

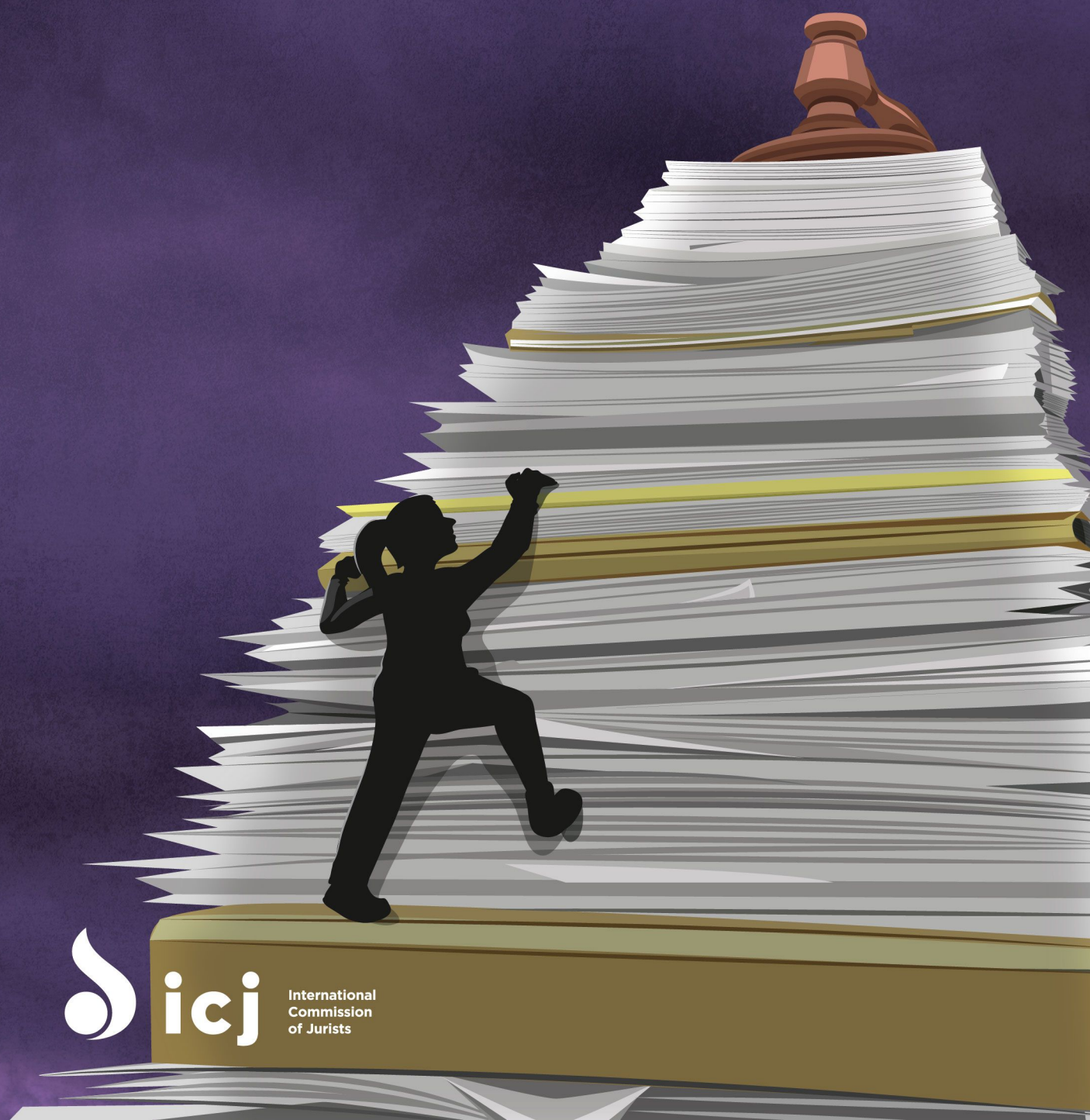
Accountability for Sexual and Gender-Based Violence in Lebanon

Guidance and Recommendations
for Criminal Justice Actors



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October 2020

Table of Contents

- Executive summary..... 4**
- Introduction..... 10**
- Research methodology..... 11**
- 1. Applicable legislative framework..... 12**
 - 1.1. International law and standards..... 12
 - 1.2. Domestic framework..... 14
 - 1.2.1. The Criminal Code..... 14
 - 1.2.2. Law No. 293/2014 on the protection of women and other family members from domestic violence..... 23
 - 1.3. Relevant criminal justice actors..... 24
- 2. Investigation..... 28**
 - 2.1. Procedural Framework..... 28
 - 2.1.1. Procedural framework governing the investigation of offences where the perpetrators were reportedly discovered *in flagrante delicto*..... 28
 - 2.1.2. Procedural framework governing the investigation of offences falling outside the category of *in flagrante* offences..... 30
 - 2.1.3. Cases of domestic violence..... 30
 - 2.2. Challenges in practice..... 31
 - 2.2.1. A victim-centred approach: Part I..... 32
 - 2.2.2. Biased misperceptions and the victim / offender relationship..... 33
 - 2.2.3. Protection measures..... 35
 - 2.2.4. Risk-assessment and management of the risks facing victims..... 42
- 3. Medico-legal evidence..... 47**
 - 3.1. Collection of medico-legal evidence..... 49
 - 3.2. Prevention of sexually transmitted infections and human immunodeficiency virus..... 51
 - 3.3. Pregnancy management and abortion services..... 51
 - 3.4. Psychological injury and support services..... 52
- 4. Prosecution and adjudication..... 53**
 - 4.1. Procedural framework..... 53
 - 4.1.1. Prosecution..... 53
 - 4.1.2. Indictment..... 54
 - 4.1.3. Adjudication..... 54
 - 4.2. Challenges in practice..... 55
 - 4.2.1. Prosecuting victims/survivors..... 55
 - 4.2.2. Victim-centred approach: Part II..... 56
 - 4.2.3. Sentencing practices..... 57
 - 4.2.4. "Mitigating circumstances"..... 59
- 5. Recommendations..... 62**

Executive summary

Sexual and gender-based violence (SGBV) is “a critical obstacle to achieving substantive equality between women and men as well as to women’s enjoyment of human rights and fundamental freedoms.”¹ In Lebanon, SGBV remains a pervasive human rights challenge and public health scourge blighting the lives of women and girls.² 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. The 2020 Coronavirus pandemic has merely highlighted the fact that, once again, women and girls remain the perennial victims/survivors of SGBV in the country, with studies finding that its occurrence has surged amid government-imposed confinement measures.³

Legislative and procedural gaps within the domestic framework foster and perpetuate a systematic denial of effective legal protection and access to justice and effective remedies for women victims/survivors of SGBV. As the ICJ has previously concluded,⁴ criminal investigations and prosecutions of SGBV offences are frequently undercut by discriminatory practices and bias against women, and a lack of professionalized gender-sensitive approaches to investigation, prosecution and adjudication processes, including evidence-gathering procedures, ultimately thwarting women’s access to justice.

These gaps, and the ICJ’s conviction of the urgent need to address them, have prompted the organization to further examine the procedural framework governing the investigation, prosecution and adjudication of SGBV offences in Lebanon and its implementation in practice. Drawing inspiration and guidance from international human rights law and standards, in the present memorandum the ICJ seeks to identify and propose ways in which criminal justice actors may work more effectively to address SGBV and enhance victims/survivors’ access to justice and effective remedies within the limitations of the current framework.

The memorandum formulates a list of recommendations for reforming practices that undermine SGBV-related investigations, prosecutions and trials in Lebanon, including with a view to ensuring women’s full, unrestricted access to justice, remedies and redress for SGBV in accordance with international law and standards.

Recommendations

Reaffirming its recommendations published in *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, the ICJ calls on the Lebanese authorities, including the Council of Ministers and the Parliament, to remove the obstacles to women’s access to justice, including by:

I) Ensuring the legislative framework fully complies with international law and standards on access to justice and effective remedies, including by adequately defining and fully criminalizing all forms of SGBV without exception, and ensuring that laws prohibit discrimination and preserve the principle of gender equality. To do so, at a minimum, the following steps would be required:

- Amending Law No. 293/2014 on the protection of women and other family members from domestic violence (Law No. 293/2014) so as to ensure that it comprehensively criminalizes all forms of SGBV against women;
- Ensuring that all acts of rape are criminalized, including by;

1. The Committee on the Elimination of Discrimination against Women, *General Recommendation No. 35: gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35 (2017), para. 10.

2. See generally, International Commission of Jurists (ICJ), *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, (Geneva: International Commission of Jurists, 2019).

3. 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*, 3 June 2020, accessible via: <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>.

4. See generally, ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019.

- Specifically criminalizing marital rape and abolishing paragraph 7 of article 3 of Law No. 293/2014, which provides for a “religion-based” right to claim “marital rights;”
- Appropriately and accurately characterizing rape as an offence that includes the following elements: (i) the intentional penetration of a sexual nature of the body of another person with any bodily part or object; (ii) the lack of or absence of consent or the fact that consent is vitiated; (iii) that coercive circumstances negate consent; and (iv) that ability to consent to engage in sexual activity is integrally related to the concept of legal capacity, without which, some sexual acts may entail criminal liability (e.g., age-related incapacity; incapacity as a result of intoxication).
- Criminalizing all forms of sexual assault in compliance with international standards, including by:
 - Amending articles 503 to 521 of the Criminal Code;
 - Properly characterizing sexual assault as a violation of bodily integrity and sexual autonomy.
- Criminalizing sexual harassment in compliance with international standards, including by:
 - Introducing legislation that specifically defines, criminalizes and provides appropriate punishment for sexual harassment, especially committed in public spaces or in the workplace.
- Decriminalizing abortion, including by:
 - Repealing articles 539 – 545 of the Criminal Code;
 - 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 survivor/victim so desires;
 - Ensuring that anyone who undergoes an abortion receive necessary post-abortion care, including SGBV victims/survivors.
- Revising the Criminal Code to ensure its compliance with international human rights law and standards, including by:
 - Repealing all discriminatory provisions against women, particularly those concerning “adultery” and “prostitution;”
 - Permanently rooting out discriminatory concepts and assumptions in law such as “chastity,” that endanger women and relegate them to a subordinate position;
- Providing adequate and continuous capacity-building training to all criminal justice actors, including the Judicial Police, Investigating Judges, Public Prosecutors, General Advocates and Judges on the application of international human rights law and standards, including, in particular, those by which Lebanon is bound, such as the CEDAW, the ICCPR, the CAT, the CRC and the ICESCR, which are particularly relevant with respect to the investigation, prosecution and adjudication of SGBV-related criminal offences;
- Establishing training programmes on gender-sensitive approaches to the investigation, prosecution and adjudication of SGBV-related crimes for all criminal justice actors.

II) As underscored in Chapters 2, 3 and 4, establishing gender-sensitive legal procedures and protocols for the investigation, prosecution and adjudication of SGVB-related crimes, and ensuring that forms of redress be designed to respond to the specific needs of women and girls victims/survivors of SGBV, including by:

- Amending the current procedural framework on SGBV, which combines the Code of Criminal Procedure (CCP) and Law No. 293/2014, with a view to adopting gender-sensitive evidence-collection procedures that enhance women’s access to justice and effective remedies;
- Furnishing investigatory authorities and the Office of Public Prosecution (OPP) with meticulous and clear guidelines, specific to their respective mandates, and tailored to the investigation, prosecution and adjudication of cases of SGBV. Furthermore, such guidelines should:
 - Offer robust instructions and training based on international human rights law and standards and recommended State practices, including, among others, on:
 - a. how to process the initial receipt of SGBV complaints;
 - b. the evaluation of SGBV complaints;
 - c. the effective documentation, collection, preservation and storing of SGBV-related evidence;
 - d. effective prosecution strategies.
 - Be enforced diligently and fully complied with by all concerned actors.
- Establishing and integrating specialized prosecution units and chambers for SGBV-related

criminal offences within the Criminal Courts and Courts of Appeal, guaranteeing the timely and efficient handling of SGBV cases;

- Endorsing a coherent, participatory and victim-centric approach to SGBV case management, by establishing an effective system of referral between all concerned institutions;
- Revising and refining the current protocol governing the provision of forensic medicine with a view to ensuring its full compliance with international human rights law and standards and recommended good practice, particularly the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (Istanbul Protocol) and the World Health Organization's Guidelines for Medico-legal Care for Victims of Sexual Violence (WHO Guidelines), ensuring that:
 - Medical and forensic practitioners stringently observe the instructions contained therein;
 - Until the current protocol is so refined and enforced, healthcare and forensic medical practitioners rely on and comply with the Istanbul Protocol and the WHO Guidelines.

III) As identified in Chapters 2 and 3, enhancing and increasing the capacity, coordination and resources of criminal justice actors to ensure the effective investigation, prosecution and adjudication of SGBV cases, including by:

- Establishing the fund under article 21 of Law No. 293/2014, which is supposed to provide assistance and care to domestic violence victims/survivors, in addition to the rehabilitation of offenders;
- Establishing an adequate number of government-run shelters across the country for SGBV victims/survivors that provide legal, medical and psychological assistance to SGBV victims/survivors;
- Establishing government-funded rehabilitation programmes for SGBV offenders, including ones that address the perpetrator's propensity to violence and intimate-partner abusive behaviour;
- Establishing government-funded medico-legal facilities for the provision of healthcare and forensic testing, thus ensuring healthcare and forensic testing services are provided simultaneously, at the same facility, and are accessible to all victims/survivors of SGBV;
- Increasing the number of healthcare and forensic practitioners qualified and trained to carry out forensic testing;
- Adequately equipping healthcare and forensic practitioners to conduct their work;
- Extending training on the use of medico-legal reporting and forensic science to all criminal justice actors with a view to enhancing their respective knowledge of and familiarity with this discipline.

The ICJ considers that, pending the introduction and implementation of the above recommendations and the reforms that they, in turn, entail, all criminal justice actors, including the Judicial Police, Investigating Judges, Public Prosecutors, General Advocates and Judges, should make the most of the tools that are at their disposal today, including the Criminal Code, CCP, Law No. 293/2014 and the ISF General Memorandum, with a view to ensuring the prevention, investigation, prosecution, adequate sanctioning and provision of effective remedies in cases of SGBV by public and private actors. In so doing, criminal justice actors should draw inspiration from the following guidance and recommendations:

Investigation (Chapter 2)

With a view to ensuring effective investigation practices, the ICJ urges first responders and investigatory authorities, including the Judicial Police, Department of Investigation and the OPP to:

- Exercise due diligence to prevent additional violations of the human rights of SGBV victims/survivors, investigate and prosecute all forms of SGBV;
- Gather the pertinent facts about the alleged offence(s) from the alleged victim(s), alleged offender(s) and witnesses, where relevant;
- Proceed to the crime scene in order to collect, preserve and store all evidence in support of the SGBV allegation(s);
- Appoint a relevant "expert," pursuant to article 34 of the CCP, in order to ensure evidence is consistently collected, preserved and stored;

- Employ victim-centered, gender-sensitive measures that prioritize the well-being and safety of the victim/survivor consistently throughout the investigation stage so as to prevent secondary victimization, including by:
 - Limiting the number of times an SGBV victim/survivor is interviewed, as well as the number of people who interview her, yet providing her with adequate time to relay her experience, so as to minimize traumatization;
 - Interviewing SGBV victims/survivors in a separate room, preferably in the presence of a female officer, with a view to ensuring her privacy;
 - Refraining from interrupting the SGBV victim/survivor as she relays her story;
 - Refraining from victim-blaming and from making biased assumptions about SGBV victims/survivors, their behaviours and practices;
 - Ensuring confidentiality.
- Enhance the current system of protection, including by:
 - Extending the protection mechanism to all SGBV victims/survivors and applying it to all forms of SGBV, as opposed to limiting its scope of application to domestic violence cases;
 - Ensuring that applications for protection orders be expedited;
 - Ensuring that protection orders be fully enforced;
 - Establishing a specialized judicial body empowered to hear protection order applications.
- Conduct an assessment of dangerousness in all SGBV cases, including by ensuring that all necessary measures be taken to mitigate the risk posed to the victim/survivor, her children and extended family, paying particular attention to cases where the offender is in possession of a firearm;
- Provide medico-legal services simultaneously, at the same place, by the same practitioners and make them available 24-hours a day in a one-stop shop fashion or, where it is not feasible to provide a full-time service, on an on-call basis outside regular working hours;
- Conduct medico-legal examinations in an environment that is reassuring, confidential and appropriate for the potentially distressed state of the victim/survivor;
- Obtain the victim/survivor's full, genuine, free and prior informed consent, preferably in writing, before proceeding with the collection and documentation of medico-legal evidence;
- Ensure adequate government funding to provide free STI screening in all cases that involve sexual violence, and emergency contraception, pregnancy testing and HIV prophylaxis on a case-by-case basis when appropriate.

Prosecution (Chapter 4)

With a view to ensuring effective prosecution practices in SGBV-related cases, the ICJ urges the Department of Investigation and the OPP to:

- Exercise due diligence to prevent further violations of the human rights of SGBV survivors, and investigate, prosecute and ensure access to remedies for all forms of SGBV;
- Exercise prosecutorial discretion and refrain from charging and prosecuting SGBV victims/survivors for other "crimes," such as "adultery" or "prostitution;"
- Refrain from making baseless, prejudiced and patriarchal assumptions with respect to the victim's/survivor's behaviour or relationship with the offender;
- Ensure victims/survivors are informed about their rights, the remedies at their disposal and their role in criminal proceedings;
- Conduct effective risk-assessment and management for SGBV victims/survivors, and where applicable, their children, family and witnesses, consistently throughout the investigation, prosecution and trial phases, with a view to identifying danger and acting to prevent reprisals and retaliatory acts by the offender;
- Ensure the implementation in practice of protection measures to mitigate the risks faced by victims/survivors of SGBV offences, including by:
 - monitoring the implementation of protection orders and ensuring the offender's adherence thereto;
 - duly taking into account the personal circumstances of SGBV victims/survivors, including the needs of her family members, if any;
 - charging and prosecuting offenders with obstruction of justice and breach of court orders if they fail to comply with protection measures imposed by the Courts to ensure the security and safety of SGBV victims/survivors, particularly in cases of repeat or serious breaches of protection orders.

- Provide the court with all relevant information and documentation, including, among others, a risk-assessment of the offender's dangerousness for the SGBV victim/survivor and society, and the offender's antecedents, including, in particular, prior history of sexual or physical abuse, if any;
- Urge the court to obtain input from the SGBV victim/survivor, with a view to ensuring that the judge/s be fully apprised of the effect(s) the offender's acts have had on the victim/survivor, and where relevant, her children or other relatives, if any;
- Make appropriate sentencing recommendations to the court, and appeal, where warranted, sentences that are too lenient and thus not commensurate to the seriousness of the offence committed;
- Refer to the United Nations Office on Drugs and Crime's Handbook on effective prosecution responses to violence against women and girls, with a view to developing effective prosecution strategies.

Adjudication (Chapter 4)

With a view to ensuring the effective adjudication of SGBV, the ICJ urges Judges to:

- Exercise due diligence to prevent further violations of human rights of SGBV survivors, sanction and ensure access to remedies for all forms of SGBV;
- Enhance the current system of protection, including by:
 - Extending the protection mechanism to all SGBV victims/survivors and applying it to all forms of SGBV;
 - Issuing protection orders promptly;
 - Ensuring the consequences of non-compliance are explicitly outlined in the protection order;
 - Removing time limits on protection orders by granting long-term, final or post-hearing orders;
 - Informing judges about the preventive and deterrent value in domestic violence abusers' engagement in offending behaviour programmes;
 - Ensuring judges adopt a means-testing approach, whereby offenders who have the financial means to pay be compelled to bear the expense of reform-oriented programmes;
 - Putting an end to the practice of foisting reconciliation onto SGBV victims/survivors with their offending spouses unless SGBV survivors have specifically indicated their willingness to be reconciled;
 - Modelling protection orders in a way that seeks to ensure the ongoing residence of victims/survivors in the marital home – or their return thereto – with access to all their possessions, restraining the perpetrator accordingly.
- Desist from engaging in judicial stereotyping, victim-blaming and other harmful practices that undermine SGBV victim's/survivor's right to access to justice and effective remedies, including reparation for the harm inflicted against them, including by:
 - Rejecting submissions from the defence that cite "honour" or "provocation" as a justification for the offender's actions;
 - Rejecting submissions advanced by the defence that make groundless assumptions regarding consent, such as the purported "offensive" behaviour of SGBV victims/survivors or their sexual history.
- Adopt a victim-centred approach, with a view to minimizing the pressures on SGBV survivors that abound at the trial phase, including by:
 - Using articles 178 and 249 of the CCP, which allow for proceedings to be held in camera, in order to ensure that the identity of the SGBV victim/survivor is not disclosed to the media and/or the general public;
 - Dismissing gratuitous, irrelevant lines of questioning impinging on the reputation of SGBV victims/survivors during trial, thus enabling them to give the best possible evidence;
 - Creating a court room environment that is conducive to the needs of the SGBV victim/survivor.
- Impose sentences that are commensurate with the gravity of the SGBV offence committed, ensuring accountability and deterrence for violence perpetrated against women;
- Make a comprehensive and informed assessment of the offence(s) and its/their impact on the SGBV victim/survivor, taking into consideration any aggravating circumstances, such as the offender's antecedents and recidivism;

- Ensure that at sentencing, mitigating circumstances be taken into account only when judiciously and evidentially warranted, including by:
 - Ensuring that decisions are well reasoned and justified on a case-by-case basis;
 - Rejecting arguments advanced by the defence in support of mitigating circumstances that are ambiguous, vague, irrelevant or based on harmful gender stereotypes;
 - Ensuring that justice is not only done but is manifestly and undoubtedly seen to be done.

Introduction

A ubiquitous human rights scourge and a public health challenge, sexual and gender-based violence (SGBV) against women and girls⁵ has a devastating impact on gender equality and women's empowerment. The phenomenon is not particular to any one context or country; quite the reverse, it is pervasive in the lives of women and girls across the globe, affecting one in three women worldwide.⁶

Research conducted by the United Nations Population Fund⁷ and non-governmental organization KAFA (Enough Violence Against Women)⁸ points to the widespread incidence of SGBV against women and girls in Lebanon, particularly with respect to domestic violence. While efforts by the Lebanese authorities to combat SGBV – such as the specific enactment of new legislation and the implementation of new policies – are laudable, they have been piecemeal, and major obstacles continue to give rise to access to justice failings, thereby entrenching impunity for SGBV offences.⁹

While the development of a legal framework that robustly preserves women's human rights is conducive to the prevention of, and an effective response to SGBV – and thus vital in Lebanon as in any other country context – in and of itself, as a standalone measure, it cannot deliver justice to victims/survivors of SGBV in a meaningful way. Rather, in order to give effect to women's human rights pursuant to Lebanon's obligations under relevant international human rights law and standards, a gender-equitable legal framework must be accompanied by effective policies and practices in the administration of justice.

Presently, Lebanese criminal justice actors responsible for the investigation, prosecution and adjudication of SGBV offences continue to be guided by inadequate laws and policies, which ultimately fail to sufficiently address the complexities and multiple facets of the SGBV phenomenon. In its report *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies* (July 2019 Report), the ICJ undertook an in-depth analysis of the pertinent legal framework and structural obstacles that continue to impede women's access to justice in Lebanon. On the basis of that analysis, the organization made a number of recommendations for legislative reform which, if implemented, would go some way towards ensuring that Lebanese laws fully criminalize and sanction violations of women's human rights, including by repealing and amending provisions that discriminate against women.

5. See, the Committee on the Elimination of Discrimination against Women (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, where the CEDAW Committee observed: "Gender-based violence affects women throughout their life cycle" (footnotes in the original omitted). Accordingly, references to woman or women throughout this document should be understood to include girl/s unless specified otherwise.

6. See, CEDAW Committee, *General Recommendation No. 35*, para. 6, where the CEDAW Committee has observed: "gender-based violence against women, whether committed by States, intergovernmental organizations or non-State actors, including private persons and armed groups, remains pervasive in all countries, with high levels of impunity. It manifests itself on a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology-mediated settings and in the contemporary globalized world it transcends national boundaries" (footnotes in the original omitted). See generally, World Health Organization (WHO), *Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner violence*, (Geneva: World Health Organization, 2013).

7. United Nations Population Fund, *Lebanon Scorecard on Gender-based Violence*, 16 May 2017.

8. KAFA (Enough Violence Against Women), *Clarifications on "dissecting Lebanese law 293 on domestic violence: are women protected?" IFI Policy Brief*, 8 January 2018.

9. See, International Commission of Jurists (ICJ), *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, (Geneva: International Commission of Jurists, 2019), where the ICJ analysed three main obstacles affecting women's access to justice for SGBV in Lebanon in light of international law and standards: i) Legal obstacles comprising laws that fail to fully criminalise certain violations of women's rights, mainly due to inadequate or absent definitions of the relevant crimes, such as rape and marital rape, sexual assault, and sexual harassment, as well as laws that discriminate against women, including the Criminal Code, the Nationality Law and the Personal Status Laws; ii) Women's access to justice is also impeded by obstacles in the administration of justice, such as the lack of effective gender-sensitive investigations, lack of coherent and effective prosecutions, and lack of adequate competences and resources, as well as discriminatory policies, practices and gender stereotypes on the part of justice sector actors; iii) Women also encounter economic, social and cultural barriers, including gender stereotyping, a perception that SGBV is a social rather than criminal matter and social stigma and family pressure associated with bringing legal claims, which is worsened at times by victims' limited awareness of their own rights.

In addition to an inadequate legal framework, however, the ICJ has concluded that attitudes rooted in patriarchy and harmful gender stereotypes which tend to trivialize, justify or deny SGBV, in addition to false narratives about victims' backgrounds and behaviours, bedevil all phases of the criminal justice process in Lebanon. With respect to this, one key conclusion of the July 2019 Report¹⁰ was that criminal justice actors should be apprised about these discriminatory attitudes, and about the disproportionate effect and harmful consequences they have on women.

The present memorandum aims to palliate the current absence of comprehensive guidance available to Lebanese criminal justice actors tasked with addressing SGBV. Mindful of the complexities surrounding legislative reform in Lebanon, including a fractured political landscape and a consistent failure among decision-makers to galvanize consensus on gender-related issues, the ICJ has crafted specific guidance and recommendations for criminal justice actors whose implementation requires no modification to SGBV-related laws as they stand today.

The main purposes of this memorandum are as follows. First, this document aims to furnish investigators, prosecutors and judges with knowledge and recommendations they can deploy in the context of the investigation, prosecution and adjudication of SGBV offences pursuant to Lebanon's existing legal framework, which are informed by an examination of recurrent practical challenges associated with the administration of justice in cases of SGBV. Second, this memorandum aims to assist victims/survivors of SGBV, by highlighting their rights and entitlements, particularly their right to access to justice and their right to an effective remedy and reparation for the harm inflicted against them.

The guidance and recommendations outlined in this document are consistent with Lebanon's international human rights obligations and draw on international best practice and procedures in this domain. The ICJ hopes that criminal justice actors will consider endorsing and applying the guidance and recommendations presented in this memorandum in their approaches to the investigation, prosecution and adjudication of SGBV offences. The organization further hopes that this memorandum will enhance understanding on the part of the criminal justice actors of the rights of SGBV victims/survivors.

Research methodology

This memorandum is informed by an analysis of 37 judicial decisions relating to SGBV and 24 protection orders issued by Judges for Urgent Matters pursuant to Law No. 293/2014 on the Protection of Women and Other Family Members from Domestic Violence (Law No. 293/2014). Protection orders are not publicly available in Lebanon and, accordingly, the ICJ was restricted to reviewing a small portion of protection orders issued since the law's inception. The protection orders obtained by the organization were anonymized.

Reports published by UN agencies and NGOs such as KAFA (Enough Violence Against Women) have also been taken into account. Where possible, the ICJ conducted interviews with practitioners working within or have contact with the country's criminal justice system, including some with expertise in forensic medicine.

10. See generally, ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019.

1. Applicable legislative framework

1.1. International law and standards

Discrimination against women “includes gender-based violence, that is, ‘violence that is directed against a woman because she is a woman or that affects women disproportionately’ and, as such, is a violation of their human rights.”¹¹ Gender-based violence “takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.”¹²

The view that SGBV, whether perpetrated by the State and its agents or by family members, communities or strangers,¹³ in the public or private sphere¹⁴ “impairs or nullifies the enjoyment by women of human rights and fundamental freedoms...[and]...is discrimination,”¹⁵ has received wide acceptance at the international level and has become consolidated and enshrined in various sources of international law.

Discrimination against women refers to “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹⁶

There is now a remarkable and consistent recognition among legal authorities, including United Nations (UN) human rights treaty monitoring bodies;¹⁷ independent human rights experts;¹⁸ regional human rights systems; UN agencies; and others that SGBV, whether committed by State agents or non-State actors, unequivocally constitutes prohibited discrimination and can violate the absolute legal prohibition against torture or other cruel, inhuman or degrading treatment. This recognition of SGBV as a form of torture and discrimination is both relevant and accurate, legally speaking, irrespective of the situation in which the violence takes place – whether in armed conflict or peacetime, in the home, the street or in places of detention – and regardless of the identity of the perpetrator – whether a family member, a member of the community, a stranger or a State official. There is now a consistent, considered opinion across most of the above-mentioned institutions, bodies, authorities and experts that States must fulfil their obligations under international human rights law to prevent, stop and redress SGBV, including through a variety of legal and practical initiatives. In this context, General Recommendation No. 35 issued by the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) is particularly noteworthy, describing the prohibition of SGBV as a principle of customary international law¹⁹ and is therefore binding on all States whether or not they are party to any particular treaty.

11. CEDAW Committee, *General Recommendation No. 35*, para. 1.

12. CEDAW Committee, *General Recommendation No. 35*, para. 14.

13. CEDAW Committee, *General Recommendation No. 35*, para. 6.

14. CEDAW Committee, *General Recommendation No. 19: Violence against Women*, UN Doc. A/47/38 (1992), para. 9.

15. See, CEDAW Committee, *General Recommendation No. 19*, para. 7, where the CEDAW Committee states, “these rights and freedoms include: (a) The right to life; (b) The right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment; (c) The right to equal protection according to humanitarian norms in time of international or internal armed conflict; (d) The right to liberty and security of person; (e) The right to equal protection under the law; (f) The right to equality in the family; (g) The right to the highest standard attainable of physical and mental health; (h) The right to just and favourable conditions of work.” See also, *Convention on the Elimination of All Forms of Discrimination Against Women*, 1249 UNTS 13, 18 December 1979 (CEDAW), art. 1.

16. CEDAW, art. 1.

17. Such as the CEDAW Committee, the Human Rights Committee (HRC) and the Committee against Torture (CAT Committee), the Committee on Economic, Social and Cultural Rights (ESCR Committee).

18. Such as the Special Rapporteur on violence against women and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

19. CEDAW Committee, *General Recommendation No. 35*, para. 2.

Lebanon is a State party to core human rights treaties²⁰ that impose legal obligations on the State to adopt effective legislative, judicial, administrative, educational and other appropriate measures to respect, protect and fulfil the human rights of all.²¹ In light of this, Lebanon is also bound to ensure access to justice and effective remedies for women and girl victims of SGBV,²² as well as to exercise due diligence to prevent, investigate, criminally sanction and provide reparations for SGBV.

By becoming parties to international human rights treaties, States undertake to respect, protect and fulfill the rights guaranteed therein. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights; the obligation to protect requires States to protect individuals and groups against human rights abuses; and the obligation to fulfill human rights means that States must take positive action to facilitate their exercise and enjoyment.

<p><i>Obligation to respect human rights</i></p>	<p>Requires all State officials and personnel, including government agents, public authorities and those who act under the government’s instructions, direction or control or through delegation of governmental authority, not to interfere with the enjoyment of human rights or commit human rights violations.</p>
<p><i>Obligation to protect human rights</i></p>	<p>Requires States to safeguard human rights and ensure that private individuals do not interfere with or violate the human rights of others. State authorities must take all necessary measures to protect individuals from the impairment or nullification of their human rights by third parties.²³</p>
<p><i>Obligation to fulfill human rights</i></p>	<p>Requires States to take affirmative actions to ensure the realization of human rights. This means that States must ensure the existence of a legal framework that gives effect to human rights obligations by which it is bound, and that it takes positive and effective steps to ensure their appropriate enforcement in practice.</p>

States also have an obligation to ensure access to justice for victims/survivors of SGBV, which entails, *inter alia*, the right to an effective remedy,²⁴ as well as the entitlement to claim any such remedy before an independent and impartial judicial authority;²⁵ and to equality before the law and equal protection of the law without discrimination.²⁶

20. *International Covenant on Civil and Political Rights*, 999 UNTS 171, 16 December 1966 (ICCPR) (Lebanon acceded on 3 November 1972); *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3, 16 December 1966 (ICESCR) (Lebanon acceded on 3 November 1972); *International Convention on the Elimination of All Forms of Racial Discrimination*, 660 UNTS 195, 7 March 1966 (CERD) (Lebanon acceded on 12 November 1971); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1465 UNTS 85, 10 December 1984 (CAT) (Lebanon acceded on 5 October 2000); *Convention on the Rights of the Child*, 1577 UNTS 3, 20 December 1989 (CRC) (Lebanon acceded on 14 May 1991); *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 2171 UNTS 227, 25 May 2000 (Lebanon acceded on 8 November 2004); *International Convention for the Protection of All Persons from Enforced Disappearance*, 2716 UNTS 3, 20 December 2006 (ICPPED) (Lebanon acceded on 6 February 2007); and CEDAW (Lebanon acceded on 16 April 1997). Lebanon has signed but is yet to ratify the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

21. Human Rights Committee, *General Comment No. 31*, paras. 7 & 8.

22. See, among others, ICCPR, arts. 2(3), 3 & 26; CEDAW, arts. 2(b) & (c), 3 & 15(1); CEDAW Committee, *General Recommendation No. 33: Women’s Access to Justice*, UN Doc. CEDAW/C/GC/33 (2015), paras. 1, 2, 15, 16, 17, 19 & 20.

23. HRC, *General Comment No. 31*, para. 8; 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.

24. ICCPR, art. 2.

25. ICCPR, art. 2.

26. ICCPR, arts. 2, 3, 14 and 26; UN Human Rights Council, Report of the Special Rapporteur on the Independence of Judges and Lawyers, UN Doc. A/HRC/17/30 (2011), para. 37.

“The right of access to justice is multidimensional. It encompasses justiciability, availability, accessibility, good-quality and accountability of justice systems, and provision of remedies for victims.”²⁷

Where the State fails to comply with its obligations to respect, protect and fulfil human rights, obstacles and restrictions to the realization of the right of access to justice will surface and affect both men and women. Women’s access to justice, however, will be affected in particular and specific ways as a result of gender disparity, harmful gender stereotypes and women’s unequal socio-economic position in society vis-à-vis their male counterparts. Under international human rights law and standards, Lebanon is therefore required to take specific steps to remove and remedy the various obstacles that continue to impede and undermine women’s ability to access justice effectively.²⁸

1.2. Domestic framework

In the July 2019 Report,²⁹ the ICJ undertook a detailed study of Lebanon’s legal framework, pinpointing a number of substantive shortcomings with respect to SGBV. Since the main purpose of this memorandum is to set out specific guidance and recommendations of practical use to criminal justice actors in handling SGBV cases against the backdrop of Lebanon’s legal framework such as it exists today, the ICJ does not consider that an in-depth review of the legislative flaws pertaining to SGBV in light of international law and standards is necessary. Accordingly, Lebanon’s legislative shortcomings with respect to SGBV are simply recapitulated in brief below for the reader’s ease of reference.

1.2.1. The Criminal Code

Lebanon’s Criminal Code prescribes a number of criminal penalties for various SGBV-related offences (see tables below), but does not sufficiently address, and adequately legislate against, all forms of SGBV. Consequently, in certain instances, women victims/survivors of SGBV are hindered in their pursuit of justice. Archaic and flawed provisions inconsistent with Lebanon’s obligations under human rights law continue to feature in the Criminal Code, such as the criminalization of adultery, “prostitution” and abortion; while blatant omissions of certain forms of SGBV, such as marital rape and sexual harassment, underscore the lack of compliance of the Criminal Code with international law and standards binding on Lebanon.

Pursuant to the Criminal Code, SGBV-related offences are classified as either felonies or misdemeanours. The former carry a range of criminal sanctions, including: death; hard labour for life; life imprisonment;³⁰ a fixed-term hard labour; and a fixed-term extended imprisonment. With respect to misdemeanours, the penalties range from imprisonment with hard labour; ordinary imprisonment; and a fine.³¹ SGBV-related offences featured in the Criminal Code are presented in the tables below, together with their corresponding penalty and any aggravating factors.

27. CEDAW Committee, *General Recommendation No. 33*, para. 1.

28. ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019, pp. 5-10.

29. ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019, pp. 11-20.

30. Criminal Code, art. 37.

31. Criminal Code, art. 39.

"Offences against public morality and decency"³²

<i>Criminal offence</i>	<i>Criminal Code article(s)</i>	<i>Offence classification</i>	<i>Penalty</i>	<i>Aggravation of sentence</i>
Forced sexual intercourse committed against a person other than the spouse by violence or threat	503(1)	Felony	A minimum of five years' [imprisonment with] hard labour ³³	Increase of imprisonment from one third to one half and double the fine [where applicable] (art.257) if: - If the offender is one of the persons referred to in art.506 [a relative, a guardian, an official or religious cleric who takes advantage of their power] (art.511)
Forced sexual intercourse committed against a person below 15 years of age other than the spouse by violence or threat	503(2)		A minimum of seven years' [imprisonment with] hard labour	Increase of imprisonment from one third to one half and double the fine (art.257) if: - The offence is committed by two or more persons who have joined forces to overcome the resistance of the victim or have assaulted him/her in succession; - The offender infects the victim with syphilis or any other disease, or the offence causes harm to the victim resulting in incapacitation for more than 10 days, or if the victim was a virgin and lost her virginity as a result of the offence; - In the event that one of the aforementioned offences results in the death of the victim, and the offender did not intend this outcome, then a minimum penalty of 12 years shall apply (art.512)

32. Legislative Decree No. 53, 14 September 2017, amended articles 504-510; 513-515; and 518-521.

33. Criminal Code, art. 45 stipulates: "persons sentenced to hard labour shall be compelled to perform arduous work consistent with their gender and age, either within the prison or outside."

Forced sexual intercourse committed against a person other than the spouse, unable to resist due to physical or mental retardation or because of deceiving means	504	Felony	A minimum of five years' [imprisonment with] hard labour	Articles 511 and 512 apply as set out above
			If the minor is under 15 years of age: a minimum of seven years' [imprisonment with] hard labour	
Sexual intercourse with a minor	505	Felony	If the minor is under 15 years of age: a minimum of five years' "temporary" imprisonment with hard labour	Articles 511 and 512 apply as set out above
			If the minor is under 12 years of age: a minimum of seven years' imprisonment with hard labour	
			If the minor is between 15 and 18 years of age: from two months to two years' imprisonment	

Sexual intercourse with a minor committed by a relative/guardian; or an official or religious cleric who takes advantage of their power	506	Felony	If the minor is under 15 years of age: a minimum of seven years' imprisonment with hard labour	Article 512 applies as set out above
			If the minor is under 12 years of age: a minimum of nine years' imprisonment with hard labour	
			If the minor is between 15 and 18 years of age: a minimum of five years' imprisonment with hard labour	
Indecent acts committed against a person by violence or threat	507	Felony	A minimum of four years' imprisonment with hard labour	Articles 511 and 512 apply as set out above
			If the minor is under 12 years of age: a minimum of six years' imprisonment with hard labour	
			If the minor is between 15 and 18 years of age: from a minimum of four years' imprisonment with hard labour to a maximum of 15 years [imprisonment with] hard labour	

Exploiting a person's illness or compelling a person to commit an indecent act	508	Felony	10 years' imprisonment	Articles 511 and 512 apply as set out above
			If committed against a minor under 15 years of age: 10 years' [imprisonment with] "temporary" hard labour	
Indecent acts committed against a minor	509	Felony	If the minor is under 15 years of age: from three to 15 years' imprisonment with hard labour	Articles 511 and 512 apply as set out above
			If the minor is under 12 years of age: a minimum of four years' imprisonment with hard labour	
Indecent acts committed by a relative/ guardian; or an official/ religious cleric who takes advantage of their power	510	Felony	If the minor is between 15 and 18 years of age: a maximum of 10 years' imprisonment with hard labour	Article 512 applies as set out above
			If the minor is under 15 years of age: a minimum of five years' imprisonment with hard labour	

"Offences of seduction and debauchery violating the sanctity of places reserved for women"³⁴

<i>Criminal offence</i>	<i>Criminal Code article(s)</i>	<i>Offence classification</i>	<i>Penalty</i>	<i>Aggravation of sentence</i>
Seduction of a virgin with the promise of marriage	518 ³⁵	Misdemeanour	A minimum of six months' imprisonment and a fine between 3,000,000 to 5,000,000 LBP ³⁶ or one of either penalty, unless the act requires a more severe penalty	Not applicable
			If the minor is under 15 years of age: a minimum of seven years' imprisonment with hard labour	
			If the minor is between 15 and 18 years of age: a minimum of five years' imprisonment	
Touching or fondling a male or female minor without their consent	519	Misdemeanour	If the minor is under 15 years of age: a minimum of one year's imprisonment	Not applicable
			If the minor is between 15 and 18 years of age: a maximum of six months' imprisonment	

"Felonies and misdemeanours concerning human life and safety"

<i>Criminal offence</i>	<i>Criminal Code article(s)</i>	<i>Offence classification</i>	<i>Penalty</i>	<i>Aggravation of sentence</i>
Intentional homicide	547	Felony	From 15 to 20 years' imprisonment with hard labour	Increase of hard labour from 20 to 25 years: - If committed against the spouse
Premeditated homicide	549	Felony	Death penalty	Not applicable

34. Legislative Decree No. 53, 14 September 2017 amended articles 504-510; 513-515; and 518-521.

35. The offender escapes criminal liability and criminal sanctions in the event a valid marriage takes place between the offender and the minor, provided the marriage is lawful under the applicable personal status law.

36. 3,900 Lebanese Pounds (LBP) is approximately equivalent to 1 United States Dollar (USD).

"Incitement to indecency and infringement of public morality and ethics"³⁷

<i>Criminal offence</i>	<i>Criminal Code article(s)</i>	<i>Offence classification</i>	<i>Penalty</i>	<i>Aggravation of sentence</i>
Encouraging, facilitating, assisting or engaging in debauchery, corruption or secret prostitution	523	Misdemeanour	From one month to one year's imprisonment and a fine between minimum wage and triple the minimum wage	Increase of imprisonment from one third to one half and double the fine (art.257) if: - If the offender is a family member, irrespective of the victim's age - If the offender is one of the persons referred to in art.506 [a relative, a guardian an official or religious cleric who takes advantage of their power]
Relying on the prostitution of others	527	Misdemeanour	From six months to two years' imprisonment and fine between minimum wage and double the minimum wage	Increase of imprisonment from one third to one half and double the fine (art.257): - If the offender is a family member - If the offender is one of the persons referred to in art.506 [a relative, a guardian an official or religious cleric who takes advantage of their power] Sentence further doubled if the offence is accompanied by threats or acts of violence

37. Law No. 293/2014 on the protection of women and other family members from domestic violence (Law No. 293/2014) amended articles 523 and 527 of the Criminal Code.

"Offences causing intentional harm"³⁸

<i>Criminal offence</i>	<i>Criminal Code article(s)</i>	<i>Offence classification</i>	<i>Penalty</i>	<i>Aggravation of sentence</i>
Intentional assault causing bodily harm resulting in either illness or incapacitation	554 - 556	Misdemeanour	From one month to one year's imprisonment and a fine between minimum wage and triple the minimum wage	Increase of imprisonment from one third to one half and double the fine (art. 257) in certain cases ³⁹ (art. 559)
			Resulting in incapacitation between 11 and 20 days: up to one year's imprisonment and a maximum fine of 100,000 LBP, or one of either penalty	
			Resulting in incapacitation exceeding twenty days: From three months' up to three years' imprisonment and a maximum fine of 100,000 LBP	
	557 - 558	Felony	Resulting in the rupture or removal of an organ; amputation or loss of a limb; grave impairment to one of the senses or a serious deformity or a permanent disability: a maximum of 10 years' imprisonment with hard labour	
Resulting in the miscarriage of a pregnancy, provided the offender was aware of the pregnancy: a maximum of 10 years' imprisonment with hard labour				

38. Law No. 293/2014 amended the Criminal Code. Articles 3(7)(a) & (b) stipulate: "anyone who, with or due to the intent of obtaining their right to marital intercourse" causes harm to the spouse or threatens the spouse, will be subject to the penalties stipulated in articles 554-559 and 573-578 of the Criminal Code, respectively.

39. Criminal Code, arts. 547-549.

Sexual offences

The Criminal Code does not explicitly define sexual assault. This, combined with the inadequate definition of rape and the explicit exclusion of the offence of marital rape from the Criminal Code, falls short of international law and standards which establish an absolute prohibition on all forms of sexual assault. Moreover, the Code, fails to conform with the definition of rape contained in the Rome Statute, which is viewed as the most authoritative in international law to date.⁴⁰

While rape, and some other types of sexual assault, could be prosecuted pursuant to articles 503-510 of the Criminal Code, the law does not recognize SGBV against women as a violation of their physical, sexual or psychological integrity.⁴¹ Rather, the Criminal Code addresses sexual offences as crimes against “public morality and decency,” thereby characterizing these offences as intrusions on the “honour” of the victim/survivor, their family and society. Conceiving and criminalizing sexual offences along these lines diminishes the seriousness of the offence(s) and is irreconcilable with international law, 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.

Virginity

Legal provisions, such as articles 503-512, that treat “virginity” as an aggravating factor – determining the length of rape sentences on the basis of whether or not the victim was a “virgin” at the time the offence was committed – 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, and instead administer sentences that are commensurate with the gravity of the offence of rape.

Sexual harassment

In contravention to international human rights standards, there is no explicit criminal provision that prohibits and penalizes sexual harassment in public spaces or in the workplace. Efforts have been underway to legislate against sexual harassment, including the approval of a draft law by the Lebanese Council of Ministers in 2017, however, as previously pointed out by the ICJ in the July 2019 Report, the provisions featured in the draft legislation fail to meet international standards, which, instead, provide and require a robust definition of sexual harassment,⁴² such as that formulated by the CEDAW Committee.⁴³

40. International Criminal Court (ICC), *Elements of Crimes*, 2011, ISBN No. 92-9227-232-2, art. 8(2)(b)(xxii)-1, which stipulates an act is considered rape if: (1) The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body; and (2) The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

41. CEDAW Committee, *General recommendation No. 35*, paras. 29(a) & (e).

42. ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019, pp. 18-20.

43. CEDAW Committee, *General Recommendation No. 19*, para. 18, which stipulates: “[s]exual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.” Although sexual harassment law has been traditionally associated with labour-related offences, over time States have recognized the harms caused by analogous behaviour in a variety of situations, including in public and private spaces, resulting in legislation applicable in other contexts.

Adultery

Articles 487-489 of the Criminal Code, as amended by article 3 of Law No. 293/2014, criminalize adultery by a man or woman.⁴⁴ In addition to violating a range of human rights,⁴⁵ the criminalization of adultery specifically has been found to amount to sex discrimination.⁴⁶

Sex work⁴⁷

While the Law on Public Health of 1931 permitted the sale of sex in licensed locations, no new licenses have been issued since 1975.⁴⁸ 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. The CEDAW Committee has pointed out that the “criminalization of prostitution,” such as it exists under the current Lebanese framework, acts as a barrier to women’s access to justice.⁴⁹

Human trafficking

The adoption of Law No. 164/2011 “on punishment for the crime of trafficking in persons” (Law No. 164/2011) aimed to strengthen the legal framework and to ensure protection against trafficking in persons in Lebanon. Previously, the Criminal Code did not cover all acts of human trafficking in a manner consistent with the Palermo Protocol,⁵⁰ by which Lebanon is bound. As observed by the ICJ in the July 2019 Report, however, Law No. 164/2011 “criminalizes engagement in sex work by victims of trafficking who engage in prostitution”⁵¹ unless the victim is able to prove that she was compelled into committing acts which are punishable by law, in which case the victim may avail of an amnesty from punishment.⁵² The CEDAW Committee has called on Lebanon to, among others, amend article 523 of the Criminal Code as necessary to ensure that victims of trafficking are not subjected to prosecution by the authorities.⁵³

1.2.2. Law No. 293/2014 on the protection of women and other family members from domestic violence

Law No. 293/2014 is a relatively recent addition to the domestic framework. Adopted on 7 May 2014, it codifies crimes of SGBV committed within a family setting, extending measures of

44. Article 489 provides: (i) adultery cannot be prosecuted unless the spouse files a complaint as a personal plaintiff; (ii) the “accomplice or intervening party” is to be prosecuted along with the adulterer; and (iii) the complaint cannot be accepted if the spouse consented to the adultery, after the passage of three months from the time the spouse had knowledge of the crime or if the male spouse consents to “resume shared life.”
45. Including, depending on the circumstances, some of the following rights: the rights to equality and non-discrimination; the right to liberty and security of person; the right to privacy; the right of all persons, free of coercion, discrimination and violence, to the highest attainable standard of sexual health, including access to sexual and reproductive health care services, to seek, receive and impart information related to sexuality, to respect for bodily integrity, individual autonomy and self-determination, including to choose one’s partner, to decide to be sexually active or not, to consensual sexual relations, to pursue a satisfying, safe and pleasurable sexual life; and the rights to freedom of expression and association.
46. CEDAW Committee, *General Recommendation No. 33*, para. 9; CEDAW Committee, *Concluding Observations: Fiji*, UN Doc. A/57/38 (2002), paras. 64-65; HRC, *Toonen v. Australia*, Communication No. 488/1992, UN Doc. CCPR/C/50/D/488/1992 (1994), para. 8.5; HRC, *General Comment No. 35: Article 9 (Liberty and Security of Person)*, UN Doc. CCPR/C/GC/35 (2014); HRC, *Concluding Observations: Kuwait*, UN Doc. CCPR/C/KWT/CO/2, para. 30.
47. While the CEDAW uses the term “prostitution” (art. 6), another commonly used term by those advocating for prostitution to be considered as legitimate work and to be subject to legislation regarding health and safety at work, including the ICJ, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the UN Secretary General and the WHO, is “sex work.” See, for example, the Joint United Nations Programme on HIV/AIDS (UNAIDS), *Sex work and HIV/AIDS: UNAIDS technical update*, 4 July 2002, p. 3, which advocates for using the term “sex work” because it is less stigmatizing.
48. See, United Nations Development Fund (UNDP), *Lebanon Gender Justice and the Law*, (New York: UNDP, 2018), p. 24, available at: <file:///Users/admin/Downloads/Lebanon%20Country%20Assessment%20-%20English.pdf>.
49. CEDAW Committee, *General Recommendation No. 33*, para. 9.
50. *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.
51. ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019, p. 20. According to Law No. 164/2011: “a victim of trafficking means any natural person who was the subject of trafficking in persons or who is reasonably considered by the competent authorities to be a victim of trafficking in persons, regardless of whether the perpetrator of the crime was identified, arrested, tried or convicted.”
52. Criminal Code, art. 586 (as amended by Law No. 164/2011).
53. CEDAW Committee, *Concluding Observations: Lebanon*, UN Doc. CEDAW/C/LBN/CO/4-5 (2015), para. 30(b).

protection to victims/survivors and related policing and prosecution reforms (see section 2.2.3.). The law, however, is inconsistent with Lebanon's legal obligations under international law.

The law is premised on and applies an overly restrictive definition of domestic violence that fails to include many forms, acts and manifestations of SGBV taking place within family settings. Instead, it 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 as construed in the definition of family, involving one of the offences stipulated in this law, and that results in killing, harming, or physical, psychological, sexual, or economic harm.⁵⁴

Article 3 amends several articles of the Criminal code, including those relating to: (i) beggary of minors or mendicity (article 618); (ii) encouraging facilitating or assisting debauchery or corruption (article 523); (iii) relying on the prostitution of others (article 527); (iv) intentional homicide (article 547); premeditated homicide (Article 549); (v) adultery (articles 487-489); (vi) causing harm to the spouse when obtaining marital rights (articles 554-559); and (vii) threatening the spouse when obtaining marital rights (articles 573-578).

Collectively, articles 2 and 3 fail to expressly incorporate a number of SGBV acts, including rape, sexual assault, threats of sexual assault, sexual harassment, harms of a non-physical nature, such as psychological and economic harms not based on acts defined in article 3,⁵⁵ in addition to acts that constitute the denial of women and girls' reproductive rights. The ICJ has expressed concern that, "acts that draw their source from some of the most deeply entrenched patriarchal traditions, such as forcing girls to marry and preventing women from leaving the house, are also not included."⁵⁶ These fragmentary and inadequate definitions enshrined in Law No. 293/2014 have evinced a divergence in interpretation by the Lebanese courts, with some judges maintaining stringent interpretations and others accepting definitions of domestic violence that extend beyond the express confines of the law.

The current definition of rape is inadequate as it fails to: explicitly define marital rape as rape; expressly criminalize marital rape as a criminal offence; and criminally sanction marital rape as such. Instead, the law introduced a crime that merely prohibits a spouse's use of threats or violence to claim a "marital right to intercourse."⁵⁷ Accordingly, the definition is inconsistent with the absolute prohibition of all forms of sexual assault, including rape, under international law. In fact, the very notion of a "marital right to intercourse," which could lead to sexual abuse in marriage with impunity, is left unscathed.

1.3. Relevant criminal justice actors

This section is concerned with laying the foundations for the memorandum, identifying criminal justice actors tasked with the investigation, prosecution and adjudication of SGBV cases, and briefly delineating their place and the role they play within Lebanon's criminal justice system.

Criminal Courts

In Lebanon, ordinary courts exercise jurisdiction over criminal and civil law matters. Criminal courts, which are relevant for the present purposes, are regulated by the new Code of Criminal Procedure (CCP),⁵⁸ and organized hierarchically in the following order: pretrial courts; trial courts; Criminal Courts; Appellate Courts; and the Court of Cassation. First instance cases involving petty offences and misdemeanours are adjudicated by Single Criminal Judges in trial courts, with no representation from the Office of the Public Prosecution (OPP) during the proceedings.⁵⁹ They become seized of cases by way of, for example, charges brought by the

54. Law No. 293/2014, art. 2. It further 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.

55. ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019, p. 13.

56. ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019, p. 13.

57. Law No. 293/2014, art. 7.

58. New CCP, Law No. 328, 7 August 2001.

59. CCP, art. 150.

OPP, charges brought directly by civil parties or orders issued by Investigating Judges or the Indictment Chamber.⁶⁰

The Criminal Court, another first instance body along with the trial court, comprises a three-judge panel, including a Presiding Judge and two Counsellor Judges. It exercises jurisdiction over specific cases of felonies and connected misdemeanours pursuant to a criminal indictment and a statement of charges submitted by the OPP.⁶¹ While it does not enjoy jurisdiction where an offence is not explicitly referenced in the indictment, it has the authority to amend the legal qualification of the offences described therein.⁶²

First instance decisions rendered by Single Criminal Judges may be appealed to an Appellate Court,⁶³ the individual chambers of which are presided over by a Presiding Judge and two Counsellor Judges. Criminal Court decisions, by contrast, are not subject to appeal, but rather, can be challenged through cassation at the Criminal Chamber of the Court of Cassation. The latter is the highest court in Lebanon's judicial order, and functions as a court of last resort with jurisdiction and powers that are limited to re-examining and reconsidering points of law as opposed to questions of fact.

The Office of Public Prosecution

The primary function of the OPP is to initiate public action in criminal matters.⁶⁴ The CCP makes it incumbent upon the OPP to bring criminal charges against the alleged perpetrator of a criminal offence.⁶⁵ The OPP assumes a leading role in the investigation stage of cases involving perpetrators purportedly caught *in flagrante delicto*.

The OPP at the Court of Appeal is led by a Public Prosecutor (procureur général), responsible for executing the duties of the OPP with the assistance of General Advocates (avocats généraux).⁶⁶ Public Prosecutors are bound by the territorial jurisdiction of the courts to which they are attached. At the Court of Cassation, the OPP is headed by the State's Public Prosecutor (procureur général) who, similarly to the Public Prosecutor at Appellate Courts, is assisted by General Advocates.⁶⁷ The State Public Prosecutor at the Court of Cassation – who is appointed by way of decree issued by the Council of Ministers (Conseil des Ministres du Liban, the executive) on the basis of a proposal by the Minister of Justice – has jurisdiction over the entire country.⁶⁸

Pursuant to Law No. 293/2014, which dictates the procedural framework applicable to cases involving domestic violence in tandem with the CCP, the Public Prosecutor at the Court of Appeal "shall assign one or more General Advocates to a Governorate to receive and follow up on complaints related to incidents of domestic violence."⁶⁹ General Advocates maintain a supervisory role throughout the course of the investigation, directing the work carried out by Judicial Police.

Judicial Police

Judicial Police officers investigate complaints involving offences classified as misdemeanours or felonies. They discharge their duties under the supervision of the State Public Prosecutor at the Court of Cassation, Public Prosecutors and General Advocates.⁷⁰ A number of criminal justice actors perform the functions of Judicial Police, including, among others: Governors and district

60. CCP, arts. 151(a)-(c).

61. CCP, art. 233.

62. CCP, art. 233.

63. See, CCP, arts. 208-211 for the rules governing the right to appeal of judgments and orders issued by the Single Criminal Judge; and arts. 212-213 for a definition of judgments that are open to appeal.

64. CCP, art. 5.

65. CCP, art. 6.

66. CCP, arts. 11 & 12; CCP, art. 24(f) stipulates that General Advocates may perform the duties of the Public Prosecutor at the Court of Appeal.

67. CCP, arts. 11 & 12.

68. CCP, art. 13.

69. Law No. 293/2014, art. 4.

70. CCP, art. 38.

commissioners;⁷¹ the Director-General of Internal Security Forces (ISF, the national police agency of Lebanon), officers of the ISF, the Judicial Police, non-commissioned officers serving in the regional sectors and the heads of ISF police stations;⁷² the Director-General of General Security, officers of General Security and non-commissioned investigators in General Security.⁷³

Internal Security Forces (ISF)

Following the adoption of Law No. 293/2014, the ISF assumed a pivotal role in responding to and investigating domestic violence offences. The law establishes a specialized division within the Directorate General of the ISF to process complaints of domestic violence and discharge the functions of the Judicial Police, such as arriving at a crime scene, securing it, etc.⁷⁴ The specialized division is governed by internal ISF laws and regulations.⁷⁵

Investigating Judge

Investigating Judges carry out pretrial investigations into allegations of felonies and misdemeanours. Each Court of Appeal is composed of an Investigation Department, headed by First Investigating Judges who either investigate the case or instruct their subordinates to do so.⁷⁶ The OPP refers cases to the First Investigating Judge by filing a statement of charges.⁷⁷

Investigating Judges are not allowed to try a case,⁷⁸ but, rather, are empowered to make a recommendation for prosecution. They are bound by a duty of confidentiality until the case is referred to trial, and are liable if such confidentiality is breached.⁷⁹ Any recommendation made by an Investigating Judge in connection with a criminal case (e.g., a recommendation to prosecute) can be appealed before the Indictment Chamber, which has sole authority to issue indictments in cases of felonies.⁸⁰ Civil party actions by aggrieved persons are filed directly with Investigating Judges.⁸¹

The Indictment Chamber

A Civil Chamber at the Court of Appeal performs the functions of an Indictment Chamber, which include, among others, issuing criminal indictments or accusations in the case of felonies.⁸²

Once Investigating Judges have completed their investigation, if they have determined that the alleged offence in question amounts to a felony, they transmit the case file to the OPP for referral to the Indictment Chamber.⁸³ The OPP submits a copy of the case file, together with their report, to the Indictment Chamber so that it can make a decision based on the merits of the case.⁸⁴ If the Indictment Chamber considers that the facts reproached to the defendant disclose evidence of a felony in law and are sufficient to attribute criminal responsibility to the defendant, it will indict the defendant,⁸⁵ issue a warrant for the defendant's arrest and hand over the case to the Criminal Court.⁸⁶

Decisions issued by the Investigating Judge in relation to alleged felonies can be challenged before the Indictment Chamber.⁸⁷

71. CCP, art. 38(1).

72. CCP, art. 38(2).

73. CCP, art. 38(3).

74. Law No. 293/2014, art. 5.

75. Law No. 293/2014, art. 5.

76. CCP, art. 51.

77. CCP, art. 51.

78. CCP, art. 52.

79. CCP, art. 53.

80. CCP, art. 54.

81. CCP, art. 51.

82. CCP, art. 128.

83. CCP, art. 129.

84. CCP, art. 130.

85. CCP, art. 130(c).

86. CCP, art. 130(c).

87. CCP, art. 135.

Civil Parties

Aggrieved parties, that is, persons who were victims of the offence(s) allegedly committed by the accused,⁸⁸ may become formal parties to the case at hand and, in doing so, acquire the status of civil party (*partie civile*).⁸⁹ They may also assume this status before the First Investigating Judge in cases of felonies and misdemeanours, or before Single Criminal Judges in cases of misdemeanours and petty offences.⁹⁰

88. CCP, art. 5 stipulates: “[a]ny person against whom a public prosecution is initiated shall be termed the defendant; a person charged with a misdemeanor shall be termed ‘a person charged with a misdemeanor’; and a person accused of committing a felony shall be termed an accused.”

89. CCP, art. 7.

90. CCP, art. 7.

2. Investigation

Effective SGBV investigations call for a well-coordinated and specialized investigative effort that tailors its procedures, and indeed its personnel, with a view to addressing gender considerations. The CEDAW Committee has recommended that States “[c]onsider establishing specialized gender units within law enforcement, penal and prosecution systems,”⁹¹ which, in turn, would create supportive environments that encourage and enable women to exercise their right to access to justice and effective remedies for violations of their rights.⁹² For example, guaranteeing, where possible, the opportunity for women victims/survivors of SGBV to speak with a female officer in the course of dealing with police or other criminal justice actors is recognized as good practice by States.⁹³ This would entail recruiting women at all levels of seniority,⁹⁴ and in particular increasing the number of women first responders, thus ensuring women are given the opportunity to interact with women criminal justice actors.

Law No.293/2014 and supplementary guidance published by the ISF (see section 2.1.3.) have undoubtedly improved the response of criminal justice actors to situations of domestic violence, establishing specialized police and prosecution units, victim/survivor hotlines and protection mechanisms. While commendable, this framework still presents substantial barriers concerning the access to justice of women victim/survivors of SGBV, including, among others, a spousal exemption for rape. Furthermore, unless acts of SGBV qualify as domestic violence, satisfying the definitional requirements of articles 2 and 3 of Law No. 293/2014, they are characterized as ordinary crimes under the Criminal Code (see section 1.2.2.). For the reasons discussed above, the Criminal Code is inadequate, outdated and fails to comply with international law; it omits marital rape and sexual assault from its scope and, instead, proscribes as offences acts that, under international human rights law obligations binding on Lebanon, should not be criminalized, such as adultery, sex work and abortion.

It follows that, whereas domestic violence victims/survivors have the distinct advantage of – albeit limited – victim-centered interactions with specialized justice sector units and certain safeguards, other victims/survivors of SGBV are not afforded the same duty of care as their complaint and subsequent investigation, if any, will be informed solely by the CCP, which establishes no such specialized procedures for cases of SGBV.

2.1. Procedural framework

The forthcoming section provides an in-depth overview of the procedures the authorities responsible for instigating and conducting criminal investigations – namely, Public Prosecutors, General Advocates, Investigating Judges and Judicial Police officers – adhere to in the context of SGBV investigations, depending on the following classification: SGBV offences where the perpetrators were caught *in flagrante delicto*; other SGBV-related offences for which the perpetrators were not discovered *in flagrante delicto*; and cases where the SGBV-related offences may be characterized as domestic violence under Law No. 293/2014.

2.1.1. Procedural framework governing the investigation of offences where the perpetrators were reportedly discovered *in flagrante delicto*⁹⁵

As soon as the Public Prosecutor or General Advocates are notified of the felony (n.b., this procedure is not applicable to misdemeanours) they should proceed to the scene of the crime

91. CEDAW Committee, *General Recommendation No. 33*, paras. 51(c) & 17(e).

92. CEDAW Committee, *General Recommendation No. 33*, para. 51(d).

93. UN General Assembly (UNGA), *Resolution on strengthening crime prevention and criminal justice responses to violence against women*, UN Doc. A/RES/65/228, 31 March 2011, para. 16(l).

94. UNGA, *Resolution on strengthening crime prevention and criminal justice responses to violence against women*, para. 16(k).

95. CCP, art. 29 defines an offence discovered *in flagrante* as: (a) “an offence witnessed as it occurs; (b) an offence where the perpetrator is apprehended during or immediately after its commission; (c) an offence following which the suspect is chased by hue and cry [i.e., a situation where bystanders are summoned to assist the apprehension of an offender who has been witnessed in the act of committing an offence]; (d) an offence detected immediately after [it was] committed, within a time where traces of its commission are clearly discernable; (e) an offence where a person is caught in possession of objects, weapons or documents indicating that he is the perpetrator, within 24 hours of the occurrence of the offence.”

and inform the relevant Investigating Judge.⁹⁶ At this stage, Public Prosecutors or General Advocates have the power to take a number of measures without having to wait for the Investigating Judge,⁹⁷ including: (i) taking a detailed record of the crime scene with a view to documenting its state as it was when the Public Prosecutors or General Advocates first arrived at it; (ii) compiling information and evidence of the offence;⁹⁸ (iii) impounding weapons used to commit the offence in addition to other relevant items;⁹⁹ and (iv) interviewing persons who witnessed the offence.¹⁰⁰ Public Prosecutors may also resort to any other investigative procedure they deem necessary to collect evidence and identify perpetrator(s) and possible accomplice(s).¹⁰¹ The CCP gives identical powers to Investigating Judges.¹⁰²

Public Prosecutors or General Advocates must relinquish the investigation of an *in flagrante* offence to Investigating Judges upon their arrival, providing them with any information, records or impounded items that Public Prosecutors or General Advocates have collected.¹⁰³ If, however, the time limit applicable to *in flagrante* offences¹⁰⁴ expires before the arrival of Investigating Judges, then Public Prosecutors or General Advocates are authorized to complete their investigation and forward the case file and statement of charges to the Investigating Judge.¹⁰⁵ Where the Investigating Judge completes the investigation, then they transmit the case file to the Public Prosecutor, who subsequently brings formal charges against suspects.¹⁰⁶

In the event a Public Prosecutor or General Advocate is unable to attend the crime scene of an *in flagrante* offence, the Judicial Police are permitted to proceed with the investigation,¹⁰⁷ provided that the Public Prosecutor has been apprised about the situation. The Judicial Police must comply with the Public Prosecutor's instructions,¹⁰⁸ which can include directing the Judicial Police to make inquiries, collect and preserve evidence, and interview witnesses, albeit not under oath.¹⁰⁹

The CCP further empowers the Public Prosecutor and Investigating Judge to order the apprehension and interrogation of any person who is present at the scene of the felony and against whom there are "strong suspicions" that they were involved in the commission of the offence,¹¹⁰ a power that the CCP also bestows on Judicial Police officers.¹¹¹ Judicial Police officers may interrogate the suspect, provided the suspect voluntarily agrees to be interviewed.¹¹² Suspects may exercise their right to remain silent, in which case they cannot be compelled to speak.¹¹³

Upon arrest, the suspect can be held in custody for two days, a period of time which may be renewed for a further two days by the Public Prosecutor or Investigating Judge if they consider that additional time is required for the purposes of the investigation.¹¹⁴ Likewise, Judicial Police officers are empowered to extend a suspect's detention for two days if the *in flagrante* offence being investigated is a felony, though such an extension requires written approval from the Public Prosecutor at the Court of Appeal.¹¹⁵ Where the suspect has absconded, or was not

96. CCP, art. 31.

97. CCP, art. 31.

98. CCP, art. 31(a).

99. CCP, art. 31(b).

100. CCP, art. 31(c).

101. CCP, art. 35.

102. CCP, art. 56.

103. CCP, art. 36.

104. CCP, art. 32 stipulates: "procedures relating to a felony discovered *in flagrante* shall end 8 days after their commencement."

105. CCP, art. 36.

106. CCP, art. 57.

107. CCP, art. 40.

108. CCP, art. 41.

109. CCP, art. 41.

110. CCP, arts. 32 (as amended by Law No. 359/2001) & 56.

111. CCP, arts. 41 & 44.

112. CCP, art. 41.

113. CCP, art. 41.

114. CCP, art. 32 (as amended by Law No. 359/2001) & 56.

115. CCP, art. 42.

present at the beginning of the preliminary investigation, the Public Prosecutor can issue a summons to have them brought in immediately.¹¹⁶

The Public Prosecutor and Investigating Judge may conduct a search of the suspect's residence, or direct the Judicial Police to do so, if they believe it will lead to obtaining evidence linked to the offence.¹¹⁷ Such evidence may subsequently be impounded.¹¹⁸

If neither a Public Prosecutor nor an Investigating Judge is present, Single Criminal Judges in that jurisdiction shall make their way to the crime scene and undertake the investigation of the *in flagrante* offence, adhering to the same rules by which Public Prosecutors are bound. Single Criminal Judges shall cease their inquiries once either a Public Prosecutor or an Investigating Judge arrives on the crime scene, unless Single Criminal Judges have already completed their investigation, in which case they must forward the case file to the OPP.¹¹⁹

2.1.2. Procedural framework governing the investigation of offences falling outside the category of *in flagrante* offences

The Judicial Police investigate offences that fall outside the category of *in flagrante* crimes. They are supposed to follow the relevant procedures outlined in the CCP, such as gathering information about the offence, making inquiries with a view to identifying the perpetrator and collecting evidence against them.¹²⁰ In carrying out these functions, they are permitted to search the crime scene, impound any incriminating evidence and take witness statements.¹²¹ Judicial Police officers must "inform the [OPP] of the procedures they undertake and shall abide by its instructions" and seek its approval before conducting a search of a home or a person.¹²²

Public Prosecutors may elect to conduct the preliminary investigation of offences that fall outside the category of *in flagrante* crimes themselves, in which case the suspect's legal counsel has the right to be present with their client during interrogation.¹²³ Alternatively, Public Prosecutors shall "scrutinize the preliminary investigations carried out by the Judicial Police officer."¹²⁴ Where Public Prosecutors conclude that the offence is a felony or misdemeanour and necessitates further investigation, they shall bring relevant charges before the Investigating Judge.¹²⁵

Public Prosecutors may opt not to proceed with the preliminary investigation if: (i) they consider the act does not constitute an offence; (ii) the evidence that an offence has been committed is not sufficient to proceed with the preliminary investigation; and (iii) the period of time within which a public prosecution may commence has lapsed, namely the expiry of a ten-year prescription period in cases of felonies and a three-year period in cases of misdemeanours.¹²⁶ Several circumstances may lead to a prosecution being terminated, including: the death of the defendant; a general amnesty; the expiry of a prescription period; and/or a civil action being dropped.¹²⁷

2.1.3. Cases of domestic violence

In cases of domestic violence, the applicable procedural framework is more developed for four main reasons. First, the procedures delineated in Law No 293/2014 pertaining to the investigation and prosecution of domestic violence offences are complemented by an ancillary General Memorandum governing "the rules of communication and treatment by ISF officers in relation to complaints of domestic violence," which provides specific guidelines by which ISF officers are bound when they are contacted by, or attend to, victims/survivors of domestic

116. CCP, arts. 32 & 56.

117. CCP, art. 33.

118. CCP, art. 33.

119. CCP, art. 37.

120. CCP, art. 47 (as amended by Law No. 359/2001).

121. CCP, art. 47 (as amended by Law No. 359/2001).

122. CCP, art. 47 (as amended by Law No. 359/2001).

123. CCP, arts. 25(a) & 49.

124. CCP, art. 49.

125. CCP, art. 49.

126. CCP, arts. 50 & 10(c).

127. CCP, arts. 10(a), (b), (c) & (d).

violence. Second, the law establishes specialized units within the ISF mandated to investigate domestic violence.¹²⁸ Third, investigations are conducted in the presence of “social workers knowledgeable about family affairs and conflict resolution” appointed by the Ministry of Social Affairs. Fourth, criminal justice actors are empowered to put in place protective measures for domestic violence victims/survivors, such as protection orders (see section 2.2.3.).

Prior to the issuance of a protection order, criminal justice actors may enforce other protective measures. General Advocates may ask the Judicial Police to obtain a promise from the offender not to further aggress the victim/survivor and, where applicable, their children, other members of the victim/survivor’s family and others providing support to the victim/survivor, such as a social worker.¹²⁹ Where these persons are in danger, the Judicial Police may bar the offender from entering the family home for a maximum of four days,¹³⁰ arrest the offender,¹³¹ or move the victim/survivor and her family to a secure location if they so wish, at the offender’s expense.¹³²

Taken together, Law No. 293/2014 and the ISF General Memorandum mentioned above establish two avenues through which victims/survivors, and indeed witnesses and other third parties can report domestic violence.¹³³ Victims/survivors can either call the ISF operated 1744 hotline, available on a 24/7 basis, or attend a police station directly. In the event a victim/survivor rings the hotline, the ISF officer who responds to that call must, respectively: (i) introduce the Service Department where he/she is working and give his/her family name; (ii) listen to the victim/survivor as they explain the reason for their calling the hotline, refraining from engaging in “prejudicial behaviour;” and (iii) request the name, address and phone number of the victim/survivor in order to contact them if the situation warrants the attendance of a patrol unit.¹³⁴

In cases where the violence reported appears to disclose evidence of *in flagrante delicto* offences, the ISF officer must direct the victim/survivor to the nearest police station in the area in order to press charges if she so chooses or send a police patrol to the place where the abuse has occurred and where the victim is present. The ISF can facilitate the transport of the victim/survivor to the police station.¹³⁵ If however, the violence reported does not appear to reveal an *in flagrante delicto* offence, the ISF officer is required to direct the victim/survivor to the Public Prosecutor at the Court of Appeal in order to file a formal complaint.¹³⁶

ISF officers are required to attend the crime scene in cases of *in flagrante* crimes or if they are notified that a protection order has been violated.¹³⁷ In the course of their investigations, supervised by a General Advocate, ISF officers may interview the victim/survivor, the suspect and any witnesses, including minors, provided a “social worker” is present.¹³⁸

2.2. Challenges in practice

A combined analysis of the procedural framework described above and of 37 judicial decisions and 24 protection orders pertaining to cases arising from SGBV incidents has highlighted serious concerns about the shortcomings and failings besetting the methods and procedures currently employed by Lebanese criminal justice officials during the investigative stage of SGBV-related cases. This, in turn, raises doubts as to whether such methods and procedures are conducive to the distinctive and specific needs of victims/survivors of SGBV crimes. The July 2019 Report concluded that SGBV investigations in Lebanon are often flawed, failing to adopt a gender-sensitive approach. Ensuring accountability for SGBV crimes and eliminating impunity requires

128. Law No. 293/2014, art. 5.

129. Law No. 293/2014, art. 11(a).

130. Law No. 293/2014, art. 11(b)(i).

131. Law No. 293/2014, art. 11(b)(ii).

132. Law No. 293/2014, art. 11(b)(iii).

133. Directorate General of Internal Security Forces (Directorate General of ISF), General Memorandum on the Rules of communication and treatment by ISF officers in relation to complaints of domestic violence (General Memorandum), Doc. 316/204-4, 30 July 2018, Sections I & II.

134. Directorate General of ISF, General Memorandum, Section I, paras. 1-3.

135. Directorate General of ISF, General Memorandum, Section I, para. 4(a).

136. Directorate General of ISF, General Memorandum, Section I, para. 4(b).

137. Law No. 293/2014, art.7.

138. Law No. 293/2014, arts. 5 & 9.

investigations that are thorough, gender-sensitive and free from harmful gender stereotypes that discriminate against women.

The forthcoming chapter will build on these findings and delve into further analysis. The primary objective is to apprise criminal justice actors of the deficiencies that tend to arise in practice in the context of the investigation of SGBV-related offences, and offer specific guidance and recommendations with a view to enhancing the effectiveness of procedures in a manner that is consistent with international standards and recommended good practice.

2.2.1. A victim-centred approach: Part I

For SGBV victims/survivors, the pursuit of justice can prove a traumatic endeavour, potentially exposing them to further human rights violations and abuses that will ultimately compound the pain and suffering they have already experienced. This is commonly referred to as “secondary victimization.” According to the UN General Assembly (UNGA), secondary victimization occurs not as a direct result of the criminal act, but through the inadequate response of institutions and individuals to the victim/survivor.¹³⁹ For example, interviewing victims/survivors several times or obliging them to relay and recount their statement repeatedly during the same investigation, can greatly contribute to their secondary victimization and should be avoided.

Ineffective criminal justice responses can bring about the revictimization of victims/survivors, which, as a result, may induce them into abandoning the criminal process altogether.¹⁴⁰ Successfully prosecuting SGBV is therefore especially contingent upon the way in which victims/survivors are received by first responders. For this reason, integrating a victim-centered approach that minimizes the chances of secondary victimization at the stage of investigation, which is victims’/survivors’ entry point to the criminal justice process, is vital. States are strongly encouraged to design and develop comprehensive systems that ensure supportive and sensitive responses throughout the investigation of SGBV incidents which could, in turn, “increase the likelihood of successful apprehension, prosecution and conviction of the offender, contribute to the well-being and safety of the victim and prevent secondary victimization.”¹⁴¹

Presently in Lebanon the only document that provides instructions on how to interact with, and respond to, victims/survivors of SGBV-related crimes is the ISF General Memorandum (see below). While the guidance contained therein certainly provides for measures that would contribute to alleviating and assuaging the inevitable pressures that victims/survivors will face during the investigation, it could be further refined to include provisions that limit the number of times victims/survivors are interviewed by ISF officers.¹⁴² Moreover, as already noted, such guidance should not be used solely in the context of addressing domestic violence, but should apply more broadly in all cases of SGBV.

In any event, guidelines per se are insufficient and must be combined with adequate and continuous training for those responding to SGBV complaints, who, in Lebanon, comprise all Judicial Police officers, Public Prosecutors, General Advocates and Investigating Judges.

ISF General Memorandum: The rules of communication and treatment by ISF officers in relation to complaints of domestic violence

Where a victim/survivor attends the police station to press charges, the officer who receives them is required to act as follows:

1. Receive the victim in a separate interrogation room to ensure their privacy;

139. UNGA, *Resolution on strengthening crime prevention and criminal justice responses to violence against women*, 2011, para. 15(c).

140. United Nations Office on Drugs and Crime (UNODC), *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, (Vienna: United Nations Office on Drugs and Crime, 2014) p.1.

141. UNGA, *Resolution on strengthening crime prevention and criminal justice responses to violence against women*, 2011, para. 16(b).

142. African Commission on Human and Peoples’ Rights (ACoMHPR), *Guidelines on combatting sexual violence and its consequences in Africa*, 5 November 2017, principle 40.4.

2. Receive the victim with respect (as per the rules of uniform and appearance);
3. Guide the victim either to the nearest police station or to the OPP;
4. Limit the number of officers who interview the victim;
5. Enable the victim to express their opinion fully without intervention or interruption;
6. Provide the victim with adequate time to relay her story;
7. Limit the questions asked to the subject of the complaint;
8. Refrain from giving advice to the victim concerning any personal issues, such as their marital relationship, and from blaming the victim for the violence to which they were subjected;
9. Keep the investigation confidential, ensuring that no officer, bar those responsible for conducting the investigation, intervenes.¹⁴³

2.2.2 Biased misperceptions and the victim / offender relationship

Legal structures, as well as criminal laws and procedures and the justice systems through which they are administered, must be free of harmful gender stereotypes and gender discrimination. It is crucial, therefore, that each link in the criminal justice chain duly embraces and upholds the principle of gender equality and non-discrimination.¹⁴⁴ Many criminal justice systems, including Lebanon's, however, remain suffused with notions of patriarchy and harmful biases against women that tend to "justify gender-based violence as a form of protection or control of women."¹⁴⁵ As asserted by the CEDAW Committee, "the effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms."¹⁴⁶ In further elaborations the CEDAW Committee has noted that, at the judicial level:

"[t]he application of preconceived and stereotyped notions of what constitutes gender-based violence against women, what women's responses to such violence should be and the standard of proof required to substantiate its occurrence can affect women's right to the enjoyment of equality before the law, fair trial and the right to an effective remedy established in articles 2 and 15 of the Convention."¹⁴⁷

The HRC has recognized that, "inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes."¹⁴⁸ International human rights law and standards, however, also firmly emphasize that traditions, as well as cultural and/or religious practices should never be invoked to excuse, justify or negate criminal responsibility for crimes of SGBV.¹⁴⁹

Harmful practices

There are a number of practices that discriminate against women and girls, violate their human rights, are harmful to their health and well-being, and constitute SGBV, such as crimes committed in the name of so-called honour, child and early marriage and forced marriage, to name but a few.¹⁵⁰ Harmful practices by definition constitute a denial of

143. Directorate General of ISF, General Memorandum, Section III, paras. 1-9.

144. ICJ, *Women's Access to Justice for Gender-based Violence – Practitioners' Guide No. 12*, (Geneva: International Commission of Jurists, 2016), p. 186.

145. CEDAW Committee, *General Recommendation No. 19*, para. 11.

146. CEDAW Committee, *General Recommendation No. 19*, para. 11.

147. CEDAW Committee, *General Recommendation No. 35*, para. 26(c).

148. HRC, *General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000), para. 5.

149. UNGA, *Declaration on the Elimination of Violence against Women*, UN Doc. A/RES/48/104 (1993), art. 4; CEDAW Committee, *General Recommendation No. 19*, para. 11; Council of Europe, *Convention on combating violence against women and domestic violence (Istanbul Convention)*, 11 May 2011, ETS 210, art. 42.

150. CEDAW Committee and Committee on the Rights of the Child (CRC Committee), *Joint General Recommendation No. 31 of the CEDAW Committee on the elimination of discrimination against women / General Comment No. 18 of the CRC Committee on harmful practices*, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18 (2014), paras. 17-30.

dignity and integrity and are imposed on women and girls “regardless of whether the victim provides, or is able to provide, full, free and informed consent.”¹⁵¹ Harmful practices impair or nullify the enjoyment and exercise by women and girls of human rights guaranteed under international human rights law, including the ICCPR, such as the right to liberty and security of person (art. 9); freedom from torture or other cruel, inhuman or degrading treatment or punishment (Article 7); the right to equality between men and women (art.3); freedom from slavery (art.8); freedom of movement (art.12); right to freedom of expression (art.19); the right to privacy (art.17); and the right to equality before the law and equal protection of the law without discrimination (art.26).

In this context, a case in point is that of “honour” crimes, namely, crimes committed with the purported intent to “restore” and/or “preserve” the family’s “honour” – that is, its reputation in the eyes of relatives, the wider community and even society – in response to the “deviant,” often sexual behaviour of a woman who is thought to have brought “shame” on her family as a result. Biased misperceptions and harmful gender stereotypes about the relationship between victims/survivors and perpetrators are deeply embedded in the very notion of “honour” crimes. While article 562 of Lebanon’s Criminal Code – which provided 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 – was repealed in 2011, de facto, judges, still treat “honour”¹⁵² as a mitigating factor applicable at sentencing pursuant to article 252 of the Criminal Code.¹⁵³ The latter allows for reduced punishment if a crime occurred as a result of “extreme rage” caused by “dangerous and wrongful action committed by the victim.”

As a result of the perpetuation in practice of harmful gender stereotypes and biased assumptions about the relationship between victims/survivors and perpetrators to which judges continue to subscribe, women are deprived of their right of access to justice and effective remedies when they are victims of SGBV.

In the case of Manal Assi (see below), for example, the Court of Cassation had to determine whether the culprit’s sentence for the gruesome murder of his wife, which he alleged he had been “provoked” to commit by the discovery of her extra-marital affair, could be reduced due to the “mitigating” circumstances characterizing the perpetration of the crime, as the Beirut Criminal Court had found, sentencing him, as a result, to a mere term of five years’ imprisonment.

Manal Assi Case

In 2014, Manal Assi, a 33-year-old mother of two, 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, now unconscious and drowning in her own blood, locked in the house, and intentionally obstructed her mother and children, who were present, from seeking assistance. Upon his return, some two hours later, he allowed the victim to be transported to the hospital, where she was pronounced dead.

At trial, the defendant claimed that he had committed the crime in a “fit of fury” or extreme rage, provoked by the victim’s behaviour, namely her alleged engagement in an extra-marital affair. In 2016, the Beirut Criminal Court convicted him of intentional homicide pursuant to article 549 of the Criminal Code, which carries the death penalty. In view of the victim’s supposed infidelity, among other mitigating circumstances, however, the Court reduced his sentence from death to five years’ imprisonment, giving little regard to the fact

151. CEDAW Committee and CRC Committee, *Joint General Recommendation No. 31*, para. 16(d).

152. Under article 193 of the Criminal Code, the motive is deemed honourable if it is of a chivalrous, magnanimous and unselfish nature and is free of any personal interest and financial gain. Article 193 states that, if a court deems the motive to have been honourable, the following sentence can be applied: (i) life imprisonment instead of the death penalty; (ii) life imprisonment of 15 years’ imprisonment with hard labour; (iii) limited imprisonment instead of limited imprisonment with hard labour; and (iv) a simple jail term instead of a jail term with hard labour. The judge also has the right to make the sentence confidential.

153. ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019, pp. 22 & 42.

that his actions had spanned several hours, and to his antecedents of violence against the victim prior to her death as per testimonies in the case file.

The prosecution appealed the sentence to the Court of Cassation, which subsequently increased the penalty to 18 years' imprisonment with hard labour, citing the repeal of article 562, coupled with the inapplicability of article 252 as a defence in all cases of murder in its decision. While the Court found that the defendant could justify his violent response to his wife's alleged act of adultery, it held that he could not link his subsequent actions, namely, his failure to seek help for her and the fact that he had prevented others from coming to her assistance, to his original rage.

While the Court of Cassation replaced the initial overly lenient sentence with a term of 18 years' imprisonment with hard labour, the ICJ is concerned that in the course of its deliberations, the Court set a precedent for cases where offenders are purportedly provoked in a "fit of fury," which may lead other Courts to hold that such "provocation" mitigate the seriousness of the offences committed. Moreover, the Court 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" as relevant circumstances to take into account in resentencing him. The mere consideration of these stereotyped factors amounts to discrimination and, in practice, endorses the possibility for notions of "honour" to play a critical misplaced role in the adjudication of SGBV crimes. This, in turn, gives rise to the misapplication of the concept of mitigation in the context of sentencing in SGBV cases.

2.2.3. Protection measures

States Parties should "adopt and implement effective measures to protect and assist women complainants and witnesses of gender-based violence before, during and after legal proceedings...this should include immediate risk assessment and protection, comprising a wide range of effective measures and, where appropriate, the issuance and monitoring of eviction, restraining or emergency barring orders against alleged perpetrators, including adequate sanctions for non-compliance."¹⁵⁴

SGBV against women constitutes discrimination within the meaning of article 2 of the CEDAW and, as such, engages all of the obligations encompassed therein. Article 2 enjoins an obligation on States "to pursue by all appropriate means and without delay a policy of eliminating discrimination against women, including SGBV against women."¹⁵⁵ For States, this means that the starting point in tackling SGBV should be its prevention. Therefore, under international law, Lebanon is obligated not only to exercise due diligence to investigate, prosecute, criminally sanction and ensure access to remedies for acts of SGBV, but also to adopt measures to prevent their occurrence in the first place.¹⁵⁶ The CEDAW Committee has listed a range of SGBV preventative measures that States should adopt,¹⁵⁷ including, among others, effective legislation and implementation measures to address the root causes of SGBV, such as patriarchal attitudes and gender stereotypes, inequality in the family and the neglect or denial of women's human rights.¹⁵⁸ SGBV prevention should be pursued also through the integration of gender equality content into curricula at all levels of public and private education programmes;¹⁵⁹ awareness-raising programmes;¹⁶⁰ and mandatory capacity-building, education and training for the judiciary, lawyers, police officers and legislators.¹⁶¹

154. CEDAW Committee, *General Recommendation No. 35*, para. 40(b).

155. CEDAW Committee, *General Recommendation No. 35*, para. 21.

156. CEDAW Committee, *General Recommendation No. 35*, paras. 21-26.

157. CEDAW Committee, *General Recommendation No. 35*, paras. 34-39.

158. CEDAW Committee, *General Recommendation No. 35*, para. 34.

159. CEDAW Committee, *General Recommendation No. 35*, para. 35(a).

160. CEDAW Committee, *General Recommendation No. 35*, para. 35(b).

161. CEDAW Committee, *General Recommendation No. 35*, para. 38.

In order to protect SGBV victims/survivors, and those who are at risk of SGBV, international standards prescribe that States must adopt legislative and regulatory measures that enable the relevant authorities to hand down protection orders for victims/survivors of SGBV in situations of immediate danger, seeking to ensure the safety of the victim/survivor and imposing various restraints on the person subjected to the order.¹⁶² Such orders should be easily obtainable, without undue delay, financial or administrative burdens,¹⁶³ and “regardless of whether a complaint is lodged, legal prosecution takes place, or the perpetrator of the violence is sentenced.”¹⁶⁴ Criminal justice actors should receive adequate training to ensure that they identify and respond appropriately to the specific needs of women victims/survivors of SGBV, including by using and enforcing protection orders.¹⁶⁵

In this context, Article 12 is one of the most critical provisions of Law No. 293/2014, establishing a new protection mechanism for victims/survivors of domestic violence in Lebanon. Under the law, domestic violence victims/survivors, their children¹⁶⁶ and other “descendants,” persons living with the victim/survivor, as well as “social workers, witnesses and any other person providing assistance to the victim,”¹⁶⁷ who “are exposed to danger,”¹⁶⁸ can avail themselves of a protection order “in order to prevent continued or repeated violence.”¹⁶⁹

As explained above (see section 2.1.3.), the OPP, and specifically General Advocates in charge of domestic violence cases, can intervene by putting in place temporary protective measures to buy victims/survivors, and those at risk, time to request longer-term protection orders from the relevant judicial authorities.¹⁷⁰

Applications for protection orders may be submitted to: (i) the Investigating Judge investigating the case; (ii) the Criminal Court hearing the case; or (iii) Judges for Urgent Matters as an urgent request. Each of them must issue a decision on the application within a period not exceeding 48 hours.¹⁷¹ Victims/survivors can make an application for a protection order without the assistance of legal counsel and are exempt from paying any costs.¹⁷²

Applications for protection orders need not be made in parallel with or in the context of criminal proceedings, but rather, may be made independently of other legal proceedings. Accordingly, irrespective of whether or not they have filed a criminal complaint against the offender, domestic violence victims/survivors can, at all times, submit a request for a protection order to Judges for Urgent Matters. Where the victim/survivor has lodged a criminal complaint with the ISF or OPP, the Investigating Judge investigating the case, or the Criminal Court hearing the case, are empowered to issue protection orders.

Protection orders may impose a number of measures, including but not limited to: (i) “barring [the respondent from] confrontation or the instigation of a confrontation with the victim and persons who fall within the ambit of article 12;”¹⁷³ (ii) preventing the respondent from hindering the victim/survivor’s continued occupancy of the family home;¹⁷⁴ (iii) removing the respondent from the family home for a temporary period of time;¹⁷⁵ (iv) relocating the victim and those

162. UNGA, *Resolution on strengthening crime prevention and criminal justice responses to violence against women*, 2011, para. 16(h); Istanbul Convention, arts. 50(1) & 53(1); AComHPR, *Guidelines on combatting sexual violence and its consequences in Africa*, 2017, principle 27(1).

163. CEDAW Committee, *General Recommendation No. 33*, para. 51(j); CEDAW Committee, *General Recommendation No. 35*, para. 31(a)(ii); Istanbul Convention, arts. 50(1) & 53(2).

164. AComHPR, *Guidelines on combatting sexual violence and its consequences in Africa*, 2017, principle 27(2); CEDAW Committee, *General Recommendation No. 35*, para. 31(b).

165. UNGA, *Resolution on strengthening crime prevention and criminal justice responses to violence against women*, 2011, para. 20(c).

166. Law No. 293/2014, art. 12 stipulates that children legally included in the protection order shall mean those who are at the age of legal custody in accordance with personal status legal provisions and all laws in force.

167. Law No. 293/2014, art. 12.

168. Law No. 293/2014, art. 12.

169. Law No. 293/2014, art. 12.

170. Law No. 293/2014, art. 11.

171. Law No. 293/2014, art. 13.

172. Law No. 293/2014, art. 16.

173. Law No. 293/2014, art. 14(1).

174. Law No. 293/2014, art. 14 (2).

175. Law No. 293/2014, art. 14 (3).

residing with her “to a secure and suitable temporary residence” when it appears “that they face actual danger in connection with their continued occupancy of the family home;”¹⁷⁶ (v) compelling the respondent to provide a housing allowance in the event the victim is relocated away from the family home;¹⁷⁷ and (vi) compelling the respondent to provide money for “food, clothing and education” for the spouse and minor children within their capacity.¹⁷⁸

The protection afforded by virtue of Law No. 293/2014 is a positive step in addressing SGBV and is undoubtedly of tangible benefit to victims/survivors at risk. However, there are flaws within this newfound system of protection. The ICJ has identified the following seven concerns with respect to the protection order system.

Limited scope of application

The protection order mechanism is limited in scope and, as a result, only victims/survivors of domestic violence, who fall within the meaning of “family” in article 2 of Law No. 293/2014, may have recourse to protection orders. Given the limited definition upon which the mechanism rests, some SGBV victims/survivors who face an ongoing risk of violence may be precluded from qualifying for protection under this system. Limiting such protection to particular categories of victims/survivors is discriminatory and constitutes an impediment to the right of access to justice and effective remedies for victims/survivors of SGBV and those at risk of SGBV. Under international law, 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/survivors of SGBV, as well as those against whom SGBV acts have been inflicted, without distinction. Therefore, the accessibility of protection orders should not be confined exclusively to instances of domestic violence, but should be made available to all victims/survivors – and those who are at risk – of SGBV,¹⁷⁹ irrespective of their relationship to the perpetrator.

Despite Law No. 293/2014’s limited scope of application, the ICJ has seen evidence that Judges for Urgent Matters have issued protection orders to domestic violence victims/survivors who, while not strictly falling within the restricted article 2 definition of “family,” were nonetheless found to be entitled to protection. It must be noted however, that on the basis of the limited number of protection orders to which the ICJ had access, it is not possible to ascertain how frequently judicial authorities apply an expansive understanding of the definition of “family” to the benefit of victims/survivors.

Judge for Urgent Matters in Jdeidet Al-Matn
Decision Number: 268/20
Date: 18 June 2016

The applicant alleged that the respondent, her husband, beat her and their two children. She also claimed that the respondent sexually harassed the housekeeper and threatened retaliation if she informed the applicant. Accordingly, the applicant petitioned the Court for protection for her, her two children and the housekeeper, which the Court subsequently granted to all of them.

Limited scope of definition

Even where acts of SGBV are perpetrated by a family member, the definition of domestic violence adopted by Law No. 293/2014 applies only to acts that disclose the commission of offences under article 3, which, as noted earlier (see section 1.2.2.), is overly restrictive, since it omits crimes that constitute SGBV, such as marital rape, other forms of sexual assault and sexual harassment. Accordingly, victims/survivors of marital rape and other acts of SGBV overlooked by the law cannot make an application for a protection order, thereby flouting Lebanon’s obligation under international human rights law to protect women against all forms of harm and discrimination.¹⁸⁰

176. Law No. 293/2014, art. 14 (4).

177. Law No. 293/2014, art. 14 (4).

178. Law No. 293/2014, art. 14 (5).

179. Istanbul Convention, art. 53; ICJ, *Women’s Access to Justice for Gender-based Violence – Practitioners’ Guide No. 12*, 2016, p. 175.

180. CEDAW Committee, *General Recommendation No. 33*, paras. 1-3.

Courts determining protection order applications should not focus exclusively on the issue of direct and immediate threats to the life, health and physical integrity of the victim/survivor to the exclusion of other forms of violence, such as emotional and psychological suffering,¹⁸¹ as broader interpretations of domestic violence would enable extending protection to those victims/survivors who suffer non-physical forms of harm. The decision below is an illustration of this more enlightened and comprehensive approach, demonstrating that Judges for Urgent Matters have, on occasion, premised their decisions on expansive interpretations of SGBV, referring explicitly to “physical, psychological and economic violence,” thus adopting an approach that is much more consistent with international law than the letter of domestic law.

Judge for Urgent Matters in Jdeidet Al-Matn
Date: 21 May 2015

The applicant submitted a request to the Court for protection against the respondent, her husband, with whom she has a nine-month-old child, on the basis that he subjected her to “abuse, intimidation and beating,” and prevented her from continuing her postgraduate studies even though they had agreed that she would pursue further education once married. The applicant claimed that she was expelled from the family home several times for failure to obey the respondent’s orders. On one occasion, the applicant alleged that the respondent went so far as to threaten her with an automatic weapon that he possessed at the family home. She alleged that, after the birth of their daughter, the situation worsened with the respondent regularly threatening to kick the applicant out of the family home and to prevent her from seeing their daughter.

Following an altercation, the respondent made good on his threats, beat his wife and left the family home with their child to an unknown destination. The applicant had no knowledge of the whereabouts or fate of her daughter. Furthermore, she was not able to enter the family home to retrieve her personal belongings, and the respondent had failed to provide her with an allowance even though he derived an income from his job as a builder.

The Court granted the application, finding that the applicant’s testimony revealed that she was the subject of ongoing violence and abuse at the hands of the respondent who prevented her from seeing her child and from exercising her natural right to further her education – all of which “amount to physical, psychological and economic violence and pose a danger to the child who should not be barred from the love and care of her mother at such a young age.”

In its decision, the Court referred to fundamental human rights principles, such as dignity of the person and non-discrimination, and noted the State’s obligations under international law, explicitly referring to the CEDAW (articles 2(c) and 5(a)) and the Convention on the Rights of the Child (article 3(a)).

It must be noted, however, that more comprehensive and progressive interpretations and understandings of SGBV, such as the one presented here, will only protect the victim/survivor in the case in which they arise, as protection order decisions have no value as judicial precedents.

Temporal limitations

States are duty-bound to guarantee that applications for protection orders “are heard in a timely and impartial manner.”¹⁸² Applying for protection orders before Judges for Urgent Matters and other judicial authorities can prove inefficient, as they may not be able to hear the application in a timely fashion. Indeed, the ICJ has already observed that, Judges for Urgent Matters have other responsibilities and have become overwhelmed with a large caseload.¹⁸³ This is likely owing to the fact that Judges for Urgent Matters are attached to Civil Courts, as opposed to gender specialized units within Lebanon’s criminal justice system. Their wide-ranging jurisdiction and purview over civil law matters, in turn, limits their ability to focus their attention on protection order applications. In SGBV cases delays in granting such orders may have dire consequences.

181. *V.K v. Bulgaria*, Communication No. 20/2008, UN Doc. CEDAW/C/49/D/20/2008 (2011), para. 9.9.

182. CEDAW Committee, *General Recommendation No. 33*, para. 51(j).

183. ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019, p. 33.

As discussed (see Chapter 2), the CEDAW Committee has noted the considerable merit in “the creation of gender units as components of justice institutions,”¹⁸⁴ and has recommended that States consider doing so. The establishment of a specialized judicial body empowered to hear protection order applications could go a long way in resolving issues relating to delays in processing such requests.

In addition, when protection orders feature injunctions, they do not come into effect instantaneously, but within 48 hours from being granted, a period of time during which the victim/survivor is unprotected and potentially at an even greater risk of violence.

Furthermore, protection orders issued under Law No. 293/2014 are temporary, time-bound measures and their duration, which varies greatly in practice, relies solely on the discretion of the relevant judicial authority granting them. Some protection orders are granted for a period as short as one week, which is certainly utterly inadequate when the violence, in many cases, has been ongoing for years.¹⁸⁵ A protection system that staunchly promotes the safety of victim/survivors of SGBV, according to the UN Handbook for Legislation on Violence against Women, “should grant courts the authority to issue long-term, final or post-hearing orders after notice...”¹⁸⁶

Reconciliation

The ICJ is particularly concerned about certain rulings on protection order applications where some Judges for Urgent Matters decided the duration of the protection order based on the time they considered the couple would need to either reconcile or divorce. Judges foisting “reconciliation” on victims/survivors of SGBV with their abusive spouse is of grave concern, violating the rights of victim/survivors to justice and effective remedies. Judges must approach the question of reconciliation with great caution, and only when it is raised by the victim/survivor of her own free will.

In one illustrative case the ICJ analyzed, a Judge for Urgent Matters granted a protection order to a woman who was repeatedly exposed to domestic violence at the hands of her husband. Despite the long history of violence, however, the Court saw fit to compel both the husband and the wife to participate in “couples therapy,” contravening the victim/survivor’s right to access to justice and effective remedies.

Judge of Urgent Matters in Alay
Decision Number: 102/2015
Date: 2 May 2015

In accordance with article 13 of Law No. 293/2014, the applicant petitioned the Court for protection from the respondent, her husband, with whom she had a three-month-old baby. The applicant alleged that she was the victim of domestic violence perpetrated by the respondent, who had subjected her to beatings and the threat thereof, the threat of abduction and the confiscation of her personal belongings.

Following a beating endured on 30 March 2015, the applicant fled the family home and attended a forensic doctor, who examined her and issued a report documenting a number of injuries she had sustained as a result of the beating, including bruising on her back, right wrist and lower abdomen and left foot, in addition to vaginal bleeding. The injuries caused her to be absent from work for a period of four days.

The applicant further alleged that the respondent had continued to spy on her and her parents, with whom she was residing in Baysour “with the intention of causing harm,” and that he had not paid any allowance towards food, clothing and medical care.

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

185. ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019, p. 34.

186. UN Division for the Advancement of Women, Department for Economic and Social Affairs, *Handbook for Legislation on Violence against Women*, UN Doc. ST/ESA/329 (2010), p. 47.

The Court heard testimony from both the applicant and respondent. The former reiterated what she said in her statement, while the latter claimed that he treated the applicant well and was generous to her, satisfying all of her financial requests, even though “she behaved in an uncompromising and unsuitable manner.” He claimed that it was this behavior, as well as her beating their child, “that led [him] to beat her” on occasion “in order to teach her good manners.” The respondent also claimed that despite the deteriorating relationship between him and the applicant, he was trying to reconcile with her and secure her return to the family home. He also expressed his willingness to give her back her personal belongings, such as her identification papers, and to engage in “couples counseling sessions with the applicant under the supervision of experts in order to preserve the family unit.”

The Court granted the applicant’s petition for protection under article 13, ruling [as follows]:

1. Barring the respondent from confronting the applicant and her family either directly or through a third party;
2. Barring the respondent from damaging the applicant’s personal belongings;
3. Compelling the respondent to pay the applicant a weekly allowance of 100,000 LBP for her and her child to ensure housing and clothing for a period of two months. The payment of the allowance is subject renewal;
4. Compelling the respondent to pay the applicant a sum of 300,000 LBP in order to cover the medical treatment she underwent as a result of the latest episode of violence to which she was subjected;
5. Barring the respondent from damaging the furniture in the family home;
6. Allowing the applicant to enter the family home to retrieve her personal belongings, especially her identification papers, mobile telephone and their child [who remained at the family home with the respondent];
7. Sending a copy of the decision to the OPP in Baabda in order to supervise its implementation and inform the applicant and respondent of same.

While the Court satisfied all of the applicant’s requests, it further mandated the applicant and respondent to undertake ten sessions of “couples therapy,” under the supervision of a psychiatrist or social worker, or both, at the personal expense of the respondent, once the case was reviewed by KAFA.¹⁸⁷

While the Court clearly recognized the seriousness of the situation – as evidenced by the numerous measures it ordered to restrain the perpetrator – its decision is also an example of a judge foisting reconciliation on a survivor of SGBV despite the fact that she had not requested it.

Protection orders are a form of remedy predicated on the notion of empowering victims/survivors.¹⁸⁸ By forcing the victim/survivor to undergo “couples therapy,” as a means toward reconciliation, the Court minimized and diminished the violence to which the victim/survivor was subjected and deprived her of her autonomy and ability to make a decision about her marriage to a violent and abusive person, and specifically whether she wanted her marriage to continue or whether she would have preferred to seek a divorce. Additionally, compelling the victim/survivor to undergo couples therapy, where she would be in close proximity to her abuser, puts her at risk of secondary victimization. States are duty-bound to ensure that protection orders do not result in the repetition of victimization.¹⁸⁹

The State has an obligation to ensure “all legal proceedings, protective and support measures and services to women’s victims/survivors of gender-based violence respect and strengthen their autonomy,”¹⁹⁰ and judicial authorities tasked with issuing injunctions should give priority to the protection and safety of the victim/survivor and/or to criminal proceedings over reconciliation. Regrettably, “reconciliation” considerations often inform a judge’s assessment of the need for a renewal, an amendment to or a cancellation/disposal of the protection order initially granted.

187. KAFA (Enough Violence Against Women) is a Lebanese non-profit organization which aims to eliminate all forms of SGBV and exploitation, with a particular focus on domestic violence.

188. UN Division for the Advancement of Women, Department for Economic and Social Affairs, *Handbook for Legislation on Violence against Women*, 2010, p. 48.

189. Istanbul Convention, art. 56(1)(a).

190. CEDAW Committee, *General recommendation No. 35*, para. 41.

The ICJ is concerned that even where reconciliation or divorce has occurred, neither necessarily guarantees the non-recurrence of SGBV.

Offending behaviour programmes

Pursuant to article 20 of Law No. 293/2014, “[in] addition to the penalties provided under the provisions of this Law, the Court may compel the offender of a domestic violence crime to undertake anti-violence rehabilitation courses at specialized centers.” Accordingly, the judicial authority presiding over a domestic violence case has the authority to compel domestic violence offenders to undergo anti-violence rehabilitation. Compelling offenders to attend these rehabilitation sessions, which aim to motivate and support them to change their abusive, violent behavior pattern is decided on a case-by-case basis by the judges sentencing the individuals concerned. As a result, offenders who have been found guilty will not automatically be required to enroll in anti-violence rehabilitation programmes, and whether or not they will be ordered to do so remains entirely at the sole discretion of judges.

While Law No. 293/2014 is explicitly geared towards criminal offenders, in practice, the urgency and advisability of such anti-violence rehabilitation courses arise in the context of protection order applications. 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 in the course of compiling the present memorandum, as well as those reviewed for the ICJ’s July 2019 Report, indicate 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,¹⁹¹ 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. Judicial authorities empowered to issue protection orders should be informed about the preventive and deterrent value and effectiveness of offending behaviour programmes, giving more consideration to the engagement of domestic violence abusers in such rehabilitation.

Even in the few instances where this provision of the law is invoked and judges order abusers to undertake these courses, there are no State-funded anti-violence rehabilitation programmes in existence to which offenders of domestic violence can be referred. Presently, judges instead allocate the task to non-governmental organizations (NGOs) and the onus of paying for the course lies with the offender.¹⁹² While the running of such a scheme by NGOs is a welcome idea, obliging the offender to bear the cost, irrespective of his personal financial situation, is problematic as it will make it difficult for offenders who do not have the financial means to cover such costs. This, in turn, will prevent offenders from participating in courses to address their violent and abusive behaviour, even in cases where they would be willing to do so if they had the means to pay. The CEDAW Committee has called on States to:

[A]llocate appropriate human and financial resources at national, regional and local levels to effectively implement laws and policies for the prevention, protection and victim/survivor support, investigation, prosecution, and provisions of reparations to victims/survivors of all forms of gender-based violence against women, including support to women’s organizations.¹⁹³

In order to bolster and give effect to anti-rehabilitation programmes more broadly, judges should adopt a means-testing approach, whereby offenders who have the financial means to pay are compelled to bear the expense of reform-oriented programmes. The State must also adequately resource these programmes for instances where offenders do not have the financial means to attend them, either directly or by funding NGOs who run the programmes.

While Law No. 293/2014 makes provision for the establishment of a fund for the anti-violence rehabilitation of offenders and the assistance and care of domestic violence victims/survivors,¹⁹⁴

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

192. See for example, Judge for Urgent Matters in Beirut, Decision Number. 539/2014, 31 April 2014; Judge for Urgent Matters in *Jdeidet Al-Matn*, 21 May 2015; Judge for Urgent Matters in *Alay*, Decision Number. 102/2015, 2 May 2015; Judge for Urgent Matters in *Jdeidet Al-Matn*, Decision Number. 179/2014, 22 July 2014; Judge for Urgent Matters in *Jdeidet Al-Matn*, Decision Number. 264/2017, 28 October 2017.

193. CEDAW Committee, *General recommendation No. 35*, para. 53.

194. Law No. 293/2014, art. 21.

according to information obtained by the ICJ, to date no such fund has been established.

Enforcement limitations

The CEDAW Committee has called on States to ensure that protection or restraining orders are accompanied by adequate sanctions for non-compliance. Similarly, the African Commission on Human and Peoples' Rights (ACoMHPR) has recommended that States take legislative and other measures to address the breaching of protection orders in a manner that is "effective, deterrent and proportionate."¹⁹⁵

Article 18 of Law No. 293/2014 stipulates that the penalties for violating the conditions imposed by a protection order include up to three months' imprisonment, a maximum fine of twice the minimum wage, or one of either penalty, that is, imprisonment or a fine. Where the violation involves violence or recidivism, the penalty increases to one year of imprisonment and a maximum fine of four times the minimum wage.

The July 2019 Report concluded, "the consequences of failing to comply with a protection order are minimal in comparison to the harm that may be inflicted."¹⁹⁶ Indeed, the penalties for non-compliance are not commensurate to the seriousness of the types of harm that may arise as a result of non-compliance with protection orders. Penalties of a more severe nature could have the effect of deterring perpetrators from committing breaches of the protection order in the first place.

On the basis of its analysis of 26 protection orders in the July 2019 Report, the ICJ expressed concern that, "with exception, penalties for non-compliance are rarely mentioned in protection orders."¹⁹⁷ This is consistent with the examination of the additional 24 protection orders undertaken by the ICJ for the present purposes, where only a very small number of protection orders explicitly reference the implications of, and applicable sanctions for, failing to comply with protection orders. Therefore, when issuing protection orders, judicial authorities must, without exception, explicitly mention the consequences of non-compliance, including the imposition of criminal sanctions in serious cases, which, to reiterate, may serve as a preventative measure.

Shelters

For a domestic violence victim/survivor who has sustained physical and/or psychological injuries and who has chosen to flee the marital home and seek refuge, securing accommodation can prove extremely difficult. Shelters that specifically cater to victims/survivors in Lebanon are few and far between, and the number of places available within such shelters is woefully inadequate when compared with the number of victims/survivors who seek to escape violence in the family home.¹⁹⁸

While legal provisions that favour and safeguard the victim survivor's continued occupancy of the home exist,¹⁹⁹ they are rarely enforced. The ICJ has observed that it is customary practice for judicial authorities to keep alternative housing arrangements made by subjects of domestic violence intact, as opposed to ordering the perpetrator's removal from the family dwelling. In view of the shelter shortage, it is advisable for judicial authorities to model protection orders in a way that seeks to ensure the ongoing residence of victims/survivors at their home – or their return to it – with access to all their possessions, restraining the perpetrator accordingly.

2.2.4. Risk-assessment and management of the risks facing victims

The opening of criminal investigations and the subsequent unfolding of prosecutions of SGBV offences often gives rise to a real risk of acts of retaliation against victims/survivors – as well as against any existing children and/or witnesses willing to testify against the alleged perpetrator.

195. ACoMHPR, *Guidelines on combatting sexual violence and its consequences in Africa*, 2017, principle. 27(4).

196. ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019, p. 34.

197. ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019, p. 34.

198. ISF officers refer victims to NGOs who can provide them with free services, including shelter including, KAFA (Enough Violence Against Women), Maryan and Martha, Good Shepherd Sisters and the Young Women's Christian Association. ABAAD also offers victims of SGBV immediate safe-housing on a 24-hour basis.

199. Law No. 293/2014, arts. 14(2) & (3).

Women and children are particularly susceptible to retaliation at the hands of perpetrators where protection orders are issued, as “[r]estraining orders may aggravate the problem of separation violence...”²⁰⁰

International standards and recommended practice indicate that risk-assessment and management of the safety, security, privacy and physical and mental integrity of victims/survivors of SGBV are indispensable at all stages of the criminal justice process, and should be conducted even where a victim/survivor is unwilling or reluctant to engage with any such risk assessment.²⁰¹ Accordingly, risk-assessments should feature in the very initial stages of the criminal process, and be reviewed methodically throughout,²⁰² as risk levels and types of risk can change over time.²⁰³

For example, pursuant to the Istanbul Convention, States parties to the treaty have an obligation to take:

Necessary legislative or other measures to ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide coordinated safety and support.²⁰⁴

Strengthening criminal justice responses to SGBV, as observed by the UNGA, entails States incorporating risk-assessments complying with relevant international legal instruments into their domestic legal frameworks.²⁰⁵ This involves, *inter alia*, police, investigating judges, prosecutors, other criminal justice actors and victims’ advocates meticulously evaluating the “level or extent of harm that victims may be subjected to based on their vulnerability, the threats to which they are exposed [and] the presence of weapons [among] other determining factors.”²⁰⁶ Access to, or possession of firearms must, without fail, factor into these evaluations.²⁰⁷ Criminal justice actors should not make a determination about a victim’s/survivor’s safety solely on the basis of the minor gravity of the offence(s) already perpetrated against them, as even when perpetrators have been charged only with minor offences they may nonetheless be extremely dangerous.²⁰⁸

One of the most pressing concerns in the Lebanese context is that criminal justice actors do not conduct thorough, exhaustive risk-assessments vis-à-vis SGBV victims/survivors. 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.²⁰⁹

With regard to the police, neither the CCP, nor the ISF General Memorandum specifically cover the need to conduct a risk-assessment and the type of evaluation such an assessment should entail. The ICJ is concerned that the guidance provided within the ISF General Memorandum is markedly vague, failing to specify determining factors that necessitate immediate action

200. *Jessica Lenahan (Gonzales) et al v. the United States*, Inter-American Commission on Human Rights, Case No 12.626, Report No. 80/11 (2011), para. 166.

201. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, p. 52.

202. ICJ, *Morocco: Ensuring the Effective Investigation and Prosecution of Sexual and Gender-Based Violence against Women and Girls*, (Geneva: International Commission of Jurists, 2017), p. 20.

203. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, p. 56.

204. Istanbul Convention, art. 51(1).

205. UNGA, *Resolution on strengthening crime prevention and criminal justice responses to violence against women*, 2011, para. 16(f).

206. UNGA, *Resolution on strengthening crime prevention and criminal justice responses to violence against women*, 2011, para. 16(f).

207. Istanbul Convention, art. 51(2); AComHPR, *Guidelines on combatting sexual violence and its consequences in Africa*, 2017, principle 27(3).

208. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, p. 54.

209. Judge for Urgent Matters in *Jdeidet Al-Matn*, 21 May 2015.

on the part of first responders (e.g. the police officer that picks up the call from the victim/survivor who has phoned the hotline, the police officer that receives the victim/survivor at the police station, etc.). Such guidance should instead equip first responders with a checklist of telltale signs they should look out for from the moment they first interact with an SGBV victim/survivor, in addition to other specific guidance and recommendations articulated below. It is crucial that such recommended practices be mandated in all cases of SGBV and not solely in cases of domestic violence. This conclusion is supported by the analysis previously set out in this memorandum about the underinclusive scope of Law No. 293/2014 with respect to acts of SGBV.

Like the Judicial Police, Public Prosecutors and General Advocates in Lebanon are not equipped with specialized guidelines on risk-assessment for victims/survivors of SGBV.²¹⁰ Public Prosecutors' approach to cases of SGBV should centre on the safety of the victim/survivor. Buy-in into the risk-assessment from the victim/survivor is crucial in this regard, as women are usually the best judges of their own safety. Therefore, in order to fully grasp the victim/survivor's personal situation and circumstances, Public Prosecutors and General Advocates should make every effort to engage in a discussion with her and work together to pinpoint her protection needs and any "[p]atterns of behaviour [by the perpetrator] that may indicate lethality."²¹¹ Such comprehensive engagement on the part of prosecutors with SGBV victims/survivors is often associated with them being enabled to provide more compelling and effective testimony, and to assist with securing strong evidence of the offence(s) more broadly, thus enhancing the chances that the prosecution's case will ultimately be successful at trial in securing the conviction of the perpetrator in just and fair proceedings.²¹²

The response of Lebanese criminal justice actors to victims/survivors of SGBV could be bolstered and improved through the adoption of effective risk-assessment and management tools. The implementation of measures aimed at assessing potential threats and analyzing risk would further consolidate and enhance the effectiveness of the system of protection orders enacted through Law No. 293/2014.

The ICJ has previously endorsed²¹³ a checklist of risk-assessment considerations by the United Nations Office on Drugs and Crimes (UNODC) reproduced below,²¹⁴ which the agency considers a good starting point for risk analysis conducted by criminal justice actors working on cases of SGBV. One caveat to this, however, is that the list is non-exhaustive and should in no way be regarded as catering for all circumstances.

210. Interview conducted with a Public Prosecutor at the Court of Appeal in Mount Lebanon by the ICJ, 11 July 2019.

211. ICJ, Morocco: *Ensuring the Effective Investigation and Prosecution of Sexual and Gender-Based Violence against Women and Girls*, 2017, p. 20.

212. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, pp. 53-54.

213. ICJ, Morocco: *Ensuring the Effective Investigation and Prosecution of Sexual and Gender-Based Violence against Women and Girls*, 2017, pp. 20-21.

214. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, pp. 54-55.

Standard risk and danger assessment (including assessment of the lethality risk and risk of repeated violence)	
<p>Prior victimization</p>	<ul style="list-style-type: none"> • Type, severity and frequency of assault. • Date of most recent assault. • Severity of this incident: strangulation, burning, permanent physical damage, head injuries, weapons involved, sexual aggression and coercion, drugging, poisoning, confinement. • Serious injury in prior assaults. • History and nature of past violence towards this victim. • Is there a pattern of ongoing intimidation, coercion and violence? • Who is perpetrating such a pattern, and against whom? • What is the severity of the violence? • Who has been injured and how? • Who is afraid and in what ways? (include non-physical fears such as losing children, home, job, etc.). • Was the victim assaulted during pregnancy or shortly after giving birth? • Current or past orders for protection. • Previous domestic violence charges dismissed, previous domestic violence contacts with police or prosecutor's office.
<p>Perpetrator's drug and alcohol problems</p>	<ul style="list-style-type: none"> • Alcohol or drug use.
<p>Perpetrator's obsessive/ possessive behaviour and excessive jealousy</p>	<ul style="list-style-type: none"> • Jealous or controlling behaviours. • Intimidation of victim if she seeks help. • Nature of controlling behaviour: threats of future injury or death (the more specific the threat, the greater the risk), threats to use a weapon, threats of child abduction or denial of visitation rights, threats made openly and in presence of others. • What kind of threats or coercion have been used to dissuade the victim from participating in the prosecution? • Who is most vulnerable to ongoing threats and coercion?
<p>Perpetrator's mental health history (i.e. suicidal ideations, plans, threats and past attempts)</p>	<ul style="list-style-type: none"> • Threats of homicide or suicide. • Evidence of depression. • Evidence of paranoid thinking. • History of mental health or emotional problems.
<p>Perpetrator's threats to kill the victim or her children</p>	<ul style="list-style-type: none"> • Threat to harm victim or children. • Has the perpetrator harmed the children, in what ways? • Has the perpetrator threatened to harm the children? In what ways? • Does the victim fear that the abuser will take the children in retaliation for the cooperation with prosecutors? • Did the children witness offence or other violence or threats?

<p>Perpetrator’s use of violence in settings outside the home</p>	<ul style="list-style-type: none"> • Prior criminal history, and whether there are other pending charges. • History and nature of past violence towards others (i.e. history of violence in prior relationships).
<p>Evidence of escalating violence or intimidation</p>	<ul style="list-style-type: none"> • Stalking behaviour; use of weapon; sexual abuse; animal abuse; property damage or threats of future property damage; hostage taking; victim’s increased vulnerability due to age, disability, pregnancy.
<p>Perpetrator’s possession of, access to, familiarity with and degree of fascination with guns</p>	<ul style="list-style-type: none"> • Access to firearms/availability of weapons.
<p>Perpetrator’s proclivity to respect court rules</p>	<ul style="list-style-type: none"> • Record of violation of court orders. • Record of failure to follow pretrial release or probation rules. • Previous participation in batterer treatment programme.
<p>The status of the relationship</p>	<ul style="list-style-type: none"> • Are the victim and perpetrator separated or separating, estranged? • Is the victim in the process of fleeing? • What is the status of any family or other court case? • Imminent break-up, separation or divorce initiated by victim; imminent change in child custody and/or imminent change in victim’s residence.
<p>Obtain information regarding these factors through all appropriate and available sources</p>	<ul style="list-style-type: none"> • IMPORTANT: prosecutors must insist that law enforcement officers and investigators provide them with appropriate information about prior activities especially those associated with increased risk for lethality. • Police reports of the current offence. • Additional information obtained from officers/ investigators. • Emergency calls, past police reports involving the same perpetrator. • Prior arrests and convictions of the same perpetrator. • Input from victim advocate if the victim has given the advocate permission. • Petitions for civil protection orders and any supporting documents, prior pre-sentence investigation reports. • Any probation status and/or compliance.

3. Medico-legal evidence

Consent and sexual offences

Before embarking on a discussion about medico-legal evidence (see below) and how to best obtain it, the question of consent within the context of sexual conduct requires specific consideration.

The CEDAW Committee has characterized sexual offences, including rape, as human rights violations and offences against the person, as opposed to against honour and social mores. In particular, “the [CEDAW] Committee has clarified time and again that rape constitutes a violation of women’s right to personal security and bodily integrity, and that its essential element was lack of consent.”²¹⁵ Treaty Body jurisprudence has determined that consent in the context of sexual conduct entails the existence of “unequivocal and voluntary agreement” to engage in such conduct.²¹⁶ Consent is therefore the act of communicating voluntary agreement to the sexual activity in question by words or conduct that is contemporaneous to the said activity. Moreover, it is imperative that no lack of agreement to continue to engage in the said activity is manifested while the said activity is ongoing, and that it is premised on the legal capacity of the parties willing to engage in such conduct to be able, legally speaking, to enter into such an agreement.

While medico-legal or forensic evidence can play a transformative role in proving the commission of offences, the presence of physical injury in victims/survivors is not required to substantiate or corroborate the occurrence of such offences. The CEDAW Committee has stressed, “there should be no assumption in law or in practice that a woman gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use or used physical violence.”²¹⁷ The CEDAW Committee has also held, “it is not necessary to establish that the accused had overcome the victim’s physical resistance in order to prove lack of consent.”²¹⁸

Therefore, the absence of detectable physical injury should not give rise to any conclusion that the victim/survivor’s claim is implausible. Sexual assault victims, for example, may offer no physical resistance against their assailants or put up any struggle out of fear. In such cases, it is possible that there would be no physical trace of assault.

Medico-legal evidence is pivotal to the effective investigation and prosecution of SGBV crimes and is often especially critical in the successful prosecution of sexual assault. Its critical importance and direct bearing on legal proceedings have been noted by the UN Secretary General²¹⁹ and the CEDAW Committee,²²⁰ among others. The World Health Organization (WHO) maintains that the ultimate objective of collecting forensic evidence is to prove, or disprove, a physical connection between individuals and places or objects.²²¹ This intersection between justice and medicine requires a coordinated approach to evidence collection, the execution of which is reliant on procedural protocols for all concerned agencies.

Pursuant to article 34 of the Lebanese CCP, where “the nature of the offence” requires a technical competency beyond that of the investigating authority, the Public Prosecutor or Investigating Judge²²² may call on the services of one or more appropriate experts, clearly specifying their

215. *Karen Tayag Vertido v. Philippines*, Communication No. 018/2008, UN Doc. CEDAW/C/46/D/18/2008 (2010), para. 8.7, available at: <http://juris.ohchr.org/Search/Details/1700>.

216. See, *Karen Tayag Vertido v. Philippines*, Communication No. 018/2008, para. 8.9, where the CEDAW Committee made recommendations to the State party, including “[r]emoval of any requirement in the legislation that sexual assault be committed by force or violence,” and reference to the fact that the act may “take place in “coercive circumstances,” which includes a broad range of “coercive circumstances.”

217. *Karen Tayag Vertido v. Philippines*, Communication No. 018/2008, para. 8.5.

218. *Karen Tayag Vertido v. Philippines*, Communication No. 018/2008, para. 8.5.

219. UNGA, *In-depth study on all forms of violence against women: report of the Secretary-General*, 6 July 2006, UN Doc. A/61/122/Add.1, para. 323.

220. CEDAW Committee, *General Recommendation No. 33*, para. 51(k).

221. WHO, *Guidelines for medico-legal care for victims of sexual violence* (Geneva: World Health Organization, 2003), p. 57.

222. CCP, art. 56.

respective assignments. Experts must strictly adhere to the scope of their assignment as directed by the Public Prosecutor and, upon completion of their examination, issue a report with their findings.²²³ While the article appears to imply a broad set of circumstances in which the prosecution can engage the assistance of experts, making explicit reference to instances where the condition of the victim/survivor requires “medical assistance or an autopsy” by “a physician or forensic pathologist,” it fails to envisage cases where the survivor may not require medical assistance as such, but the intervention of a specialized sexual assault team in order to yield important evidence.

According to the Lebanese Ministry of Justice, the Department of Forensic Medicine and Criminal Evidence (DFMCE), governed by Decree No. 7384, has a roster of 81 forensic doctors,²²⁴ 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.²²⁵ However, information obtained by the ICJ indicates that out of the 81 registered forensic practitioners, only a dozen have received formal training in forensic medicine which takes an additional year of academic study.²²⁶ The ICJ is concerned that the remaining 69 forensic practitioners are not formally trained in their discipline. Also cause for concern is the fact that of the dozen qualified forensic practitioners, only two are women. It would follow that SGBV survivors are more likely to be examined by a male forensic practitioner than a female one.

While efforts have been underway to improve the service of the DFMCE,²²⁷ criminal justice actors have confirmed that it remains underdeveloped and poorly resourced.²²⁸ Moreover, a Lebanese prosecutor at the Court of Appeal informed the ICJ that in cases of SGBV, prosecutors have encountered flawed forensic reports that have resulted in impunity.²²⁹ In the case of Roula Yaccoub, for example, erroneous methodologies and gaps in the forensic examination caused a number of forensic doctors to misidentify the cause of death.

Roula Yaccoub Case

On 7 July 2013, despite several attempts to save her life in Halba hospital, Roula Yaccoub, a 33-year-old mother of five, died from a brain hemorrhage after she was brutally beaten by her husband.

The same day, an investigation into her death was launched. The Public Prosecutor commissioned two forensic doctors to conduct a postmortem examination, the report of which attributed the cause of death to a “ruptured aneurysm” caused by a “congenital malformation.” Mounting protests prompted the Public Prosecutor to seek the opinion of another two forensic practitioners, who drew conclusions identical to those of the first forensic report.

The Investigating Judge subsequently referred both reports to two separate committees within the Lebanese Syndicate of Physicians in Beirut and Tripoli to make a determination about the cause of death. Both committees uncovered serious procedural deficiencies in the initial forensic examinations, which had ultimately skewed the scientific conclusions that the forensic practitioners had drawn about the cause of Roula Yaccoub’s death.

The two Committees consulted by the Investigating Judge eventually concluded that the original examinations were flawed for the following reasons: (i) the forensic doctors had failed to take sufficient images, to thoroughly examine certain areas of her body, such as her neck, and to appropriately dissect organs, including the brain, which had led to the

223. CCP, art. 34.

224. Ministry of Justice, available at: <https://www.justice.gov.lb/index.php/modernization-projects-details/9/2>.

225. Decree No. 7384, 14 November 1946.

226. Interview conducted with a forensic medicine practitioner based in Beirut by the ICJ, 28 October 2019.

227. Namely the establishment of a committee charged with examining the situation of forensic medicine and evidence in Lebanon.

228. Interview conducted with a Public Prosecutor at the Court of Appeal in Mount Lebanon by the ICJ, 11 July 2019.

229. Interview conducted with a Public Prosecutor at the Court of Appeal in Mount Lebanon by the ICJ, 11 July 2019.

loss of scientific evidence; (ii) the images upon which the forensic doctors had relied were insufficient to reach a conclusion that the victim died of a ruptured aneurysm; and (iii) gaps in the forensic reports made it impossible to determine with certainty the cause of death, particularly given the decay of the tissues two months after death. It was concluded that the death was likely associated with violence as the cerebral hemorrhage was concentrated on the lower part of the brain.

The North-Lebanon Indictment Chamber ordered an expanded investigation into the victim's death in July 2014, quashed the Investigating Judge's decision and indicted the accused for the murder of his wife. The case was subsequently heard by the North Lebanon Criminal Court which subsequently acquitted the accused. The Public Prosecutor has appealed this decision.

With a view to ensuring effective and competent criminal investigative practices, prosecution strategies and comprehensive medical care for SGBV victims/survivors and their equal access to justice and effective remedies, medical and forensic protocols in Lebanon should reflect recommended practices relating to the gathering, preservation and archiving of medico-legal evidence. Recommended practices and related protocols are delineated meticulously in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol),²³⁰ and in the World Health Organization Guidelines for medico-legal care for victims of sexual violence (WHO Guidelines).²³¹ The introduction of these protocols should be carried out in parallel with the training of a sufficient number of investigators and forensic practitioners²³² across the country, and the allocation of funding to ensure that service provision is cost-free.²³³

The absence of specialized prosecutorial units and courts for SGBV-related offences in Lebanon heightens the need for all actors involved in the administration of criminal justice to become adept in the use of medico-legal reporting and forensic science for the purposes of investigating, prosecuting and adjudicating such offences. Training should therefore extend to judges and prosecutors as well, with a view to enhancing their respective knowledge of, and familiarity with, what is a highly technical discipline. This approach could result in a greater success rate in the prosecution and adjudication of SGBV crimes.

3.1. Collection of medico-legal evidence

Model service provision prescribes that the health, as well as the physical and psychological integrity of SGBV victims/survivors should be the foremost concern of medical practitioners.²³⁴ This, for example, entails prioritizing the management of pregnancies and the treatment of physical injuries and sexually transmitted infections (STIs) over forensic examinations.²³⁵ In the interest of not subjecting the victim/survivor to protracted medical testing, medico-legal services should be provided simultaneously, at the same place, by the same practitioners and be available 24-hours a day in a one-stop shop fashion or, where it is not feasible to provide a full-time service, on an on-call basis outside regular working hours.²³⁶ Moreover, medical practitioners must conduct examinations in an environment that is reassuring, confidential and sensitized to the potential distressed state of the victim/survivor.

230. See, Office of the United Nations High Commissioner for Human Rights (OHCHR), *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. HR/P/PT/8Rev.1 (2004), especially paras. 215-232 on "sexual torture and rape."

231. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003.

232. CEDAW Committee, *General Recommendation No. 33*, para. 51(k).

233. AComHPR, *Guidelines on combatting sexual violence and its consequences in Africa*, 2017, principle. 40.4 (a)(vii).

234. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, p. 17; AComHPR, *Guidelines on combatting sexual violence and its consequences in Africa*, 2017, principle. 40.4 (a)(iii).

235. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, p. 17.

236. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, pp. 17-21.

While maintaining compassion and sensitivity, practitioners must provide a service that is objective, untainted by biased assumptions with respect to, for example, the sexual practices of the victim/survivor.²³⁷ It is also essential that before proceeding with the collection and documentation of medico-legal evidence, the victim/survivor's full, genuine, free and prior informed consent is obtained, preferably in writing.²³⁸ An explicit request for their consent to the actual procedure to be performed should therefore be made before proceeding with collecting medico-legal evidence from them. In order to provide such consent, victims/survivors must be provided with full information about the procedure, the reasons for carrying it out, its consequences, if any, and an explanation as to the use of the evidence collected, so that they can make an informed decision as to whether they wish to go ahead with it or not.

Detailed documentation of physical injuries²³⁹ is essential and may be used as corroborating evidence by the prosecutorial authority to evidence the alleged perpetrator(s) actions towards the victim/survivor, the use of objects to commit offences or presence of the victim/survivor and perpetrator in particular places. Forensic examinations may involve inspecting areas of the body that would not be inspected in a routine medical examination.

The WHO recommends a two-pronged approach to physical examinations of the SGBV victim/survivor. First, upon receiving SGBV survivors or patients, practitioners should perform an 11-step "top-to-toe examination,"²⁴⁰ five of which involve: (i) taking the victim/survivor's vital signs, inspecting their hands, wrists and forearms for injuries and ligature marks; (ii) inspecting the body for defensive injuries, such as bruising, abrasions, lacerations and incised wounds, including the ears, neck, scalp and breasts; (iii) inspecting the face with special attention given to the mouth; (iv) inspecting the ears, neck and scalp; and (v) performing an abdominal examination and palpation in order to exclude internal trauma or check for pregnancy.²⁴¹ Symptoms may include genital bleeding; discharge; itching; sores; pain; urinary problems; anal pain or bleeding; and abdominal pain. Practitioners should pay particular attention to the fact that symptoms may develop in the aftermath of the assault and physical examination, the recording of which is of equal importance.²⁴²

Second, with a view to accurately classifying and recording the actual or attempted alleged assault and its nature, the WHO recommends a genito-anal examination as necessary in order to determine whether or not the following has occurred:

- vaginal penetration of victim by offender's penis, fingers or objects;
- rectal penetration of victim by offender's penis, fingers or objects;
- oral penetration of victim by offender's penis or other object;
- oral contact of offender's mouth with victim's face, body or genito-anal area;
- forced oral contact of victim's mouth with offender's face, body or genito-anal area;
- ejaculation in victim's vagina, [anus or mouth] or elsewhere on the victim's body or at the scene.²⁴³

Given the discomfort, trauma and pain that victims may experience during genito-anal examinations, it is vital that practitioners ensure that the SGBV victim/survivor consents thereto and is made to feel comfortable and safe, as much as it is practically possible. When bathing, douching and wiping, among other things, have occurred in the aftermath of the crime and before a forensic examination, such activities may have rendered any forensic evidence collected valueless, in which case, it might be pointless to proceed with such an invasive examination in the first place.

237. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, p. 20.

238. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, p. 34.

239. Before proceeding with this discussion one initial caveat must be made. For victims of SGBV, and particularly those subjected to sexual violence, the presence of physical injury is not required to substantiate or corroborate the occurrence of such crimes and thus, the absence of physical injury that is detectable to the naked-eye should not give rise to any presupposition that the victim's/survivor's claim is implausible. Women who are raped for example, may opt against engaging physical resistance and struggle out of fear. In such cases, it is possible that there will be no physical trace of assault. Rather, their symptoms may be purely psychological.

240. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, pp. 39-42.

241. For the full 11-step top-to-examination see, WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, pp. 39-42.

242. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, p. 37.

243. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, p. 37.

The Istanbul Protocol and WHO Guidelines set out various methodologies and approaches for the careful collection and preservation of forensic specimens, including DNA sampling, sample of blood, hair, saliva, sperm etc., which practitioners in Lebanon are strongly encouraged to follow.²⁴⁴

3.2. Prevention of sexually transmitted infections and human immunodeficiency virus

Among the adverse health consequences associated with SGBV is the risk of victims/survivors contracting sexually transmitted infections (STIs). Common STIs include chlamydia, gonorrhea, syphilis, trichomoniasis, hepatitis B and human immunodeficiency virus (HIV).²⁴⁵ Therefore, comprehensive service provision must comprise screening for STIs, both in the aftermath of the assault and months after its occurrence as STIs can take between there days and three months to incubate.²⁴⁶

While the AComHPR recommends that victims of rape have access to prophylaxis within 72 hours to prevent the transmission of STIs,²⁴⁷ the WHO recommends that prophylactic treatment be provided on a case-by-case basis, as it is an area of medicine where practice is under constant revision. Practitioners are therefore encouraged to keep up-to-date with the latest recommendations in this field. The ICJ has previously recommended that practitioners consult the latest edition of the WHO's *Guidelines for the Management of Sexually Transmitted Infections*.²⁴⁸ The ICJ further believes that access to prophylaxis should be offered more broadly to victims/survivors of sexual assault, because some STIs can be contracted not only through rape, but also through other types of sexual assault.

3.3. Pregnancy management and abortion services

Victims/survivors are entitled to be counselled and offered information about the risk of pregnancy resulting from rape and then, providing they give their full and informed consent, offered a pregnancy test and granted free access to emergency contraception such as the emergency contraception pill, should the victim/survivor presents within five days of the assault.²⁴⁹

With a view to fulfilling the right to effective remedy and reparation, it is incumbent on the State to provide victims/survivors of SGBV with effective access to safe and legal medical abortion and post-abortion care.²⁵⁰ Problematically, in violation of international human rights law and standards, abortion in Lebanon is a criminal offence.²⁵¹ Women who undergo abortions, as well as individuals who perform them, are subject to severe penalties.²⁵² While there is no explicit exception to the criminalization of abortion, women who terminate pregnancies in order to preserve or "save their honour," may benefit from "attenuating circumstances."²⁵³ It is not clear, however, whether such circumstances apply to victims/survivors of sexual violence, and in the event they do, the provision itself is a patriarchal construct that contravenes the principle of non-discrimination. The CEDAW Committee has called on States to:

244. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, pp. 58-62.

245. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, pp. 67-72.

246. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, p. 67.

247. AComHPR, *Guidelines on combatting sexual violence and its consequences in Africa*, 2017, principle. 33.1.

248. See generally, WHO, *Guidelines for the management of sexually transmitted infections*, (Geneva: World Health Organization, 2003).

249. AComHPR, *Guidelines on combatting sexual violence and its consequences in Africa*, 2017, principle. 29; WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, pp. 64-67.

250. *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (Maputo Protocol), 11 July 2003, art. 14(2)(c); ESCR Committee, General Comment No. 22: *The Right to Sexual and Reproductive Health (Article 12 of the ICESCR)*, UN Doc. E/C.12/GC/22 (2016); UNGA, *In-depth study on all forms of violence against women: report of the Secretary-General*, 2006, para. 334; AComHPR, *Guidelines on combatting sexual violence and its consequences in Africa*, 2017, principle. 30; WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, p. 66.

251. Presidential Decree No. 13187, 20 October 1969, makes an exception to the prohibition of abortion where the mother's life is at risk.

252. Criminal Code, art. 541 stipulates that women who undergo abortions can be punished with a term of imprisonment ranging from six months up to three years.

253. Criminal Code, art. 545.

[L]egalize abortion at least in cases of rape, incest, threats to the life and/or health of the mother, or severe fetal impairment, as well as provide women with access to quality post-abortion care, especially in cases of complications resulting from unsafe abortions. States parties should also remove punitive measures for women who undergo abortion.²⁵⁴

In order to enable victims/survivors of SGBV to exercise their right to effective remedy and reparation, and to deter women from seeking unsafe abortions, the State must ensure effective access to sexual and reproductive healthcare services and sexual and reproductive rights, including safe access to legal abortion, and post-abortion care, in all cases and particularly in cases of rape.²⁵⁵

3.4. Psychological injury and support services

A number of both immediate and long-term psychological health impairments can manifest in victims/survivors of SGBV, including rape trauma syndrome, post-traumatic stress disorder, depression, social phobias and suicidal behaviour.²⁵⁶ Psychological injuries can be much more insidious and subtle and thus difficult to detect, in particular because they do not necessarily emerge immediately. Nevertheless, in the course of collecting and documenting evidence of SGBV-related offences, efforts should be made so as to ensure psychological problems are not overlooked, but rather, given consideration equal to that of physical injuries.

Criminal justice actors must assist and support traumatized victims/survivors and make appropriate referrals to specialized service providers for rehabilitation.

254. CEDAW Committee, *Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review*, 10-28 February 2014, p. 2.

255. CEDAW Committee, *General recommendation No. 35*, para. 18; HRC, *General Comment No. 28*, para. 11; CAT Committee, *General Comment No. 2: Implementation of Article 2 by States Parties*, UN Doc. CAT/C/GC/2 (2008), para. 22.

256. WHO, *Guidelines for medico-legal care for victims of sexual violence*, 2003, pp. 13-16.

4. Prosecution and adjudication

Ending impunity, ensuring accountability for SGBV and effective access to justice, as well as the right to a remedy and reparation for victims/survivors, are not only contingent upon comprehensive investigations, but also upon effective prosecution and judicial strategies that adhere to, and are modelled on, international human rights law and gender-sensitive considerations. As the “gatekeepers” of criminal justice, prosecutors and judges, in this regard, are well placed to dispense justice, ensure that justice processes are guided by international law and standards and pursue accountability for SGBV victims/survivors. In terms of SGBV prevention, such practices have the added value of communicating a deterrent-based message to society that SGBV is unacceptable.

Prosecutors must, therefore, cooperate with those carrying out the investigation in order to ensure the effectiveness, efficiency and fairness of SGBV prosecutions.²⁵⁷ This involves making sure that all reasonable inquiries have been made and, on that basis, taking a decision to prosecute, in addition to monitoring that the actions of the police and investigators comply with international human rights law and standards.²⁵⁸ Similarly, judges can ensure domestic implementation of, and compliance with, international law and standards, apprising themselves of any prejudices and harmful gender stereotypes they harbour that may feed into the outcome of the case. In their capacity, they can also manage their courtroom in a manner that prevents the revictimization of victim/survivors.

With a view to preventing the secondary victimization of SGBV victims/survivors (see section 2.1.1.) the CEDAW Committee²⁵⁹ and the UNGA²⁶⁰ have underscored and recommended the need for specialized expertise on SGBV to be institutionalized, noting that, where possible, States should seek to establish specialized units, as well as specialized courts or dedicated court time to handle cases involving SGBV.

As discussed elsewhere in this memorandum (see section 2.1.3.), Law No.293/2014 establishes specialized police and prosecutorial units to deal with domestic violence cases. These positive developments, however, are geared towards, and intended for, victims/survivors of domestic violence, to the exclusion of other SGBV victims/survivors. As consistently maintained throughout this document, such gender-sensitive approaches should be applied in all cases of SGBV.

4.1. Procedural framework

The forthcoming section is concerned with delineating the procedures criminal justice actors are meant to comply with during the stages that follow an effective investigation of SGBV-related offences, namely, prosecution, indictment and adjudication.

4.1.1. Prosecution

Once an investigation is completed, the Investigating Judge may order a “stay of proceedings” on either legal or factual grounds.²⁶¹ The former, for example, refers to instances where the Investigating Judge has concluded that the alleged act does not constitute an offence or where a new law has been enacted that renders the charges inapplicable.²⁶² If the Investigating Judge’s decision to dismiss the case is made on factual grounds, the investigation must have failed to: (i) establish that the offence occurred; (ii) deliver evidence that establishes a causal link between the alleged offence and the defendant; or (iii) find or ascertain the identity of the alleged perpetrator.²⁶³

257. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, p. 69.

258. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, p. 69.

259. CEDAW Committee, *General Recommendation No. 33*, para. 51(d).

260. UNGA, *Resolution on strengthening crime prevention and criminal justice responses to violence against women*, 2011, para. 16(c).

261. CCP, art. 122.

262. CCP, art. 122.

263. CCP, art. 122.

In cases of completed investigations where the Investigating Judge does not order a “stay of proceedings,” they transmit the case file to the OPP, at which point the OPP has one week to present submissions containing preliminary views on what should happen next.²⁶⁴ If the OPP deems further investigation is necessary for the purposes of prosecution, it may submit a request to the Investigating Judge, specifying any existing “shortcomings” in the case file and/or additional “investigative measures” that should be taken.²⁶⁵

In cases of misdemeanours, the Public Prosecutor sends the case file to the Single Criminal Judge three days upon receipt of the case file with a list of items compiled by the Investigation Department.²⁶⁶ Where Investigating Judges decide that the alleged act(s) amounts to a felony, they must issue a decision that sets out the facts of the case, the evidence collected and the applicable legal qualification.²⁶⁷ The case file is subsequently referred to the Public Prosecutor who is responsible for its transmission to the Indictment Chamber.²⁶⁸

Where an Investigating Judge has ordered a stay of proceedings and fresh evidence is uncovered, such as, for example, witness testimony, the investigation can be reopened.²⁶⁹ After the Public Prosecutor assesses the probative value of any such fresh evidence, including whether it is sufficient to warrant the reopening of an investigation, they refer the case to the Investigating Judge, who decides whether to uphold their initial decision or whether to commit the defendant for trial.²⁷⁰

4.1.2. Indictment

With respect to felonious offences, the Indictment Chamber is charged with issuing a “criminal indictment,”²⁷¹ based on the merits of the case and the Public Prosecutor’s submissions.²⁷² If the Indictment Chamber is of the view that the investigation is complete, it has the authority to either order a stay of proceedings and discharge the defendant,²⁷³ or, where it has ascertained that the facts and evidence against the accused amount to a felony, issue an indictment²⁷⁴ and refer the accused to the Criminal Court for trial on the charges against them.²⁷⁵

If the Indictment Chamber is unable to make a determination because it deems the investigation is “incomplete” or “unclear,” or upon a request from the Public Prosecutor, civil party or the accused, it may conduct a “supplementary investigation,” conforming to the rules pertinent to that of the functions of Investigating Judges (see sections 2.1.1. and 2.1.2.).²⁷⁶

4.1.3. Adjudication

Charges of misdemeanours are brought by the Public Prosecutor before a Single Criminal Judge. The statement of charges contains a description of the alleged offence, the location where it was committed, the complaint, if any, a record of the preliminary investigation and all other documentation supporting the OPP’s case.²⁷⁷ Misdemeanours discovered *in flagrante delicto* that carry a penalty of imprisonment, must be tried either immediately or on the

264. CCP, art. 121.

265. CCP, art. 121.

266. CCP, art. 124.

267. CCP, art. 125.

268. CCP, art. 125.

269. CCP, art. 127.

270. CCP, art. 127.

271. CCP, art. 128(1).

272. CCP, art. 129.

273. CCP, art. 130(a).

274. The indictment should contain a detailed account of the facts of the case, an itemized list of the supporting evidence, a reasoned legal qualification, the legal provisions applicable to the facts and an arrest warrant. Furthermore, it will set out all relevant information about the accused. See Code of Criminal Procedure, art. 131 for further detail.

275. CCP, art. 130(c). Where the Indictment Chamber considers the acts constitutes a misdemeanour, it can refer the defendant to the Single Criminal Judge.

276. CCP, arts. 132 & 134.

277. CCP, art. 152.

following day of the charges being proffered.²⁷⁸ Single Criminal Judges examine the facts set out in the Public Prosecution's statement of charges, the complaint of the victim and the circumstances and facts associated with the alleged offence,²⁷⁹ basing their judgment exclusively on the evidence presented to them, including witness testimony, in the course of adversarial proceedings. The judgments rendered by Single Criminal Judges may be appealed.²⁸⁰

Cases involving felonies are transferred to the Criminal Court. In its deliberations, the Criminal Court gives consideration to the indictment, the case file, claims of the civil party where applicable, witness testimony and arguments made by the Public Prosecutor and the defence, and must issue a unanimous or "majority verdict" within ten days of the closure of criminal proceedings.²⁸¹ If the evidence proves that the offence is attributable to the accused, it shall convict them, impose the requisite penalty and rule on the compensation to be awarded to the civil party if a claim has been filed.²⁸² The ruling must specify any aggravating or mitigating circumstances.²⁸³ If the Court decides to acquit the accused for lack of evidence or doubt, the civil party may bring a claim before the Court for the damages they sustained based on the facts detailed in the indictment.²⁸⁴ When the defendant is convicted, in addition to the guilty verdict, the judgment will include "a statement detailing the amount of personal compensation"²⁸⁵ where the victim/survivor has assumed the status of civil party (see section 1.3.), requesting a specific amount of compensation, in addition to an order for all applicable legal fees and costs to be covered by the offender.²⁸⁶

4.2. Challenges in practice

Bar the CCP and the additional mechanism of protection afforded by Law No. 293/2014, criminal justice actors involved in the prosecution and adjudication of SGBV cases do not have any specialized procedural guidelines equivalent to the ISF General Memorandum at their disposal. This lacuna has resulted in incoherent and ineffective prosecutions of SGBV offences, as previously concluded by the ICJ in the July 2019 Report.

With a view to ensuring the effective prosecution and punishment of SGBV-related offences, criminal justice actors at the prosecution and adjudication levels must be informed about existing procedural flaws and advised on measures and recommended practices to which they can resort to address these flaws.²⁸⁷

4.2.1. Prosecuting victims/survivors

Criminal justice frameworks that retain archaic provisions criminalizing certain behaviours and practices can often deter and dissuade victims/survivors from seeking remedy and reparation for SGBV, owing to fear that by lodging an official complaint with the relevant authorities, they could expose themselves to criminal charges, thus rendering the pursuit of justice worthless and potentially harmful to them.

Such assessments hold particularly true in Lebanon, where individuals who have engaged in "adultery" or "prostitution" (which is how sex work is referred to in the Criminal Code), or who have sought to have an abortion following a pregnancy resulting from rape, are subject to harsh criminal sanctions pursuant to certain provisions in the Criminal Code (see section 1.2.1.). Indeed, victims'/survivors' search for justice for an offence of SGBV, could, in turn, exacerbate and compound the violation(s) they have already experienced and deprive them of their right to prompt and fair redress under international law.

278. CCP, arts. 153-154.

279. CCP, art. 176.

280. CCP, arts. 208-211.

281. CCP, art. 272.

282. CCP, art. 273.

283. CCP, art. 274.

284. CCP, art. 278.

285. CCP, art. 274(g).

286. CCP, art. 274(h).

287. ICJ, *Gender-based Violence in Lebanon: Inadequate Framework, Ineffective Remedies*, 2019, pp. 30-31.

Foreign national SGBV victims/survivors who make a complaint that they have been trafficked are especially vulnerable as they may be prosecuted for offences related to “illegal immigration.” Mindful of the risk of arrest or deportation, victim/survivors of human trafficking are often more reluctant to come forward and report serious human rights abuses, which can prolong and perpetuate their sexual exploitation.²⁸⁸

As previously discussed in this memorandum (see section 2.2.1.), treating SGBV victims/survivors as criminals and subjecting them to pressures associated with the investigation and trial processes can result in their secondary victimization. This is the case even if criminal charges do not culminate in the conviction of an SGBV victim/survivor at trial, or if a judge chooses to show lenience at sentencing, based on the existence of mitigating circumstances, such as the very fact that the person convicted was herself a victim/survivor of SGBV.

4.2.2. Victim-centred approach: Part II

For victims/survivors of SGBV particular phases of the trial, such as having to give evidence through live testimony to the Court, as well as having to confront the alleged perpetrator, can conjure up strong feelings of anxiety, distress, fear, shame and embarrassment. The UNODC explains that these feelings can arise, in part, because of victims’/survivors’ unfamiliarity with the court setting and trial proceedings,²⁸⁹ being in close proximity to the perpetrator or being exposed to intense cross-examination.²⁹⁰ Prosecutors can play an invaluable role in mitigating and reducing these pressures, fostering trust between victims/survivors and the criminal justice system, and ensuring the non-recurrence of victimization by employing a number of victim-centred measures.

First and foremost, prosecutors should inform victims/survivors of their rights and the remedies available to them, “in addition to [providing them with] information about their role and opportunities for participating in criminal proceedings.”²⁹¹ Additional measures at the disposal of Prosecutors and Judges include creating an enabling court room environment, limiting the gratuitous questioning of victims/survivors at trial and shielding their identity from the media and/or general public. These measures operate not only to ease the mounting pressures on victims/survivors and make them feel safe, but to enable them to give the best evidence possible.²⁹²

Moreover, during trials relating to rape or other forms of sexual assault, the defendant may attempt to draw attention to a victim’s/survivor’s previous sexual history with a view to discrediting or diminishing the victim’s/survivor’s claim, which the ICJ has argued, “is humiliating for the victim, and, usually, irrelevant in respect of its probative value in establishing guilt or innocence of the crime for which the person is accused.”²⁹³ As a general principle, including in the specific case of Lebanon, where the criminal justice system, in certain respects, operates on the basis of patriarchal assumptions about women’s behaviour, lines of questioning that revolve around a victim’s/survivor’s sexual history should ordinarily be prohibited, unless and until it has been established they are both relevant and probative.²⁹⁴ Even in such circumstances, it is of paramount importance that the victim/survivor’s right to be treated with respect, privacy and confidentiality are consistently adhered to, and that no harmful gender stereotypes are peddled to influence the proceedings. The complainant’s

288. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, p. 17; ICJ, *Morocco: Ensuring the Effective Investigation and Prosecution of Sexual and Gender-Based Violence against Women and Girls*, 2017, pp. 22-23.

289. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, p. 60.

290. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, p. 119.

291. UNGA, *Resolution on strengthening crime prevention and criminal justice responses to violence against women*, 2011, para. 18(a).

292. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, p. 119.

293. ICJ, *Women’s Access to Justice for Gender-based Violence – Practitioners’ Guide No. 12*, 2016, p. 235. See UN Division for the Advancement of Women, Department for Economic and Social Affairs, *Handbook for Legislation on Violence against Women*, 2010, p. 44 for the view that: “[i]n many countries, complainant/survivor’s prior sexual history continues to be used to deflect attention away from the accused onto the complainant.”

294. Istanbul Convention, art. 42; UNGA, *Resolution on strengthening crime prevention and criminal justice responses to violence against women*, 2011, para. 15(e).

previous sexual history is in fact irrelevant in establishing whether or not she consented to the sexual conduct in question. If, on a previous occasion, the complainant consented to sexual conduct with the defendant, this does not prove that she did so also on the occasion when the sexual offence in question was allegedly committed.

The UNODC has developed a number of victim-centric measures, reproduced below,²⁹⁵ that Prosecutors can employ with a view to easing the experience of victims/survivors and facilitating their testimony.

Confidentiality measures	Privacy measures	Victim support measures
Measures designed to protect the identity of the victim from the press and public	Special evidentiary rules designed to limit the questions that can be posed to a victim during her trial	Measures designed to ease victim's experience during their testimony
<ul style="list-style-type: none"> • Removing any identifying information such as names and addresses from the court's public records and preventing media access to such information • Using a pseudonym for the victim • Prohibiting disclosure of the identity of the victim or identifying information to a third party • Permitting victims to testify behind screens or through electronic or other special methods • Allowing in camera proceedings or closed sessions during all or part of the trial, i.e. during victim's testimony (excluding public) 	<ul style="list-style-type: none"> • Prohibiting questions about the victim's prior or subsequent sexual conduct • Not requiring corroboration of the victims' testimony (according to national laws) 	<ul style="list-style-type: none"> • Permitting victims to testify in a manner that allows her to avoid seeing the accused (i.e. closed circuit TV or screens) • Limiting the frequency, manner and length of questioning • Permitting a support person, such as a family member or friend, to attend the trial with the victim • A video-recorded interview with a vulnerable or intimidated witness before the trial may be admitted by the court as the witness's evidence-in-chief

4.2.3. Sentencing practices

While the ultimate power over sentencing belongs to the judge, prosecutors can submit recommendations for appropriate sentencing that can impact on, and contribute to, the disposition the judge sees fit to impose. These recommendations must ensure that the sentences are commensurate with the gravity of the SGBV crime(s) committed, and are designed to ensure accountability, deter further violence against women and promote victim and community safety.²⁹⁶ Prosecutors should also give due consideration to offending behaviour programmes – also referred to as “anti-violence rehabilitation” in Law No. 293/2014 – in their submissions to the judge about sentencing options. Such considerations, however, should only be given weight

295. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, p. 119.

296. UNGA, *Resolution on strengthening crime prevention and criminal justice responses to violence against women*, 2011, para. 17.

where warranted and appropriate, based on the facts of each case, the attitude of the offenders, including as attested to by guilty pleas, expressions of remorse and a willingness to change, and their antecedents.

Prosecutorial authorities have a responsibility to furnish the Court with all the information it needs to make an appropriate sentencing determination, including the perpetrator's antecedents of sexual, physical or psychological harm, where applicable; a risk-assessment of the perpetrator's dangerousness for the victim and society; and any aggravating circumstances with respect to the commission of the offence.²⁹⁷ Prosecutorial authorities should also be alert and prepare to respond to arguments put forward by the representatives of those convicted, presented as mitigation, but which in fact seek to undermine the character of a witness, including the victim/survivor herself.²⁹⁸

At the sentencing stage, the victim/survivor is presented with a prime opportunity to address the Court and raise its awareness about the impact the offender's acts have had on her life, as well as that of her family, including her children, if any. The prosecutor can facilitate the victim's/survivor's participation at the sentencing stage in a number of ways, including by ensuring the victim/survivor is allowed to address the Court orally or submit a letter to the judge.

Sentences that are commensurate with the severity of the offence are part and parcel of the right to an effective remedy and ensure accountability for human rights violations. The prosecution should ordinarily always challenge, by way of appeal, sentences that are overly lenient, as they violate the victim's/survivor's right to access to justice and effective remedies and have the effect of promoting impunity in society at large for SGBV-related crimes.

The ICJ is concerned that, in some cases of SGBV in Lebanon, sentencing determinations have been incoherent and have failed to reflect the gravity of the offence at hand. In such cases, including the one featured below, it appears that the sentencing Court has 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.

Criminal Court in Mount Lebanon
Decision Number: 775/2019
Date: 14 May 2019

In the presence of a social worker, the victim gave a statement, alleging that her stepfather, the defendant, had raped her on multiple occasions in different hotels in the vicinity of Mount Lebanon. She was 16 at the time of the alleged incidents. The defendant, she claimed, used to give her a drug called "Dulcina" under the pretext of "relaxing or soothing her nerves" owing to "her anxious and apprehensive character." She claimed that the medication resulted in her disorientation, loss of consciousness and control, leaving her "unable to resist or counter any assault against her," and that the defendant exploited her drug-induced state to rape her.

During the preliminary investigation, and in subsequent statements, the defendant denied the allegations against him. At trial, however, the defendant stated that he had gone on to marry and have a child with the victim, and subsequent to the victim's retraction of her complaint, petitioned the Court to drop the charges against him. If the victim is between the age of 15 and 18, and a valid marriage takes place between the offender and victim, article 505 of the Criminal Code allows for the suspension of criminal prosecution or trial proceedings, provided that the judge's decision to suspend is made on the basis of a report issued by a social worker detailing the minor's social and psychological status. The social worker is required to conduct this assessment and report to the judge every six months for a period of three years from the date of the decision. In this instance, the defendant's request was denied because he failed to furnish the Court with proof of his marriage to the victim i.e. a valid marriage certificate.

297. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, p. 122.

298. UNODC, *Handbook on Effective Prosecution Responses to Violence against Women and Girls*, Criminal Justice Handbook Series, 2014, p. 122.

The Court convicted the defendant under article 505 of the Criminal Code for engaging in “sexual intercourse with a minor.” Given the age of the victim at the time of the commission of the offence, upon conviction the court should have sentenced him to five years’ imprisonment with hard labour. Instead, the Court sentenced him to one year’s imprisonment. Furthermore, the Court ruled that it was satisfied with the period of detention that the defendant had already served while awaiting trial which was only three months.

In its deliberations, the Court stated that the defendant was not convicted of a felony pursuant to article 506 of the Criminal Code, because his acts did not meet the necessary threshold of “coercion.” In other words, the Court convicted him of a misdemeanor, and not a felony, because, in the Court’s opinion, the defendant did not force or coerce the victim to have sex with him.

The above decision is problematic on two fronts. First, contrary to what is stated in the judgment, the family relationship that existed between the victim and the defendant clearly met the definition of article 506, which criminalizes sexual intercourse with a minor between 15 and 18 years of age committed by relatives/guardians who take advantage of their power. The perpetrator was the victim’s stepfather and, as he stated in his testimony, he lived with the victim, over whom he “exercised” legal or effective authority. Second, the defendant drugged the victim to make her incapable of “resisting or countering any assault against her;” and to exploit her drug-induced state to rape her. In the circumstances, the threshold of “coercion” within the meaning of article 506 was clearly made out. Moreover, in light of international human rights law and standards concerning the notion of consent in the context of sexual offences (see section 3.), the power relationship between the perpetrator and the victim and the fact that the defendant drugged the victim would, *a priori*, negate any question of consent. As a result, the Court’s finding that the defendant’s “acts did not meet the necessary threshold of coercion” is even more problematic.

Moreover, perceptions relating to the victim’s/survivor’s “chastity” and her social “worth” can inform sentencing practices and often result in the imposition of a more lenient sentence on those convicted, or by contrast, the imposition of a harsher sentence where the victim/survivor was a “virgin,”²⁹⁹ pursuant to article 512 of the Criminal Code (see section 1.2.1.).

4.2.4. “Mitigating circumstances”

The Criminal Code provides that if there are “extenuating grounds in a case,” the Court has discretionary authority to reduce the penalty imposed on the offender. 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;³⁰⁰ and life imprisonment with fixed-term imprisonment for not less than five years.

After examining a number of judicial decisions, the ICJ is alarmed that in the vast majority of SGBV cases analyzed, convicted offenders appear to have benefitted from a considerable reduction in their sentence following sentencing Courts concluding that there were circumstances mitigating the seriousness of their offending, with either little, or no explicit explanation as to why the Court saw fit to impose the reduced sentence.

***Criminal Court in Mount Lebanon
Decision Number: 776/2019
Date: 14 May 2019***

The complainant claimed that her husband, the defendant, sexually harassed and assaulted their four daughters, all of whom were, at the time of the alleged incidents, minors. She stated that daughter three was pregnant, alleging it was likely that the defendant was

299. 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.

300. Criminal Code, art. 253 (as amended by article 25 of the Act of 5 February 1948).

the father. During the investigation, all four daughters were interviewed and provided statements in the presence of social workers for children.

Daughter one claimed that her father harassed and assaulted her from the early age of eight, including by fondling her genital parts, rubbing his penis against her vagina and forcing her to watch pornographic films, and that he continued this pattern of abuse until she became engaged to her husband. This abuse, she alleged, happened when her mother was not at home. She stated that her father threatened to beat her if she exposed his conduct to anyone. Daughter one's husband also provided testimony to the Court, claiming that he had read a WhatsApp message exchange between them, which revealed the father's intentions to continue to engage in sexual intercourse with her "like a husband" even after her marriage. In another message, her father had asked her to send him a photograph of her vagina.

Daughter two stated that the defendant forced her to watch pornographic films on the computer, but that she prohibited him from "fondling" or touching her. She also alleged that the defendant had sexual intercourse with daughter three, "taking her virginity."

In contrast with her sisters, daughter three claimed that her father treated her and her siblings well, denying allegations that he raped or sexually abused her, and by extension, impregnated her. This testimony was a stark departure from her previous testimony in 2014, where she supported the allegations made against her father. She claimed that the latter testimony was false, and that she had lied to punish her father, who had objected to a marriage proposal she had received. She claimed that the individual who wanted to marry her took her virginity, not her father. Moreover, daughter three claimed that she gave the 2014 testimony after she came under pressure from her mother.

Daughter four also denied the allegations made against her father.

The defendant denied ever raping or engaging in sexual conduct with any of his daughters. He claimed that his daughters were forced into giving testimony against him by his wife, and that the motive behind the wife's complaint was the extramarital affair in which she had engaged, which he became aware of on the basis of a voice recording between her and another man. This claim was supported by daughter three's testimony. He further stated that daughter three became pregnant after her "pleasure marriage."³⁰¹

The defendant argued that he worked long hours, returning home late at night to his wife and, as such, was never left alone with his children. He also argued that he did not have access to a computer, and that he was illiterate, making it impossible, therefore, for him to send text messages, as claimed by daughter one.

On 16 August 2018, the complainant withdrew her statement after the defendant gave her custody of their two minor children. Despite this withdrawal, the prosecution sought the conviction of the defendant for "indecent acts committed against a person by violence or threat" (art. 507, Criminal Code) and the aggravation of the applicable penalty on the basis that the defendant was the victims' father (art. 511, Criminal Code); and for "indecent acts committed by a relative/guardian; or an official/religious cleric who takes advantage of their power" (art. 510, Criminal Code).

The Court found that there was considerable evidence against the defendant, including testimony from daughters one and two, daughter one's husband and the complainant. However, it also acknowledged that, in the absence of a medical report or testimony from daughter three to corroborate the allegation, it was unable to ascertain whether her virginity was taken by the defendant.

The Court issued a unanimous verdict, convicting the defendant and sentencing him to six years' hard labour under article 507 of the Criminal Code. The sentence was increased to eight years' hard labour pursuant to article 511 of the Criminal Code, which increases

301. Also known as *jawaz mut'ah*, which is a private and temporary marriage contract that is practised among followers of some branches of Shia Islam.

the term of imprisonment from one third to half (art.257, Criminal Code) if the offender is a "relative, guardian, official or religious cleric who takes advantage of their power." The Court imposed an additional penalty of five years' hard labour pursuant to article 510 of the Criminal Code. Taken together, this would mean that the defendant would serve a total of 11 years' [imprisonment with] hard labour.

However, at the sentencing hearing, the Court considered that there were mitigating circumstances, and thus decided to reduce the defendant's sentence to five years' [imprisonment with] hard labour in total on the basis of article 253 of the Criminal Code, deducting detention already served from the total sentence. The ruling did not provide any justification for the Court's decision that the defendant was entitled to a reduction in his sentence because of the existence of mitigating circumstances in the case.

The prosecution must be alert to arguments in mitigation that are advanced by the defendant's legal counsel, including defences that are discriminatory in nature such as those of "honour" or "provocation," or on the basis that the victim/survivor was not a "virgin" or was a "prostitute." It is incumbent on prosecutors, in such instances, to actively challenge the defence by presenting counterarguments that challenge harmful gender stereotypes and point to any inconsistency with the evidence heard by the Court. Where arguments that revolve around patriarchal stereotypes are given weight by the sentencing Court and result in excessively lenient sentencing, the Court is failing to impose punitive measures that are commensurate with the gravity of the offence, which not only gives rise to impunity, but results in a number of other violations, including the right of the victim/survivor to access to justice, effective remedies and the prevention of acts of SGBV which, in turn, amounts to violations of their right to be free from violence, including torture and other ill-treatment in certain circumstances.

5. Recommendations

While the content of this memorandum and its recommendations are addressed to the Judicial Police, the OPP, the Department of Investigation, Single Criminal Judges, Criminal Court Judges and Judges at the Court of Cassation, the ICJ considers that it is imperative on Lebanon to continue to reform its legislative framework, in particular the Criminal Code and Law No. 293/2014, in line with international law and standards.

Reaffirming its recommendations published in the July 2019 Report, the ICJ calls on the Lebanese authorities, including the Council of Ministers and the Parliament, to remove the obstacles to women's access to justice, including by:

I) Ensuring the legislative framework fully complies with international law and standards on access to justice and effective remedies, including by adequately defining and fully criminalizing all forms of SGBV without exception, and ensuring that laws prohibit discrimination and preserve the principle of gender equality. To do so, at a minimum, the following steps would be required:

- Amending Law No. 293/2014 on domestic violence so as to ensure that it comprehensively criminalizes all forms of SGBV against women;
- Ensuring that all acts of rape are criminalized, including by:
 - Specifically criminalizing marital rape and abolishing paragraph 7 of article 3 of Law No. 293/2014, which provides for a "religion-based" right to claim "marital rights;"
 - Appropriately and accurately characterizing rape as an offence that includes the following elements: (i) the intentional penetration of a sexual nature of the body of another person with any bodily part or object; (ii) the lack of or absence of consent or the fact that consent is vitiated; (iii) that coercive circumstances negate consent; and (iv) that ability to consent to engage in sexual activity is integrally related to the concept of legal capacity, without which, some sexual acts may entail criminal liability (e.g., age-related incapacity; incapacity as a result of intoxication).
- Criminalizing all forms of sexual assault in compliance with international standards, including by:
 - Amending articles 503 to 521 of the Criminal Code;
 - Properly characterizing sexual assault as a violation of bodily integrity and sexual autonomy.
- Criminalizing sexual harassment in compliance with international standards, including by:
 - Introducing legislation that specifically defines, criminalizes and provides appropriate punishment for sexual harassment, especially committed in public spaces or in the workplace.
- Decriminalizing abortion, including by:
 - Repealing articles 539 – 545 of the Criminal Code;
 - Introducing legislation that ensures the de jure and de facto exercise of the right to obtain a safe and legal abortion on, including in cases of SGBV, if the survivor/victim so desires;
 - Ensuring that anyone who undergoes an abortion receive necessary post-abortion care, including SGBV victims/survivors.
- Revising the Criminal Code to ensure its compliance with international human rights law and standards, including by:
 - Repealing all discriminatory provisions against women, particularly those concerning "adultery" and "prostitution;"
 - Permanently rooting out discriminatory concepts and assumptions in law such as "chastity," that endanger women and relegate them to a subordinate position;
- Providing adequate and continuous capacity-building training to all criminal justice actors, including the Judicial Police, Investigating Judges, Public Prosecutors, General Advocates and Judges on the application of international human rights law and standards, including, in particular, those by which Lebanon is bound, such as the CEDAW, the ICCPR, the CAT, the CRC and the ICESCR, which are particularly relevant with respect to the investigation, prosecution and adjudication of SGBV-related criminal offences;
- Establishing training programmes on gender-sensitive approaches to the investigation, prosecution and adjudication of SGBV-related crimes for all criminal justice actors.

II) As underscored in Chapters 2, 3 and 4, establishing gender-sensitive legal procedures and protocols for the investigation, prosecution and adjudication of SGBV-related crimes, and ensuring that forms of redress be designed to respond to the specific needs of women and girls victims/survivors of SGBV, including by:

- Amending the current procedural framework on SGBV, which combines the CCP and Law No. 293/2014, with a view to adopting gender-sensitive evidence-collection procedures that enhance women's access to justice and effective remedies;
- Furnishing investigatory authorities and the OPP with meticulous and clear guidelines, specific to their respective mandates, and tailored to the investigation, prosecution and adjudication of cases of SGBV. Furthermore, such guidelines should:
 - Offer robust instructions and training based on international human rights law and standards and recommended State practices, including, among others, on:
 - a. how to process the initial receipt of SGBV complaints;
 - b. the evaluation of SGBV complaints;
 - c. the effective documentation, collection, preservation and storing of SGBV-related evidence;
 - d. effective prosecution strategies.
 - Be enforced diligently and fully complied with by all concerned actors.
- Establishing and integrating specialized prosecution units and chambers for SGBV-related criminal offences within the Criminal Courts and Courts of Appeal, guaranteeing the timely and efficient handling of SGBV cases;
- Endorsing a coherent, participatory and victim-centric approach to SGBV case management, by establishing an effective system of referral between all concerned institutions;
- Revising and refining the current protocol governing the provision of forensic medicine with a view to ensuring its full compliance with international human rights law and standards and recommended good practice, particularly the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (Istanbul Protocol) and the World Health Organization's Guidelines for Medico-legal Care for Victims of Sexual Violence (WHO Guidelines), ensuring that:
 - Medical and forensic practitioners stringently observe the instructions contained therein;
 - Until the current protocol is so refined and enforced, healthcare and forensic medical practitioners rely on and comply with the Istanbul Protocol and the WHO Guidelines.

III) As identified in Chapters 2 and 3, enhancing and increasing the capacity, coordination and resources of criminal justice actors to ensure the effective investigation, prosecution and adjudication of SGBV cases, including by:

- Establishing the fund under article 21 of Law No. 293/2014, which is supposed to provide assistance and care to domestic violence victims/survivors, in addition to the rehabilitation of offenders;
- Establishing an adequate number of government-run shelters across the country for SGBV victims/survivors that provide legal, medical and psychological assistance to SGBV victims/survivors;
- Establishing government-funded rehabilitation programmes for SGBV offenders, including ones that address the perpetrator's propensity to violence and intimate-partner abusive behaviour;
- Establishing government-funded medico-legal facilities for the provision of healthcare and forensic testing, thus ensuring healthcare and forensic testing services are provided simultaneously, at the same facility, and are accessible to all victims/survivors of SGBV;
- Increasing the number of healthcare and forensic practitioners qualified and trained to carry out forensic testing;
- Adequately equipping healthcare and forensic practitioners to conduct their work;
- Extending training on the use of medico-legal reporting and forensic science to all criminal justice actors with a view to enhancing their respective knowledge of and familiarity with this discipline.

The ICJ considers that, pending the introduction and implementation of the above recommendations and the reforms that they, in turn, entail, all criminal justice actors, including the Judicial Police, Investigating Judges, Public Prosecutors, General Advocates and Judges, should make the most of the tools that are at their disposal today, including the Criminal

Code, CCP, Law No. 293/2014 and the ISF General Memorandum, with a view to ensuring the prevention, investigation, prosecution, adequate sanctioning and provision of effective remedies in cases of SGBV by public and private actors. In so doing, criminal justice actors should draw inspiration from the following guidance and recommendations:

Investigation (Chapter 2)

With a view to ensuring effective investigation practices, the ICJ urges first responders and investigatory authorities, including the Judicial Police, Department of Investigation and the OPP to:

- Exercise due diligence to prevent additional violations of the human rights of SGBV victims/survivors, investigate and prosecute all forms of SGBV;
- Gather the pertinent facts about the alleged offence(s) from the alleged victim(s), alleged offender(s) and witnesses, where relevant;
- Proceed to the crime scene in order to collect, preserve and store all evidence in support of the SGBV allegation(s);
- Appoint a relevant "expert," pursuant to article 34 of the CCP, in order to ensure evidence is consistently collected, preserved and stored;
- Employ victim-centered, gender-sensitive measures that prioritize the well-being and safety of the victim/survivor consistently throughout the investigation stage so as to prevent secondary victimization, including by:
 - Limiting the number of times an SGBV victim/survivor is interviewed, as well as the number of people who interview her, yet providing her with adequate time to relay her experience, so as to minimize traumatization;
 - Interviewing SGBV victims/survivors in a separate room, preferably in the presence of a female officer, with a view to ensuring her privacy;
 - Refraining from interrupting the SGBV victim/survivor as she relays her story;
 - Refraining from victim-blaming and from making biased assumptions about SGBV victims/survivors, their behaviours and practices;
 - Ensuring confidentiality.
- Enhance the current system of protection, including by:
 - Extending the protection mechanism to all SGBV victims/survivors and applying it to all forms of SGBV, as opposed to limiting its scope of application to domestic violence cases;
 - Ensuring that applications for protection orders be expedited;
 - Ensuring that protection orders be fully enforced;
 - Establishing a specialized judicial body empowered to hear protection order applications.
- Conduct an assessment of dangerousness in all SGBV cases, including by ensuring that all necessary measures be taken to mitigate the risk posed to the victim/survivor, her children and extended family, paying particular attention to cases where the offender is in possession of a firearm;
- Provide medico-legal services simultaneously, at the same place, by the same practitioners and make them available 24-hours a day in a one-stop shop fashion or, where it is not feasible to provide a full-time service, on an on-call basis outside regular working hours;
- Conduct medico-legal examinations in an environment that is reassuring, confidential and appropriate for the potentially distressed state of the victim/survivor;
- Obtain the victim/survivor's full, genuine, free and prior informed consent, preferably in writing, before proceeding with the collection and documentation of medico-legal evidence;
- Ensure adequate government funding to provide free STI screening in all cases that involve sexual violence, and emergency contraception, pregnancy testing and HIV prophylaxis on a case-by-case basis when appropriate.

Prosecution (Chapter 4)

With a view to ensuring effective prosecution practices in SGBV-related cases, the ICJ urges the Department of Investigation and the OPP to:

- Exercise due diligence to prevent further violations of the human rights of SGBV survivors, and investigate, prosecute and ensure access to remedies for all forms of SGBV;
- Exercise prosecutorial discretion and refrain from charging and prosecuting SGBV victims/survivors for other "crimes," such as "adultery" or "prostitution;"

- Refrain from making baseless, prejudiced and patriarchal assumptions with respect to the victim's/survivor's behaviour or relationship with the offender;
- Ensure victims/survivors are informed about their rights, the remedies at their disposal and their role in criminal proceedings;
- Conduct effective risk-assessment and management for SGBV victims/survivors, and where applicable, their children, family and witnesses, consistently throughout the investigation, prosecution and trial phases, with a view to identifying danger and acting to prevent reprisals and retaliatory acts by the offender;
- Ensure the implementation in practice of protection measures to mitigate the risks faced by victims/survivors of SGBV offences, including by:
 - Monitoring the implementation of protection orders and ensuring the offender's adherence thereto;
 - Duly taking into account the personal circumstances of SGBV victims/survivors, including the needs of her family members, if any;
 - Charging and prosecuting offenders with obstruction of justice and breach of court orders if they fail to comply with protection measures imposed by the Courts to ensure the security and safety of SGBV victims/survivors, particularly in cases of repeat or serious breaches of protection orders.
- Provide the court with all relevant information and documentation, including, among others, a risk-assessment of the offender's dangerousness for the SGBV victim/survivor and society, and the offender's antecedents, including, in particular, prior history of sexual or physical abuse, if any;
- Urge the court to obtain input from the SGBV victim/survivor, with a view to ensuring that the judge/s be fully apprised of the effect(s) the offender's acts have had on the victim/survivor, and where relevant, her children or other relatives, if any;
- Make appropriate sentencing recommendations to the court, and appeal, where warranted, sentences that are too lenient and thus not commensurate to the seriousness of the offence committed;
- Refer to the UNODC Handbook on effective prosecution responses to violence against women and girls, with a view to developing effective prosecution strategies.

Adjudication (Chapter 4)

With a view to ensuring the effective adjudication of SGBV, the ICJ urges Judges to:

- Exercise due diligence to prevent further violations of human rights of SGBV survivors, sanction and ensure access to remedies for all forms of SGBV;
- Enhance the current system of protection, including by:
 - Extending the protection mechanism to all SGBV victims/survivors and applying it to all forms of SGBV;
 - Issuing protection orders promptly;
 - Ensuring the consequences of non-compliance are explicitly outlined in the protection order;
 - Removing time limits on protection orders by granting long-term, final or post-hearing orders;
 - Informing judges about the preventive and deterrent value in domestic violence abusers' engagement in offending behaviour programmes;
 - Ensuring judges adopt a means-testing approach, whereby offenders who have the financial means to pay be compelled to bear the expense of reform-oriented programmes;
 - Putting an end to the practice of foisting reconciliation onto SGBV victims/survivors with their offending spouses unless SGBV survivors have specifically indicated their willingness to be reconciled;
 - Modelling protection orders in a way that seeks to ensure the ongoing residence of victims/survivors in the marital home – or their return thereto – with access to all their possessions, restraining the perpetrator accordingly.
- Desist from engaging in judicial stereotyping, victim-blaming and other harmful practices that undermine SGBV victim's/survivor's right to access to justice and effective remedies, including reparation for the harm inflicted against them, including by:
 - Rejecting submissions from the defence that cite "honour" or "provocation" as a justification for the offender's actions;

- Rejecting submissions advanced by the defence that make groundless assumptions regarding consent, such as the purported “offensive” behaviour of SGBV victims/survivors or their sexual history.
- Adopt a victim-centred approach, with a view to minimizing the pressures on SGBV survivors that abound at the trial phase, including by:
 - Using articles 178 and 249 of the CCP, which allow for proceedings to be held in camera, in order to ensure that the identity of the SGBV victim/survivor is not disclosed to the media and/or the general public;
 - Dismissing gratuitous, irrelevant lines of questioning impinging on the reputation of SGBV victims/survivors during trial, thus enabling them to give the best possible evidence;
 - Creating a court room environment that is conducive to the needs of the SGBV victim/survivor.
- Impose sentences that are commensurate with the gravity of the SGBV offence committed, ensuring accountability and deterrence for violence perpetrated against women;
- Make a comprehensive and informed assessment of the offence(s) and its/their impact on the SGBV victim/survivor, taking into consideration any aggravating circumstances, such as the offender’s antecedents and recidivism;
- Ensure that at sentencing, mitigating circumstances be taken into account only when judiciously and evidentially warranted, including by:
 - Ensuring that decisions are well reasoned and justified on a case-by-case basis;
 - Rejecting arguments advanced by the defence in support of mitigating circumstances that are ambiguous, vague, irrelevant or based on harmful gender stereotypes;
 - Ensuring that justice is not only done but is manifestly and undoubtedly seen to be done.

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March 2019 (for an updated list, please visit www.icj.org/commission)

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