

**Flygtningenævnets baggrundsmateriale**

<b>Bilagsnr.:</b>	<b>731</b>
Land:	Libanon
Kilde:	International Commission of Jurists and Abaad Resource Center for Gender Equality
Titel:	Joint submission on Lebanon
Udgivet:	12. oktober 2020
Optaget på baggrundsmaterialet:	17. maj 2022



**UNITED NATIONS COMMITTEE ON THE ELIMINATION OF  
DISCRIMINATION AGAINST WOMEN**

**JOINT SUBMISSION ON LEBANON  
TO THE 79<sup>th</sup> PRE-SESSIONAL WORKING GROUP OF THE COMMITTEE ON  
THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN BY THE  
INTERNATIONAL COMMISSION OF JURISTS AND ABAAD RESOURCE  
CENTER FOR GENDER EQUALITY**

Submitted on 12 October 2020

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*ABAAD Resource Center for Gender Equality (ABAAD) is a UN ECOSOC accredited organization that aims to achieve gender equality in the MENA region. Comprised of activists, lawyers, social workers and researchers, ABAAD advocates for the development and implementation of laws and policies that enhance women's effective participation, through a rights-based approach that would bring about tangible change to gender justice. ABAAD is committed to ending gender-based violence (GBV) against women and girls, providing protection and support services to GBV survivors.*

P.O. Box, 91, Rue des Bains, 33, 1211 Geneva 8, Switzerland

Tel: +41(0)22 979 3800 – Fax: +40(1)22 979 3801

Website: <http://www.icj.org>

E-mail: [info@icj.org](mailto:info@icj.org)

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**I. Introduction**

1. The International Commission of Jurists (ICJ) and ABAAD Resource Center for Gender Equality (ABAAD) welcome the opportunity to contribute to the preparation of a list of issues and questions by the pre-sessional working group of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) in advance of its review of Lebanon.
2. In Lebanon, sexual and gender-based violence (SGBV) remains a pervasive human rights challenge and public health scourge blighting the lives of women and girls. Rigidly entrenched patriarchal norms and harmful gender stereotypes about the roles and responsibilities of women and men enjoy considerable currency within the country's judiciary, police force and society at large. These stereotypes constitute serious obstacles to women's enjoyment of their human rights, and continue to impede the full implementation of the CEDAW.
3. In this submission, the ICJ and ABAAD aim to draw the CEDAW Committee's attention to the obstacles that continue to impede women's and girls'<sup>1</sup> effective access to justice for SGBV, including: (i) legal obstacles; (ii) obstacles in the administration of justice; and (iii) the impact of COVID-19 on SGBV.
4. This submission is based on research undertaken by the ICJ, including its report entitled *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*,<sup>2</sup> as well as *Accountability for Sexual and Gender-based Violence in Lebanon: Guidance and Recommendations for Criminal Justice Actors* (forthcoming).

**II. Obstacles within Lebanon's legal framework**

5. The current Criminal Code (CC) is more than 70 years old. Despite the fact that several amendments have been proposed to the Lebanese Parliament, it has not evolved to meet international human rights law and standards. The CC not only fails to criminalize *all* forms of SGBV,<sup>3</sup> but it legalizes acts of discrimination against women in contravention of articles 2, 3 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

**a. Criminalization of SGBV**

*Rape and other forms of sexual violence*

6. The definition of rape under the CC and Law No. 293/2014 "on the protection of women and other family members from domestic violence" (Law No. 293/2014) does not comply with articles 1, 2 and 16 of CEDAW, and falls short of General Recommendations issued by the CEDAW Committee<sup>4</sup> and CEDAW jurisprudence.<sup>5</sup> In 2008, the CEDAW Committee called on Lebanon to ensure "that marital rape is criminalized...";<sup>6</sup> yet, articles 503-504 of the CC penalizing rape explicitly exclude the spouse as perpetrator from their scope, and Law No. 293/2014 makes no reference to marital rape. Rather, the latter criminalizes a spouse's use of threats or violence to claim a "marital right to intercourse", but not the non-consensual violation of women's right to personal security and bodily integrity that rape entails.

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<sup>1</sup> Throughout this document, the term woman or women should be understood to include girl/s.

<sup>2</sup> ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, July 2019, (ICJ GBV Lebanon report): <https://www.icj.org/wp-content/uploads/2019/07/Lebanon-Gender-Violence-Publications.pdf>.

<sup>3</sup> CEDAW Committee, *General recommendation No. 35: gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35 (2017), para. 14.

<sup>4</sup> CEDAW Committee, *General recommendation No. 35*, para. 29(e); CEDAW Committee, *General Recommendation No. 19: Violence against Women*, UN Doc. A/47/38 (1992), para. 24(b).

<sup>5</sup> *Karen Tayag Vertido v. Philippines*, Communication No. 018/2008, UN Doc. CEDAW/C/46/D/18/2008 (2010), para. 8.7.

<sup>6</sup> CEDAW Committee, *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Lebanon*, UN Doc. CEDAW/C/LBN/CO/3 (2008), para. 27.

7. The CC and Law No. 293/2014 do not adequately define other forms of sexual assault, falling short of international law and standards, including articles 1 and 2 of CEDAW and the CEDAW Committee's General recommendations.<sup>7</sup> Law No. 293/2014 narrowly defines domestic violence in article 2 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 stipulated in article 3 of the Law, amending the CC, are forced begging, indecency, prostitution, homicide, adultery and causing or threatening harm to a spouse when "obtaining a marital right to intercourse." Other than rape, among the acts not covered are: sexual assault; threats of assault; sexual harassment and non-physical harm, such as psychological and economic harms not based on acts defined in article 3. Acts that embody some of the most deeply entrenched and harmful patriarchal traditions, such as forcing girls to marry or preventing women from leaving the house, are also not included.
8. The limited forms of rape and sexual assault that could be prosecuted are not recognized as a violation of physical, sexual and psychological integrity, contrary to the CEDAW Committee's General recommendations.<sup>8</sup> Rather, the CC addresses sexual offences as crimes against "public morality and decency," thereby characterizing these offences as intrusions on the "honour" of the complainant/survivor, their family and society. Conceiving and criminalizing sexual offences along these lines diminishes their seriousness and is irreconcilable with articles 1, 2, 5(a) and 15 of CEDAW, infringing on women's human rights, including their right to personal security, autonomy, sexual autonomy, the right to bodily integrity and to be free from discrimination on the basis of sex/gender, and the right to access to justice and effective remedies.
9. Further, the repeal of article 522 of the CC in 2017, which enabled the authorities to cease a prosecution or suspend a conviction if a perpetrator of sexual assault married the victim, is an incomplete step towards adequately addressing SGBV against minors. Article 505 of the CC criminalizes rape with a minor. However, a valid marriage between the perpetrator and a 16 to 18-year-old victim prevents the prosecution or imprisonment of the perpetrator. Similarly, article 518 of the CC provides that a valid marriage between a perpetrator who "seduces a [16 to 18-year-old] virgin girl with a promise of marriage" prevents the perpetrator's prosecution or imprisonment. These provisions run counter to Lebanon's obligations under articles 1, 2, 3, 5(a) and 15 of CEDAW. They perpetuate patriarchal, archaic norms about the so-called "honour" of the victims and their families being restored through marriage, and shield offenders of sexual offence from accountability, entrenching impunity and subjecting women to secondary victimization and discrimination.
10. Articles 503-512 of the CC that treat "virginity" as an aggravating factor for sentencing imply that rape committed against women who are not "virgins" is a "lesser" crime than that which is committed against "virgins," and confer an unwarranted preferential victimhood status on the latter. The legal framework should refrain from making such distinctions, which are based on harmful gender stereotypes perpetuating discrimination against women with the meaning of article 1 of CEDAW, and instead administer sentences that are commensurate with the gravity of the offence of rape.<sup>9</sup>

#### *Sexual harassment*

11. In Lebanon, there is no single legal text to define, criminalize and sanction sexual harassment, including in public spaces or in the workplace. While efforts have been underway to legislate against sexual harassment, including the approval of a draft law by the Lebanese Council of Ministers in 2017, the draft provisions fail to meet international law and standards that require a robust definition of sexual harassment, such as that formulated by the CEDAW Committee,<sup>10</sup> and are therefore non-compliant with articles 2(b)-(e) of CEDAW. While the definition of sexual harassment in article 2 of the draft law makes explicit reference to "undermin[ing] the...dignity of the victim," it simultaneously refers to acts that would undermine their "honour." Article 2 would amend article 535 of the CC, and consequently fall under the heading of "public morals and ethics." Criminalizing and characterizing sexual harassment as a violation of the victim's "honour" or "morality" as opposed to their rights to security of person, dignity and physical and

<sup>7</sup> CEDAW Committee, *General recommendation No. 35*, para. 2; CEDAW Committee, *General Recommendation No. 19*, paras. 6 & 7; Convention on the Rights of the Child, arts. 19(1) & 34.

<sup>8</sup> CEDAW Committee, *General recommendation No. 35*, paras. 29(a) & (e).

<sup>9</sup> CEDAW Committee, *General Recommendation No. 35*, para. 29(a).

<sup>10</sup> CEDAW Committee, *General Recommendation No. 19: Violence against Women*, para. 18.

mental integrity, perpetuate discrimination against women. Moreover, the law fails to explicitly envisage the wide set of circumstances in which sexual harassment may occur, including public spaces, educational institutions, receipt of services and sporting activities.

**In light of the above, the ICJ and ABAAD recommend that the CEDAW Committee's list of issues on Lebanon should require the State party to indicate and clarify whether any steps that have been taken to:**

- **Criminalize marital rape, including by abolishing article 3 of Law No. 293/2014 that provides for a religion-based right to claim marital rights;**
- **Amend articles 503-504 of the CC to define rape as a form of sexual assault, that is, a physical invasion of a sexual nature without consent, including under coercive circumstances;**
- **Amend the CC by comprehensively defining sexual assault as a violation of bodily integrity and sexual autonomy;**
- **Amend articles 505 and 518 of the CC to ensure that marriage to a victim of sexual assault does not shield or exempt a sexual offender from punishment;**
- **Amend the CC to ensure that sentences for sexual assault are not aggravated on the basis of the loss of the victim's "virginity," but are instead meted out in a manner that is commensurate with the gravity of the offence;**
- **Adopt legislation that specifically defines, criminalizes and sanctions sexual harassment, including that which is committed in public spaces and the workplace.**

**b. Repeal of discriminatory criminal offences**

*Adultery*

12. Articles 487-489 of the CC, as amended by article 3 of Law No. 293/2014, criminalize adultery by a man or woman. In addition to violating articles 1, 2 and 15 of CEDAW, the criminalization of adultery specifically has been found to amount to sex discrimination by the CEDAW Committee.<sup>11</sup>

*Prostitution*

13. While the Law on Public Health of 1931 permitted the sale of sex in licensed locations, no new licenses have been issued since 1975.<sup>12</sup> Article 523 of the CC criminalizes those who engage in "secret prostitution" or facilitate the practice, making sex work *per se* a criminal offence in Lebanon. Law No. 164/2011 also criminalizes engagement in "prostitution" by victims of trafficking,<sup>13</sup> unless the "victim [...] proves that she was compelled to commit acts that are punishable by law or that she was compelled to violate the terms of residency or work," in which case the victim may avail of an amnesty from punishment.<sup>14</sup> The CEDAW Committee has found that the "criminalization of prostitution" violates articles 1, 2 and 15 of CEDAW, and acts as a barrier to women's effective access to justice.<sup>15</sup>

*Abortion*

14. Pursuant to article 541 of the CC, abortion is a criminal offence and both women who undergo them and individuals who perform them are subject to severe penalties.<sup>16</sup> While there is no explicit exception to the criminalization of abortion in the CC, women who terminate pregnancies in order to preserve or "save their honour" may benefit from "attenuating circumstances" (article 545). It is not clear, however, whether such circumstances apply to complainants/survivors of sexual assault and, in the event they do, the provision itself is a patriarchal construct that discriminates against women, contravening Lebanon's obligations under articles 1, 2 and 12(1) of CEDAW. In order for complainants/survivors of sexual assault to exercise their right to effective remedy and reparation, and to deter women from seeking unsafe abortions, Lebanon

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<sup>11</sup> CEDAW Committee, *General Recommendation No. 33: Women's Access to Justice*, UN Doc. CEDAW/C/GC/33 (2015), para. 9.

<sup>12</sup> See: <file:///Users/admin/Downloads/Lebanon%20Country%20Assessment%20-%20English.pdf>.

<sup>13</sup> CC, art. 586(1), amended by Law No. 164/2011.

<sup>14</sup> CC, art. 586(8), amended by Law No. 164/2011.

<sup>15</sup> CEDAW Committee, *General Recommendation No. 33*, paras. 9 & 49.

<sup>16</sup> CC, art. 541 stipulates that women who undergo abortions can be punished with a term of imprisonment ranging from six months up to three years.

must ensure effective access to the provision of sexual and reproductive healthcare, goods and services, including safe access to legal abortion and post-abortion care in all cases, and particularly in cases of rape.<sup>17</sup>

**In light of the above, the ICJ and ABAAD recommend that the CEDAW Committee's list of issues on Lebanon should require the State party to indicate and clarify whether any steps have been taken to:**

- **Repeal articles 487-489 of the CC relating to adultery;**
- **Repeal articles 523 of the CC relating to "prostitution;"**
- **Repeal article 541 of the CC relating to abortion;**
- **Introducing legislation that ensures the *de jure* and *de facto* exercise of the right to obtain a safe and legal abortion, including in cases of SGBV if the complainant/survivor so desires, in addition to ensuring the provision of post-abortion care.**

**c. Laws that discriminate against women**

15. Despite its inclusion of the right to equality of all citizens before the law without discrimination (article 7), the Lebanese Constitution does not explicitly ensure the right to equality between women and men, and explicitly excludes female non-citizens from constitutional protection against discrimination. This is in breach of international law, including articles 1 and 15 of CEDAW, which require Lebanon to respect and ensure the respect of human rights of all people within its jurisdiction without discrimination, including on the basis of sex and/or gender, irrespective of nationality.
16. The Lebanese Constitution also specifies that the State "guarantees that the personal status and religious interests of the population, to whatever religious group they belong, shall be respected" (article 9). This provision has enabled the application of discriminatory personal status laws (PSLs), which regulate, *inter alia*, marriage, divorce, parenthood, child custody and inheritance, and is inconsistent with articles 2(a) and (f) of CEDAW. In Lebanon, there is no uniform PSL applied to all Lebanese citizens. Rather, each citizen is subject to the PSLs and respective jurisdiction of courts of one of the 18 recognized confessional communities.
17. Religious laws relating to child custody often enable and contribute to domestic violence and discrimination against women.<sup>18</sup> Expressly discriminatory provisions in these laws can deter women from filing domestic violence complaints if they risk losing custody of their children. Each confession sets a maximum age for child custody ranging from two to 15 years old. Under Law No. 293/2014, a domestic violence victim only has the right to custody of her children when leaving the marital home or when seeking a protection order where such children are of custody age (article 12). While article 22 of Law No. 293/2014 provides that all provisions contrary to the Law are annulled, it makes exception for PSLs, which means that a domestic violence victim who does not have the right to custody of children over the age of custody may elect to stay in the marital home to stay with her children. Discriminatory PSLs contravene Lebanon's obligation under article 2 of CEDAW to respect, protect and fulfil women's right to non-discrimination and the enjoyment of equality.<sup>19</sup>

**In light of the above, the ICJ and ABAAD recommend that the CEDAW Committee's list of issues on Lebanon should require the State party to indicate and clarify whether any steps have been taken to:**

- **Amend article 7 of the Constitution so as to ensure that it embodies the principle of equality between the sexes, removing any provision that discriminates against female foreigners;**
- **Abolish article 9 of the Constitution;**
- **Reform PSLs, including by ensuring that all traditions and customs inconsistent with human rights, including particularly the rights of women to equality and equal**

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<sup>17</sup> CEDAW Committee, *General recommendation No. 35*, para. 18.

<sup>18</sup> Lebanon filed a reservation to the CEDAW excluding the application of equal rights relating to children and child custody.

<sup>19</sup> CEDAW Committee, *General Recommendation No. 28 on the Core obligations of States Parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc. CEDAW/C/GC/28 (2010), para. 9.

**access to justice, and the prohibition of discrimination against women, have been overridden in accordance with article 2(f) of CEDAW;**

- **Incorporate international standards relating to women's rights in PSLs;**
- **Ensure that issues covered by PSLs, such as divorce and child custody, are adjudicated before civilian courts;**
- **Abolish article 22 of Law No. 293/2014 that preserves the application of PSL provisions on child custody.**

### **III. Obstacles in the administration of justice**

18. In Lebanon, a number of procedural obstacles continue to hamper women's effective access to justice giving rise to concern about non-compliance with CEDAW, including articles 2(a), (b), (c), (d), (e), (f), 5(a) and 15.

#### **a. Lack of effective investigations and prosecutions**

19. In Lebanon, investigations and prosecutions of SGBV offences are frequently undercut by discriminatory practices and bias against women espoused by investigators, which can deter women from reporting cases of sexual assault. Women who report sexual assault allegations often open themselves up to suspicions of engaging in "prostitution" or "adultery." Owing to assumptions that women should be "chaste" or have a "good reputation" in order to benefit from the protection of the criminal law, the proper focus on the criminal responsibility of the preparator shifts to the behaviour of the complainant. Such discriminatory attitudes contravene articles 2(d), (e), (f) and 5(a) of CEDAW.

20. The ICJ and ABAAD are concerned about investigators' lack of gender-sensitivity when dealing with SGBV cases, particularly those who are first responders. Presently, the only document that provides instructions on how to interact with, and respond to, complainants of SGBV-related crimes is supplementary guidance published by the Internal Security Forces<sup>20</sup> – a service memorandum governing "the rules of communication and treatment by ISF officers in relation to complaints of domestic violence" (ISF General Memorandum). While commendable, the extent to which this memorandum has been coupled with training of relevant justice sector actors (JSAs) remains unclear.

21. Some domestic cases have demonstrated the failure of JSAs, including forensic practitioners, to conduct prompt, effective and thorough investigations into SGBV offences. In the *Roula Yaacoub* case, an Investigating Judge concluded there was insufficient evidence to prosecute the husband for the death of his wife despite significant evidence she was beaten to death, including witness statements that the husband regularly beat the wife, statements by two daughters that their father had beaten their mother three days before her death, and was beating her with a stick on the day of her death.<sup>21</sup> The Investigating Judge relied on subsequent statements by the victim's daughters rejecting the claim that their father was beating their mother with a stick without investigating whether they were provided under duress. The Investigating Judge's decision was later quashed by the Indictment Chamber, which indicted the accused for the murder of his wife. A subsequent investigation also revealed that erroneous methodologies and gaps in the forensic examination caused forensic practitioners in the preliminary investigation to misidentify the cause of death, attributing it to a "ruptured aneurysm" caused by a "congenital malformation," as opposed to violence.<sup>22</sup>

22. Complainants have limited rights to seek review of decisions made by Investigating Judges and prosecutors in SGBV cases. A complainant cannot appeal the Office of Public Prosecution's (OPP) decision under article 50 of the Code of Criminal Procedure (CCP) to close the preliminary investigation if it concludes that the act does not constitute a crime, or the available evidence is insufficient. While decisions by Investigating Judges are subject to review before the Indictment Chamber, decisions of the Charging Authority are subject to a more limited scope of review.<sup>23</sup>

23. It is also of concern that for SGBV crimes charges are automatically dismissed if the complainant waives her personal rights in the case at any stage of the litigation process.<sup>24</sup> Complainants

<sup>20</sup> The national police agency of Lebanon.

<sup>21</sup> For more detail, see ICJ GBV Lebanon report, pp. 29-30.

<sup>22</sup> For more detail, see ICJ GBV Lebanon report, pp. 29-30 & 38-39.

<sup>23</sup> Code of Criminal Procedure (CCP), arts. 52, 65, 73, 121, 125, 135 & 143.

<sup>24</sup> Law No. 293/2014, art. 3(7)(b).

usually waive their rights as a result of coercion by the family or due to social stigma. The automatic dismissal of charges constitutes a violation of Lebanon's obligation, including under article 2(e) of CEDAW, to exercise due diligence to ensure the investigation, prosecution and punishment of SGBV, and an unjustified indulgence towards domestic violence offenders.

**In light of the above, the ICJ and ABAAD recommend that the CEDAW Committee's list of issues on Lebanon should require the State party to indicate and clarify whether any steps have been taken to:**

- **Address and eliminate all discriminatory practices and harmful gender stereotyping against women that undermine criminal investigations and prosecutions in SGBV cases;**
- **Enact new laws that prohibit discriminatory behaviours against women;**
- **Enhance the ability of JSAs through training on gender equality and non-discrimination in law and practice, especially any training on the application of CEDAW and related jurisprudence;**
- **Establish gender-sensitive legal procedures and processes, including by amending the CC, CCP and Law No. 293/2014 to include gender-sensitive investigations and evidence-gathering procedures in order to enable women to report violence against them and enhance their access to justice;**
- **Amend laws and regulations governing JSAs to give priority to dealing with SGBV in a timely manner without undue delays, and ensuring that complainants' legal and social needs are adequately addressed during investigations and prosecutions;**
- **Provide adequate training to all JSAs on how to appropriately deal with SGBV complainants;**
- **Ensure that prosecuting authorities investigate and prosecute SGBV diligently and effectively whenever warranted by the evidence, even where no formal complaint has been lodged;**
- **Ensure that SGBV complainants are afforded a right to appeal at all stages of the criminal process;**
- **Repeal article 3(7)(b) of Law No. 293/2014 so as to ensure that the OPP can continue to prosecute SGBV even where complainants withdraw their complaint.**

**b. Lack of effective measures for protecting against SGBV**

24. Law No. 293/2014 establishes a framework for granting temporary protective measures to a complainant of SGBV, which may be granted by the OPP (article 11) while the complainants await a protection order from Investigating Judges, the Criminal Court, or Judges for Urgent Matters (article 13). The framework presents procedural and substantive limitations that undermine the effectiveness of measures to protect victims from further SGBV.
25. The protection framework is limited in scope and, as a result, only complainants of SGBV who fall within the meaning of "family"<sup>25</sup> in article 2 of Law No. 293/2014 may have recourse to protection orders. Given the limited definition upon which the framework rests, some SGBV complainants who face an ongoing risk of violence may be precluded from qualifying for protection under this framework. Limiting such protection to particular categories of complainants is discriminatory and constitutes an impediment to the right of access to justice and effective remedies for complainants of SGBV. Under articles 2(b) and (c) of CEDAW, it is incumbent upon the State to ensure that the justice system be capable of providing protection to women who are at risk of becoming victims of SGBV, as well as to those against whom SGBV acts have already been inflicted, without distinction.
26. Access to protection orders is limited to persons who are victims of GBV as defined in the CC and Law No. 293/2014, which, as set out above, is overly restrictive and excludes categories of persons who are SGBV victims, including some married women and minors and, as such, it does not comply with articles 2(b), (c), (d) and (e) of CEDAW.

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<sup>25</sup> Law No. 293/2014, art. 2 stipulates that family includes either of the spouses, the father and mother of each, brother, sisters, ascendants and descendants, whether "legitimate" or "illegitimate", and those related by adoption, marriage up to the second degree, guardianship, orphan sponsorship and the mother's spouse or the father's spouse.

27. While Law No. 293/2014 provides that protection orders are temporary measures, it does not specify their duration. Some protection orders are granted for a period as short as one week, which is wholly inadequate to address any threats of violence, and more particularly violence that, in many cases, has been ongoing for years. Moreover, the information available indicates that Judges have been unable to hear applications in a timely fashion, and that injunctions issued under protection orders are only effective 48 hours after being granted, during which time the victim/survivor is unprotected and potentially at an even greater risk of violence.<sup>26</sup>
28. Protection orders are largely not subject to monitoring by law enforcement authorities. Any monitoring is, rather, undertaken by non-governmental organizations (NGOs), which can put the complainant at ongoing risk given that NGOs do not have law enforcement powers and are reliant on notifying the appropriate law enforcement authorities. Even where a breach can be established, the consequences of failing to comply with a protection order – up to three months' imprisonment and a fine, which increases when the violation involves violence or recidivism (article 18 of Law No. 293/2014) – are minimal in comparison to the harm that may be inflicted against the complainant. Moreover, penalties for non-compliance are rarely mentioned in protection orders issued by the relevant judicial authority.
29. While, article 20 of Law No. 293/2014 empowers the Court to compel domestic violence offenders to undertake "anti-violence rehabilitation at specialized centers," measures for rehabilitation are not mandatory. While these programmes appear to be a tool at the disposal of judges hearing applications for protection orders, the small sample of protection orders reviewed by the ICJ indicates that article 20 of Law No. 293/2014 is rarely invoked in the context of protection order applications. This is confirmed by a 2020 report by KAFA,<sup>27</sup> which examined 380 protection orders issued in 2018 and 2019, and where the organization noted the small number of decisions that referred offenders to anti-violence rehabilitation.
30. One of the most pressing concerns in the Lebanese context is that JSAs do not conduct thorough, exhaustive risk-assessments vis-à-vis SGBV complainants. Even when considering protection orders, the relevant authorities tend to overlook key risk-assessment factors. For example, in one case analyzed by the ICJ, a Judge for Urgent Matters ruling on a protection order application failed to consider the perpetrator's possession of a firearm, which he had used to threaten his wife, the applicant, and which she had brought to the Court's attention. Consequently, the protective measures imposed by the judge failed to address the resulting heightened risk to the applicant.<sup>28</sup>
31. With regard to the police, neither the CCP, nor the ISF General Memorandum, specifically cover the need to conduct a risk-assessment. The guidance provided within the ISF General Memorandum, in particular, is markedly vague, failing to specify factors that necessitate immediate action on the part of first responders.

**In light of the above, the ICJ and ABAAD recommend that the CEDAW Committee's list of issues on Lebanon should require the State party to indicate and clarify whether any steps have been taken to:**

- **Extend the protection mechanism to all SGBV complainants and applying it to all forms of SGBV, as opposed to limiting its scope of application to domestic violence cases;**
- **Ensure that applications for protection orders are expedited, including by establishing a specialized judicial body empowered to hear protection order applications;**
- **Ensure that protection orders are fully enforced;**
- **Conduct an assessment of dangerousness in all SGBV cases, including by ensuring that all necessary measures are taken to mitigate the risk posed to the complainant, her children and extended family;**
- **Enhance the monitoring of protection orders and ensure the offender's adherence thereto;**

<sup>26</sup> ICJ GBV Lebanon report, p.33.

<sup>27</sup> KAFA (Enough Violence Against Women), *Analytical Reading of Protection Decisions Issued in 2018-2019*, 16 July 2020, p. 7: <https://www.kafa.org.lb/sites/default/files/2020-07/study-on-protection-orders.pdf>.

<sup>28</sup> Judge for Urgent Matters in *Jdeidet Al-Matn*, 21 May 2015.

- **Ensure the consequences of non-compliance are explicitly outlined in protection orders;**
- **Inform judges about the preventive and deterrent value in SGBV offenders' engagement in rehabilitation programmes.**

**c. Lack of judicial coherence in sentencing in SGBV cases**

32. With respect to SGBV offences, gender stereotyping has also been documented at the sentencing stage of trials for these offences. In some cases of SGBV, sentencing determinations have been incoherent and have failed to reflect the gravity of the offence in question. In such cases, it appears that the sentencing Court failed to conduct a thorough assessment of the pertinent evidence, including evidence attesting to the presence of aggravating circumstances, and to adequately explain the rationale for the sentence it imposed. In case 775/2019, the defendant drugged, and subsequently raped his 16-year-old stepdaughter on multiple occasions. The Court convicted the defendant under Article 505 of the CC for engaging in "sexual intercourse with a minor." Although the Court should have sentenced him to five years' imprisonment with hard labour given the age of the victim, it sentenced him to one year's imprisonment, ruling that it was satisfied with the three months of detention that the defendant had already served while awaiting trial.<sup>29</sup>
33. Perceptions relating to the complainant's "chastity" and her social "worth" also inform sentencing practices, and often result in the imposition of a more lenient sentence on those convicted,<sup>30</sup> or by contrast, the imposition of a harsher sentence where the complainant was a "virgin,"<sup>31</sup> pursuant to article 512 of the CC.
34. The CC provides that, if there are "extenuating grounds in a case," the Court has discretionary authority to reduce the penalty imposed on the offender.<sup>32</sup> In the vast majority of SGBV cases analyzed by the ICJ, convicted offenders appear to have benefitted from a considerable reduction in their sentence based on "mitigating circumstances" with either little, or no explicit evidence, let alone explanation justifying their consideration in the first place.<sup>33</sup>
35. Although article 562 of the CC<sup>34</sup> was repealed in 2011, until November 2017, some criminal courts still considered "honour" as a "mitigating circumstance" in their decisions, granting reduced sentences pursuant to article 252 of the CC to abusers who claimed that they committed violence to protect the honour of their family in a "fit of fury" provoked by the victim's acts or behaviour. Article 252 allows for reduced punishment if a crime occurred as a result of extreme rage caused by "dangerous and wrongful action committed by the victim."
36. In the case of *Manal Assi*, the victim was brutally beaten and tortured for some six hours by the defendant, her husband, following an argument between them. The victim sustained a number of injuries to her head and body, in addition to burns as a result of the pressure cooker the defendant threw at her. The defendant left the victim locked in the house, unconscious and drowning in her own blood, and intentionally obstructed her mother and children, who were present, from seeking assistance. Upon his return, he allowed the victim to be transported to the hospital, where she was pronounced dead. The defendant claimed that he had committed the crime in a "fit of fury," provoked by the victim's behaviour, namely her alleged engagement in an extra-marital affair. In 2016, the Criminal Court convicted him of intentional homicide pursuant to article 549 of the Criminal Code, which carries the death penalty. However, in view of the victim's supposed infidelity, among other "mitigating circumstances", the Court reduced

<sup>29</sup> ICJ, *Accountability for Sexual and Gender-based Violence in Lebanon: Guidance and Recommendations for Criminal Justice Actors* (ICJ forthcoming GBV memo), section 4.2.3 (forthcoming).

<sup>30</sup> See, for example, the *Manal Assi* case, discussed in, ICJ GBV Lebanon report, pp. 43-44.

<sup>31</sup> See for example, Criminal Court in Beirut, Decision Number. 204/2016, 16 March 2016, where the loss of the victim's virginity aggravated the defendant's sentence from five to seven years' hard labour.

<sup>32</sup> CC, art. 253, which stipulates that these penalty reductions include, *inter alia*, replacing the death penalty with hard labour for life or fixed-term hard labour from seven to 20 years; hard labour for life with a fixed-term hard labour for not less than five years; and life imprisonment with fixed-term imprisonment for not less than five years.

<sup>33</sup> ICJ forthcoming GBV memo, section 4.2.4.

<sup>34</sup> Stipulated that the sentence of a man who claimed to have killed or injured his wife, daughter or other relative in the name of "honour" may be reduced in mitigation. Under article 193 of the Criminal Code, the motive is deemed honourable if it is of a chivalrous, magnanimous and unselfish nature and is free of any personal interest and financial gain.

his sentence from death to five years' imprisonment, giving little regard to the fact that his actions had spanned several hours, and to his antecedents of violence against the victim prior to her death as testimonies in the case file showed. While on appeal the Court of Cassation replaced the initial overly lenient sentence with a term of 18 years' imprisonment with hard labour, in the course of its deliberations, the Court set a precedent reasoning that where offenders are purportedly provoked in a "fit of fury," it may lead other Courts to hold that such "provocation" mitigates the seriousness of the offences committed. The Court also considered "the society in which the defendant lives", "its well-established social traditions relating to the husband's honour", and "the fact that the victim committed adultery" were relevant circumstances to take into account in resentencing him. The mere consideration of these stereotyped factors amounts to discrimination within the meaning of article 1 of CEDAW and, in practice, endorses the possibility for notions of "honour" to play a critical misplaced role in the adjudication of SGBV crimes, in contravention of articles 2(d), (e), (f) and 5(a) of CEDAW. This gives rise to the misapplication of the concept of mitigation in the context of sentencing in SGBV cases.

**In light of the above, the ICJ and ABAAD recommend that the CEDAW Committee's list of issues on Lebanon should require the State party to indicate and clarify whether any steps have been taken to:**

- **Ensure that sentencing Courts impose sentences that are commensurate with the gravity of the SGBV offence committed, ensuring accountability and deterrence for violence perpetrated against women;**
- **Ensure that sentencing Courts make a comprehensive assessment of the SGBV offence and its impact on the SGBV complainant, taking into consideration any aggravating circumstances, such as the offender's antecedents and recidivism;**
- **Ensure that at sentencing "mitigating circumstances" are only taken into account when judicially and evidentially warranted;**
- **Limit the application of article 252 of the CC;**
- **Provide training on gender-sensitivity in judicial, prosecutorial and law enforcement training programmes;**
- **Raise awareness among JSAs and citizens to reject violence, discrimination and stereotypes against women.**

#### **d. Lack of adequate capacity and resources**

37. According to the Lebanese Ministry of Justice, the Department of Forensic Medicine and Criminal Evidence has a roster of 81 forensic doctors,<sup>35</sup> with a minimum of 13 forensic practitioners in Beirut; 11 in North Lebanon; ten in Mount Lebanon; seven in South Lebanon; eight in Beqaa; and five in Nabatieh.<sup>36</sup> However, out of the 81 registered forensic practitioners, only 12 have received formal training in forensic medicine. The ICJ and ABAAD are concerned that the remaining 69 forensic practitioners are not formally trained in their discipline. Moreover, of the 12 qualified forensic practitioners, only two are women, which means that SGBV survivors are more likely to be examined by a male forensic practitioner than a female one.

38. The very limited number of forensic practitioners across the country are not provided with adequate equipment to ensure the proper examination of SGBV complainants, such as evidence collection kits containing labels to effectively document the chain of custody. In addition, while the ISF allocated rooms within their investigation units to examine women subjected to SGBV, these rooms only contain an examination bed and lack specialized forensic equipment. The location of these rooms is problematic in that they are placed in security settings, rather than specialized healthcare centers, and thus afford limited privacy to SGBV complainants. Moreover, the expense of medical treatment must be covered by the complainant, except when a judge orders the offender to do so.

**In light of the above, the ICJ and ABAAD recommend that the CEDAW Committee's list of issues on Lebanon should require the State party to indicate and clarify whether any steps have been taken to:**

<sup>35</sup> Ministry of Justice: <https://www.justice.gov.lb/index.php/modernization-projects-details/9/2>.

<sup>36</sup> Decree No. 7384, 14 November 1946.

- **Increase the number of qualified forensic practitioners, including female practitioners;**
- **Provide forensic practitioners with adequate equipment to ensure the proper examination of SGBV complainants, including evidence collection kits with relevant labels necessary for documenting the chain of custody;**
- **Establish government-funded medico-legal facilities for the provision of healthcare and forensic testing independent from police stations.**

#### **IV. The impact of COVID-19 on SGBV**

39. The 2020 COVID-19 pandemic highlighted the fact that, in Lebanon, women and girls remain the perennial victims/survivors of SGBV in the country. Studies have found that the incidence of SGBV has surged amid government-imposed, COVID-19 related confinement measures.<sup>37</sup> Prolonged periods of isolation, income insecurity and restricted access to medical and social services have exacerbated the incidence of SGBV.
40. Between March and August 2020, ABAAD received a total of 2,370 phone calls on its 24/7 SGBV hotline, compared with 1,193 phone calls in all of 2019. ABAAD also conducted a survey which found that 10% out of 500 men and women observed an increase in violence and abuse against women since the outbreak of COVID-19; and 37% of women out of 250 reported feeling less safe since lockdown.<sup>38</sup>
41. The increasing reliance of first responders on remote and online platforms to respond to incidents of SGBV during the pandemic has underscored technology gaps that have disproportionately affected many women, leaving some completely disconnected from essential information and services, including a modality to report SGBV.<sup>39</sup>
42. First responders and aid agencies are not trained in remote case management, including online safety measures, which may leave SGBV complainants exposed to further harm, and impede the prevention of sexual exploitation and abuse and undermine accurate reporting, as service providers lack knowledge about early warning signs of SGBV.<sup>40</sup>
43. Generalization No. 77/2020 issued by the High Judicial Council establishes an online mechanism for judges to accept complaints via email and rule thereon. Similarly, Generalization No. 68/2020 was issued by the Ministry of Justice in order to ensure effective prosecution responses to domestic violence victims during lockdown, pursuant to which Judicial Police were requested to record all cases of domestic violence, even without witnesses and empowered to interview complainants remotely. However, the extent to which these mechanisms have been used in practice and are effective remains unclear.

**In light of the above, the ICJ and ABAAD recommend that the CEDAW Committee's list of issues on Lebanon should require the State party to indicate and clarify whether any steps have been taken to:**

- **Counter the disproportionate impact of COVID-19 related restrictions on women and, in particular, complainants/survivors of SGBV;**
- **Ensure that first responders are trained in remote case management, including online safety measures;**
- **Ensure the effective access to justice of all women, including to protection mechanisms against SGBV, during the pandemic.**

<sup>37</sup> For a detailed overview and statistics see, National Commission for Lebanese Women, United Nations Entity for Gender Equality and the Empowerment of Women, United Nations Population Fund & World Health Organization, *Gender Alert on COVID-19 Lebanon*, June 2020: <https://www2.unwomen.org/-/media/field%20office%20arab%20states/attachments/publications/2020/06/lebanon%20gender%20alert%20issue3/gender%20alert%20on%20covidlebanon%20issue%203english.pdf?la=en&vs=1002>.

<sup>38</sup> ABAAD, *Our Response to GBV during COVID-19 Pandemic*, May 2020: <https://www.abaadmena.org/documents/ebook.1590737262.pdf>; ABAAD's Response to GBV during the Crises in Lebanon, August 2020: <https://www.abaadmena.org/documents/ebook.1601377248.pdf>.

<sup>39</sup> *Ibid.*

<sup>40</sup> See, COVID-19 and Prevention of Sexual Exploitation and Abuse (PSEA) Guidance Note No 1: Lebanon In-Country PSEA Network, April 2020: <https://interagencystandingcommittee.org/system/files/2020-05/COVID-19%20and%20PSEA%20Guidance%20Note%20No.1%20Lebanon%20In-Country%20PSEA%20Network.pdf>.