. Human Rights Watch reviewed 87 successful severance cases before the Sunni courts, 75 percent of which were initiated by women. Ja`fari courts do not recognize severance, and women before Ja`fari courts can only end their marriages if their irrevocable right to divorce themselves is specifically stipulated in the marriage contract, when their husbands unilaterally grant them a divorce or agree to a *quittance* under which the women must forfeit some or all of their financial rights.

## **Shia, Sunni, and Druze Confessions: Women's Conditional vs. Men's Absolute Right to Divorce**

Marriage is a contract under Shia, Sunni, and Druze personal status laws in Lebanon and it can be terminated by divorce.

Rules regulating the termination of marriage, particularly in the Sunni and Shia confessions, discriminate against women by limiting their ability to end their marriages. Men, on the other hand, have a unilateral, unlimited right to pronounce a divorce, with or without cause, and outside of any judicial proceeding.<sup>65</sup> Druze women also have

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<sup>65</sup> While a man under Sunni and Shia personal status laws can divorce without the intervention of any religious or judicial authorities he does so without the religious court's certification. Absent this certification there is no binding court decision that obliges the man to pay the deferred *mahr* and the three months maintenance during the waiting period. Divorces that are not filed with religious courts are also not recorded or enforced by the personal status department of the Ministry of Interior. This means that the wife will still be registered under their husband's name. When a husband divorces his wife

circumscribed access to divorce and may risk losing their pecuniary rights while Druze men can obtain a divorce, with or without cause, by petitioning a Druze judge and receiving a divorce judgment.<sup>66</sup>

A Sunni, Shia, or Druze woman's right to dissolve her marriage is limited to the following circumstances:

- *ʾisma*: When there is an explicit clause inserted into a Sunni marriage contract stating that husband and wife have an equal right to unilateral divorce—a practice referred to as *ʾisma*. In legal terms, the husband shares his unilateral and sole right to dissolve the marriage contract. An equivalent right exists for Shia women. Exceptionally, Sunni women may have the exclusive right to divorce, meaning that the husband in such case doesn't have the right to divorce.
- Severance: Under Sunni and Druze law, severance refers to the dissolution of the marriage by religious judicial order pursuant to a request from either spouse and for reasons specifically enumerated by law. The wife may pursue her right to severance in Sunni or Druze courts—the Jaʿfari courts do not recognize severance. To pursue severance, the court must establish the existence of specific grounds enumerated by law (see below).
- Quittance or *Khulʿ*: Half of the severance cases before Sunni courts Human Rights Watch reviewed ended with termination of the marriage via quittance, or *khulʿ*. Under quittance, a wife is released from the marriage in exchange for remuneration. In these cases, the wife forfeits all or part of her legal rights to the repayment of *mahr* and spousal maintenance, and at times also pays a sum of money to the husband to terminate the marriage without having to meet the grounds enumerated by law to obtain a severance. Sunni and Jaʿfari courts all allow termination of marriage via *khulʿ*.
- “Sovereign Divorce”: Shia women may also terminate their marriages through a “sovereign divorce,” which requires a woman to obtain an order from a Shia

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outside of court proceedings he has to certify the divorce before the religious court in order to resolve the legal consequences of the divorce. To seek certification, a husband must file a suit confirming the divorce or his desire to divorce and ask the judge to certify it in a legal order.

<sup>66</sup>Druze personal status law, art. 49 adds that if the divorce has no legitimate grounds, the judge must rule to compensate the wife and award her the deferred *mahr*. Moral and material harm is considered when assessing compensation.

religious authority divorcing her from her husband. This order must then be certified by the Ja`fari court.<sup>67</sup>

### *ʿIsma: Legally Sanctioned, Socially Rejected*

Sunni and Shia women can in principle obtain equal access to unilateral divorce by including *ʿisma*, or the explicit right to divorce, in their marriage contracts. In practice, this rarely happens in a society that considers divorce an exclusively male right. Of the 14 Muslim women interviewed by Human Rights Watch, none had inserted this clause in their marriage contracts.<sup>68</sup>

“Our customs don’t allow it. How could I ask for something like this... As if my husband is not a man!” said Nur, 31years old and the mother of three children. Nur’s husband, whom she married under Sunni religious law, began to beat and verbally insult her early on in their marriage.<sup>69</sup>

In the 150 divorce judgments before Ja`fari and Sunni, courts that Human Rights Watch reviewed, only three were issued based on the wife’s exercise of *ʿisma*, or her right to divorce herself.

Three lawyers who regularly provide couples advice on Shia and Sunni marriage contracts told Human Rights Watch that the issue is often a sore spot between prospective spouses, and the man’s relatives often do not hesitate to intervene to prevent him from “giving in” to the woman’s wish to share his right to divorce.<sup>70</sup> At times, they said, it prompted breaking the engagement and a decision not to marry.

### *Severance and Khul` : A Costly Termination*

Sunni and Druze, but not Ja`fari courts, recognize severance as a means of dissolving a marriage if certain grounds for dissolution are met. A Sunni or Druze judge, with the assistance of two court-appointed arbiters in cases of marital discord, has the discretion

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<sup>67</sup> Law on the Regulation of Sunni and Ja`fari Justice, art. 346.

<sup>68</sup> Human Rights Watch interviews with Nur, Muslim Sunni, Lebanon, July 21, 2012; Amina, May 4, 2012; Dina, September 20, 2012; Darine, Muslim Shia, Lebanon, March 22, 2013; and Hayfa, Muslim Sunni, Lebanon, May 30, 2012.

<sup>69</sup> Human Rights Watch interview with Nur, July 21, 2012.

<sup>70</sup> Human Rights Watch interview with a lawyer practicing before the Ja`fari Courts, May 11, 2012.

to determine the degree of culpability of each spouse in severance lawsuits and the requisite financial rights of each party.

Under the provisions of the Ottoman family law still in effect before the Sunni courts<sup>74</sup> and the Druze personal status law,<sup>72</sup> women may seek a severance when:

- Spousal maintenance is not paid;
- Her husband is unable to have sexual relations because of impotence, contagious disease, or insanity;
- The husband has a prolonged absence from the marital abode due to travel, disappearance, or imprisonment; and
- The husband commits adultery under the Druze personal status law.<sup>73</sup>

In addition, either spouse has the right to demand a severance on the grounds of “hardship and discord,” or “harm arising from poor conjugal relations, such as assault and insult, or compulsion to perform a prohibited activity or the performance thereof.”<sup>74</sup> According to a Sunni judge, these cases remain pending between 12 to 18 months before the judge pronounces severance.<sup>75</sup> According to him, this allows both spouses to take some time and room for reconciliation before taking a final decision to end the marriage.

While under Druze personal status law, spouses can ask a judge to terminate their marriage based on a mutual consent,<sup>76</sup> for Sunni and Druze women, severance is often the only means available to them to end their marriages unilaterally. Of 87 severance judgments that Human Rights Watch examined, women initiated proceedings in 64 cases. In the 23 cases where men had initiated severance, they did so in an attempt to reduce

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<sup>71</sup>Ottoman family law, arts.119-129.

<sup>72</sup>Druze personal status law, arts. 44-46.

<sup>73</sup>Druze personal status law, art. 43.

<sup>74</sup>Ottoman family law, art.130; and Druze personal status law, art. 47.

<sup>75</sup>Human Rights Watch interview with a Sunni Judge presiding over a first-instance court in Beirut, Lebanon, June 4, 2012.

<sup>76</sup>Druze personal status law, art. 42.

their culpability and thus financial obligations, particularly when the deferred *mahr* that would have been due in divorce was a substantial sum.<sup>77</sup>

The proscribed grounds upon which a wife can request a severance leave women and at times their children vulnerable to violence and abuse.

One lawyer hired by a local association to assist women appearing before religious courts said he was representing a woman who sought a severance before the Sunni court because she discovered that her husband was sexually abusing their daughter.<sup>78</sup> The case perplexed the judge since the legally enumerated grounds for severance do not include sexual abuse of children. As a result, he had to establish the existence of marital hardship and discord for a specific period of time before ordering a severance. It took more than a year for the woman to obtain a severance decision, freeing her and her daughter from her husband.

During severance for hardship and discord proceedings, the court gives priority to promoting spousal reconciliation. If that fails, the judge appoints two arbiters, usually clerks of the court,<sup>79</sup> whose job it is to meet with both spouses separately, identify the cause of their dispute, and then prepare a report setting out the degree of fault that each spouse bears for the marriage's failure. Based on this, the judge issues his ruling pursuant to article 343 of the law regulating Islamic religious courts.<sup>80</sup>

Although the determination of fault has a significant impact on the financial rights and responsibilities of the parties, the process lacks transparency and basic due process guarantees, including a right of appeal the arbiters' report.<sup>81</sup> Judges before Sunni courts implement the arbiters' culpability findings by issuing judgment without a legal

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<sup>77</sup> The *mahr* is a sum of moveable or non-moveable property, the amount of which is set out in the marriage contract, which is paid to the wife by the husband before the marriage (known as the advance). The second part, the deferred *mahr*, is payable in one of two cases: upon the death of the husband or the termination of the marriage by the husband.

<sup>78</sup> Human Rights Watch interviews with three lawyers working with a local NGO to defend women against violence, June 5, 2012 and June 22, 2012.

<sup>79</sup> By law the arbiters must be Muslim men known for their probity. Law regulating the Islamic courts, art. 347, adds that the Supreme Sunni Court must maintain a list of arbiters after they swear before the court that they will perform their task with honesty, probity, and faithfulness.

<sup>80</sup> Law on the Regulation of Sunni and Ja`fari Justice art. 343 states, "If the arbiters' report determines that most or all culpability lies with the husband, the judge shall rule for the severance. Pursuant to the claim, the husband must fulfill the rest of the wife's rights. If the most or all culpability is established to lie with the wife, he shall rule for a quittance of all or part of the *mahr* commensurate with the culpability."

<sup>81</sup> Ottoman family law, art. 130.

explanation, which notes simply that it is “religiously and legally germane.”<sup>82</sup> The judge is not bound by the arbiters’ assessment of culpability and can alter blame assigned to either party at his discretion and without explanation.

Human Rights Watch’s review of severance cases shows that women are overwhelmingly found to be more culpable than men. The challenge of obtaining a positive ruling in severance cases, and the length of proceedings during which women must remain in the marital home, means many choose to forego any determination of culpability and apply directly for a *khul`* which requires them to relinquish their pecuniary rights.

Of the 87 severance cases reviewed, judges sought to determine fault in 41 cases; women forfeited their rights in the remaining 46. Of those 41, a husband was found fully culpable in only one case when the judge established he had “contracted HIV/AIDS because of his homosexual relations.”<sup>83</sup> In the remaining 40 cases, the court found women partially responsible, even in cases with spousal violence or harm. One court found the husband 75 percent culpable, even though he beat his wife more than legally sanctioned bounds of physical discipline allowed by Islamic law.<sup>84</sup> In another case, the court ruled that although the husband “releases his hand and transgresses in disciplining the plaintiff,” the wife bore remaining liability since she met him “with odious words and curses.”<sup>85</sup>

The judgments reflect that even where women meet the grounds required for severance, the court typically required them to forfeit some of their pecuniary rights, and the reasons for their culpability were often arbitrary or discriminatory. In each of the 40 cases reviewed by Human Rights Watch in which the court found both spouses culpable, women lost at least 20 percent of their *mahr* claims in the final settlement.

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<sup>82</sup> Judgment issued by the Baabda Sunni Court, June 6, 2011; Judgment issued by the Beirut Sunni Court, January 23, 2010; Judgment issued by the Beirut Sunni Court, December 13, 2011; Judgment issued by the Beirut Sunni Court, February 20, 2012; Judgment issued by the Beirut Sunni Court, March 3, 2009; Judgment issued by the Beirut Sunni Court, March 3, 2009; Judgment issued by the Beirut Sunni Court, October 11, 2011; Judgment issued by the Beirut Sunni Court, April 10, 2011; Judgment issued by the Beirut Sunni Court, April 8, 2010.

<sup>83</sup> Judgment issued by the Beirut Sunni Court, January 23, 2010.

<sup>84</sup> Judgment issued by the Tripoli Sunni Court, September 27, 2011.

<sup>85</sup> Judgment issued by the Beirut Sunni Court, October 20, 2010.

In one of these cases, the judge declared that the wife’s readiness “to acquit herself of all her legal rights and pay part of the costs” was evidence that she bore “greater culpability”, even though the arbiters had determined the spouses were equally culpable.<sup>86</sup>

In another case, the Supreme Sunni Court upheld the first instance judgment holding the wife equally at fault, after the arbiters had set her culpability at 25 percent, as a “penalty” for her for “maintaining contact on Facebook with others” – which it deemed “not appropriate for veiled women.”<sup>87</sup>

In the 46 severance cases reviewed where women gave up all of their pecuniary rights in order to divorce, the court did not even appoint arbiters or assess spousal culpability but instead ruled for the severance in exchange for the wife giving up her financial rights to the *mahr* and maintenance.<sup>88</sup>

Based on the review of severance cases and interviews with women who sought a severance, women forfeited their rights in a high proportion of the cases partly because of the long delays involved in assessing culpability, the requirement that women remain in the marital home throughout the duration of court proceedings, and because of the general challenges women face in winning severance cases—including ensuring legal fees for their lawyers or providing enough evidence to prove the husband’s culpability.

In the 32 severance cases reviewed by Human Rights Watch before the first instance court, it took the judge on average one year and three months to issue a decision. During this time, if women do not remain in their marital homes they will be considered at fault in the severance proceeding and risk losing custody and financial rights, unless the judge presiding over her case considers that the circumstances that led her to file such claim pushed her to leave her marital home.

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<sup>86</sup> Judgment issued by the Beirut Sunni Court, January 16, 2010.

<sup>87</sup> Judgment issued by the Supreme Sunni Court, January 10, 2011.

<sup>88</sup> Human Rights Watch identified 46 cases that were originally filed as severance cases but resulted in quittance judgments. For example, judgment issued by the Beirut Sunni Court, June 5, 2010; five judgments issued by the Beirut Sunni Court, January 2, 2010; judgment issued by the Beirut Sunni Court, March 4, 2010; judgment issued by the Baabda Sunni Court, September 22, 2010.

### GIVING UP PECUNIARY RIGHTS: AMINA'S STORY

Amina, a Christian-Palestinian mother of four who converted to Islam to wed her Sunni husband according to Sunni personal status laws, explained why she gave up her pecuniary rights during her severance proceeding despite the fact that her husband abused her during their marriage. Amina said she began working as a parking valet and house cleaner in her neighborhood to help support the family and save for her daughter's education. Arguments with her husband, who wanted to split the money she earned, became so heated that the police intervened on several occasions, including once when she was admitted to the hospital after her husband beat her.

These incidents were documented in both police and medical reports. Amina finally filed for severance.

After first refusing to accept the court summons, her husband appeared before the judge and demanded that in return for his wife "quitting him," she forfeit all her pecuniary rights, including the car she bought and registered in her name, her jewellery, household furnishings, and other property. He also refused to contribute to his children's school or university fees and demanded they live with him. Amina said that the judge's only intervention in response was to advise her to accept the conditions and agree to a *khul`*, or quittance, instead of pursuing a severance case that might drag on for months. Feeling she had no choice, Amina did as the judge advised.<sup>89</sup>

Three women who filed severance lawsuits with the Sunni court on grounds of hardship and discord said that judges delay adjudication to allow spousal reconciliation while advising women to exercise "patience and forbearance" even in cases where the husband beat his wife.<sup>90</sup>Nur said the judge in her case encouraged her to reconcile with her husband, despite the fact that he raped and beat her, because the judge deemed that the beating "did not go beyond a slap or two" and that a husband has a legal right to force his wife to have sex with him.<sup>91</sup>According to Nur, the judge advised her "to

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<sup>89</sup>Human Rights Watch interview with Amina, May 4, 2012.

<sup>90</sup> Human Rights Watch interviews with Nur, July 21, 2012; Amina, May 4, 2012; and Havfa, May 30, 2012.

<sup>91</sup> While marital rape is not a crime under Lebanese criminal law under the Law on Protection of Women and Family Members from Domestic Violence passed on April 1, 2014, beating a spouse or inflicting harm on a spouse in order to have intercourse

change her clothing and lifestyle in a way pleasing to religious law and religion” to try to reconcile with her husband.<sup>92</sup>A judge in the Sunni courts told Human Rights Watch that most courts only issue judgments in severance cases a year after the filing date to encourage reconciliation.<sup>93</sup>

Fault-based divorce regimes, like the severance system, frequently condition financial rights on lack of fault and they may be abused by husbands to “eliminate any financial obligation towards their wives”<sup>94</sup>The Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW (the UN body tasked with monitoring the implementation of CEDAW) has stated that state parties should revise all provisions that link the grounds for divorce and financial consequences and states that women should not be forced to forgo their economic rights in order to obtain a divorce.<sup>95</sup>

### *Further Limits on Shia Women’s Right to Divorce*

Severance is not recognized under Shia personal status law and the only option for a Shia woman who does not include her right to end the marriage in her marriage contract is to seek relief from a Ja`fari religious authority, who can be outside the religious court and can divorce her on behalf of her husband—a practice known as “sovereign divorce.”

She must then certify such an order in a Ja`fari court for it to acquire official force. The process is lengthy, and two lawyers who spoke to Human Rights Watch said it can take up to two years to receive the order, and even then, a court might not certify it.<sup>96</sup>The court may refuse to certify the divorce if the judge concludes that the religious authority from whom the woman obtained the order is not a “sovereign authority”—meaning, he does have the legal and religious qualifications needed to authorize such an order.

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is a crime. See, Law on Protection of Women and Family Members from Domestic Violence, no. 293, <http://jo.pcm.gov.lb/j2014/j21/wfn/n293.htm> (accessed December 4, 2014).

<sup>92</sup>Human Rights Watch interview with Nur, July 21, 2012.

<sup>93</sup>Human Rights Watch interview with a Sunni Judge presiding over a first-instance court in Beirut, June 4, 2012.

<sup>94</sup>UN Committee on the Elimination of Discrimination against Women, General Comment 29, para.39, [http://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1_en.pdf) (accessed on December 4, 2014).

<sup>95</sup>UN Committee on the Elimination of Discrimination against Women, General Comment 29, paras.39-42, [http://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1_en.pdf) (accessed on December 4, 2014).

<sup>96</sup>Amina Dayikh, *Sovereign Divorce* (in Arabic) (Publications for Distribution and Publication, 2008). The novel tells the story of the author, a lawyer who spent more than 20 years seeking a sovereign divorce.

A woman can request a sovereign divorce for non-payment of maintenance, harm, poor conjugal relations, or abandonment. Although these are similar grounds to those for severance in the Sunni and Druze courts, authenticating the sovereign order in the Ja`fari courts to give it legal force involves added procedural, legal, and political considerations:

- There is no consensus about who is a Shia authority whose order is binding on the religious court. Conflicting attitudes and political and personal disputes may sway a judge's decision about whether the religious authority is a sovereign authority.
- Unlike in severance cases, there is no codification of acceptable reasons for a Shia woman's request to be granted, and women are dependent first on the discretion of religious authority who is eligible to grant the sovereign divorce and at a later stage by the courts discretion to recognize the decision itself;
- Ja`fari courts issue divergent judgments either recognizing or rejecting the sovereign divorce decisions issued by the religious authority, and the courts possess discretionary authority to accept or reject a wife's claim for the certification of the sovereign order if she obtains it.<sup>97</sup>

The absence of criteria establishing whether someone is a sovereign authority and thus whether a decision will be recognized deters women from pursuing such cases and results in inconsistent judgements.

In one case before the Ja`fari Court in Baabda, a woman seeking a divorce submitted an order issued by a sheikh in the town of `Akkar, granting her a sovereign divorce "on necessary grounds, in release from the infliction of injustice, harm, and injury, and in keeping with the justice of the Holy Lawgiver." In reviewing the sheikh's order, the court considered this evidence of the woman's claim during the certification proceeding and the judge ruled to certify the woman's divorce from her husband.<sup>98</sup> In turn, the judge ruled to certify the woman's divorce from her husband.<sup>99</sup>

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<sup>97</sup>Munir Mughniya, "Toward the Codification of Rules for a Ja`fari Shia Women's Demand for a Compulsory Divorce from the Legal Sovereign" (in Arabic), *al-`Adl*, no. 4, 2001, pp. 1609-16.

<sup>98</sup>The court stated "It is consistent with the formula of a sovereign divorce insofar as it is signed by a person known to be among the community of knowledge and reasoned opinion in the scholarly field, of which there is no doubt or question." Judgment issued by the Baabda Ja`fari Court, May 16, 2012.

<sup>99</sup>Judgment issued by the Baabda Ja`fari Court, May 16, 2012.

## DINA

Dina, a 32-year-old Sunni, met her husband, a Shia, when she was 22. They married a few months later before a Sunni cleric in the United Arab Emirates (UAE), where they decided to live, and where their child was born a year after the marriage.

Dina told Human Rights Watch that she worked full time and also took full responsibility for child care and household responsibilities. She said that her husband, who did not work, constantly criticized her performance at work, forbade her from going out with her co-workers, and from having her friends over to their house.

After a couple of years together, Dina decided to return to Lebanon with her daughter. There she filed for a severance with the Sunni court, but discovered that her husband had registered their marriage with the Ja`fari court. As a result, she was not entitled to terminate the marriage through severance and could only do so by obtaining a sovereign divorce, or if her husband agreed to divorce her before the court. Her husband began to blackmail her and threatened to file an obedience and cohabitation case and to lock her up in “their marital house.”<sup>100</sup> He also took their daughter who was a few months past the Shia legal maternal custody age and demanded \$40,000 to grant her a divorce.

Dina’s family hired a lawyer to pursue the case in the Ja`fari court and oversee negotiations with her husband’s lawyer. Her lawyer did not pursue a sovereign divorce because there was no guarantee that she could obtain an order from a religious authority or that the religious court would recognize the order. Instead, he convinced her husband to appear in the religious court to divorce her and return their child into Dina’s care after threatening to pursue a criminal case against him for an unrelated business matter.<sup>101</sup>

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<sup>100</sup>A lawsuit filed before Sunni or Ja`fari courts by a husband against a wife who has deserted him and made herself unavailable to him sexually, to demand that she return or to force her to live with him. If a wife refuses, she is considered legally recalcitrant.

<sup>101</sup>Human Rights Watch interview with Dina, September 20, 2012.

Yet, in a very similar case, the Ja`fari Court in Beirut refused to certify a sovereign divorce in which the wife submitted a divorce decree from a sheikh in his capacity as representative of the leading Shia authority Grand Ayatollah al-Sayyid Ali al-Sistani in Europe and America. The court refused to accept it since it had “not been apprised of its details as to whether it is truly valid.”<sup>102</sup>

Current practice dictates that sovereign divorces issued by the Supreme Shia Islamic Council’s Office of Legal Affairs be accepted by the courts, or by the Supreme Court itself, but procedures remain vague and there is broad latitude in assessing the grounds for divorce, according to statements from a lawyer bringing such cases who spoke to Human Rights Watch.<sup>103</sup>

### *Impact of Husband-Initiated Divorce on Women’s Legal Status*

Sunni and Shia personal status laws grant men an inalienable, absolute right to unilaterally terminate a marriage at will, without cause, outside a courtroom, and sometimes in the absence and without the knowledge of their wife.<sup>104</sup> They simply have to declare that they divorce their wives.

After doing so, they can revoke or withdraw the divorce within a certain period without the consent of his wife or the need to conclude a new marriage or pay a new *mahr*.<sup>105</sup> The Druze personal status law also affords Druze men an inalienable, absolute right to unilaterally terminate a marriage at will, without cause, but requires that the divorce be issued following a judgment by a Druze judge.<sup>106</sup>

While, strictly speaking, a man under Sunni and Shia personal status laws can divorce without the intervention of any religious or judicial authorities, in practice, the legal consequences of a divorce that is not filed with the religious courts are unresolved.

However, the woman is indeed divorced according to the religious law without the religious court’s certification, and there are no binding court decisions that oblige the man

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<sup>102</sup> Judgment issued by the Beirut Ja`fari Court, March 9, 2010.

<sup>103</sup> Human Rights Watch interview with a lawyer practicing before the Ja`fari Courts, May 11, 2012.

<sup>104</sup> Bashir al-Bilani, *Personal Status Laws in Lebanon*, p. 123-124.

<sup>105</sup> Ottoman family law, art. 113.

<sup>106</sup> Bashir al-Bilani, *Personal Status Laws in Lebanon*, p.132.

to pay the deferred *mahr* and the three months maintenance unless the woman files separate lawsuits to recover her rights. Furthermore, divorces not filed with religious courts are not recorded or enforced by the Personal Status Department of the Ministry of Interior, meaning the women are still registered under their husband's name according to the civil authorities.

A husband can however divorce his wife outside court proceedings and then certify the divorce before the religious court without informing his wife or having her participate in the proceeding. To seek certification, a husband must file a lawsuit confirming the divorce or his desire to divorce and ask the judge to certify it in a legal order.<sup>107</sup> Often he produces a statement from a cleric in his capacity as the overseer of the divorce, and occasionally he might perform a second, alternative divorce before the court. In Ja`fari Courts, he must present two male witnesses as additional documentation.<sup>108</sup> In these cases, the husband can then record the divorce with the Personal Status department at the Ministry of Interior, and it is enforceable provided he pays the deferred *mahr*.

In cases in which a husband chooses to certify a divorce and his wife is not present, wives can learn about the divorce through a court server or to read it in a daily paper (a plaintiff/husband is ordered to publish notice of a divorce in two daily newspapers if his wife is not present during divorce proceedings and he wants a court to certify the divorce).<sup>109</sup>

If a woman is given notice of pending divorce proceedings initiated by her husband, she has three choices: to appear before the court to hear the divorce notification; refrain from attending; or send a lawyer to represent her.

Women and lawyers working before the Sunni and Ja`fari religious courts told Human Rights Watch that the woman's presence or absence at these court proceedings has no impact on the outcome of the lawsuit or the judgment. In certification lawsuits initiated by

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<sup>107</sup>Ibid p.123.

<sup>108</sup>Judgment issued by the Beirut Ja`fari Court, November 19, 2009; Judgment issued by the Beirut Ja`fari Court, February 17, 2010; Judgment issued by the Beirut Ja`fari Court, March 23, 2010; Judgment issued by the Beirut Ja`fari Court, February 11, 2011; Judgment issued by the Beirut Sunni Court, March 15, 2012.

<sup>109</sup> See, the Lebanese Code of Civil Procedure, [http://ar.jurispedia.org/index.php/%D9%82%D8%A7%D9%86%D9%88%D9%86\\_%D8%A3%D8%B5%D9%88%D9%84\\_%D8%A7%D9%84%D9%85%D8%AD%D8%A7%D9%83%D9%85%D8%A7%D8%AA\\_%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A%D8%A9\\_%D8%A7%D9%84%D8%AC%D8%AF%D9%8A%D8%AF\\_\(lb\)](http://ar.jurispedia.org/index.php/%D9%82%D8%A7%D9%86%D9%88%D9%86_%D8%A3%D8%B5%D9%88%D9%84_%D8%A7%D9%84%D9%85%D8%AD%D8%A7%D9%83%D9%85%D8%A7%D8%AA_%D8%A7%D9%84%D9%85%D8%AF%D9%86%D9%8A%D8%A9_%D8%A7%D9%84%D8%AC%D8%AF%D9%8A%D8%AF_(lb)).

husbands the judge merely ascertains that the man wants to terminate his marriage and then issues the judgment without addressing any legal claims by the wife against her husband, even if she is present.

Any claims by the wife, including financial suits related to *mahr*, compensation, and spousal maintenance and care of children claims, must be addressed in separate legal actions.

In one example, a divorce certification case before the Beirut Ja`fari Court, the defendant-wife appeared with counsel. Her lawyer informed the court that the husband was seeking to shirk his duty of spousal maintenance, offering evidence of a pending maintenance lawsuit filed by the wife prior to the divorce case.

The lawyer asked the court, if it ruled to certify the divorce, to uphold his client's right to maintenance in the judgment. However, the judge disregarded all the defendant-wife's motions and certified the divorce, in accordance with the legal precept that "divorce lies with the man and he has performed it... It acquires legal force when it is done properly and all legal conditions are met."<sup>110</sup> The judgment did not elaborate on the nature of these conditions, nor did it respond to the wife/defendant's requests.

In another case before the Sunni court, in which the wife/defendant appeared at the proceedings, the minutes of the trial cited in the judgment show that she requested that her children remain with her in return for forfeiting her pecuniary rights to the deferred *mahr* and waiting-period maintenance. Yet, the judge disregarded this request and issued his order certifying the divorce.<sup>111</sup>

"Why bother [attending divorce proceedings]?" Nur, who did not appear in court after receiving court notification that her husband had divorced her explained:

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<sup>110</sup>Judgment issued by the Beirut Ja`fari Court, April 8, 2009.

<sup>111</sup>Judgment issued by the Beirut Sunni Court, March 3, 2010.

My presence wouldn't have changed anything....Can you imagine how humiliating it is to stand before a judge and to listen to your husband's unilateral decision to end the marriage?<sup>112</sup>

If a woman chooses not to attend, the judge follows procedures for in absentia trials: the clerk's office is notified of the wife's chosen residence and the husband is ordered to inform her of the divorce with a notice published in two daily newspapers. In practice however, some women do not learn that their husbands have obtained a divorce certified by a religious court through these measures. In one case, a wife was divorced without her knowledge and ostensibly relinquished all her rights.<sup>113</sup>

In cases where husbands fail to certify their divorces but their wives want to document them to obtain their financial rights or remarry, the divorced wife becomes the plaintiff in the divorce certification case. In these cases, the defendant/husband has various means by which he can challenge the claim, including claiming that he never pronounced a divorce. In this case, his wife must prove the opposite by, for example, producing documents proving her husband's intention to divorce before other (foreign) courts,<sup>114</sup> or statements from witnesses present when he pronounced the divorce.<sup>115</sup>

A husband may also allege that he has "reclaimed" his wife during the waiting period after a divorce when it is still revocable,<sup>116</sup> even without her knowledge.<sup>117</sup> Or he may challenge the veracity of the authorization of the sheikh who oversaw the divorce, if one did so.<sup>118</sup> During the trial, the husband may also explicitly refuse to certify the divorce if his wife refuses to give up part or all of her *mahr*,<sup>119</sup> or before the status of a jointly owned house is resolved,<sup>120</sup> or unless his wife relinquishes custody of the children.<sup>121</sup> The wife may at times

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<sup>112</sup>Human Rights Watch interview with Nur, July 21, 2012.

<sup>113</sup>The court rejected the wife's severance petition after the husband/defendant produced "a copy of a legal writ issued by the same court that included incontrovertible documentation of divorce between the litigants and documentation of the plaintiff's release of the defendant from all legal claims." Judgment issued by the Beirut Sunni Court, February 12, 2011.

<sup>114</sup> Judgment issued by the Beirut Sunni Court, June 19, 2010.

<sup>115</sup> Judgment issued by the Supreme Sunni Court, February 2, 2011.

<sup>116</sup> Judgment issued by the Sidon Sunni Court, January 27, 1998.

<sup>117</sup> Judgment issued by the Supreme Sunni Court, April 3, 2012.

<sup>118</sup> Judgments issued by the Supreme Ja`fari Court, April 17, 2012, and the Baabda Ja`fari Court, January 28, 2010.

<sup>119</sup> Judgment issued by the Baabda Ja`fari Court, January 28, 2010.

<sup>120</sup> Judgment issued by the Beirut Ja`fari Court, April 1, 2009.

<sup>121</sup> Judgment issued by the Baabda Ja`fari Court, June 28, 2012.

also be compelled to pay a sum of money before her husband certifies the divorce.<sup>122</sup> Hayfa, a 48-year-old woman married before the Sunni Court when she was 15, said her husband divorced her more than seven times before she succeeded in having the divorce certified before the court so that she could claim some of her financial rights.<sup>123</sup>

## **Christian Confessions: Women’s Limited Right to Terminate Marriage vs. Men’s Ability to Circumvent Restrictions**

As outlined in the table below, it is nearly impossible for either spouse to terminate a marriage, even consensually, under Christian confessions.

There are specifically enumerated situations in which couples can end their marriages through annulment, dissolution, and divorce or apply for desertion. These provisions vary among Catholic, Orthodox, and Evangelical confessions in Lebanon.<sup>124</sup>

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<sup>122</sup> Judgment issued by the Beirut Ja`fari Court, April 30, 2009.

<sup>123</sup> Human Rights Watch interview with Hayfa, May 30, 2012.

<sup>124</sup> Desertion entails the spouses living separate lives, but the matrimonial bond still exists and neither spouse can remarry. Annulment, dissolution, and divorce on the other hand terminate marriage and allow each spouse to remarry.

**Table 6: Grounds for Termination of Marriage and Desertion for Christian Confessions**

TYPE OF TERMINATION OR DESERTION	CATHOLIC	GREEK-ORTHODOX	EVANGELICAL
<b>Temporary Desertion</b>	Spousal violence, cruelty, if either spouse adheres to a different religion, if either spouse raises the children according to non-Catholic rules; ill repute behavior or inability to continue the marriage for any other reason. <sup>125</sup>	Daily altercations; major disagreements; the impossibility of living together, even temporarily; or one of the spouses poses a threat to the other. <sup>126</sup> The court determines the period of desertion, but the period cannot exceed 3 consecutive years. <sup>127</sup>	If one spouse mistreats the other, making life unbearable, and reconciliation fails, the court may at its discretion rule for desertion for two to five years, or until the couple reconcile, or their marriage otherwise terminates. <sup>128</sup>
<b>Permanent Desertion</b>	Adultery <sup>129</sup>	N/A	N/A
<b>Annulment</b>	<p>Allow annulment only for causes that existed prior to the marriage or due to a defect in the marriage that has a direct or indirect impact on spousal consent, or some aspect that renders the marriage defective in form or substance.<sup>130</sup></p> <p>Causes for annulment include mental incapacity, inability to assume basic marital duties due to mental causes, ignorance, error, fraud, simulation, conditioned consent, force</p>	<p>A marriage is annulled if:</p> <ul style="list-style-type: none"> <li>a) it was contracted while an earlier marriage was still valid;</li> <li>b) it was contracted in contravention of the Church's fundamental laws, such as marriage between relatives up to the third degree;</li> <li>c) the priest who performed the marriage is from a confession other than that of either spouse;</li> <li>d) it was entered into absent consent or due to coercion or threats; and</li> <li>e) either spouse was unfit to live a married life at the time of</li> </ul>	<p>A marriage is annulled if it was contracted while an earlier marriage was still valid or if it was contracted between two spouses barred from marrying by the church because of their close familial relationship.<sup>132</sup> A marriage can also be annulled if:</p> <ul style="list-style-type: none"> <li>a) a spouse was not of sound mind, or had a mental illness, at the time of marriage;</li> <li>b) the marriage was not consummated within a year;</li> <li>c) a minor entered into the marriage without the guardian's permission, when it is required;</li> <li>d) the marriage was contracted based on fraud of a fundamental condition,</li> </ul>

<sup>125</sup>Code of Canons of the Eastern Catholic Church, 1990, art. 863.

<sup>126</sup>Personal status law and the Code of Procedure of the Greek Orthodox Patriarchate of Antioch and All the East, art 17.

<sup>127</sup>Personal status law and the Code of Procedure of the Greek Orthodox Patriarchate of Antioch and All the East, arts. 48-49

<sup>128</sup>Personal status law for the Evangelical confession in Syria and Lebanon, art 36.

<sup>129</sup>Code of Canons of the Eastern Catholic Church, art. 863.

<sup>130</sup>Code of Canons of the Eastern Catholic Church arts. 816-827.

TYPE OF TERMINATION OR DESERTION	CATHOLIC	GREEK-ORTHODOX	EVANGELICAL
	or grave fear.	marriage (but only if there are no children and the spouses have been married less than 5 years). <sup>131</sup>	or essential character of a spouse, or by coercion; e) other conditions, necessary for the validity of the marriage, are lacking; and f) a woman remarries within 3 months of an annulment, divorce, or husband's death. <sup>133</sup>
<b>Dissolution</b>	Non-consummation; <sup>134</sup> the Pauline Privilege (a marriage of two non-Christians after which one converts to Christianity); <sup>135</sup> or the Petrine Privilege (a marriage between a Catholic and non-Catholic in which the non-Catholic does not fulfill the obligations of Christianity and the sacraments of Christian marriage).	A marriage is dissolved if: a) either spouse converts to another religion; b) either spouse attempts to kill the other; c) either spouse was sentenced to prison for three or more years for a “shameful” crime; d) either spouse neglects the other for three consecutive years; e) reconciliation has not been achieved after the desertion phase; f) a spouse, without the other's consent, takes steps to not conceive or refuses to have sex “without excuse or lawful grounds”. <sup>136</sup>	A marriage is dissolved if: a) either spouse has an incurable mental illness which makes normal marital life impossible; b) a spouse tries to murder the other; c) either spouse converts to a religion other than Christianity; d) one of the spouses goes absent, missing or out of reach for at least five years; e) both spouses have stopped living together and having marital relations for between two to five years, and reconciliation fails; f) one spouse deserts the other and reconciliation fails during the desertion period; and g) either spouse is sentenced to prison for three or more years for a “disgraceful” crime.

<sup>132</sup>Personal status law for the Evangelical confession in Syria and Lebanon, art.24.

<sup>131</sup> Personal status law and the Code of Procedure of the Greek Orthodox Patriarchate of Antioch and All the East, arts. 64 and 66.

<sup>133</sup>Personal status law for the Evangelical confession in Syria and Lebanon, art.25.

<sup>134</sup> Code of Canons of the Eastern Catholic Church, art. 826.

<sup>135</sup> Code of Canons of the Eastern Catholic Church, art. 854.

<sup>136</sup> Personal status law and the Code of Procedure of the Greek Orthodox Patriarchate of Antioch and All the East, art. 67.

TYPE OF TERMINATION OR DESERTION	CATHOLIC	GREEK-ORTHODOX	EVANGELICAL
<b>Divorce</b>	Not permitted.	A divorce can be granted on grounds of adultery; adultery may be characterized by the following acts (but not exclusively): if a husband discovers his wife is not a virgin after they marry; if a spouse repeatedly tells the other not to frequent a place of ill-repute, or interact with persons of ill-repute, and the spouse does not obey; if the wife spends the night outside the marital home, in a suspect place; if a court compels the wife to return to the marital home and she refuses with no acceptable excuse; if a spouse is shown to be sexually deviant; if the husband facilitates the wife's adultery or insists on it, against her will, or wants to exercise "unnatural forms of intercourse"; if the husband accuses the wife of adultery without proof. <sup>137</sup>	Adultery <sup>138</sup>

While restrictions on the termination of marriage extend equally to both men and women, there are instances which allow men more grounds for divorce or annulment than women such as under the Orthodox church, a man can be granted a divorce if he discovers his wife is not a virgin after they marry. Moreover there are two aspects of the laws that impact women differently and disproportionately.

<sup>137</sup>Personal status law and the Code of Procedure of the Greek Orthodox Patriarchate of Antioch and All the East, arts. 68-69.

<sup>138</sup>Personal status law for the Evangelical confession in Syria and Lebanon, art. 32.

- 1) First, while spousal violence is grounds for desertion spousal violence short of attempted murder is insufficient to obtain a prompt end to a marriage as explained in the following section. Spousal violence overwhelmingly affects women in Lebanon. This is a problem in all Christian personal status laws in Lebanon, but particularly for Catholics since violence is never a sufficient ground for terminating a marriage unless a husband's violence is attributable to mental incapacity that existed prior to the marriage and this incapacity makes him incapable of assuming basic marital duties.
- 2) Second, Christian men in Lebanon can convert to Islam and remarry without ever divorcing their wives (Muslim men are legally allowed to have up to four wives) as explained in the following section. There are no similar processes by which Christian women can bypass Christian personal status law after their marriages have been consummated.

The difficulties in ending an abusive marriage force many women to relinquish their pecuniary rights to maintenance or compensation in exchange for the husband's agreement to end the marriage through conversion to another Christian confession whose laws more readily allow for termination of the marriage, particularly since for the duration of the court proceedings, the Christian courts will not order the husband to vacate the marital home, even if it is owned by the wife since they do not have jurisdiction over civil property matters.<sup>139</sup> This means the woman may be forced to live with her husband until the court rules on the dissolution or divorce.

Lawyers working in the Christian courts said that when women do own the marital home, they must seek relief from the civil courts if they want their husbands to vacate the premises. In certain domestic abuse cases, under the new 2014 domestic violence law women can apply for a restraining order that can compel their husbands to leave the house for a temporary period regardless of who owns the house.<sup>140</sup>

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<sup>139</sup>Human Rights Watch interviews with three lawyers practicing before Christian Courts, May 17, 2012, May 18, 2012, and June 16, 2012; three lawyers working with a local NGO to defend women against violence, June 5, 2012 and June 22, 2012; and the head of a local NGO working towards promoting and achieving gender equality, September 25, 2012.

<sup>140</sup>Law on Protection of Women and Family Members from Domestic Violence.

## *Abuse and Adultery Not Grounds for Termination*

### **Catholic Courts**

Catholic courts only grant an annulment in cases where grounds that existed prior to the marriage have a direct or indirect impact on spousal consent, such as fraud or misrepresentation (including for example not being able to have children, not already being married), mental illness, or simulation. Simulation occurs when one spouse enters into the marriage without believing in marriage as an institution, including not believing in fidelity, procreation or the indissolubility of marriage. Legally, an annulment renders the marriage and any related past and future legal consequences void. The spouse that a judge finds liable for the annulment is responsible for compensating the other spouse for damages.

Catholic courts do not view spousal violence as grounds for annulment unless a husband's violence is attributable to mental incapacity that existed prior to the marriage and this incapacity makes him incapable of assuming basic marital duties.<sup>141</sup>

Of the 14 annulment cases Human Rights Watch reviewed in which the wife claimed that her husband abused her, the judge granted the annulment in only one case; when the judge found the violence was proof of mental incapacity because a court-appointed psychologist provided a report, thus meeting the criteria for an annulment.<sup>142</sup>

#### **NISRINE**

Nisrine, a 32-year-old mother of two, told Human Rights Watch that she has been fighting for an annulment for at least two years. She stated that her husband abused her and that she had submitted a report to the court documenting the physical injuries she had sustained as a result of beatings. "Once he threatened to push me off the balcony and say that I committed suicide, so I wouldn't have any proof that he hurt me," she said. "But none of this is enough. The court doesn't want to give me an annulment."<sup>143</sup>

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<sup>141</sup> Human Rights Watch interviews with three lawyers practicing before Christian Courts, May 17, 2012, May 18, 2012, and June 16, 2012.

<sup>142</sup> Judgment issued by the Unified First Instance Maronite Court, May 11, 2010.

<sup>143</sup> Human Rights Watch interview with Nisrine, May 8, 2012.

Catholic provisions for dissolution are also confined to non-consummation of the marriage, and the Pauline Privilege (a marriage of two non-Christians after which one converts to Christianity) and the Petrine Privilege (a marriage between a Catholic and non-Catholic in which the non-Catholic does not fulfill the obligations of Christianity and the sacraments of Christian marriage).<sup>144</sup> Spousal violence, cruelty, adultery, or inability to continue the marriage, are valid grounds for desertion, but neither temporary nor permanent desertion actually terminate the marriage or are grounds for termination. Women's restricted ability to terminate marriages before the Catholic courts even in cases of abuse also result in their forfeiting financial rights.

In one case, Hala, a member of the Sunni confession, married in the Catholic Church, said that she left the home she shared with her husband after years of psychological and verbal violence. In an attempt to end the marriage, she turned to a Sunni judicial authority, who she said received her with hostility. Her lawyer then informed her she would have to appear before the Catholic courts where she would only be entitled to obtain a desertion, entitling her to support but not terminating her marriage. To avoid this, Hala resolved to forfeit her claims to compensation in exchange for her husband agreeing they would change their confessional affiliation to Assyrian and file for dissolution through the Assyrian court which is more lenient in granting termination of marriages. She did this despite having spent a significant amount of money furnishing their home, which was owned by and remained with the husband.<sup>145</sup>

In one case that Human Rights Watch reviewed, Maria, a Catholic Maronite who wed in 1984, was regularly assaulted by her unfaithful husband. He was sentenced to 20 years in prison for an unrelated murder. After his incarceration Maria sought an annulment from the Catholic Maronite court but her claim was denied when the court found that her husband's incarceration, abuse, and adultery were insufficient grounds for annulment, and instead ruled for temporary desertion with her husband at fault.<sup>146</sup>

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<sup>144</sup> See Table 6 "Grounds for Termination of Marriage and Desertion for Christian Confessions" above.

<sup>145</sup> Human Rights Watch interview with Hala, June 22, 2012.

<sup>146</sup> Human Rights Watch interview with Maria, May 17, 2012.

## Evangelical and Orthodox Courts

Women married under Orthodox or Evangelical confessions face similar problems, though to a lesser degree, as these confessions recognize adultery as grounds for divorce if proved by either spouse.

However, spousal rights to divorce remain unequal. For example, under the Greek-Orthodox personal status laws a husband, but not a wife, can divorce if he discovers after the wedding that she was not a virgin, provided that he gives a statement to this effect to the court in the first days of the marriage.<sup>147</sup>

In addition, during divorce proceedings, Christian courts cannot order the husband to vacate the marital home, even if it is owned by the wife (she would have to file a case before a civil judge). This may lead women to forfeit their financial rights to encourage the husband to facilitate the termination of the marriage more quickly.

After discovering her husband's adultery, Sabine, who was then 40 years old, told Human Rights Watch she filed for a divorce in the Greek-Orthodox court, but that her husband refused to leave the marital home, even though it was registered in her name. Sabine agreed to give up spousal maintenance and compensation for damages she would have been entitled to because her husband was at fault in ending the marriage in exchange for her husband's agreement to dissolve the marriage by stating to the court that they had been separated for three years and leaving the house. In order to do so, she had to obtain financial assistance from her father because she did not work outside of the home.<sup>148</sup>

Either spouse may also petition to dissolve the marriage if they establish that the other party attempted to kill them. In these cases, Evangelical law adds the condition that the attempted murder must first be proved in a criminal court. Spouses may also obtain dissolution if the spouses do not cohabit for a certain period—three years for the Orthodox confession, and two years for the Evangelical confession. Spousal abuse in and of itself is not cause for dissolution, but only temporary desertion (which may later be grounds for dissolution if the couple does not reconcile within three years under Orthodox confessions or two years in Evangelical confessions).

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<sup>147</sup>Human Rights Watch interview with a lawyer practicing before Christian Courts, June 16, 2012.

<sup>148</sup>Human Rights Watch interviews with Sabine, June 7, 2012 and Dina, September 20, 2012.

Michelle, a mother of two in her 40s and an Evangelical Christian, waited until her children were nearly adults before filing a dissolution of marriage claim, despite being beaten by her husband for years, to avoid the risk of losing custody of her children. When she filed the dissolution lawsuit, which was based on the abuse, her husband denied that he beat her and accused her of being an alcoholic who made up the allegations. Despite her claims of abuse, the court rejected her request for dissolution, because when asked, she explained that she and her husband had been separated for less than the two years required by the Evangelical court before allowing a dissolution.<sup>149</sup>

### *Unilateral Conversion by Men Allowing Them to Divorce*

Given the difficulty of ending a Christian marriage, some Christian men choose to convert to Islam so that they can remarry. Under Shia and Sunni personal status laws, men can have up to four wives.<sup>150</sup> The first wife remains confined to the restrictions imposed by their Christian confession (see Table 6 “Grounds for Termination of Marriage and Desertion for Christian Confessions” above), which limit her ability to leave the marriage or remarry. The Court of Cassation has ruled such conversions are valid when they are done in line with procedural formalities. In these cases, the Christian marriage and its effects continue to be subject to the Christian authorities under which the marriage was celebrated, but the rights of the first wife and any children from the first marriage, particularly regarding inheritance, are diminished by the rights of the husband’s second wife.<sup>151</sup>

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<sup>149</sup>Human Rights Watch interview with Michelle, July 27, 2012.

<sup>150</sup> Issues around rights abuse resulting from polygamy are outside of the scope of this report. CEDAW General Recommendation 21 states “polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some States parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of article 5 (a) of the Convention,” <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21> (accessed on December 4, 2014).

<sup>151</sup>The Court of Cassation recently ruled that the first wife is entitled to a 50 percent share of her deceased husband’s estate provided the remainder of the estate is distributed to his second wife under Islamic legal rules. Court of Cassation, March 13, 2001, the Eastern Mediterranean Legal Journal, Legal Studies, p. 49; Court of Cassation, April 9, 2002, the Eastern Mediterranean Legal Journal, Legal Studies, p. 181.

### MICHEL AND JOSIANE

Michel and Josiane married in the Maronite Catholic church and had two children. Josiane told Human Rights Watch that five years later, they agreed to separate due to constant disagreements and she continued to be responsible for the care of the children.

According to Josiane, neither spouse sought an annulment and they agreed not to interfere in one another's personal matters, except when it came to the children's needs. Michel moved to Kuwait to expand his business, and a few months later, Josiane received news from a friend that Michel was living with a new wife and was expecting a child. Josiane discovered that Michel had converted to Islam and married under Sunni law. Josiane's priority now is guaranteeing her children's inheritance rights, which she is trying to do in agreement with her husband, to avoid a protracted court dispute.<sup>152</sup>

In cases like Josiane's, the marriage and its legal consequences are still subject to the laws of the religious authority that married them. This is based on article 23 of Decree 60 LR, which states that if one spouse converts to another confession, the marriage and its effects (i.e., support and guardianship of legitimate children) are subject to the authority under which the marriage was celebrated. The judgments that Human Rights Watch reviewed all rely on this article to invalidate a judgment of divorce issued by another court authority.<sup>153</sup>

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<sup>152</sup>Human Rights Watch interview with Josiane, Christian Maronite, Lebanon, July 13, 2012.

<sup>153</sup>Court of Cassation, Assemblée plénière, February 14, 1989, *Baz*, p. 40; March 24, 1994, *Cassandre*; July 13, 2001, *Cassandre*.

## IV. Unequal Maternal Custody-Paternal Guardianship

Custody laws regarding which parent children reside with after marriage ends frequently fail to adhere to international human rights obligations to apply the best interests of the child test or to otherwise uphold the rights of the child.<sup>154</sup> Laws governing custody and guardianship also discriminate against women by applying unequal standards in assessing with whom children should continue to reside, and by only affording fathers guardianship rights.

In religious laws, “custody” entails the preservation and care of children and concern with their material and moral upbringing until such point as they no longer require it. Based on this definition, custody is by nature of limited duration and ends when the child no longer needs care. As long as the matrimonial bond exists, custody is the duty of both spouses. If the marriage is terminated, however, most religious laws in Lebanon tend to favor maternal custody of children who are young. Sunni and Druze personal status laws also provide for the possibility to transfer the maternal custody to the maternal grandmother.

Alongside the concept of custody, religious courts recognize the concept of “guardianship,” which entails the preservation and upbringing of children and their assets until they reach adulthood. Across religious laws with the exception of the Armenian-Orthodox personal status law the right of guardianship both during marriage and after is preeminently granted to of the father who is recognized as the preemptory moral and financial guardian of his children.<sup>155</sup>

The general principle across religious laws is that when marriage terminates, custody is determined by the age of the child, with courts favoring maternal custody when children are young and then giving custody to the father as the children’s guardian.

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<sup>154</sup>Article 3 of the Convention on the Rights of the Child states “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 3.

<sup>155</sup>Bashir al-Bilani, *Personal Status Laws in Lebanon*

During the maternal custody period, the father still has an obligation to cover his children's expenses and has the right to visit according to a mutual agreement between the parents. If such agreement fails, the courts intervene. As their guardian, the father also has the right to make decisions about his children's education, travel, assets, and residence. In typical cases, after reaching the predetermined end of the maternal custody age, which differs from religion to religion, the children automatically revert to the father.

Religious judges, can at their discretion extend the period of maternal custody past the set maternal custody age if they deem it is in the best interest of the child. They can also further limit the maternal custody period based on arbitrary reasons that do not relate to the best interest of the child. Maternal custody can also be limited if a mother fails to comply with cohabitation and obedience requirements (see Section "Loss of Maternal Custody Rights" below).

After the maternal custody period, the mother's right to visit her children is limited according to an agreement between the parents or the court's decision.

Discriminatory rulings and laws on custody and guardianship have adverse consequences for women seeking to terminate their marriages, exposing them to extortion and coercion during termination proceedings, at times having to choose between their children or termination of their marriages.

Discriminatory rulings and laws also serve to undermine children's rights. Judges remain unconstrained by any clear legal text on the best interest of the child, and in all cases, they have wide discretion to rule as they deem fit, guided only by the maternal custody age. The non-recognition of joint custody by religious courts in Lebanon, except for few Christian courts recent decisions where it is in a judge's discretion to recognize it, further undermines the best interests of the child.

While child custody laws continue to fail to protect the best interest of the child, in a promising development, recently some religious courts have considered the best interest of the child when determining which parent will obtain custody (see Section "Judges Deviate from Maternal Custody Ages" below).

## Limited Maternal Custody vs. Absolute Paternal Guardianship

The general principle across religious laws is that fathers have legal guardianship of children. While fathers, but not mothers, always maintain guardianship over their children, child residence is determined by the age of the child with courts favoring maternal custody when children are young and paternal custody after they pass a predetermined age, which varies across religions.<sup>156</sup> Recently, some confessions have increased the cut-off ages for maternal custody. These measures are not unified and continue to differentiate between boys and girls.

**Table 7: Maternal Custody Period**

	AGES OF MATERNAL CUSTODY	SOURCE
<b>Catholic</b>	Ends at 2 for boys and girls; can be extended if the judge determines it is in the best interest of the child.	Art. 123–24 of the personal status law of the Catholic confessions.
<b>Greek Orthodox</b>	Ends at 14 for boys and 15 for girls; can be extended if the judge determines it is in the best interest of the child.	Art. 57 of the Personal Status and Procedural Code of the Greek Orthodox Patriarchate of Antioch and All the East approved by the Holy Synod in Balamand on October 16, 2003.
<b>Coptic Orthodox</b>	Ends at 11 for boys and 13 for girls; can be extended if the judge determines it is in the best interest of the child.	Adopted in Art. 93 of its first code, issued on December 9, 2010.
<b>Evangelical</b>	Ends at 12 for both boys and girls; can be extended if the judge determines it is in the best interest of the child.	Art. 62 of the personal status law of the Evangelical confession in Syria and Lebanon, approved by the general assembly of the Supreme Evangelical Synod in Syria and Lebanon.
<b>Armenian Orthodox</b>	Ends at 7 for boys and 9 for girls; can be extended if the judge determines it is in the best interest of the child.	Art. 128–32 of the personal status law of the Armenian Orthodox confession.
<b>Syriac Orthodox</b>	Ends at 7 for boys and 9 for girls; can be extended if the judge determines it is in the best interest of the child.	Art. 61 of the personal status law of the Syriac Orthodox confession.

<sup>156</sup>The parent that does not have custody is entitled to visitation.

	AGES OF MATERNAL CUSTODY	SOURCE
<b>Assyrian</b>	Ends at 7 for boys and 9 for girls; can be extended if the judge determines it is in the best interest of the child.	Art. 111 of the personal status law of the Assyrian confession
<b>Sunni</b>	Since 2011, ends at 12 for both boys and girls; can be extended if the judge determines it is in the best interest of the child.	Art. 15 of the New Code of Family Provisions issued on January 10, 2011.
<b>Shia</b>	Ends at 2 for boys and 7 for girls; Ja`fari judges can extend if the child has reached the legal age of choice (usually reached when the child reaches the age of puberty) and chooses to stay with his or her mother.	Art. 348 of the Guide to Ja`fari Justice, which dictates that the mother maintain custody of both male and female children for the two-year nursing period, the father has greater entitlement to custody of male children while the mother has greater entitlement to custody of female children until the age of seven, after which the father has greater entitlement to all children. Art. 349 states that maternal custody, if established is not revoked if the woman's husband leaves her by dissolution or divorce before age two for boys and age seven for girls, unless the mother remarries in this period, in which cases she loses her right to custody, which reverts to the father.
<b>Druze</b>	Ends at 7 for boys and 9 for girls; the judge has no discretion to consider special circumstances.	Art. 64 of the Druze personal status law.

Maternal custody rights, unlike paternal guardianship rights, are time-bound, conditional, and revocable, either due to a legal end to maternal custody, a judgment of maternal unfitness, or in some cases because a woman relinquishes these rights as part of a settlement.<sup>157</sup>

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<sup>157</sup>Grounds for loss of custody vary from one confession to another.

One striking example that illustrates the difference between custody and guardianship is that in some confessions, following the death of the father, guardianship does not automatically rest with the mother, but might be granted to the male members of the father's family.

While religious judges can at their discretion extend the period of maternal custody past the set maternal custody age if they deem it to be in the child's best interest, using arbitrary cut-off ages as the default deciding principle to determine who has primary care responsibilities for the child fails to ensure that these decisions are based on the best interest of the child as a primary consideration. Further, the time-bound, conditional, and revocable nature of maternal custody discriminates against women who cannot enjoy the right of guardianship, which remains restricted to fathers regardless of child's best interests.

The maternal custody-paternal guardianship equation fails to use the child's best interest as a primary consideration in determining child custody, as well as discriminating against women by providing them fewer legal rights with regards to their children.

Further, despite recent religious court rulings that consider the best interests of the child, discrimination against women in accessing divorce and obtaining spousal maintenance and financial compensation continues to undermine the rights of the child and limit women's exercise of their rights over their children.

In several cases reviewed by Human Rights Watch, women forfeited maternal custody rights to obtain a divorce, severance, annulment, or dissolution judgment. In these cases, the judge ratified the agreement between the ex-spouses without examining the best interest of the child or the woman's reason for forfeiting her rights.

Following such agreements, in the cases Human Rights Watch reviewed, when women seek to regain maternal custody, their petitions are typically denied by judges who note that mothers gave up their rights as part of the settlement terminating the marriage and do not assess whether these agreements meet the best interests of the child test.

In a judgment issued on August 3, 2008, the Syriac Orthodox Court granted the father control of the children since "the mother has already relinquished her right to custody of

the two children.”<sup>158</sup> Similarly, the Beirut Sunni Court on April 13, 2010, denied a mother maternal custody citing the divorce agreement between the ex-spouses.<sup>159</sup> The Baabda Ja`fari Court on March 15, 2010, also denied a mother maternal custody, claiming that “the mother forfeited her right in exchange for a divorce,” although the child was not yet one year old.<sup>160</sup>

## Judges Deviate from Maternal Custody Ages

Based on the review of 101 decisions in Christian, Ja`fari and Sunni courts, judges display a wide range of practices in determining whether to deviate from maternal custody age cut-offs.

A judge’s williness to do so varies significantly from judge to judge based on the discretion he has and differences in statutes across confessions. For example, in the Druze confession, the judge has no discretion to consider special circumstances including the best interest of the child and must give custody to the father after the maternal custody age is reached.<sup>161</sup> While in some cases, primarily before the Ja`fari courts, judges deviated from the set ages where the child—having reached the “age of choice” usually set at puberty—articulated a preference for which parent to live with.

This lack of clarity and certainty leaves mothers dependent on the whims of judges or their estranged husbands. Rayya told Human Rights Watch that she fears she will lose custody of her daughter who will shortly turn seven (the Ja`fari maternal cut-off age) in a proceeding before the Ja`fari court, but that there is nothing she can legally do about it because her daughter has not yet reached the “age of choice.” She also believes that the judge will view her Christian background unfavorably. She said,

I have no chance to keep her, the judge will not accept to listen to her testimony at the age of seven and everyone told me that the fact that I am Christian will extremely compromise my case. I have no idea what to do, I think day and night about this issue and the anxiety is killing me. The

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<sup>158</sup> Judgment issued by the Mt. Lebanon Syriac Orthodox Court, August 3, 2008.

<sup>159</sup> Judgment issued by Beirut Sunni Court on April 13, 2010.

<sup>160</sup> Judgment issued by Baabda Ja`fari Court on March 15, 2010.

<sup>161</sup> Druze personal status law, art. 64.

only way out is to succumb to all his [my husband's] orders and mood swings and not to upset him. He knows very well what his rights are and does not waste one occasion to remind me what he can do. I am living in a constant blackmail.<sup>162</sup>

Of the 27 judgments issued by Sunni courts granting the father primary care of the children that Human Rights Watch reviewed, the judge automatically adhered to the maternal custody age in 15 cases.

In at least some of the 15 cases, it appears the transfer of custody was not in the best interest of the child. For example, in a judgment issued by the Supreme Sunni Court on December 5, 2011, the court ordered the mother to turn her three children over to their father as he was deemed more capable of protecting, raising, disciplining, and guiding them, although according to a forensic medical report, he had previously physically abused and harmed them. The court extracted a pledge from the father not to repeat the incident, basing its reasoning on his right to discipline his children.<sup>163</sup>

In nine cases before the Sunni courts reviewed by Human Rights Watch in which the judges revoked maternal custody before the cut off age they did so due to “unfitness” for example because of the woman’s (different) religious affiliation, lack of “proper religious education” for children, long hours at work, or “questionable” social behaviors or remarriage, and not based on an examination of the best interests of the child (see Section “Loss of Maternal Custody Rights” below).

In the three other cases, judges solicited the opinions of the children who had reached the age when maternal custody ended and chose to live with their fathers, before ruling to transfer them to the father.<sup>164</sup> In these and other cases in which judges solicited the opinion of the children before making a determination, the judgments indicated that they did so to help make a decision consistent with the best interests of the child. For example, in one case in which the maternal custody period had not ended the court was persuaded that

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<sup>162</sup>Human Rights Watch interview with Rayya, Christian Maronite, Lebanon, March 4, 2013.

<sup>163</sup>Judgment issued by the Supreme Sunni Court on December 5, 2011.

<sup>164</sup> Judgment issued by the Beirut Sunni Court, June 15, 2010; Judgment issued by the Beirut Sunni Court, May 13, 2010; Judgment issued by the Higher Sunni Court, December 5, 2011.

the best interests of the child dictated keeping him in his mother's care after the judge heard the testimony of the child.<sup>165</sup>

Judgments issued by the Ja`fari courts are similar in that judges followed the pre-set maternal custody ages without further analysis into the best interests of the child, they sought the child's opinion in only a minority of cases, and maternal custody was often revoked during the set maternal custody period due to "unfitness" or remarriage.

Of 16 judgments granting the father primary care of the children reviewed by Human Rights Watch, the judge automatically applied the maternal custody age in eight cases.<sup>166</sup> For example, the Ja`fari Court in Baabda revoked a mother's maternal custody of her seven-year-old son based on the precept that "custody is the right of both parents; the mother has the right provided her son is no older than two, at which point the right is transferred to the father."<sup>167</sup> In a separate case, the judge ordered the mother/defendant to turn over her two children to their father citing the rule that

... custody, when it expires with the child's attainment of legal age, does not revert, based on the general rule that what has expired does not revert.... If, after the custody age expires, the peremptory moral and financial guardian seeks custody of the child, the mother must turn him over to him with the utmost willingness; otherwise, she is guilty of the grossest obstinacy.<sup>168</sup>

In two additional cases judges applied the maternal custody age only after seeking the opinion of the children before doing so.<sup>169</sup> In other cases, judges explicitly refused to do so. For example, the Ja`fari Court in Sidon refused to solicit the opinion of two children and required their mother to turn them over to their father after they passed the maternal custody age. The court stated that the children had not yet reached the legal age to choose,

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<sup>165</sup>Judgment issued by the Beirut Sunni Court, November 7, 2009.

<sup>166</sup>Two judgments issued by the Baabda Ja`fari Court, February 3, 2010 and May 10, 2012; Four judgments issued by the Beirut Ja`fari Court, October 2, 2007 and February 16, 2007 and December 1, 2010 and October 27, 2008; Judgment issued by the Nabatiya Ja`fari Court, March 14, 2011; Judgment issued by the Sidon Ja`fari Court, October 31, 1996.

<sup>167</sup> Judgment issued by the Baabda Ja`fari Court, May 10, 2012.

<sup>168</sup> Judgment issued by the Beirut Sunni court, January 11, 2011.

<sup>169</sup> Judgment issued by the Baabda Ja`fari Court, January 9, 2012; Judgment issued by the Beirut Ja`fari Court, February, 16, 2009.

although they were aged 13 and 14.<sup>170</sup> The Ja`fari Court in Baabda adopted a similar approach when it refused to consider a 15-year-old girl's desire to stay with her mother.<sup>171</sup>

However, in cases where judges did solicit the opinion of the children, it appeared to be part of an assessment of the best interests of the children. In one case, the judge granted two children's wish to remain with their mother "after the court confirmed that the children had sufficient maturity to participate in this decision and ascertained that the two children understood their request."<sup>172</sup> The children were aged 12 and 14.

In all 43 cases from the Ja`fari and Sunni courts reviewed by Human Rights Watch, judges affirmed the mother's or the father's right to contact in cases where they did not enjoy custody.

A few judgments issued by the Sunni courts reviewed by Human Rights Watch stand out for their divergence from the general tendency to automatically apply the legal custody age.<sup>173</sup> In these, judges ruled for children to remain with their mothers past the legal maternal custody age relying entirely on considerations of the best interests of the child.

In one case a Sunni judge rejected a father's petition that his two children revert to him after they had passed the maternal custody age, explaining in its ruling that "paternal custody, though a legitimate right, is limited by the benefit thereof...This father may lose his twin sons who are the subject of the suit because he does not seek to realize their health, moral, and educational welfare," which dictated that the children remain in their mother's care.<sup>174</sup>

According to two lawyers who spoke to Human Rights Watch, Christian courts also typically issue a ruling regarding who is responsible for the primary care of the children as part of the judgment for annulment, divorce, desertion, or dissolution.<sup>175</sup> Based on the cases Human Rights Watch reviewed, the Christian courts also appear to issue similarly divergent judgments. In some cases, the Christian courts consider the best interest of the child as

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<sup>170</sup> Judgment issued by the Sidon Ja`fari Court, April 2, 2009.

<sup>171</sup> Judgment issued by the Baabda Ja`fari Court, July 2, 2012.

<sup>172</sup> Judgment issued by the Beirut Ja`fari Court, June 10, 2009.

<sup>173</sup> Human Rights Watch interview with a Sunni Judge presiding over a first-instance court in Beirut, Lebanon, June 4, 2012.

<sup>174</sup> Judgment issued by the Beirut Sunni Court, presided over by Sheikh `Arif Muhammad al-Hajj, November 24, 2008.

<sup>175</sup> Human Rights Watch interview with two lawyers practicing before Christian Courts, May 17, 2012 and May 18, 2012.

“the absolute standard in determining the child’s guardianship” if the parents are separated,<sup>176</sup> but in other termination cases the father is granted custody of the children with no explanation whatsoever.<sup>177</sup>

For example, at their discretion, some Christian courts assign social workers and psychologists to conduct on-site investigations into each parent’s living arrangements and psychological tests of the entire family to determine the best interest of the child.<sup>178</sup> In another case before the Orthodox Court however, the judge automatically applied the maternal custody age without considering the child's best interest. Similarly, the Mt. Lebanon Syriac Orthodox Court gave the father primary care rights without explanation after the maternal custody period had ended.<sup>179</sup>

Further, in some cases women appeared to be penalized for initiating or being responsible for marriage termination proceedings. For example, in one case, the Maronite Court denied the mother both compensation and maternal custody, although the children were still under the maternal custody age, noting, “The mother bears full culpability insofar as it is she who wishes to separate from her husband.”<sup>180</sup> In a second case filed by a woman with the Unified First Instance Roman Catholic Melkite Court, the court ruled for an annulment after four years of proceedings, and gave the children to the father without noting the children's ages. As stated in the case file, since the woman bore the responsibility for the annulment, the court saw no need to even address the issue of the children's welfare.<sup>181</sup>

Recently, some Christian courts have also granted parents joint custody, which is at a judge’s discretion.<sup>182</sup>

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<sup>176</sup>Judgments issued by the Unified First Instance Maronite Court, June 13, 2007, and July 14, 2009.

<sup>177</sup>Judgment issued by the Unified First Instance Maronite Court, May 11, 2010.

<sup>178</sup>Judgment issued by the Appellate Maronite Court, May 9, 2009.

<sup>179</sup> Judgment issued by the Orthodox Court, December 17, 2007; Judgment issued by the Mt. Lebanon Syriac Orthodox Court, November 26, 2007.

<sup>180</sup> Judgment issued by the Unified First Instance Maronite Court, March 30, 2007.

<sup>181</sup> Judgment issued by the Unified First Instance Roman Catholic Melkite Court, May 31, 2011.

<sup>182</sup> Judgments issued by the Unified First Instance Roman Catholic Court, July 20, 2010, November 9, 2011, and June 26, 2012.

## Loss of Maternal Custody Rights

Various personal status codes, both in the Christian<sup>183</sup> and Shia, Sunni, and Druze<sup>184</sup> confessions, recognize numerous grounds for the loss or limitation of maternal custody, including:

- A mother's "unfitness" to raise and care for her child;
- A mother's marriage with a man other than the child's father;
- A mother's lack of attention to the child's religious education (including being from a different confession); and
- A mother's "recalcitrance" (a woman can be found recalcitrant if she leaves the marital home and refuses to cohabit with her husband).

These grounds permit judges in religious courts to evaluate a woman's conduct, her personal relationships, her moral character, religious beliefs, and her observance of these beliefs.

While it is appropriate for a court to carefully evaluate both parents' ability to care for their children in determining who will retain primary responsibility for caring for them, Lebanese religious courts rarely, if ever, look into a father's behavior to assess his fitness as a parent. In addition, some of the criteria religious judges use to assess a woman's ability are based on discriminatory stereotypes of motherhood and women generally, rather than an evaluation of whether the mother is a fit parent and it would be in the best interest of the child to remain with her. For example, while remarriage is grounds for ending maternal custody, remarriage does not affect paternal rights.

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<sup>183</sup> For Christian confessions, see personal status law and Code of Procedure for the Catholic confessions, art. 125; personal status law and Code of Procedure of the Greek Orthodox Patriarchate of Antioch and All the East, art.58; Syriac Orthodox personal status law, 1949, art.63; Eastern Assyrian personal status law, 1949, art.102; and personal status law for the Evangelical confession in Syria and Lebanon, art. 63.

<sup>184</sup> See, Druze personal status law, art. 55; New Code of Family Provisions for the Sunni sect, art. 15. The Guide to Ja`fari Justice refers to several conditions for women to get custody but none for fathers. To get maternal custody a woman must be "trustworthy and of good repute, and her child shall be subject to no moral or religious harm or excess in her care and under her upbringing." These conditions are similar to those specified by the Sunni family code, with the difference being that the Shia confession requires the mother to be Muslim, based on the rule that no non-Muslim woman shall have maternal custody over a Muslim child.

### *Due to “Unfitness” Absent Objective Non-Discriminatory Criteria*

In evaluating maternal fitness for custody, judges look at a mother’s reliability and at her capacity to provide for her children’s “moral” education.<sup>185</sup> However, there are no clear, explicit standards for evaluating reliability and capacity to provide moral and religious education and these determinations are often made based on stereotypical, discriminatory or arbitrary criteria. In most cases, these issues are only raised when the child reaches the maternal custody cut-off age, but they can also arise if the father questions the mother’s maternal fitness during the maternal custody period.

Human Rights Watch interviewed 12 women who spoke about the double standards courts applied in assessing whether mothers and fathers were fit parents and how arbitrary grounds for loss or limitation of maternal custody prevented them from seeking to end their marriages or motivated them to abandon their financial rights.<sup>186</sup>

Mireille told Human Rights Watch that she did not even consider asking for an annulment before the Maronite Court, both because of what it would cost and out of fear of losing her children who were very young:

My daughters, who are my soul and my life, were the main reason why I didn’t leave the house [marriage] until now. I couldn’t even bear the idea of losing them. This is why I stayed in the house [marriage]... We didn’t leave until they became adults, although if I had left before, I would have at least had the chance to look for a good job and secure a decent life.... At my age now, the only thing I can do is catering services.<sup>187</sup>

Suzanne, a 44-year-old woman married before the Orthodox Church in 1998, had to give up all her financial rights in order to keep her 7-year-old daughter until she reached the legal maternal custody age, which was nine at the time. She explained,

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<sup>185</sup>New Code of Family Provisions for Sunnis, art. 12; Druze personal status law, art.55; Guide to Ja`fari Justice, art. 358.

<sup>186</sup> Human Rights Watch interview with Nadine, September 28, 2012; Suzanne, Christian Orthodox, Lebanon, July 15, 2012; Mireille, February 18, 2013; Rayya, March 4, 2013; Michelle, July 27, 2012; Dina, September 20, 2012; Amina, May 4, 2012; and Nur, July 21, 2012.

<sup>187</sup> Human Rights Watch interview with Mireille, February 18, 2013.

Although it was my legal right, my husband threatened to question my fitness as a mother before the court if I insisted on claiming my right to compensation. This was after I discovered he was cheating on me...Honestly, I couldn't stand being with him under the same roof and I was afraid he would take my daughter from me. I signed the agreement before the court and the judge didn't even wonder why I was doing it...Thankfully, my parents supported me financially and emotionally throughout the process. I always wonder what other women in this situation who don't have this kind of support do. Do they keep their children or risk losing them to secure a living?<sup>188</sup>

Several other women who spoke to Human Rights Watch explained how concerns about being found “unfit” unduly interfered with their ability to go on with their lives after they separated from their husbands.

Dina told Human Rights Watch that while her case was before the Ja`fari Court, in the period leading up to her divorce, but before she obtained an agreement certified by the religious court in which she forfeited maternal custody in exchange for weekly visitation rights, she was afraid to go out at night to spend time with friends. The few times she did go out, she avoided what she called “dubious” places—that is, establishments that served alcohol or played loud music. Based on the advice of her lawyer, if she did want to have an alcoholic drink when she went out, she said, “I’d drink vodka out of a Pepsi can.”<sup>189</sup>

Human Rights Watch attended a session of an Islamic court involving a case against a woman where the lawyer for the father submitted a CD containing photos of the mother taken from her Facebook page showing her out at night with her friends. The father’s lawyer based her entire argument for why the mother should not have the children on these photos, arguing that she had a dubious character because she drank alcohol. At the time of writing, the case was still before the court.

Judges have broad discretion to rule on maternal fitness. In some cases, judges place the burden of proving maternal fitness on the father; others require the mother to show that she is fit, which can turn the case into a public trial of her morals and lifestyle.

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<sup>188</sup>Human Rights Watch interview with Suzanne, July 15, 2012.

<sup>189</sup>Human Rights Watch interview with Dina, September 20, 2012.

### JUDICIAL DISCRETION IN ASSESSING MATERNAL FITNESS

In one case, a non-Lebanese woman married a Lebanese man she met in a nightclub where she worked. During their marriage they had a daughter and then divorced when the daughter was a year old. The father maintained primary care responsibilities for their child after the divorce despite the fact that she was still under the maternal custody age and the mother had obtained an order from the Sunni first instance court in Beirut requiring the father to return the child to her. The father appealed to the Supreme Court, which overturned the ruling of the first instance court, revoking maternal custody.

In the first instance court, the father cited several reasons why the court should revoke maternal custody including the mother's previous work, that she did not nurse the child, what he described as psychological and anger issues, and that she had been sexually assaulted as a child. The court ordered the mother to be examined by two doctors, who stated that she did not suffer psychological ailments or any illness that would negatively affect her daughter's psychological upbringing and health.

On this basis, the first instance court ruled that the child should be returned to her mother, noting that the father's allegations that the mother's psychological state made her unfit were rejected pursuant to the medical reports.<sup>190</sup>

The Supreme Court, however, appeared to reject the expert medical evidence and overturned the first instance ruling explaining that the mother was unfit because she attempted to kill herself before the first court proceeding, after her child was taken from her.

"If she cannot be trusted with herself, how can she be entrusted with another..." the judgment stated.<sup>191</sup>

Courts across confessions also consider, and weigh differently, the fact of the mother's employment in evaluating fitness for maternal custody. Human Rights Watch reviewed

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<sup>190</sup> Judgment issued by the Beirut Sunni Court, November 7, 2009.

<sup>191</sup> Judgment issued by the Supreme Sunni Court, May 26, 2010.

seven judgments addressing the issue of a mother's employment in assessing her ability to raise a child.<sup>192</sup> While judges did not always find in their favor, in all of these lawsuits fathers used the fact the of the mother's employment to argue that she was an unfit parent. In contrast, being employed is never considered in assessing whether a father is a fit parent. In these seven cases there was little, if any analysis of whether the child was appropriately taken care of.

In a judgment issued by the Supreme Sunni Court on December 22, 2010, the court overturned the first instance ruling granting maternal custody during the maternal custody period, citing the best interest of the child: "The mother/appellee is preoccupied with her job, working from morning until the evening, and she lives with her elderly grandmother." Similarly, a Sunni first instance court revoked a woman's maternal custody of her four-year-old son because "she is distracted from his upbringing and places him in care centers."<sup>193</sup>

In other cases however, judges in Sunni courts explicitly refused to consider a mother's career as cause for the revocation of maternal custody, particularly if "the mother is divorced and has no provider"<sup>194</sup> and provided that "the type and time of work have no impact on the care of the child."<sup>195</sup>

Courts across confessions also weigh the proximity of the mother's residence to the father's home, favoring proximity, in assessing whether she is able to raise and care for her child. Similar considerations are not taken into account when assessing a father's parental fitness.

### *Due to Marriage with a Man not the Father*

In cases where an estranged mother is remarried to a man other than her child's father, mothers lose maternal custody in the Shia, Sunni, and Druze confessions (although for Sunni and Druze women, it can be transferred to the maternal grandmother if the girl is less than 9 years old and the boy is less than 7 years old). In Christian confessions a new

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<sup>192</sup> Five judgments issued by the Beirut Sunni Courts, November 7, 2009, September 20, 2011, March 2, 2011, April 8, 2010, and May 13, 2010; Judgment issued by the Higher Sunni Court on December 22, 2010; Judgment issued by the Tripoli Sunni Court, February 22, 2011.

<sup>193</sup> Judgment issued by the Beirut Sunni Court, September 20, 2011.

<sup>194</sup> Judgment issued by the Beirut Sunni Court, March 2, 2011.

<sup>195</sup> Judgment issued by the Supreme Sunni Court, March 18, 2009.

marriage is also grounds for termination of maternal custody but judges have the discretion to not revoke maternal custody if they deem it to be in the best interest of the child. Some women interviewed by Human Rights Watch spoke of how their husbands and ex-husbands used the threat of revocation of maternal custody due to a new relationship to coerce and threaten them and to control their behavior.

This condition does not apply to the father, who may marry or become involved with a woman other than the child's mother with no similar consequences. A woman must choose, therefore, between maternal custody and her right to autonomy and to make decisions about the most intimate aspects of her life. In three cases, women interviewed by Human Rights Watch who had maternal custody said that they chose to abstain from having any relationships, despite the fact that their ex-husbands could, so that they did not risk losing their children.

Dina told Human Rights Watch;

If I post a picture on my Facebook page from a party or a gathering I go to, or any event that may even imply I am pursuing a *normal* social life, I get a message from my ex-husband mocking me and saying things like he wonders whether I will keep my smile in a couple of months, when he'll be able to take his daughter back!!! How can I even consider a relationship with another man?<sup>196</sup>

Rayya is in a similar situation. Although her ex-husband has remarried, he threatens that if another man is around his daughter or dares to visit them in *his* house, he will immediately evict her and take his daughter back. Rayya was advised by her own lawyer not to show any kind of affection or display that she is in an intimate relationship in public because it could put her at serious risk of losing her child.<sup>197</sup>

Even in cases where there is no coercion or threats by the father, the judge's discretionary authority to rule on maternal custody if a woman enters into a new relationship remains difficult to predict and puts a woman in a relationship in a vulnerable position.

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<sup>196</sup>Human Rights Watch interview with Dina, September 20, 2012.

<sup>197</sup>Human Rights Watch interview with Rayya, March 4, 2013.

A judgment issued by the Unified First Instance Maronite Court on January 31, 2008, noted:

The wife lives with her daughter and she is in a relationship with a man for whom, according to what is now known, she left her husband. Photos were produced to prove the veracity of this... The mother's dubious relationship with a man other than her husband has a grave impact on the psychology and character of the minor daughter, causing a kind of imbalance or turmoil in her character, which also does not act to her benefit and welfare...Although it is better for the child to be with her mother at age five, it is to her benefit and welfare to be with her father in this case, where the wife and mother is involved in questionable relationships.<sup>198</sup>

Similarly, the Supreme Sunni Court heard a case where a divorced woman with children remarried and then obtained a divorce by *khul'* when she discovered that the new marriage was grounds for losing maternal custody. Despite divorcing her second husband, the judge revoked maternal custody, stating that the mother's claim "that she does everything in her power is not germane; if this were true, she would have devoted herself to custody of her daughter, not [re]marriage."<sup>199</sup>In a different case, a judge in the Beirut Sunni Court also ruled to revoke maternal custody "with the affirmation of a new marriage...because the woman's attention is diverted from the child and she is preoccupied with marriage and its preparations."<sup>200</sup> The blanket deprivation of maternal custody in cases of remarriage also fails to consider the best interests of the child, whether the mother's new relationship would actually interfere with it, and whether the mother continues to be the more suitable custodian.

### *Due to Neglecting a Child's Religious Education*

One of the most common reasons cited by judges in the cases that Human Rights Watch reviewed, who rule that women should lose maternal custody is neglect of the child's religious education. There is a presumption amongst many judges that women neglect their child's education if they are from a different confession. In no cases

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<sup>198</sup> Judgment issued by the Unified First Instance Maronite Court, January 31, 2008.

<sup>199</sup> Judgment issued by the Supreme Sunni Court, March 16, 2011.

<sup>200</sup> Judgment issued by the Beirut Sunni Court, May 18, 2010.

reviewed did men lose parental rights on grounds that they neglected the religious education of their children.

There was no indication in the cases examined that stripping revoking maternal custody in cases in which the mother was from a different confession was actually in the best interest of the child. Further, the denial of maternal custody for mothers from different religious backgrounds interferes with the right of the mother to educate her children according to her beliefs. Children also have a right choose their own religion, or none at all.<sup>201</sup>

Religious education is a matter of great significance in the laws and codes of the various religious groups, which are designed to enforce the confessional bond, which secures the continuity of the confession as a whole. The laws presume that furtherance of religious education is a key criterion for the wellbeing of a child.

All of the confessional statutes in Lebanon prescribe the loss or limitation of maternal custody if the mother's religion differs from that of her child and she fails to show "due commitment" to the child's religious education.<sup>202</sup>By default, under all of the confessional statutes, children belong to their father's, not their mother's religion. In addition, women may change their religious affiliation in order to divorce their husbands and this may result in them having a different religious affiliation from their children. Some judges, especially in the Christian confessions, may mitigate this rule and not revoke maternal custody by noting that a woman changed her confession not based on her free and genuine embrace of the new religion, but to circumvent the difficulty of terminating a marriage.

In the cases Human Rights Watch reviewed we found that the maternal custodian's religious affiliation was often the primary basis used to strip her of her custodial rights.

Such rulings undermine women's equal right to educate their children based on their religious beliefs, with deference to the child's right to choose their religion, or none, as

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<sup>201</sup>Convention on Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 14. States Parties shall respect the right of the child to freedom of thought, conscience and religion."

<sup>202</sup>The New Code of Family Provisions, art.14 which regulates the Sunni personal status law discriminates between Muslim and non-Muslim mothers giving non-Muslim women maternal custody only up to age five, and denying judges the authority to rule otherwise.

they get older.<sup>203</sup> By focusing solely on religious affiliation they also fail to meet the best interest of the child.

In a judgment issued by the First Instance Maronite Court on January 31, 2008, the court ruled to revoke maternal custody as, “The wife’s conversion and embrace of Islam constitutes a danger to her minor child, which is that she will be raised in the Islamic tradition and not on Christian principles, which is not in the interest and benefit of the minor child.”<sup>204</sup>

In one case before the Supreme Sunni Court, the father argued that maternal custody should be revoked because the mother was not a Muslim. Acknowledging this as a reasonable reason to revoke maternal custody, the court then asked the mother to convert to Islam officially and submit a new copy of her personal status record proving she was a Muslim to maintain maternal custody.

In response, she argued that she was a Muslim, and recited the *shahada* before the court, but that she was unable to register her conversion due to problems she would face with her family. Only after finding that the pronouncement of the two *shahadas* was sufficient to show she was legitimately a Muslim did the court allow her to maintain maternal custody.<sup>205</sup>

Similarly, a father filed a lawsuit with the Beirut Sunni Court to revoke maternal custody citing concerns about his daughter and her mother residing with “her Nazarene [Christian] family.”<sup>206</sup> The judge rejected the lawsuit, but only after establishing “the genuineness of the mother’s embrace of Islam.” This judgment was upheld by the Supreme Sunni Court, which rejected the father’s appeal of the first instance judgment. The court ruled, “It was not established in the first instance or on appeal that the girl’s faith and welfare is affected by staying with her mother/appellee. The appellant stated in the first instance that she had converted to Islam and is teaching her daughter to recite the Quran.”<sup>207</sup>

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<sup>203</sup>International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 13.

<sup>204</sup> Judgment issued by the Unified First Instance Maronite Court, January 31, 2008.

<sup>205</sup> Judgment issued by the Supreme Sunni Court, January 13, 2010.

<sup>206</sup> Judgment issued by the Beirut Sunni Court, August 29, 2009.

<sup>207</sup> Judgment issued by the Supreme Sunni Court, March 17, 2010.

In addition to showing that they belong to the same confession as their children, in many cases, mothers also had to demonstrate to the court that they are devout followers of their children's faith in order to maintain maternal custody.

In a judgment issued by the Beirut Sunni Court on October 21, 2004, the judge awarded a woman maternal custody of her two daughters only after the mother proved:

that her family does not consume alcohol or any other forbidden items, that she performs the five daily prayers, that she is religiously observant and applies the provisions of Islam, that she is giving her children an Islamic upbringing, and that she taught her daughters the prayers and some chapters of the Quran.

A judge may not only evaluate the mother's faith, but he may test the child's belief as well. One court expressed "its satisfaction with the soundness of the daughter's faith after the court questioned her to ascertain whether she was memorizing Nazarene prayers in violation of Sharia, but without result."<sup>208</sup> In a similar case, the judge determined that the child "knew nothing about Christian prayer and their religious hymns" and established her ability to "recite the opening chapter of the Quran and some short Quranic chapters, and perform ablutions and the prayer" before upholding maternal custody.<sup>209</sup>

### *Due to Recalcitrance*

The religious courts' concept of recalcitrance applies to women who have left their marital homes and who have refused to cohabit with their husbands. A court may order a woman who has left the marital home to cohabit with her husband. If she refuses the court can issue a judgment of recalcitrance which can then be used to revoke her right to maternal custody unless she can establish a legally sanctioned reason for leaving the marital home.

Cyntia and Mireille, who both were physically and emotionally abused during their marriages, explained to Human Rights Watch that they were advised by their local parish bishops not to leave their marital homes despite the abuse since the Maronite Court would consider this as an act of recalcitrance which could lead to their losing maternal

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<sup>208</sup> Judgment issued by the Beirut Sunni Court, August 29, 2009.

<sup>209</sup> Judgment issued by the Beirut Sunni Court, November 11, 2010.

custody.<sup>210</sup> Dina and Amina were given the same advice by their lawyers, who said that the Sunni and the Ja`fari courts respectively could also deprive them of maternal custody based on a finding of recalcitrance if they did so.<sup>211</sup>

#### DARINE

In another case, Darine, a Lebanese Shia woman in her 40s said that she married a Saudi man in the Ja`fari court in Beirut and then moved to Riyadh, where she could not work, her husband compelled her to wear a full-face veil (*niqab*) and did not allow her to socialize with men, even members of his own family. She returned to Lebanon with her daughter after deciding that she did not want to return to Riyadh, preferring to raise their daughter in Beirut and resume her career as an architect. Her husband filed an “obedience and cohabitation” lawsuit in the Ja`fari court in Beirut, which issued a judgment compelling Darine to return to Riyadh to live with him.

Darine’s lawyer explained to her that if she does not comply with the cohabitation order she’ll legally become a “recalcitrant wife” and she’ll lose maternal custody. “All I want is to secure a decent and healthy environment for my daughter,” Darine told Human Rights Watch. “The way my husband is handling the issue is extremely harmful to her and to us as a family... however I am afraid religious courts are unable or not willing to see that.”<sup>212</sup>

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<sup>210</sup>Human Rights Watch interview with Cyntia, March 3, 2013 and Mireille, February 18, 2013.

<sup>211</sup>Human Rights Watch interview with Dina, September 20, 2012 and Amina, May 4, 2012.

<sup>212</sup>Human Rights Watch interview with Darine, March 22, 2013.

## **V. Women’s Vulnerable Economic Position, Lack of Protection from Domestic Violence**

Of 27 women interviewed for this report, 23 said that the principal obstacle they faced in trying to get divorced was their vulnerable economic position both during and after the termination of their marriages.

This is partly because cultural, religious and traditional values in Lebanon undermine women’s economic independence and contribute to their economic marginalization and dependence on husbands, and partly because Lebanese personal status laws do not recognize a wife’s economic and non-economic contributions to the marriage, including the value of her unpaid domestic labor, or the concept of marital property.<sup>213</sup>

This is in breach of Lebanon’s international human rights obligations to provide equality of access to ownership, acquisition, management, administration, enjoyment and disposition of property. In addition, the lack of adequate legal protection from domestic violence may reinforce women’s economic inequality and often contributes to women’s inability to protect themselves from violence or to leave abusive marriages.

### **Women’s Economic Dependence in Marriage**

Across all confessions, personal status laws stipulate that it is a husband’s duty to provide for his wife and family, while her duty is care for their children and home. Under these laws, a husband must support his wife and children, including by providing food, clothing, shelter, and other living expenses. The wife on the other hand must have sex with her husband and live in the marital home.

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<sup>213</sup>Countries use different legal approaches to identify and divide property acquired by couples during marriage or separate property that is improved through joint effort. In some cases this is done through a “community of property” regime, which typically involves a legal regime where all property acquired during marriage is presumptively owned jointly by both spouses. Community of property systems usually recognize that property that is owned before the marriage, inherited, or received as a gift remains separate property. Some countries have mixed systems of separate and community of property, and allow spouses to elect which regime will apply when they marry. Some others follow a separate property regime but recognize the concept of conjugal partnership gains through joint effort, allowing for their distribution based on the extent of contribution made by each spouse. Some systems also allow for an absolute community of property, where all property acquired prior to and during marriage are presumptively jointly owned.

Reflecting these laws and social norms, according to a 2010 study of gender in the labor market in Lebanon by the Lebanese Central Administration of Statistics and the World Bank, the employment rate for married women is 34 percent compared to 59 percent for unmarried women. Women only constitute 25 percent of the labor force in Lebanon.<sup>214</sup> Further, the study found that women earn on average 75 percent of their male counterparts for the same work, further economically disadvantaging them.

During a marriage and sometimes even during a separation, a wife can go to court to compel her husband to fulfill his financial duties to support her if he fails to do so.<sup>215</sup> There is a lack of clear legal standards for determining the amount and it appears that women often receive insufficient funds to support themselves, and there are virtually no alternative mechanisms to support women economically during these proceedings (see Section “Inadequate, Biased, and Arbitrary Spousal Maintenance Judgments” below).

Further, in all confessions, the husband’s obligation of spousal maintenance expires if the wife initiates proceedings to terminate the marriage, if she is a recalcitrant wife, or if she fails to fulfill her marital obligations including having sex with her husband.

The husband’s duty of spousal maintenance automatically expires following a court ruling dissolving the marriage. Once a marriage is terminated, the husband is no longer required to financially support his former wife regardless of her need, his ability to support her, and her economic or non-economic contributions to the marriage.

Further, across confessions, the concept of marital property does not exist. Rather, spousal assets such as the family home are considered separately owned, and revert to the spouse

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<sup>214</sup>World Bank and Central Administration of Statistics in Lebanon, *Lebanon: Statistical Capacity Building with the Central Administration of Statistics*, August 28, 2010.

<sup>215</sup> There are differences in this regard between Shia, Sunni, and Druze confessions on the one hand and Christian confessions on the other. Shia, Sunni, and Druze confessions permit a woman to compel her husband to pay maintenance by filing a spousal maintenance suit. In contrast, a woman in a Christian marriage cannot sue for spousal maintenance unless a suit for desertion, annulment, or dissolution has been filed, in which case Christian courts grant temporary spousal maintenance to the wife while the lawsuit is pending. In a judgment issued on December 24, 1991, by the First Civil Appellate Court of Mt. Lebanon, presided over by Judge Mynah Metri, the civil court claimed the authority to adjudicate a lawsuit demanding spousal maintenance regardless of a parallel desertion, annulment, or dissolution lawsuit. The court ordered the husband to pay spousal maintenance in this instance, and the judgment was upheld by the Court of Cassation. Yet to our knowledge, this remains an isolated case. Cited in Ibrahim Tarabulsi, *Personal Status Codes in Lebanon between Authenticity and Modernization* (in Arabic) (2011), p. 367.

in whose name the property is registered—in Lebanon typically the husband—regardless of any economic or non-economic contributions made to help acquire the property.

### *Inadequate, Biased, and Arbitrary Spousal Maintenance Judgments*

In cases where husbands fail to financially support their families or under-provide, women across confessions can bring lawsuits before religious courts to order them to meet their maintenance obligations. To do so, they must prove their husbands have failed to adequately provide for them, and refute claims of insolvency or material inability since their husbands' responsibility is contingent upon their ability to pay, not just the wife's need.

Judges in spousal maintenance lawsuits do not however use clear standards in assessing what adequate levels of spousal maintenance are. Judges do not, for example, regularly rely on factors such as knowledge of the minimum wage, the value of the husband's assets, or his annual salary to determine spousal maintenance. In all of the cases Human Rights Watch reviewed, judges' failure to use clear criteria in applying the standards provided for by the personal status laws when assessing adequate levels of maintenance resulted in inadequate and arbitrary judgments.

Lawyers told Human Rights Watch that spousal maintenance rarely exceeds LBP600,000 a month (\$400).<sup>216</sup> In 24 judgments issued by the Christian courts that Human Rights Watch reviewed, maintenance grants ranged from LBP150,000 (\$100) to LBP600,000 (\$400) a month. Similarly, the average value of maintenance awarded in 38 Sunni and Ja`fari lawsuits reviewed by Human Rights Watch was LBP300,000 (\$200) a month, although some women requested much more based on their husbands' ability to pay higher amounts. In cases where women before the Sunni courts left the sum to the discretion of the court, the judge automatically granted them LBP200,000 (\$133).<sup>217</sup>

Judges justify awarding low spousal maintenance by citing the country's floundering economy and low minimum wage. But the eleven lawyers working on personal status cases before the courts whom Human Rights Watch interviewed stated that judges are notably reluctant to award higher sums, even in cases in which the husband could afford to pay

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<sup>216</sup>Human Rights Watch interviews with three lawyers practicing before Christian Courts, May 17, 2012, May 18, June 16, 2012; a lawyer practicing before the Ja`fari Courts, May 11, 2012; and a lawyer practicing before the Sunni Courts, May 18, 2012.

<sup>217</sup> Judgment issued by the Beirut Sunni Court, April 2, 2009; Judgment issued by the Supreme Sunni Court, July 23, 2009; Judgment issued by the Sidon Ja`fari Court, April 23, 1998; Judgment issued by the Nabatiya Ja`fari Court, March 26, 2001.

more. For example, in a case involving a French national who married a wealthy Lebanese man, who, according to the woman's lawyer, owns several properties and has a net worth of millions of dollars, the court ordered the husband to pay \$300 a month. As the amount was insufficient for her to rent suitable accommodation, the lawyer told Human Rights Watch she was currently living in a convent.<sup>218</sup>

In another case, Lana, in her late 20s, who was married when she was very young in the Maronite confession, filed a spousal maintenance case as part of a desertion lawsuit to receive support for herself and her two-year-old son following disagreements with her husband that led to her leaving the marital home for reasons the court recognized as legitimate. Several months after she filed the lawsuit, the Maronite court granted Lana and her son maintenance of LBP700,000 a month (\$460), although her husband owns several properties and is a lawyer.<sup>219</sup>

Only in cases in which women had entered into court certified prenuptial agreements with their husbands indicating that in case of separation they will maintain the same standard of living, were spousal maintenance amounts significantly higher. Lawyers who spoke to Human Rights Watch indicated that in some of their cases monthly payments reached as much as \$4,000.<sup>220</sup>

### *Loss of Spousal Maintenance for Recalcitrance*

In Sunni, Ja`fari, Druze and Christian courts women risk losing their rights to spousal maintenance if they leave the marital home and are thus found to be recalcitrant. The fact that courts –with the exception of Druze courts- consider obedience and cohabitation cases at all, makes women vulnerable to abuse and restricts their access to divorce. Women before Sunni and Ja`fari personal status courts told Human Rights Watch how their husbands initiated or threatened to initiate obedience and cohabitation claims when they tried to terminate their marriages.<sup>221</sup>

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<sup>218</sup>Human Rights Watch interview with a lawyer practicing before Christian Courts, May 17, 2012.

<sup>219</sup>Human Rights Watch interview with Lana, Maronite Christian, Lebanon, July 22, 2012.

<sup>220</sup>Human Rights Watch interview with three lawyers practicing before Christian Courts, May 17, 2012, May 18, 2012, June 16, 2012.

<sup>221</sup>Human Rights Watch interviews with Dina, September 20, 2012; Darine, March 22, 2013; and Nur, July 21, 2012.

In cases Human Rights Watch reviewed, judges ordered wives to return to the marital home even when husbands were abusive, did not allow their wives to maintain custody of their children or did not pay child custody, and tried to undermine their wives' financial rights.

A Sunni or Shia man whose wife has left the marital home may file a case with the relevant court to compel her to return to live in the marital home. If the court orders the wife to return and live with her husband and she does not comply, the court deems her a recalcitrant wife who has no right to spousal maintenance. These judgments are based on customary rules the Ja`fari and Sunni courts have adopted, and are not regulated by religious texts or laws.<sup>222</sup>

Druze courts do not accept obedience and cohabitation claims; however Druze personal status laws exempt Druze men from spousal maintenance during the period in which a wife has left the marital home without a legitimate reason or if she is refusing to allow her husband to enter her home.

Human Rights Watch analyzed 40 judgments in “obedience and cohabitation” cases before the Sunni and Ja`fari courts, which only men can bring against their wives. Of the 40 judgments, in 23 cases the judge ordered the wife to return to the marital home thus requiring her to do so or risk losing her financial rights. In 21 of these cases judges ordered the wife to cohabit with her husband even when she stated that she did not wish to continue the marriage. In the 17 cases in which the judge did not find the wife recalcitrant, the court rejected the obedience lawsuits because the husband had not paid the deferred *mahr* or because the spouses had reached an agreement during the trial.

Women can also be found recalcitrant before Christian courts and lose their rights to spousal maintenance for leaving the marital home and refusing to live with their husbands without legitimate cause. It is within the judge's discretion to assess what a legitimate cause is. Recalcitrance is an issue in Christian provisions in the context of annulment, dissolution, divorce, and desertion proceedings. While awaiting trial in the termination suit, women can file for temporary maintenance. A woman loses her rights to spousal

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<sup>222</sup>For example, the Law on the Regulation of Sunni and Ja`fari Justice does not include obedience and cohabitation suits as suits over which the Ja`fari and Sunni courts have jurisdiction.

maintenance if the petition for a termination is rejected and a judgment for cohabitation is issued with which she refuses to comply.

Six women married before the Muslim courts said their husbands threatened them with obedience and cohabitation claims when they asked for divorces thus threatening their right to spousal maintenance and possibly to maternal custody. In one case, Dina said:

It was clear to both of us that the marriage couldn't continue. He maybe wanted to end it even more than me, but as soon as I asked for a divorce, after I discovered the near impossibility of obtaining a sovereign divorce from the competent Ja`fari authorities, he threatened me with an obedience suit, which would make my life hell and force me to return to the Gulf to live with him and leave my family. I never imagined this was still possible in this day and age.

In the 40 “obedience and cohabitation” cases analyzed, judges often failed to seriously examine the causes and grounds the woman advanced during the trial for leaving the marital home, including physical abuse.

In 21 cases, despite claims from the wife that she left the home because of abuse, the judge ordered her to return to her husband. For example, the Supreme Ja`fari Court ordered a wife to return to her husband although she alleged that “he mistreats her, beats her, refuses to support her, and prohibits her from working.” The court based its ruling on the husband’s brief statement of “his willingness to live with her.”<sup>223</sup> In another case, the Ja`fari Court in Baabda ordered the wife to cohabit with her husband who had physically abused her “after the husband made a written pledge not to harm his wife.”<sup>224</sup>

Women were also forced to cohabit with their husbands even when they attempted to undermine their financial rights. For example, the Beirut Sunni court ordered a woman to cohabit with her husband, although he admitted that she left home following an argument over his desire to reduce her *mahr*. The husband also forced her to live in a home in Jbeil,

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<sup>223</sup> Judgment issued by the Supreme Ja`fari Court, April 10, 2012.

<sup>224</sup> Judgment issued by the Baabda Ja`fari Court, July 12, 2012.

Lebanon away from her family and friends, despite owning a house in Beirut where he worked and where they were located.<sup>225</sup>

In another case before the Beirut Ja`fari Court, the woman in a cohabitation case testified that she left the marital home after her husband expelled her following arguments over money, because she refused to turn over stocks registered in her name. The husband denied this and said that she left home without his knowledge. Relying only on his testimony, the judge declared the wife to be recalcitrant and revoked her right to spousal maintenance “because she did not make herself available to him and left the marital home.”<sup>226</sup>

In only three out of 40 cases reviewed did the judge send a clerk to examine the condition of the marital residence and prepare a report before issuing his ruling.

### *Loss of Maintenance in Severance and Desertion Cases Filed by Wife*

Women also lose their rights to spousal maintenance if they file severance cases in the Sunni courts or are found to be at fault for desertion in the Christian courts. In these cases, a woman who pursues a severance or files a desertion case often must choose between financial support and her ability to terminate the marriage.

According to the Sunni courts, “A severance suit filed by the wife constitutes a refusal to continue married life and her rejection of spousal maintenance.”<sup>227</sup>The Supreme Sunni Court upheld the same principle, opining, “A severance suit is an acceptable defense in a spousal maintenance suit.”<sup>228</sup>

Significantly, a woman loses her right to spousal maintenance on the date the severance suit is filed, not the date the judgment is issued, regardless of the duration of the suit. The Supreme Sunni Court ruled, “The appellant’s obligation of maintenance expires on the date on which the appellee files a severance suit.”<sup>229</sup>The Sunni courts’ approach to spousal maintenance suits filed during or after a severance suit is not based on statutory

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<sup>225</sup> Judgment issued by the Beirut Sunni Court, June 2, 2010.

<sup>226</sup> Judgment issued by the Beirut Ja`fari Court, April 6, 2010.

<sup>227</sup> Judgment issued by the Beirut Sunni Court, December 13, 2008.

<sup>228</sup> Judgment issued by the Supreme Sunni Court, April 9, 2008.

<sup>229</sup> Judgment issued by the Supreme Sunni Court, July 23, 2009.

texts regulating these issues, but rather the opinion of the Supreme Court. Although the new Sunni family code (2011) devotes an entire chapter to maintenance issues (chapter 2), spousal maintenance in severance cases is not addressed. Article 8 of chapter 2 of the code, which enumerates the cases in which spousal maintenance is not obligatory, does not include a severance case filed by the wife.<sup>230</sup> Given that local lawyers have advocated for Sunni courts to rule to preserve spousal maintenance, even following a severance filing and judgment. Doing so would preserve the wife's financial rights while allowing her to terminate the marriage.

## Women's Economic Vulnerability after Marriage Terminates

"After 25 years of marriage, I left home with one suitcase filled with just my personal effects," says Mireille.<sup>231</sup> "I couldn't prove I had paid for half the house we bought in the early years of our marriage," said Rayya. "Should a woman demand a receipt from her husband? I didn't even inquire about the registration procedures at the notary's office at the time. I only learned from the lawyer I hired for the severance case that all the property was registered in my husband's name."<sup>232</sup> Amina added: "I would park students' cars in the morning and clean houses in the afternoon. I saved enough for a car, but I found that he registered it in his name after he kicked me out of the house with my four children."<sup>233</sup>

The experiences that Mireille, Rayya, and Amina shared with Human Rights Watch illustrate women's economic vulnerability when they separate from their husbands.

In both Christian and Ja`fari, Sunni, and Druze courts in Lebanon, in all cases, the issuance of a final judgment terminating a marriage suspends the man's obligation of spousal

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<sup>230</sup>Code of Family Provisions, art. 8, as decree 46 of October 1, 2011, states:

The wife shall receive no maintenance in the following cases:

- a. If she refuses, without legitimate cause, to move to the marital abode that fulfills all legal conditions and was prepared by her husband in the place of his actual residence.
- b. If she leaves the marital abode without a legitimate excuse.
- c. If she prohibits the husband from entering the marital abode owned by her, provided she has not asked him to move and he did not move within three months of the date of the request.
- d. If she refuses to move or travel with her husband, unless stipulated otherwise in the marriage contract or unless this entails harm to her, the assessment of which is left to the judge in accordance with Islamic rules and precepts.

<sup>231</sup>Human Rights Watch interview with Mireille, February 18, 2013.

<sup>232</sup>Human Rights Watch interview with Rayya, March 4, 2013.

<sup>233</sup>Human Rights Watch interview with Amina, May 4, 2012.

maintenance regardless of his former wife's need or her professional prospects, or lack thereof.<sup>234</sup>

Rather under the Shia and Sunni personal status codes, a husband's financial responsibility is limited to the deferred *mahr*, while under the Christian codes a wife can be entitled to compensation if the husband is at fault for terminating the marriage and under the Druze code a wife is entitled to her deferred *mahr* and can also be entitled to damages.

### *Lack of Damages, Inadequate and Loss of Mahr in Shia and Sunni Confessions*

Under the Sunni and Shia personal status laws, when a marriage terminates—even when a husband decides to unilaterally divorce at will and without cause—the husband is only required to pay his wife a deferred *mahr* (the value of which is stipulated in the marriage contract), and maintenance for the first three-months' after the divorce—referred to as the waiting period, in which the divorce is revocable by the husband.

In practice, as reflected in 38 cases before Sunni and Ja`fari courts reviewed by Human Rights Watch, the amount to be paid during the waiting period does not exceed LBP100,000, (\$60) per month. Given this, the spouses' agreement in the marriage contract on the deferred *mahr* sum is of great importance.

However, women and lawyers interviewed by Human Rights Watch said that often women entering into marriage disregard the material aspect of the contract. The deferred *mahr* amount is in many cases a symbolic figure, for instance one lira, or one gold coin and does not reflect what spouses' believe would be adequate compensation in the case of divorce. In interviews with Human Rights Watch, nine women said that this was because they did not imagine their husbands would unilaterally divorce them, or that they did not want to put a price on their relationship with their husbands. Two of them added that they felt social pressure to not request an appropriate deferred *mahr* amount.

Further, in many cases in which a wife needs to obtain a certification of divorce from a Sunni or Ja`fari court because her husband has divorced her outside of a court proceeding

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<sup>234</sup> There are two exceptions: 1) in Islamic confessions, a man must pay spousal maintenance to his wife for the three-month waiting period following a divorce and 2) in Christian confessions, the duty of spousal maintenance continues following a judgment for desertion.

(for instance because she wants to remarry) women give up their financial rights. Human Rights Watch examined 29 judgments from the Sunni and Ja`fari courts in which the wife initiated the certification of divorce proceedings. In 18 of those cases, the wife forfeited her full pecuniary rights in exchange for certification of termination of the marriage.<sup>235</sup> In two out of the 29 judgments reviewed by Human Rights Watch where it was noted by the court that the wife asked the judge to guarantee her *mahr* rights, the court rejected the request on the grounds that “the subject of the case is limited to the certification of the divorce, exclusive of the defendant’s *mahr* claim. A *mahr* claim requires an independent suit,”<sup>236</sup> and “The pecuniary rights ensuing from the divorce shall be claimed separately, insofar as they are preserved in the husband’s care and shall continue as such.”<sup>237</sup>

The Druze personal status law on the other hand, requires a judge in the Druze courts to grant a wife damages, in addition to the deferred *mahr*, if the divorce is unilaterally initiated by the husband at will and without cause, taking into consideration both material and moral harm.<sup>238</sup> One lawyer practicing before the Druze courts told Human Rights Watch that judges abide by this rule and assess the value of compensation based on the husband’s social and economic capacities; compensation may range from LBP5million to LBP50 million (around \$3,300-33,300).<sup>239</sup>

### *Judicial Discretion in Allocating Compensation*

Before Christian personal status courts the party that is found liable for the annulment, dissolution, or divorce is responsible for compensating the other party for damages. In cases of desertion, there is no compensation, although women continue to be entitled to modest spousal maintenance sums.

The presiding judge can use his discretion to set the value of the damages that are to be paid. Even in cases where husbands are found completely liable for the termination of the marriage, judges are often reluctant to grant women large compensation sums, according to lawyers working on personal status cases and a review of court cases.

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<sup>235</sup> Of 77 judgments in divorce cases we reviewed, in 29 of them the judgment was issued in the wife’s presence and the case was not rejected nor was an agreement reached between the spouses.

<sup>236</sup> Judgment issued by the Sidon Ja`fari Court, April 2, 1998.

<sup>237</sup> Judgment issued by the Beirut Ja`fari Court, March 8, 2009.

<sup>238</sup> Druze personal status law, art. 49.

<sup>239</sup> Human Rights Watch interview with a lawyer practicing before the Druze Courts, July 6, 2012.

According to three lawyers working on personal status cases before Christian and Druze courts interviewed by Human Rights Watch, judgments for compensation for middle and upper-middle class clients are relatively low (on average LBP20 million (\$13,000); and rarely exceed LBP60 million (\$40,000), regardless of the husband's economic worth or contributions the wife made during the marriage.<sup>240</sup> Most compensation amounts in the cases Human Rights Watch reviewed were much lower.

In 18 judgments issued by the Catholic courts examined by Human Rights Watch in which women sought compensation on the basis that their husbands were liable for the annulment, dissolution, or divorce, women received compensation in only eight cases (with the husbands being found not liable in the other 10), with the compensation ranging from LBP2 million (\$1,320) to LBP15 million (\$10,000).

However, in one exceptional judgment on September 27, 2012, the Beirut Appellate Orthodox Court ordered a husband to compensate his wife LBP225,000,000 (\$150,000) after he was judged to bear full culpability for the dissolution of the marriage.<sup>241</sup>

This case illustrates the arbitrariness of judicial compensation orders absent clear criteria to assess adequate compensation amounts. In most cases reviewed, Human Rights Watch found no specific criteria used to set compensation value; the judge simply cited provisions from personal status laws that permit him to determine the value of compensation in consideration of material and moral damage and the status of both husband and wife. Compensation is typically assessed without referring to the material status of either spouse.<sup>242</sup>

This arbitrariness also extends to whether compensation should be paid at all. This is reflected, for example, by the unwillingness of Catholic judges to require compensation in cases where a marriage is annulled on the basis of mental incapacity (i.e., harm is not

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<sup>240</sup> Human Rights Watch interview with three lawyers practicing before Christian Courts, May 17, 2012, May 18, 2012, June 16, 2012; Human Rights Watch interview with a lawyer practicing before the Druze Courts, July 6, 2012.

<sup>241</sup> Judgment issued by the Beirut Appellate Orthodox Court, September 27, 2012.

<sup>242</sup> In one exceptional case, in a judgment issued by the Unified First Instance Roman Catholic Court on February 22, 2010, the court determined the compensation amount using specific criteria which included the assets owned by each, their jobs, the age they were married, and the duration of the marriage.

intended) despite the rule in Catholic courts mandating compensation from the spouse at fault for the annulment or dissolution of the marriage. Catholic judges have expressed

...the court's predilection for denying compensation in cases in which the marriage is annulled on the grounds of mental incapacity. The husband who suffers from a psychological ailment that is out of his control is not able to free himself of it and is not responsible for the failure of the marriage. In turn, he cannot be held accountable for an action beyond his ability to change. But the court also considers the party that caused the failure of the marriage on the grounds of his mental incapacity, if in fact it is possible for him to compensate the less well-off party for damages incurred, even without intent of design.<sup>243</sup>

However, women can only terminate marriages in Catholic courts by seeking an annulment on the grounds of her husband's inability to meet the basic obligations of marriage for psychological reasons (see Table 6 "Grounds for Termination of Marriage and Desertion for Christian Confessions" above). Thus, a woman has little hope of obtaining compensation, even in cases in which she is actually seeking an annulment because of spousal abuse but using mental incapacity as the official basis for annulment.

In the 69 divorce cases reviewed by Human Rights Watch (including desertion and annulment) before the Christian courts where compensation was at issue it was clear that judges in these courts and within the same denomination applied different standards when assessing compensation. In some cases, as above, judges only agreed to compensate the petitioning spouse if the other spouse was intentionally and willfully at fault.

In another case before the Unified First Instance Maronite Court, a woman said she had no children because her husband was infertile and refused to see specialists. The man also beat her "until her nose bled," she said. The court accepted this claim, stating in its judgment of January 21, 2008, "Witnesses brought by the wife testified that he was of ill-repute, he considered himself always right, and he constantly beat his wife; he has a very nervous temper and is not a normal person. This confirms the failure of the marriage."

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<sup>243</sup>Judgment issued by the Unified First Instance Roman Catholic Melkite Court, May 31, 2011.

The court ruled to annul the marriage on the grounds of misrepresentation, especially of the capacity to reproduce, and on the grounds of the husband's inability to assume the basic burdens and responsibilities of marriage for psychological reasons. Yet, the court rejected the compensation claim filed by the woman, stating, "The husband showed no intent to deceive his wife to win her consent." The judgment gave no other explanation and did not address the husband's liability for the annulment or the damages sustained by the wife after nine years of married life.<sup>244</sup>

In contrast, the same court issued a judgment on July 3, 2012, compensating a wife in very similar circumstances with the sum of \$10,000. The court annulled the marriage, as it had become clear to the wife after the wedding that her husband was abusive and infertile. In this case, the marriage lasted only 15 months. The court offered the following explanation:

It was established that major culpability for the failure of the marriage rests with the husband. The causes of disagreements assumed a psychological nature and were beyond his control. In addition, the husband contributed to the collapse of married life and the separation through his negligence, mismanagement, addiction, and apathy. Moreover, he is unable to produce children, whereas the wife married to have children and form a family and was shocked by the bitter reality of the husband.<sup>245</sup>

The Greek Orthodox and Evangelical confessions are distinguished by the allowances they make for compensation. Article 74 of the Greek Orthodox personal status law permits the payment of damages without regard to liability for the annulment or dissolution in cases of indigence. In these cases, the court may order the man to pay a sum of money to allow the woman to "adjust to her new status," that is, secure a place to live, furnishings, and enough money to survive, after marriage.<sup>246</sup> Article 30 of the Evangelical personal status law provides for the payment of damages in case of severance without addressing the liability for the severance. Greek Orthodox and Evangelical courts have applied this provision freely.

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<sup>244</sup>Judgment issues by the Unified First Instance Maronite Court, January 21, 2008.

<sup>245</sup>Judgment issues by the Unified First Instance Maronite Court, July 3, 2012.

<sup>246</sup> Personal status law and Code of Procedure of the Greek Orthodox Patriarchate of Antioch and All the East., art. 74.

For example, the First Instance Greek Orthodox Court for the Bishopric of Mount Lebanon issued a judgment on March 22, 2010, ordering a husband to pay his wife a sum “to adjust to her diminished position,” although it found her liable for the dissolution of the marriage.<sup>247</sup> The same court ordered a husband to pay a sum to his wife despite determining them jointly responsible for the dissolution of the marriage, to permit her to adjust to her new status following the dissolution.<sup>248</sup>

### *Failure to Compensate Women for Marital Contributions*

In Christian and Shia, Sunni, and Druze personal status codes, there is no recognition of marital property and there is no compensation for non-economic contributions, including work in the home or childcare, to the marriage.

Christian personal status laws dictate that each spouse maintains separate ownership of his or her property and has the right to manage and use it and the fruit of his or her labor, unless the spouses agree otherwise in writing.<sup>249</sup> Although these provisions allow for spouses to agree to joint ownership of assets, in recognition of the direct or indirect contributions each spouse makes in the earnings of the other, in reality, this sort of agreement is extremely rare in Lebanon.

Brigitte, a woman in her fifties, was married for more than 30 years during which she told Human Rights Watch her husband subjected her to verbal, psychological, and physical abuse, before finally forcing her to leave the marital home. According to Brigitte she only worked outside the home sporadically, devoting most of her time to raising their three children and housework. When she did work outside of the home everything she earned she gave to her husband in cash, who bought the marital home and registered it in his name. After her separation, Brigitte found a job in a company making LBP750,000 a month (\$500), which was barely enough to provide for her basic expenses. She has no legal share of the marital home, since it is her husband’s property and she kept no receipts proving she contributed to it. As for her domestic labor, which allowed her husband to devote himself to his job and advance professionally—he receives a pension of LBP4.5 million

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<sup>247</sup>Judgment issued by the First Instance Greek Orthodox Court of Mt. Lebanon, March 22, 2010, cited by Ibrahim Tarabulsi, p. 549.

<sup>248</sup>Judgments issued by the First Instance Greek Orthodox Court of Mt. Lebanon, June 30, 2001 and November 15, 2010, cited by Ibrahim Tarabulsi, p. 549.

<sup>249</sup>Personal status law and Code of Procedure for the Catholic confessions, art.39; Syriac Orthodox personal status law, art.39; Personal status law and Code of Procedure for the Coptic Orthodox confession in Lebanon, 2010, art.48.

(\$3,000) a month—she received no remuneration because the law does not acknowledge her labor as a contribution.<sup>250</sup>

In Shia, Sunni, and Druze confessions, there is also no provision addressing marital property; given the lack of a text, judges invoke civil law, though it too contains no provision for marital property.<sup>251</sup>

## Inadequate Protection from Domestic Violence

Through its review of case files and interviews with affected women, lawyers, and advocates, Human Rights Watch found that due to the multiple statutory provisions and judicial bodies that adjudicate marital disputes, a woman in an abusive relationship typically finds herself tossed between religious and civil courts and opinions and suspended in time, given the long duration of court proceedings—without adequate preventive laws or timely interventions to protect her from harm.

Discriminatory provisions in personal status laws including in access to divorce and maternal custody and the absence of protective mechanisms, including adequate financial compensation, also affect a woman's willingness to turn to the courts and enter into personal status law disputes even when she is in an abusive relationship.

Amina, Mireille, Cyntia, Michelle, and Monica—5 of 27 women interviewed by Human Rights Watch—experienced domestic violence during their marriages.<sup>252</sup>

Mireille and Michelle chose not to turn to the criminal or religious courts to punish nor end their husbands' abuse in fear of losing their children.<sup>253</sup> Michelle waited until her children

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<sup>250</sup>Human Rights Watch interview with Brigitte, July 4, 2012.

<sup>251</sup>Sami Mansour, *The Economic Consequences of a Civil Marriage among Lebanese Citizens Abroad*, (Al-Adl, 2001, n.1), p. 5-33; The Ministry of Justice Legislation and Consultation committee opinion n. 189/r/1964 dated 18/3/1964, The Ministry of Justice Legislation and Consultation committee Jurisprudence Collection, Sader ed. 2004, p. 1219; opinion n. 916/r/1969 dated 17/2/1969, The Ministry of Justice Legislation and Consultation committee Jurisprudence Collection, Sader ed. 2004, p. 1239; opinion n. 66/73 dated 26/2/1973, The Ministry of Justice Legislation and Consultation committee Jurisprudence Collection, Sader ed. 2004, p. 1247; opinion n. 266/r/91 dated 26/12/1991 The Ministry of Justice Legislation and Consultation committee Jurisprudence Collection, Sader ed. 2004, p. 1299.

<sup>252</sup>Human Rights Watch interview with Amina, May 4, 2012; Mireille, February 18, 2013; Cyntia, March 3, 2013; Michelle, July 27, 2012; and Monica, July 23, 2012.

<sup>253</sup>Human Rights Watch interview with Mireille, February 18, 2013 and Michelle, July 27, 2012.

were grown before filing for a dissolution with the Evangelical Court. Mireille did not petition the court at all, but simply left home with her daughters when they reached legal adulthood.

In contrast, Amina learned from her first experience— “the first beating,” as she said—and did not hesitate to call the police and obtain a medical report from the hospital to prove the harm she sustained. “None of it did any good,” she said. Amina said that the only thing the police were willing to do was to compel her husband to sign a pledge not to harm her. When the judge considered her severance suit before the Sunni Court, he disregarded the abuse; instead of finding her husband at fault for his actions, he advised Amina to accept a quittance and forfeit her rights.<sup>254</sup> Similarly, Cyntia produced a report for the Maronite Court establishing her husband's abuse, but it had no impact on the case, which has been pending before the court for nearly two years.<sup>255</sup>

Monica's case, discussed below, clearly illustrates the dilemma of women who find themselves in an abusive marriage, particularly when they lack the financial resources, necessary to secure a place to live for themselves and their children away from their violent husbands, or hire a lawyer to fight for their rights.

Monica, a Maronite woman in her late forties, told Human Rights Watch that her husband beat her from the first years of their marriage, but that she stayed with him for fear of losing her children. After 23 years of a married life she describes as filled with verbal, psychological, and physical abuse, she decided to file for an annulment with the Maronite courts. When her husband learned of her action, he went into a rage and beat her more violently, she says.

Despite this, after seeking the advice of a lawyer, she learned that at the time, in 2009, she could not obtain an expedited ruling ordering her husband to leave the home as he owned it in either the religious or criminal courts.<sup>256</sup> While women are still not adequately protected from domestic violence under Lebanese law, the situation has improved since Monica sought relief from the courts, through the passage of the April 2014 Law on Protection of Women and Family Members from Domestic Violence.

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<sup>254</sup>Human Rights Watch interview with Amina, May 4, 2012 and Cyntia, March 3, 2013.

<sup>255</sup>Human Rights Watch interview with Cyntia, March 3, 2013.

<sup>256</sup>Human Rights Watch interview with Monica, July 23, 2012.

### *Inadequate Instruments to Protect Women from Domestic Violence*

As noted above, citing physical abuse is not sufficient cause for divorce in most personal status courts in Lebanon. Under the Shia and Sunni confessions, in cases in which a woman has the right to seek a divorce (see Section “Unequal Divorce Laws” above) she must prove that the abuse exceeds her husband’s legal authority to discipline his wife under the relevant personal status law.<sup>257</sup> In other cases, particularly in Catholic annulment suits, abuse is never in and of itself legal grounds for annulment.

Although religious courts are authorized to make judgments on marriage and its legal effects, their powers do not extend to convicting a husband of criminal harm in cases of abuse, or of protecting women from abuse.

On April 1, 2014 Lebanon’s parliament passed the Law on Protection of Women and Family Members from Domestic Violence, which came into effect in May 2014.<sup>258</sup> While establishing important protection measures and related policing and court reforms, the law still leaves women at risk of marital rape and other abuse. The law defines domestic violence narrowly, and thus does not provide adequate protection from all forms of abuse. It is defined 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.” The crimes identified in the law relate to forced begging, prostitution, homicide, adultery, and the use of force or threats to obtain sex.

The narrow definition of domestic violence fails to meet UN guidelines on protection from domestic violence, which calls for a comprehensive definition of domestic violence, including acts of physical, sexual, psychological, and economic violence.<sup>259</sup>

An earlier draft of the law included marital rape as a crime, but the provision was removed under pressure from religious authorities. As a form of compromise, the law criminalizes a

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<sup>257</sup>The Lebanese women democratic gathering, *Legal violence against women in Lebanon under criminal and personal status law - legal study*, by Maitres Marie-Rose Zalzal, Ghada Ibrahim, and Nada Khalifeh, (Beirut, Lebanon: Dar al Farabi, 2008).

<sup>258</sup>Law on the Protection of Women and Family Members from Domestic Violence.

<sup>259</sup>United Nations Department of Economic and Social Affairs/Division for the Advancement of Women (DESA/DAW), *Handbook for Legislation on Violence against Women*, E.10.IV.2, (New York: United Nations Publications, 2009), p.24, <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf> (accessed November 26, 2014).

spouse's use of threats or violence to claim a "marital right to intercourse" but does not criminalize the non-consensual violation of physical integrity itself.

Advocates also criticized a reference to a "marital right of intercourse," which does not exist under Lebanese criminal law, and fear it could be used to legitimize marital rape. UN human rights experts and agencies have repeatedly called on governments to criminalize marital rape. In 2008, the Committee on the Elimination of Discrimination against Women specifically called on Lebanon to ensure "that marital rape is criminalized and that marriage to the victim does not exempt a sexual offender from punishment."<sup>260</sup> In particular, the committee has continuously stressed "that there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence."<sup>261</sup>

Moreover, article 22 of the new law states that all provisions considered contrary to the new law would be annulled except when in conflict with personal status laws or Law No. 422 on Protection of Children in Conflict with the Law or at Risk. This article is contrary to the recommendation of the UN Handbook for Legislation on Violence against Women. This states 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."<sup>262</sup> Exempting matters governed by personal status laws from the domestic violence law undermines women's security in the home.

For instance, Muslim men continue to have the authority to discipline their wives. They could still be prosecuted under criminal law but the religious courts are under no obligation to sanction him for such behavior. Court rulings over domestic violence moreover would not override or be required to be factored in during personal status court

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<sup>260</sup>CEDAW, "Concluding comments of the UN Committee on the Elimination of Discrimination against Women," CEDAW/C/LBN/CO/3, April 8, 2008, para.27, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/No8/298/32/PDF/No829832.pdf?OpenElement>(accessed on December 4, 2014).

<sup>261</sup> See, for example, CEDAW, Communication No. 18/2008, CEDAW/C/46/D/18/2008, Sept. 1, 2010, at para. 8.7, stating, "[t]hrough its consideration of States parties' reports, the Committee has clarified time and again that rape constitutes a violation of women's right to personal security and bodily integrity, and that its essential element was lack of consent." See also, CEDAW, Communication No. 18/2008, CEDAW/C/46/D/18/2008, Sept. 1, 2010, at para. 8.5.

<sup>262</sup>UN DESA/DAW, *Handbook for Legislation on Violence against Women*, p. 16.

rulings. Thus women could still face court cases for recalcitrance, loss of their pecuniary rights, and to revoke maternal custody regardless of whether they have received protection or pursued a case for domestic violence under this law.

In a positive development, however, at least two judges implementing the domestic violence law have interpreted the definition of the acts of violence banned by the law broadly.

In the law's first judicial application, a Summary Affairs judge in Beirut, Jad Maalouf, asserted that:

Violence is not just limited to physical aggression...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 to her face 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 293/2014. Indeed, what is meant by violence is that which causes psychological harm as well. 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.<sup>263</sup>

In a ruling on August 20, 2014, Summary Affairs Judge Antoine Tohme in al-Metn, also found that the use of children for extortion can be a form of psychological violence amounting to domestic violence. In the case under consideration, a woman who was insulted and humiliated by her husband on a regular basis, left the marital home and subsequently was not able to see her two children, who remained with the father. The woman petitioned the court for maternal custody and spousal and child support. In his ruling, Judge Tohme ordered that both children, who were minors, be turned over to the mother and that the husband pay a monthly \$1000 USD allowance. The judge also appointed the NGO KAFA (Enough Violence and Exploitation) to designate someone whom

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<sup>263</sup>See, Nizar Saghieh, "Interpreting Lebanon's Law Against Domestic Violence: Jurisprudence as Legal Reform," *Legal Agenda*, June 30, 2014.

it saw fit to monitor the girls' psychological state, attempt to reconcile the spouses, and present a report to the court.

In arriving at this result, the judge relied upon a finding that the mother had been subject to physical, psychological, “and other forms of violence” as defined by the domestic violence law. Preventing a parent from seeing her child was considered to amount to psychological violence, an infringement against human dignity, and a violation of the physical and mental safety of the individual.<sup>264</sup>

### *Difficulty Obtaining Expedited Court Orders during Termination Proceedings*

Procedural rules for all Christian confessions provide for expedited maintenance and custody, which is necessary given how lengthy and complicated Christian termination proceedings are, but in fact, a review of 36 relevant court judgments, showed that these legal proceedings took from 6 to 10 months on average. Three lawyers interviewed by Human Rights Watch said this is because judges in the Christian courts refuse to issue an expedited judgment for maintenance and custody until they have questioned both parties. Moreover, the Christian courts take a two-month recess in the summer, when a woman, no matter how pressing her need, can file no petition at all with the court.

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<sup>264</sup>See, Youmna Makhoul, “Domestic Violence on Trial: No to the Use of Children to Abuse and Extort,” *Legal Agenda*, September 12, 2014.

## VI. International Human Rights Obligations

Lebanon has ratified a number of international human rights covenants that protect and promote women's equality during and after marriage, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>265</sup> the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>266</sup> and International Covenant on Civil and Political Rights (ICCPR).<sup>267</sup> In addition, Lebanon has undertaken to implement other internationally recognized norms and standards on gender equality, including the Beijing Platform of Action<sup>268</sup> and the Millennium Development Goals (MDGs).<sup>269</sup>

However, as this report shows, Lebanon has failed to comply with its human rights obligations: a host of religiously based personal status laws and court decisions fail to guarantee equality in marriage and divorce and permit discrimination against women, violating their human rights, including to non-discrimination, physical integrity and health.

### Reservations to CEDAW

Lebanon has entered reservations to articles 9 and 16 of CEDAW. These articles address the obligation of states to eliminate discrimination against women with regard to their nationality and the nationality of their children (art.9) and in marriage and family life (art. 16). As far back as 1994, the CEDAW committee (the UN body tasked with monitoring the implementation of CEDAW) expressed its alarm at “the number of State parties which have entered reservations to the whole or part of article 16, especially when a reservation has also been entered to article 2, claiming that compliance may conflict with a commonly held vision of the family based, *inter alia*, on cultural or religious beliefs or on the country's

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<sup>265</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, acceded to by Lebanon on April 16, 1997.

<sup>266</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S.3, entered into force January 3, 1976, acceded by Lebanon November 3, 1972.

<sup>267</sup> International Covenant on Civil and Political Rights (ICCPR)

<sup>268</sup> Fourth World Conference on Women, Beijing Declaration and Platform for Action, 1995, <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> (accessed February 1, 2013).

<sup>269</sup> UN Millennium Development Declaration, September 18, 2000, G.A. Res. 55/2, U.N. GAOR, 55<sup>th</sup> Sess., Supp. No. 49 at 4 U.N. Doc. A/55/49 (2000).

economic or political status.” The committee called on all states parties to “progress to the stage where reservations, particularly to article 16, will be withdrawn.”<sup>270</sup>

The entering of these reservations casts doubt on Lebanon’s commitment to advancing women’s human rights, especially their rights to equality in marriage and divorce. In its concluding comments to Lebanon in 2005, the CEDAW committee stated that Lebanon’s reservations were contrary to the object and purpose of the Convention and urged it to withdraw them. The committee also specifically urged Lebanon to “adopt a unified personal status code which is in line with the convention and would be applicable to all women in Lebanon, regardless of religious affiliation.”<sup>271</sup>The committee urgently renewed its call in 2008 and expressed its regret that Lebanon had made no progress towards a unified personal status code.<sup>272</sup>

In response to these concerns, Lebanon stated that it would not be possible to lift the reservations or implement a unified family law code, as “each Lebanese is subject to the laws, regulations and courts of his or her own religious community.”<sup>273</sup>

The government’s reservation however is inconsistent with Lebanon’s international obligation under CEDAW article 2 to work “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women” and to which the government does not have a reservation.<sup>274</sup> The Lebanese government continues to use these norms as a means to justify human rights violations against women. The Lebanese government should take immediate steps to ensure equality in the substantive and procedural laws and policies governing personal status laws.

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<sup>270</sup> CEDAW Committee, General Recommendation No. 21, Equality in Marriage and family relations (1994), HRI/GEN/1/Rev.9 (Vol.II), p. 337, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21> (accessed February 1, 2013), para. 44.

<sup>271</sup> CEDAW Committee, “Concluding observations of the UN Committee on the Elimination of Discrimination against Women, Lebanon”, 33rd session, July 2005, <http://www.un.org/womenwatch/daw/cedaw/cedaw33/conclude/lebanon/0545048E.pdf> (accessed February 1, 2013), para 24.

<sup>272</sup> CEDAW Committee, “Concluding observations of the UN Committee on the Elimination of Discrimination against Women, Lebanon”, 40th session, January 2008, <http://daccess-dds.ny.un.org/doc/UNDOC/GEN/No8/298/32/PDF/No829832.pdf?OpenElement> (accessed February 4, 2013).

<sup>273</sup> 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, Third periodic report, Lebanon,” UN. Doc. CEDAW/C/LBN/3, July 7, 2006, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/No6/437/44/PDF/No643744.pdf?OpenElement> (accessed February 1, 2013).

<sup>274</sup> CEDAW, art.2(f).

## Right to Equality during and after Marriage

International human rights laws guarantee equality to women during and after marriage. Article 16 of CEDAW obliges states to take all appropriate measures to eliminate discrimination against women in “all matters relating to marriage and family relations,” and to ensure that women and men have the “same rights and responsibilities during the marriage and at its dissolution.”<sup>275</sup> Article 23 of the ICCPR similarly guarantees equality between the spouses “during marriage and at its dissolution.”

In 1994 the CEDAW committee released an authoritative interpretation of the principle of equality within marriage and divorce.<sup>276</sup> It explicitly states that “whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people.”<sup>277</sup> Countries cannot therefore invoke religion, tradition or custom to justify any form of sex-based discrimination in marriage.

The CEDAW committee also expressed concern that “identity-based personal status laws and customs perpetuate discrimination against women and that the preservation of multiple legal systems is in itself discriminatory against women.”<sup>278</sup> It called on states parties to “adopt written family codes or personal status laws that provide for equality between spouses or partners irrespective of their religious or ethnic identity or community.”<sup>279</sup>

Furthermore, in the absence of a unified family law, like in Lebanon, the committee expressed that “the system of personal status laws should provide for individual choice as to the application of religious law, ethnic custom or civil law at any stage of the relationship.”<sup>280</sup>

The UN Human Rights Committee (the body tasked with monitoring the implementation of the ICCPR) has also rejected the use of tradition, religion and culture to justify violations of

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<sup>275</sup>CEDAW, art. 16 (1)(c).

<sup>276</sup>CEDAW Committee, General Recommendation No. 21, Equality in Marriage and family relations (1994), HRI/GEN/1/Rev.9 (Vol.II), p. 337, <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21> (accessed February 1, 2013)

<sup>277</sup>CEDAW Committee, General Recommendation No. 21, para 13.

<sup>278</sup>CEDAW Committee, General Recommendation No. 29, Economic consequences of marriage, family relations and their dissolution, UN. Doc. CEDAW/C/GC/29, February 26, 2013, para. 14.

<sup>279</sup>CEDAW Committee, General Recommendation No. 29, para. 15.

<sup>280</sup> *Ibid.*

women's rights to equality before the law, and to the equal enjoyment of all rights guaranteed under the ICCPR.<sup>281</sup>

The obligation of states to ensure the same rights of women and men during marriage and divorce includes an obligation to ensure that laws do not set higher barriers to divorce for women. The Human Rights Committee clearly outlines the obligations that state parties have in regard, stating that: "The grounds for divorce and annulment should be the same for men and women, as well as decisions with regard to property distribution, alimony and the custody of children".<sup>282</sup> The CEDAW committee also stated that with regards to women having to renounce any pecuniary rights, states parties should "eliminate any procedural requirement of payments to obtain a divorce that does not apply equally to husbands and wives."<sup>283</sup>

## Domestic Violence as Grounds for Divorce

States have an obligation to protect women from violence of any kind, including that which occurs in the family.<sup>284</sup> The CEDAW Committee notes that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men."<sup>285</sup>

Violence against women by their husbands is not automatically considered a ground for divorce in Lebanon: in severance claims to end some Muslim marriages, examined by Human Rights Watch, domestic violence did not necessarily render the husband liable, thereby jeopardizing both the wife's claim for divorce and her financial security. Domestic violence short of attempted murder or mental incapacity to assume the basic duties of a marriage is never sufficient in Christian marriages to obtain a quick termination of marriage. In Catholic confessions, including the Maronite confession, marriage is considered a sacrament and it cannot be dissolved unless one of the parties can show that grounds existed prior to the marriage which impaired spousal consent.

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<sup>281</sup>UN Human Rights Committee, General Comment No. 28, para. 5.

<sup>282</sup>Ibid para. 26.

<sup>283</sup>CEDAW Committee, General Recommendation No. 29, para. 41.

<sup>284</sup>CEDAW Committee, General Recommendation No. 12 (eighth session, 1989), Violence against women.

<sup>285</sup>CEDAW Committee, General Recommendation No. 19, paras 1, 7.

Denying women the right to equality in divorce condemns some women to remain in abusive marriages, putting women's health and lives in jeopardy. In addition, the CEDAW committee noted that the “lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion.”<sup>286</sup> With regards to the place of women in family life, the CEDAW Committee further urged states parties to comply with general recommendation 19 on violence against women to ensure that, “in both public and family life, women will be free of the gender-based violence that so seriously impedes their rights and freedoms as individuals.”<sup>287</sup>

## Care of Children

The Convention on the Rights of the Child instructs state parties that, in all matters concerning children, “the best interest of the child shall be a primary consideration.” The convention adds that “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”<sup>288</sup> And further notes that children have a right to maintain direct contact with both parents on a regular basis unless it is not in their best interest.

Various treaty bodies have addressed gender-based discrimination with regard to rights concerning child. The Human Rights Committee states that “any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interest of the children in this connection.”<sup>289</sup> The Committee also stated that states have an obligation to ensure that the “matrimonial regime contains equal rights and obligations for both spouses with regard to the custody and care of children, the children’s religious and moral education, the capacity to transmit to children the parent’s nationality.”<sup>290</sup>

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<sup>286</sup> *Ibid* para. 23.

<sup>287</sup> CEDAW Committee, General Recommendation no. 21, para. 40.

<sup>288</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 9.

<sup>289</sup> HRC General Recommendation No. 19 para 9.

<sup>290</sup> HRC General Comment No. 28, para. 25,

[http://ccprcentre.org/doc/ICCPR/General%20Comments/HRI.GEN.1.Rev.9%28Vol.1%29\\_%28GC28%29\\_en.pdf](http://ccprcentre.org/doc/ICCPR/General%20Comments/HRI.GEN.1.Rev.9%28Vol.1%29_%28GC28%29_en.pdf) (accessed on December 4, 2014).

The CRC also does not use the term “custody,” with its implications of parental ownership rights over children, but instead encourages a child-focused approach in family law, especially in determining where a child should live after divorce, and parental responsibilities. The CRC requires that children be given a right to express their views freely in all matters affecting them, especially in judicial and administrative proceedings, with their views given due weight in accordance with their age and maturity.

## Marital Property

Women’s right to equality in marriage and family life includes their right to marital property. Article 16 of CEDAW obliges states to ensure: “The same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property.”<sup>291</sup>The UN Human Rights Committee reinforces article 16, stating that equality in marriage includes the “administration of assets.” It states that:

States parties must ensure that the matrimonial regime contains equal rights and obligations for both spouses with regard to ... ownership or administration of property, whether common property, or property in the sole ownership of either spouse.<sup>292</sup>

The CEDAW committee has specifically rejected the notion that women should not have equal rights to marital property because of social or religious beliefs that husbands will financially support their wives and children. The committee has held states laws on division of property are discriminatory if they allow a greater share to the man on the premise that “man alone is responsible for the support of women and children of his family” and “will honourably discharge this responsibility.”<sup>293</sup>

The CEDAW committee has encouraged states to ensure that there is “equality within the property regimes available to couples (community property, separate property, hybrid), the right to choose property regime, and an understanding of the consequences of each regime.”<sup>294</sup> Thus for instance, where a community of property regime does exist, which

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<sup>291</sup> CEDAW, art.16(1)(h)

<sup>292</sup>UN Human Rights Committee, General Comment No. 28, para. 25.

<sup>293</sup> CEDAW Committee, General Recommendation No. 21, para 28

<sup>294</sup>CEDAW Committee, General Recommendation No. 29, para. 47.

provides that half of the marital property is theirs, women may not have the right to manage the property.<sup>295</sup> As such the CEDAW committee has stressed that they should ensure that both spouses are provided with “equal access to the marital property and equal legal capacity to manage it.”<sup>296</sup>

## Spousal Maintenance, Compensation and Alimony

International human rights treaties do not explicitly address the right of spouses to claim alimony from one another at the dissolution of the marriage, but women’s ability to access financial support is critical to their right to non-discrimination in marriage and divorce. The CEDAW committee has recognized the ways in which marriage may constrain women’s economic activity and freedom, leaving them with fewer assets and economic prospects than their husbands, along with the failure to recognize their unpaid labor:

Women assume many responsibilities both inside and outside the family but much of what they do remains out of sight and without material recompense. A woman’s partnership with a man in marriage and home-building, her work in her husband’s or family business and the labour of rural women are all examples of this.

There is an exaggerated recognition in common tradition of the extent of the importance of the role played by woman as wife and mother that often makes her bear the responsibility of building the home, the welfare of the family and the success of its members. However, as long as there is no documentary proof, the house and its contents, the small business or agricultural concern are all the property of the husband.”<sup>297</sup>

Laws on spousal maintenance and alimony should ensure that women and men are in an equal financial position taking into account their different roles during the marriage.

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<sup>295</sup>A community of property regime typically involves a legal regime where all property acquired during marriage is presumptively owned jointly by both spouses. Community of property systems usually recognize that property that is owned before the marriage, inherited, or received as a gift remains separate property.

<sup>296</sup>CEDAW Committee, General Recommendation No. 29, para. 38.

<sup>297</sup> 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, Third periodic report of States Parties: Lebanon”, UN. Doc. CEDAW/C/LBN/3, July 7, 2006, para. 105.

Despite the lack of explicit treaty language on alimony, UN treaty bodies have remarked on its importance, encouraged law reform to make it more effective and explained that it should be available on a non-discriminatory basis. The UN Human Rights Committee has said that article 23 of the ICCPR prohibits “discriminatory treatment in regards to the grounds and procedures ... for maintenance and alimony.”<sup>298</sup>

The CEDAW Committee has also encouraged states to reform alimony laws to better reflect gender-based economic disparities between spouses and women’s greater share of unpaid work.<sup>299</sup> Members of the CEDAW committee have also discussed alimony in a ruling on a case brought by a divorced woman under the Optional Protocol to CEDAW.<sup>300</sup>

The case was dismissed because of a failure to exhaust domestic remedies, but two committee members dissented and addressed the criteria that the local court should have considered. The dissenting members observed that the local court had failed to award ‘decent’ alimony, and should have considered the woman’s years of unpaid work in the family while her husband advanced his career and income, her uncertain financial situation, her lack of work experience outside the home, and her prospects of finding work and supporting herself at her age.

The CEDAW committee has since strongly encouraged states parties to provide for “the valuation of non-financial contribution to marital property subject to division, including household and family care, lost economic opportunity, tangible or intangible contribution to either spouse’s career development and other economic activity, and to the development of his or her human capital” as well as “consideration of post-dissolution spousal payments as a method of providing for equality of financial outcome.”<sup>301</sup>

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<sup>298</sup> UN Human Rights Committee, General Recommendation No. 19, Protection of the family, the right to marriage and equality of the spouses (art. 23), HRI/GEN/1/Rev. 2 (1990), [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/6f97648603f69bcddc12563ed004c3881?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/6f97648603f69bcddc12563ed004c3881?Opendocument) (accessed February 4, 2013), para. 9

<sup>299</sup> CEDAW Committee Concluding Observations on Germany (2009), CEDAW/C/DEU/co/6, <http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW-C-DEU-CO6.pdf> (accessed February 1, 2013), para 55 and 56.

<sup>300</sup> *Ms B-J V Germany*, Communication No. 1/2003, Decision of the UN Committee on the Elimination of Discrimination against Women, declaring a communication inadmissible under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, decision adopted on 14 July 2004, 31<sup>st</sup> session

<sup>301</sup> CEDAW, General Recommendation No. 29, para. 47.

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Lebanon does not have a civil code regulating personal status matters; instead, it has 15 separate laws for the country's 18 recognized religious communities, administered by separate religious courts. This multiplicity of laws means that Lebanese citizens are treated differently when it comes to key aspects of their lives, such as marriage, divorce, and children.

*Unequal and Unprotected: Women's Rights Under Lebanese Personal Status Laws* documents how the current personal status system discriminates against women. It is based on a review of existing laws, their application in nearly 450 recent legal judgments issued by religious courts, and more than 70 interviews with lawyers, judges, social workers, women's rights activists, and women who faced discrimination.

The report finds that across all religious groups, existing laws erect greater barriers for women who wish to terminate unhappy or abusive marriages, ensure their rights concerning their children after divorce, or secure pecuniary rights from a former spouse than they do for men. The laws are not the only source of discrimination against women. The procedures of religious courts impose multiple obstacles that can disproportionately affect women, who in many cases are financially dependent on their husbands.

Children also face violations of their rights, most importantly the right to have their best interests considered in all judicial decisions concerning their welfare, including rulings concerning with whom they will reside in cases of separation or divorce.

*(above) A Lebanese woman tearfully speaks about how her husband of nearly 20 years regularly beat her with his hands and a stick. With the help of local NGO Kafa she was eventually able to get a divorce and maintain custody of her daughters.*

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*(front cover) Activists hold placards during a protest demanding civil marriage in Lebanon. There is currently no Lebanese civil personal status law.*

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