HUMAN RIGHTS WATCH

UNEQUAL AND UNPROTECTED

Women's Rights Under Lebanese Personal Status Laws

HUMAN RIGHTS WATCH

Unequal and Unprotected

Women's Rights under Lebanon's Religious Personal Status Laws

Printed in the United States of America
Cover design by Rafael Jimenez

Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.

Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Sydney, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: http://www.hrw.org

HUMAN RIGHTS WATCH

Unequal and Unprotected

Women's Rights under Lebanon's Religious Personal Status Laws

Summary 1

I. Background 3

Multiple Personal Status Laws 3

Religious Groups and Courts 3

Judicial Flaws 5

Lack of Adequate State Oversight 6

II. Unequal Divorce Laws 8

III. Inadequate Protection from Domestic Violence 11

IV. Economic Marginalization 13

V. An Unequal Equation: Maternal Custody and Paternal Guardianship 16

VI. International Human Rights Obligations 20

Right to Equality during Marriage and upon Divorce: 20

Protection against Domestic Violence: 21

Care and Residence of Children according to the Child's Best Interest: 21

Marital Property, Maintenance, and Alimony: 21

Key Recommendations 23

Summary

Lebanese citizens are not equal before the law when it comes to their personal rights. Key aspects of their lives—including marriage, divorce, and legal custody of children—vary considerably depending on their religion, which in turn dictates to which of 15 separate personal status laws they are subject.

The lack of a civil code, and the multiplicity of religious personal status laws that exist in its absence, is often touted as essential to protect the country's religious diversity: Lebanon has 18 different recognized religious communities. In reality, it means that Lebanese citizens face vastly different legal, social, and economic realities related to life events such as divorce, with insufficient minimum legal standards or guarantees.

These religiously based personal status laws particularly disadvantage women. Human Rights Watch reviewed all personal status laws in Lebanon and analyzed 447 recent legal judgments issued by the various religious courts adjudicating cases of divorce, custody of children, spousal support, and child support.

We found that across all religions, these laws erect greater barriers for women than men who wish to terminate unhappy or abusive marriages, initiate divorce proceedings, ensure their rights concerning their children after divorce, or secure pecuniary rights from a former spouse. 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.

The laws are not the only source of discrimination against women. The religious courts' procedures impose multiple obstacles that can disproportionately affect women, who in many cases are financially dependent on their husbands. These include high legal fees; lack of oversight and accountability for religious courts that operate independent of state institutions; and a dearth of adequate material, legal, or social support from religious or civil institutions.

Court decisions and personal status laws on which they are based violate women's human rights, including to non-discrimination, equality in marriage and at its dissolution, physical

integrity, and health, while discriminating between people with different religious backgrounds. These rights are all guaranteed in several international human rights covenants that Lebanon has ratified including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) and many of these rights are enshrined in the Lebanese constitution. They are also reflected in the Beijing Platform of Action and the Millennium Development Goals, which Lebanon has committed to implement.

One solution is for Lebanon's authorities 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 in the sense that people can choose to opt into it. In that sense, it would operate alongside religious laws.

Human Rights Watch affirms the right and the 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 that protects women and alleviates their legal, economic, and social marginalization.

A civil law operating alongside religious personal status laws will not be enough to end discrimination. In parallel with action toward the adoption of an optional civil personal status code, changes need to be made to existing religious legal codes to recognize gender equality. State institutions need to exercise oversight of religious courts to ensure compliance with human rights obligations.

This document provides background to personal status laws, including an overview of religious groups in Lebanon, problems with the laws and judicial system, and lack of oversight by state institutions. It outlines four ways in which women's rights in Lebanon are adversely impacted by personal status laws—unequal divorce; unequal maternal custody and paternal guardianship rights; women's economic marginalization; and inadequate protection from domestic violence—and outlines necessary steps to alleviate their situation.

I. Background

Multiple Personal Status Laws

In 1936, a decree established Lebanon's basic personal status order. While recognizing the ability of historic religious groups to apply their own laws to their communities, it also gave every citizen the right to choose his or her religious affiliation, or to choose to not affiliate with any religion and theoretically be subject to a civil code in personal status matters. Yet almost eight decades later—and despite the continued efforts of civil society organizations and local activists—social and institutional sectarianism has hindered the passage of an optional civil personal status law.

Until recently, this meant those wishing to marry under a civil code had to wed abroad, most commonly in Cyprus, France, and Turkey. In such cases, the laws of the country where the marriage was performed apply to the union and must be observed by Lebanese courts when disputes arise between spouses—an often-problematic requirement for judges and disputants unfamiliar with non-Lebanese legal systems.

In February 2013, a new avenue opened for couples to pursue civil marriage without leaving Lebanon when the Ministry of Interior registered the first civil marriage contracted in the country. The couple in question had removed their religious affiliation from their civil records in order to register the marriage and chose to apply French civil law to their marriage. Although an important step, the impact of this case remains limited as 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.

Religious Groups and Courts

Lebanon's officially recognized religious groups include four Muslim confessions, the Druze confession, 12 Christian confessions, and the Jewish confession.

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 the state's judicial bodies. Religious bodies enjoy wide discretion in appointing judges and oversee these courts.

Religious Court	Structure
Sunni Courts	There are 12 Sunni first-instance courts across the country. There is also a Supreme Sunni Court located in Beirut. The courts are funded by the state.
Ja`fari(Shia) Courts	There are 16 Ja`fari first-instance courts across the country. There is also a Supreme Ja`fari Court located in Beirut. The courts are funded by the state.
Druze Courts	There are six first-instance Druze courts spread out all over Lebanon. There is also a Supreme Appellate Court located in Beirut. The courts are funded by the state.
Catholic Courts	There are Catholic first-instance courts established in every diocese, a district under the supervision of a bishop, in Lebanon. There are two appellate courts, one local appellate court for each of the Catholic confessions, and the Roman Rota, located in the Vatican, which both hear appeals of rulings 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.
Orthodox Courts	In general, the Orthodox first-instance courts are established in each archdiocese. The Appellate Courts hear appeals of decrees and rulings issued by first-instance courts and judges. The rulings and decrees issued by the appellate courts are not in general subject to appeal. The courts are independently funded.
Evangelical Courts	There is one first-instance court and one Appellate Court in Lebanon. Rulings of the first-instance court may be appealed before the Appellate Court and rulings of the Appellate Court are final. The courts are independently funded.

Judicial Flaws

There are several key problems with the judicial system when it comes to administering personal status laws, leaving women vulnerable to discriminatory practices. These include:

- **Lack of adequate oversight** of the religious courts. While the courts should comply with the Lebanese Constitution, the Court of Cassation, which is the highest civil court in Lebanon, has very limited oversight over religious court proceedings and decisions. Although the law establishes internal oversight mechanisms, in practice, they are ineffective as the bodies responsible for oversight and disciplinary action are overwhelming comprised of clerics and confessional judges who are keen to preserve the reputation of their peers, and ultimately their sect. These bodies are often responsible for appointing the judges they are overseeing.
- **Inadequate training or qualification requirements for religious judges**, who frequently have little to no knowledge of Lebanon's human rights obligations, in particular concerning discrimination, and do not need a national law degree with the exception of the Druze and the Evangelical courts. Some confessions, including Sunnis and Shias, only require "experience," religious law degrees or certificates to be a judge. In all religious courts judges are not required to undergo a training period, as is the case with civil judges in Lebanon.
- **Exclusion of women from the bench**, even though theoretically they are not barred from judicial appointments in religious courts, there are currently only women in the Evangelical and Armenian Orthodox courts. Women interviewed, said this negatively affected trial proceedings since they felt unable to relay sensitive and intimate concerns to male judges.
- **Financial inaccessibility, especially for Christian women.** Unlike Sunni, Ja`fari, and Druze courts, Christian courts have total autonomy from the government, giving them the freedom to set court fees for petitioners. Several Christian procedural fees, including for filing cases, are therefore quite costly compared to the Sunni, Ja`fari, and Druze court fees and can be prohibitively expensive for many petitioners. According to two lawyers practicing before Christian courts who spoke to Human Rights Watch the average fee for an annulment suit in Catholic courts is at least US$8,000—a serious impediment for many women seeking to access the courts.
- **Lack of legal aid and other assistance**. With the exception of limited assistance that may be granted by some Christian courts (at the Court's discretion and after an indigent party obtains a certificate of indigence from a local priest), the Ministry of Social Affairs limits itself to providing referral hotlines for women that can answer basic questions and give information about available nongovernmental organization

(NGO) services, but do not offer legal assistance. The Ministry of Justice through the Bar associations do not provide legal aid to petitioners in personal status suits – unlike criminal suits- and NGOs have inadequate resources to provide the legal assistance, social work, and counseling, that many women require to reach just resolutions. Some lawyers practicing in religious courts can also lack qualifications in domestic law. In Catholic confessions, for example, lawyers can practice without a law license if they have a Catholic canon law license. In the Sunni and Ja`fari Courts, a non-lawyer male relative can represent a female relative.

Lack of Adequate State Oversight

According to article 33 of the Law 2 of April 1951, Christian and Jewish religious personal status laws must comply with the constitution and the public order, and religious officials must submit a copy of their personal status codes and trial procedures to the government within one year of the law's passage.

In practice, the parliament has failed to ensure such compliance, leaving religious authorities able to legislate without oversight in contravention of the constitution, public order, and Lebanon's international commitments.

Christian personal status laws are not limited to the personal status codes 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. 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 (the highest appellate tribunal of the Roman Catholic Church).

In the absence of a disposition similar to article 33 of Law 1951, legislation in Shia and Sunni personal status laws is even more complicated. Shia personal status laws, for example, remain uncodified. Even where laws are codified, additional religious sources and foreign opinions are considered; the Lebanese constitution and human rights commitments are not.

Religious judges have wide discretion to apply rules differently in the absence of clear directives, and personal status laws remain uneven. The New Code of Family Provisions

adopted by Sunnis in 2011, for example, 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.

While the Lebanese Court of Cassation, Lebanon's highest court, in its capacity as the final arbiter of disputes, is responsible for examining religious decisions' compatibility with basic state laws and the public order, the court has long interpreted its responsibility to examine the compatibility of religious codes with the public order as limited to examining jurisdictional and procedural rather than substantive religious rules. Recently, however, the Court of Cassation has challenged decisions issued by religious courts when they conflicted with child protection measures issued by juvenile judges in civil courts.

II. Unequal Divorce Laws

International human rights law guarantees women equality within the family, at the inception of marriage, during marriage, and upon its dissolution. However, a review of 447 court cases and 72 interviews found that personal status laws and the religious courts that apply them discriminated against women of all religions when it comes to divorce.

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

The extent of this discrimination varies across confessions. For example, Shia, Sunni and Druze women enjoy a greater ability to end their marriages before their religious courts than do Christian women, who are subject to laws that are generally more restrictive in their approach to divorce for both spouses. Women appearing before Sunni and Druze courts can more easily end their marriages than Shia women who appear before Ja`fari Courts because they are able to initiate "severance" cases to end their marriage. Severance is the dissolution of the marriage by judicial order for reasons specifically enumerated by law but which requires women to prove certain criteria, such as unpaid spousal maintenance, the husband's inability to have sexual relations because of impotence, contagious disease, or insanity. In general, the criteria for women to access divorce are more stringent than those for men.

***

Women subject to Sunni, Shia, and Druze personal status laws have only a conditional right to end their marriage, unlike men from these groups, who have an absolute right to unilaterally terminate a marriage at will. While legally spouses may agree to share the right to dissolve the marriage by giving the wife *`isma*, or irrevocable power to divorce herself, the practice is largely rejected in a society in which divorce is widely considered to be a male right. Only three out of the 150 divorce judgments before Ja`fari and Sunni courts that Human Rights Watch reviewed were issued based on the wife's exercise of such right, and none of the women interviewed had inserted this clause in their marriage contracts.

"Our customs don't allow it," said Nur, a 31-year-old mother of three married to an abusive husband. "How could I ask for something like this [the right to divorce]… as if my husband is not a man!"

Without *`isma*, Sunni women can only initiate a divorce by filing for severance. Sunni courts often find women partly culpable in severance cases—even in cases with spousal violence or harm—reducing their pecuniary rights, and dissuading them from pursuing this path. Some women pre-emptively relinquish their pecuniary rights to get their husband to agree to initiate divorce. In some *khul'* or quittance cases, a wife must even pay money to her husband for a divorce.

Shia women have no access to severance and can only seek "sovereign" divorce via a Ja`fari religious authority which can be outside the court, and can divorce her on behalf of her husband—a lengthy process that does not guarantee success. The absence of criteria establishing whether someone is a sovereign authority and thus whether a decision will be recognized deters many Shia women from pursuing such cases and also results in inconsistent judgments.

In the Christian confessions, particularly those who follow the Roman Catholic Church, it is impossible for either spouse to terminate the marriage consensually. There are, however, some situations in which couples can end their marriages through annulment, dissolution, and divorce or apply for desertion, although provisions for this vary among Catholic, Orthodox, and Evangelical confessions.

While restrictions on terminating marriage extend equally to both Christian men and women, two aspects of the laws impact women differently and disproportionately. First, although spousal violence is grounds for desertion (a legal concept in Christian Personal Status laws that allows for separation of the spouses), spousal violence is in itself insufficient to obtain an immediate end to a marriage. Second, Christian men in Lebanon can unilaterally convert to Islam and remarry without divorcing their wives (Sunni and Shia men are legally allowed up to four wives). 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. There are no similar processes by which a Christian woman can bypass Christian

personal status law after consummating her marriage. Many women relinquish their rights to maintenance or compensation in exchange for the husband's agreement to end the marriage through conversion to another Christian confession with more permissive laws if marriage is terminated.

III. Inadequate Protection from Domestic Violence

Women across all confessions must contend with religious courts failing to respond to domestic violence. For Catholics, spousal violence is never sufficient grounds for obtaining an annulment, the only means by which Catholics in Lebanon can terminate 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 one case that Human Rights Watch reviewed, Maria, a Catholic Maronite who wed in 1984, was regularly assaulted by her husband who also cheated on her during their first six years of marriage. He was sentenced to 20 years in prison for an unrelated murder. After his incarceration Maria sought an annulment from the Catholic Maronite court, which denied her case. Stating that her husband's incarceration, abuse, and adultery were insufficient grounds for annulment, the court instead ruled for temporary desertion with her husband at fault. Under Orthodox and Evangelical laws, either spouse may also petition to dissolve the marriage if he or she establishes that the other party attempted to kill him or her. Spouses may also obtain dissolution if the spouses do not cohabit for a certain period. 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 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.

Nur, a 31-year old Sunni woman and the mother of three children, told Human Rights Watch that the judge in her case encouraged her to reconcile with her husband, despite the fact that he raped and beat her. 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. According to Nur, the judge advised her "to change her clothing and lifestyle in a way pleasing to religious law and religion" in order to reconcile with her husband.

Nor does civil or criminal law afford women facing domestic violence adequate relief. While the April 2014 Law on Protection of Women and Family Members from Domestic Violence established important protection measures and related policing and court

reforms, the criminal law still fails to criminalize marital rape, and the domestic violence law falls short of UN guidelines on protection from domestic violence by continuing to define domestic violence narrowly.

The law includes provisions on restraining orders that are also too narrow, and, contrary to the UN *Handbook for Legislation on Violence against Women*, exempts matters governed by personal status laws—undermining women's security in the home. In a positive development, 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. The Law on Protection of Women and Family Members from Domestic Violence 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.

IV. Economic Marginalization

A prime obstacle for many women seeking a divorce is their vulnerable economic position during and after marriage. 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 their marriages terminated.

Two main factors contribute to this situation:1) the failure of personal status and civil laws to 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; and 2) cultural, religious, and traditional expectations and norms that undermine a woman's economic independence and contribute to her financial dependence on her husband.

"I couldn't prove I had paid for half the house we bought in the early years of our marriage," Rayya told Human Rights Watch. "Should a woman demand a receipt from her husband?I only learned from the lawyer I hired for the severance case that all the property was registered in my husband's name."

According to a 2010 study of gender in the labor market 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 and on average earn 75 percent of the salary earned by male counterparts.

Based on Human Rights Watch's review of court cases, judgments on spousal maintenance (a husband's obligation to meet his wife's needs for food, clothing, shelter, and other living expenses during marriage) are often inadequate, biased, and arbitrary, with judges failing to use clear criteria in applying the standards provided for by the personal status laws when assessing adequate levels of maintenance.

They 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 that Human Rights Watch reviewed, the absence of clear criteria to assess spousal maintenance resulted in inadequate and arbitrary judgments. Judges may also

refuse to award maintenance to a wife who is deemed to be "recalcitrant"—a concept that religious courts apply to women who have left the marital home and refuse to cohabit with their husbands. 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. Under Shia, Sunni, Druze and Catholic laws a recalcitrant wife is not entitled to spousal maintenance, and a finding of recalcitrance may hinder her custodial rights vis à vis her children.

When maintenance is awarded, lawyers told Human Rights Watch that it is frequently too low to cover basic living costs. They said that spousal maintenance rarely exceeds LBP600,000 a month (US$400). 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 suits 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 did not request a specific sum but rather left it to the discretion of the court, the judge automatically granted them LBP200,000 ($133).

Judges justify awarding low spousal maintenance by citing the country's floundering economy and low minimum wage. But lawyers working on personal status cases before the courts said that judges are notably reluctant to award higher sums, even in cases in which the husband could afford to pay more. For example, in one case, a French national married to a wealthy Lebanese man was awarded just $300 a month, even though her lawyer said the husband owns several properties and has a net worth of millions of dollars. Unable to afford suitable accommodation, the lawyer said her client was living in a convent.

In addition, under all personal status codes, the man's obligation to support his spouse expires when a court finally dissolves the marriage. In all but Christian abandonment cases, spousal maintenance during separation is typically only granted temporarily when husbands fail to provide for their wives.

Conditions for compensation after the termination of marriage under Christian personal status laws are limited and vary among the different confessions. Furthermore, the sum awarded under damages is usually not enough to allow women to support themselves until they can become financially independent.

Under Sunni and Shia personal status laws, women who are divorced by their husbands are, at most, only entitled to deferred *mahr* payments—the amount their marriage contract stipulated their husband would pay upon divorce or death. 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.

During severance cases a judge can reduce or eliminate these payments if he finds the wife at fault for the divorce, leaving some divorced women stripped of all financial resources.

Women's economic vulnerability may also contribute to their inability to protect themselves from domestic violence or to leave abusive marriages.

V. An Unequal Equation: Maternal Custody and Paternal Guardianship

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.

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 because a woman relinquishes these rights as part of a settlement. 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 rest automatically with the mother, but might be granted to the male members of the father's family.

Based on the review of 101 child custody decisions in Christian and Ja`fari and Sunni, courts, judges display a wide range of practices in applying the best interests of the child standard, in particular when deciding whether to deviate from maternal custody age cut-offs.

These practices fail to adequately uphold the standard outlined by the Convention on the Rights of the Child (CRC), which instructs states parties that "the best interests of the child shall be a primary consideration" and "a child shall not be separated from his or her parents against their will" except when competent authorities, subject to judicial review, determine that doing so is in the their best interest.

The laws governing custody and guardianship also discriminate against women by applying unequal standards in assessing who children should continue to reside with and by only affording fathers guardianship rights. 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.

Women are often deterred from seeking divorce due to concerns about losing custody of their children. Human Rights Watch's review of court cases found that in many cases judges removed children from their mothers, but not their fathers, on grounds of fitness due to "questionable" social behaviors or because of the mother's supposed religious affiliation or because she remarried.

Many judges presume that women neglect their child's education if they are from a different religion, and several cases that Human Rights Watch reviewed cited the mother's neglect of the child's religious education as the basis for removing children from her care.

For example, on January 31, 2008, the First Instance Maronite Court stated it was revoking maternal custody because the "wife's conversion and embrace of Islam constitutes a danger to her minor child…."Rayya, a Christian woman who had divorced a Shia man, also said that she feared a Ja`fari court would view her religious background unfavorably in determining whether her daughter could remain with her after the age of seven, the Ja`fari maternal custody cut-off age. In no cases that Human Rights Watch that reviewed did men lose care of children cases on the grounds they had neglected their children's religious education.

Women may also be considered "unfit" if deemed unable to provide for the child's moral education. Yet there are no clear standards for evaluating the ability to provide moral or religious guidance.

Men are much less likely than women to lose their children for being unfit, and in the cases that Human Rights Watch reviewed they only did in cases of severe alcoholism or drug addiction. In contrast, women were deemed unfit in some cases for normal social activity.

Lack of legal clarity leaves women vulnerable to the whim of judges who have a wide range of practices when applying the best interests of the child standard and maternal custody age cut-offs, which vary according to religion. Maternal custody for Catholic mothers, for example, ends when their children turn 2. Sunni and Evangelical women lose maternal custody when their children turn 12, Shia women when boys turn 2 and girls turn 7 (this can be extended if the child has reached the legal age of choice),and Druze, Syriac and Armenian Orthodox women when boys turn 7 and girls turn 9. For Coptic Orthodox the age is 11 for boys and 13 for girls, and for Greek Orthodox it's 14 for boys and 15 for girls.

Regardless of whether a woman is granted maternal custody she cannot enjoy the right of guardianship (with the exception of the Armenian-Orthodox confession) which remains restricted to fathers, or in some cases his male relatives following his death, regardless of the best interests of the child.

Some women whom Human Rights Watch interviewed stayed in abusive marriages, gave up their monetary rights, or did not remarry to maintain maternal custody.

"I have no idea what to do, I think day and night about this issue [maintaining custody of my child] and the anxiety is killing me," Rayya said. "The only way out is to succumb to all his [my husband's] orders and mood swings and not to upset him."

In some cases, women appeared to be penalized in child custody proceedings for initiating proceedings to end the marriage. In one case in 2007, the Maronite Court denied the mother both compensation and her maternal custody rights, 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."

Under Shia, Sunni, and Druze laws, maternal custody ends if a mother gets remarried (although it may be granted to the maternal grandmother). This rule does not apply to Muslim and Druze men when it comes to guardianship. Under Christian laws a new marriage is also grounds for termination of maternal custody, although judges can rule otherwise if they deem it to be in the child's best interest. Fathers may typically marry or become involved with a woman other than the child's mother with no similar consequences unless the court finds it is not in the child's best interest, although the best

interest of the child is not always considered. Several women said they abstained from having relationships to avoid losing maternal custody.

"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," Dina told Human Rights Watch. "How can I even consider a relationship with another man?"

Maternal custody may also be removed from women due to "recalcitrance"—a concept that religious courts apply to women who have left the marital home and refuse to cohabit with their husbands. In such cases, a court may order a woman to resume living with her husband. If she refuses, the court can issue a judgment of recalcitrance. This can be used to revoke maternal custody of any children unless she can establish a legally sanctioned reason for leaving the marital home.

In 2002, Lebanon's parliament passed a child protection law, Law 422 on Protection of Children in Conflict with the Law or at Risk, applicable to all religions, which acted as a brake on religious personal status codes by refusing to give civil recognition and force of law to religious judgments that contravene child welfare and protection. Since then, religious courts have in some cases considered the best interest of the child when determining which parent gets custody.

VI. International Human Rights Obligations

Lebanon's host of religiously based personal status laws and court decisions fail to guarantee equality in marriage and divorce and permit discrimination against women. In doing so, they violate women's human rights—including to non-discrimination, equality in the family, physical integrity, and health—as well as a number of international human rights covenants that Lebanon has ratified that protect and promote women's equality during and after marriage. These rights include:

Right to Equality during Marriage and upon Divorce:

Lebanon has entered reservations to articles 9 and 16 of CEDAW, which address the obligation of states to eliminate discrimination against women with regard to their nationality and the nationality of their children (article9) and in marriage and family life (article 16). Lebanon has 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." The government's reservation is inconsistent with Lebanon's international obligations to work to modify and eliminate religious and cultural norms that foster inequality, and cast doubt on the country's commitment to advancing women's human rights, especially to equality in marriage and divorce.

The CEDAW committee 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." 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."

Furthermore, in the absence of a unified family law, like 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."

Restrictions and limitations on women, but not men, who want to end their marriages contravenes the obligation of states to ensure the same rights of women and men during marriage and divorce, as outlined by the Human Rights Committee, which states: "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." The CEDAW committee also stated states parties should "eliminate any procedural requirement of payments to obtain a divorce that does not apply equally to husbands and wives."

Protection against Domestic Violence:

States have an obligation to protect women from violence of any kind, including that which occurs in the family. 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." In denying women equality in access to divorce the law 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."

Care and Residence of Children according to the Child's Best Interest:

The Convention on the Rights of the Child instructs states parties that, in all matters concerning children, "the best interest of the child shall be a primary consideration." Various treaty bodies have addressed gender–based discrimination with regard to care of children (referred to as "custody" of children in Lebanon), including the Human Rights Committee, which has said 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." Decisions about which parent a child should live with based on age or so-called misconduct, including remarriage or recalcitrance—factors that do not apply to men—rather than the best interests of the child, violate these international standards.

Marital Property, Maintenance, and Alimony:

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. This violates article 16 of CEDAW, which obliges states to ensure: "The same rights for both spouses in respect of ownership, acquisition, management, administration, enjoyment and disposition of property." In addition, 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."

Lebanese women face many hurdles when seeking spousal maintenance during marriage or compensation after marriage—including a lack of clear guidance to religious courts in setting amounts. In addition, after the marriage a man has no duty to pay any regular sum of money (alimony) to his former wife.

Women's ability to access financial support is critical to their right to non-discrimination in marriage and divorce. 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." 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. The CEDAW Committee has since strongly encouraged states parties to consider "post-dissolution spousal payments as a method of providing for equality of financial outcome."

Key Recommendations

Lebanon's personal status laws urgently need reform. 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 in 2005 and 2003, including to admit non-clerical judges, specify the method of judicial appointment, and give judges more latitude to award damages during termination of marriage lawsuits, adopting a domestic violence law (2014), and implementing a cross-confessional child protection law (2002).

But the resulting modest improvements for the rights of children and women are insufficient to address systemic discrimination against women under personal status laws and before religious courts. They also have failed to prioritize the best interests of the child in custody proceedings and to address discrimination against people from different religious backgrounds who are afforded different levels of protection and rights based on their religious affiliations.

To address these concerns Lebanon's government and parliament should:

- Adopt an optional civil code to ensure the rights for all Lebanese regardless of religion, sex, or gender, and ensure that it complies with Lebanon's international human rights obligations;
- Make fundamental changes to religious personal status laws, in consultation with religious authorities, civil society groups working on women's issues, and children's rights, and experts;
- Require that religious confessions codify their laws and re-submit them to parliament for review to determine their conformance with Lebanon's constitution and human rights obligations. Religious personal status laws that do not comply should be amended before approval;
- Establish minimum education and training requirements for judges in religious courts, and require a law license and judicial training as a basic condition for their appointment; and
- Establish a monitoring mechanism to oversee personal status court proceedings to ensure that judgments are non-discriminatory and comply with Lebanon's international obligations;

- Provide information to couples before they marry on the legal regime that will govern their marital life;
- Provide legal representation for indigent spouses in all personal status lawsuits. Establish hotlines and social and legal consultations inside the religious and civil courts.

This is a summary version of a longer report available here: http://hrw.org/node/131843

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.

© 2014 AP Photo/Bilal Hussein

(front cover) Activists hold placards during a protest demanding civil marriage in Lebanon. There is currently no Lebanese civil personal status law.

© 2013 REUTERS/Jamal Saidi

hrw.org