

Responses to the Draft Law to Protect Women from Family Violence

In July 2007 KAFA (Enough) Violence & Exploitation, a civil society organization calling for gender-equality, non-discrimination, and the advancement of the human rights of women and children, took the initiative of drafting a law that criminalizes family violence. The draft law was later adopted by 41 women and human rights organization that formed “The National Coalition for the Protection of Women from Family Violence”.

The draft law was approved by the former Council of Ministers on April 6, 2010, and referred to a special parliamentary committee for further study before being submitted to voting in Parliament. However, since May 2010, nothing has been done to that effect due to the havoc the draft law created and the political crisis within the government.

The draft law aims at criminalizing all forms of family violence against women in Lebanon namely physical, mental, and sexual abuse as well as marital rape, and so-called honor crimes. It assigns a public prosecutor in each of Lebanon’s six governorates to receive complaints and investigate cases of violence. The draft law also requires the establishment of specialized family violence units in police stations and within the internal security forces to process complaints. It enumerates the types of punishment the offender receives, including fines and prison terms. The draft law considers the reporting of abuse a sufficient factor to launch a legal complaint against the violator. Moreover it ensures the full privacy of the victim throughout the reporting process. It also allows any witness (family members, neighbors, social workers, etc.) to report family violence. The draft law requires public and private healthcare centers to report cases in which they treated women who

bore evidence of abuse. It also allows a woman and her children to seek a restraining order against an alleged abuser and requires the public prosecutor for each governorate or court to make a decision with respect to the reported abuse within 48 hours.

Article 3 of the draft law singles out those who are sentenced for committing family violence crime:

1. Any member of the family who coerces any female family member to beg is imprisoned from three to six months and is fined from five hundred thousand Lebanese pounds (around 335 US dollars) to one million Lebanese pounds (around 635 US dollars).
2. Any member of the family who coerces any female family member to practice immorality and depravation acts or facilitates such acts for them, is subject to imprisonment with hard labor for three years at least.
3. Any member of the family who makes his living, whether fully or partially, by relying on the prostitution of one female family member is subject to imprisonment with hard labor for five years at least.
4. Whoever forces his wife into sexual intercourse, using violence and threat, is subject to imprisonment from six months to two years.
5. Whoever forces his wife into sexual intercourse, while the wife is unable to resist because of any physical or psychological handicap, or because of the means of deceit used against her, is subject to imprisonment from one to three years.
6. Every member of the family who has killed, with premeditation a female family member is subject to imprisonment with hard labor from twenty to twenty five years. It is noteworthy that he does not benefit from the provisions of

Article 562 of the Penal Code.

7. Every member of the family who has killed with premeditation, a female family member, and has mutilated her body after killing her, or if the victim is below fifteen years, is subject to life imprisonment with hard labor.

8. Every member of the family who has killed, with premeditation, a female family member, or practiced acts of brutality and violence against her before killing her, is subject to the death penalty.

9. Every member of the family who has injured, with premeditation, a female family member is subject to the sanctions provided for in Articles 554 to 559 in the Penal Code.

10. Every member of the family who practiced emotional and psychological violence, using coercion and threat, against a female family member, with the intention of controlling her, restricting her freedom or forcing her into marriage, is subject to imprisonment from six months to one year.

The draft law created a public outcry and generated a lot of negative responses by both Dar al-Fatwa (p. 78), the country's highest Sunni Muslim authority, and the Higher Shi'a Islamic Council. They opposed the draft bill on the grounds that Islamic *shari'a* law already protects the role and status of women and includes provisions governing legal issues related to the Muslim family.

On June 29, the Coalition issued a statement in response to Dar al-Fatwa's published rejection of the draft law (p. 81), asserting that the bill is far from being a foreign imposition and affirming that it is a product of the local environment in which we live and does not oppose any religious group. The Coalition also noted that religious courts, which oversee issues related to personal status laws such as marriage, divorce, custody, and inheritance, are not mandated to protect women from violence. For example, in cases of divorce or separation, the religious courts may consider an act of violence by the husband as justification to grant the wife a divorce, but these courts are not mandated by the state to prosecute criminal cases and punish the abusers.

It is important to note that Article 26 of the draft law was expressly put in order to deal with potential conflict with personal status codes: "All the texts contrary to the provisions of the present [draft] law are repealed. In case the provisions of the present [draft] law go against those of the Personal Status Code and the rules of jurisdiction of the religious courts, the provisions of the latter shall prevail in every case".

IWSAW Staff

Full text of the draft law is available at <http://www.kafa.org.lb/FOA.aspx?code=1&Dcode=13&title=The%20law%20to%20Protect%20Women%20from%20Family%20Violence>

The Response of Dar al-Fatwa to the Draft Law on Domestic Violence

The Grand Mufti of the Lebanese Republic Sheikh Mohammad Rachid Kabbani chaired a meeting at Dar al-Fatwa that was attended by imams and mosque preachers, and by the secretary of Dar al-Fatwa in Lebanon, Sheikh Amin al-Kurdi. Also present was the Mufti of Rachayya Sheikh Ahmad al-Ladan, a number of religious judges, and the Chairman of the *shari'a* college at the Beirut Islamic University, Dr. Anas Tabbara.

The participants discussed the draft law to protect

women from domestic violence that had been approved by the Council of Ministers in Decree No. 116 and then referred to Parliament for voting. They objected to this draft law given its serious infringements on the provisions of *shari'a* law – and the fact that it might lead to the dismantling of the Muslim family in Lebanon and to a generation of children who lack discipline because they are not raised according to the principles of Islam. Other objections related to the ensuing overlapping of power between religious and

civil courts, as well as to a potential conflict of prerogatives.

After debating the draft law from the *sharia'a* point of view as well as from the legal points of view, the participants released the following statement:

Islam in general is very keen on treating women well, and pays particular attention to mothers, wives, daughters, sisters, paternal and maternal aunts. Islam has warned against the abuse of any person in general, and of women in particular. In this respect, the following saying by the Prophet Mohammad is quite informative: "Only a man of noble character will honor women, and only a man of base intentions will dishonor them".

So Islam is quite aware of and concerned with resolving the problems related to the mistreatment of women, but this should not happen by copying Western laws that encourage the demise of the family. These laws deal with domestic issues in such ways that they only suit Western societies. They are unfit for the Muslim society, and laws should be adapted to the society they stem from. So the participants of Dar al-Fatwa's meeting chaired by the Grand Mufti of the Lebanese Republic decided to reject the draft bill aiming at protecting women against domestic violence for the following reasons:

1. The draft law on domestic violence is detrimental to the Muslim woman whether she is wife, or mother, or daughter, or sister, because it denies her many of the rights granted to her by the Islamic religious courts. If a woman has recourse to this draft law, she will automatically be stripped of her financial rights should her husband submit a complaint to the religious courts that his wife is threatening him with this new [civil] law. Thus the draft law was not meant to improve women's status, but rather to break up the family and to turn the social pyramid upside down, in compliance with Western ways which do not suit our society's principles and values.
2. It denies the Muslim father the right to educate his own children, and in particular his daughters who are mostly in need of their father's protection, advice, and education.
3. The draft law undermines the prerogatives of the

Islamic religious courts in its Articles 15 and 18.

4. The draft law causes confusion in the legal system and leads to a judiciary mess, especially with regards to the definition of the family in Article 2, and the discrimination between males/females with respect to sanctions, not to mention the introduction of new concepts such as the concept of economic violence.

5. It invents new types of crimes: such as the heresy (*bida'a*) of marital rape i.e. accusing the husband of rape and criminalizing him for it.

6. It introduces penalties that are not consistent with the penal code. It inflicts punishments "for threats" in contradiction with Articles 573 to 578 of the penal code; and makes verbal threats, which are dealt with in the penal code, a misdemeanor the moment they are uttered, as stated in clause 10 of Article 3.

7. The draft law paves the way for reporting abuse in cases related to domestic violence, although judicial jurisprudence has restricted reporting abuse to cases where the harm incurred renders the person unable to work for a period exceeding 10 days by virtue of Article 554 of the penal code. This will lead to legal problems if the charges were dropped, and attempts were made to solve the dispute amicably.

8. It authorizes the Public Prosecutor to demand alimony for the wife although he/she is not entitled to do so, as it is totally outside his/her prerogatives.

9. It transforms the social institutions as well as the public and the private healthcare centers into places where complaints are received and forwarded to the Public Prosecutor, which is a radical departure from their original responsibilities. Such a shift puts their humanitarian mission in jeopardy.

10. It transforms judicial institutions into reporting units that denounce alleged cases of family violence. This would preclude any possibility for amicable reconciliation between the different parties.

11. The draft law violates the principle of judicial evidence when using the children's testimony by virtue of Article 13.

12. The choices which are left after the intervention of the judicial police are: either providing the victim with an alternative shelter or issuing a restraining order against the alleged abuser by virtue of Article 15, which hinders any attempt at reconciliation.

13. *Sharia'a* law deals with domestic violence appropriately by urging guidance, counseling, and other measures meant to preserve the family

integrity. In case of divorce, *sharia'a* law includes provisions governing legal issues such as alimony, custody, guardianship, right of visitation, as well as keeping the family members in touch, in compliance with the principles of kinship and family cohesion cherished by Islam.

It should be noted here that some feminist secularist organizations promoted distorted interpretations of Western laws that only conform to the aggressive capitalist and individualistic values, and are in defiance of the religious principles, the moral values, as well as the oriental and Islamic customs and traditions.

14. This draft law allegedly aims to achieve equality between men and women in rights and duties, but in fact this is not the case, because this bill is fundamentally based on gender segregation, as it deliberately omitted the protection of the weak members of the family, such as the children, the handicapped, the elderly persons, regardless of their gender.

15. As stated in the draft law, increasing the punishment is neither going to prevent abuse nor even halt it, just the opposite. Overreactions will lead to clashes which won't come to an end by the mere use of the law as a measure of intimidation. This is well-known in psychology.

16. Getting the children to testify against their father would have a negative impact on Muslim children, who are the future fathers of the next generation.

Also, seeing their mother threatening their father with prison, in defiance of patriarchal authority which is guaranteed by *sharia'a* and by law, will undermine the father's authority in the family and shake his moral status as well.

To conclude

According to Article 9 of the Lebanese Constitution that protects the personal status and religious affairs of all communities, the Muslim community has the absolute right to reject any draft law that might undermine such independence in its personal status affairs and affect family bonds.

Therefore, the Grand Mufti of the Lebanese Republic and all Muslim dignitaries and ordinary citizens stress on the necessity to abide by the *sharia'a* law that governs the Muslim family matters in society. They also warn against any transgression concerning religious rules and jurisprudence. They strongly object to any draft law that violates *sharia'a* under the cover of slogans such as protecting women and combating violence, as Islam guarantees the right of the weak members of the society whoever they might be, and calls for protecting them and caring for them religiously and morally.

Press release issued by Dar al-Fatwa on June 23, 2011. For more information visit <http://www.darfatwa.gov.lb/>

Translated from Arabic by Rada Soubra

Communiqué issued by The National Coalition for the Protection of Women from Family Violence in reply to Dar al-Fatwa's refusal of the draft law

The National Coalition for the Protection of Women from Family Violence considers that the recent objections to the Protection of Women from Family Violence bill are unjustified because this draft law stems from our own environment, as well as from women's urgent need to be protected from the violence perpetrated by some men and women within the family. In no way does the draft law interfere with the noble religious concepts, because all religions agree on rejecting violence, but religious laws are not supposed to tackle the punishment issue (i.e. impose

sanctions on the perpetrators). The point is: how do we combat domestic violence? What hurts (ruins) children's education and leads to the disintegration of the family is witnessing violence happening inside the family on a daily basis as if it were an unavoidable fact of life.

The Prophet Peace be Upon Him said:

"Only a man of noble character will honor women, and only a man of base intentions will dishonor them." So, who is going to face this person of

base intentions in case he attacks a woman? Does advocating that persons of base intentions be deterred from their wrongdoing constitute a crime, and make those who are asking for it people who reject religious concepts, and moral values, and the oriental and Islamic mores and customs? The bill on the Protection of Women from Family Violence protects women from any one with base intentions be it a man or a woman. Does this constitute a denial of the Islamic principles and ethics?

Below is an illustration of all the fallacies surrounding the draft law and for its rejection:

1. Violence inflicted on Muslim women as well as other women, whether wives, mothers, daughters, or sisters, is the real cause of harm, and not the draft law that is intended to be a relief measure. The religious courts consider the minutes of the proceedings presented by women as evidence of abuse in the case of divorce or separation. This is an acquired right for women under civil law. A woman cannot obtain a *shari'a* or other religious sentence penalizing the domestic violence perpetrated against her because such a decision is the prerogative of a civil court and not a religious one.
2. Although we have some reservations with respect to associating education with violence, the bill does not hinder the fathers from raising their children, especially that minor girls are not concerned by this draft law, but rather they are subject to juvenile law. Only adult females are concerned by this law. And this is mentioned in Article 1 of the draft law.
3. There is no such thing as overlapping of prerogatives or eroding them. The draft law was very clear in its first article that stated that the prerogatives of the *shari'a*, Christian, and various religious courts should be preserved. Articles 15 and 18 of the bill are proof that the prerogatives of the religious courts should be maintained.
4. Where is the judicial mess? This [draft] law is a specific one that applies to a particular situation defined in time and space. And there is no gender differentiation with respect to punishment. The text is general with respect to those who abuse females inside the family, whether the abuser is male or female. Increasing punishment and accentuating it is part of the protectionist legal policy.
5. Criminalizing the one who forces his wife, using violence and threat, into sexual intercourse, (Article 3, Paragraph 4), is not heresy. Even Islam does not permit the husband to use violence in order to obtain his marital right (to sex). According to Islam, a wife who refuses herself to her husband is considered to be disobedient, and she might be stripped of the rights conferred to her by *shari'a* law. But this does not give the husband the right to harm her in order to get his marital right (to sex). The crime to be punished by this draft law is the abuse occurring from sexual intercourse, and not the sexual relationship itself.
6. Increasing the degree of punishment is not in contradiction with the penal code which increases punishment in case the crime is committed by one of the victim's relatives or by those who have authority over her (Article 511 of the penal code), because it is easy for the abuser to repeat the abuse when he/she is part of the victim's family circle.
7. Lawyers criticize the bill for superfluously tackling the issue of reporting, which is already stated in Article 28 of the Law on Criminal Proceedings. Indeed, mentioning the act of reporting is not something new, but is meant to stress the fact that domestic violence needs to be included in the draft bill because the abovementioned Article 28 is general and has not specified the type of abuse that should be reported.
8. We have already mentioned in a clear reference to the draft law that Article 18 and Article 1 particularly maintain the exclusive prerogatives of *shari'a* and Christian religious courts with respect to alimony, custody, and guardianship.
9. It is the duty of the healthcare centers and of the social institutions to report the cases in which they treat women who bear evidence of abuse to the Public Prosecutor. (In case unintentional harm occur, such as a car accident for instance, then it is incumbent on each hospital to report the case to the Public Prosecutor for investigation). Therefore, reporting is not an act of spying, but it is part of laws aiming at combating violence, and is adopted as a moral duty first before becoming a legal one.
10. Seeking protection does not hinder reconciliation. The terms of negotiations suppose that no party is in a weaker position than the other, otherwise negotiations are to the detriment of the weak party. The bill does not transform the legal institutions into

reporting centers. These institutions complement each other and must unite in order to ward off violence and prevent its exacerbation.

11. Listening to the testimony of a minor child does not constitute a violation of the principles of judicial proof. It is actually possible to take the testimony of a child as a way of collecting information, as long as all other necessary conditions are met, such as the presence of a social worker, as stipulated in the draft law.

12. When the severity of abuse is such that life in common is not possible anymore, then there should be a way to keep the abuser away from the victim and to allow her to take her own decisions freely, either by continuing to live with the abuser or leaving him. Thus, the possibility for reconciliation remains throughout the stages of the investigation. However, the abuser should be aware that his act is not going to remain unpunished.

13. The choice of resorting to the religious courts and abiding by their suggested solutions for the conjugal disputes does not contradict the bill. However, those women who belong to a religious community which is incapable of dealing with the issue of domestic violence are entitled to seek the help of state institutions. We should keep in mind that domestic violence is in no way limited to conjugal violence. It is violence perpetrated against women by a family member (male or female), regardless of the conjugal relationship, and this is not within the competence of the *shari'a* courts.

14. Equality means equal people. Therefore, the draft law means that all abused women are subject to the same law, because they have experienced the same aggression as well as its effects. As for the children, they already have an adequate law that protects them. In case they were covered by the draft law, then we would have an overlapping of prerogatives between the two laws.

15. Abolishing violence needs a comprehensive national strategy and not a draft law. But if the fear of the aggressor's reaction becomes the reason for not promulgating laws that inflict punishment as a deterrent, then the whole penal code should be revised, in anticipation of the criminals' reaction. The victim should then accept her status as an abused person as well as all the harm inflicted on her without complaining or asking for protection, because she

dreads the reaction of the abuser. The state is not allowed to interfere between her and her abuser, until she is killed. Then the state interferes and the criminal is sentenced to capital punishment. In this case, the father's image in the mind of his children is not shaken, and the family is not broken up!

16. The psychological effect on Muslim as well as on non-Muslim children who have witnessed the abuse of their mothers is greater than all other effects on their psyche. Therefore, in case a woman resorts to the law to defend herself from violence, she is not defying the paternal authority upheld by both religious and civil laws. In any case, by practicing violence rejected by both religious and civil laws, the abuser is misusing his authority and transforming it into authoritarianism. As for saying that threatening the father with prison defies his paternal authority and shakes his moral status, we ask the following: is not sent to prison he who fails to pay alimony to his family? The undermining of paternal authority results from the violence a father perpetrates against his family, and it is better for the fathers-to-be to be aware that he who misuses his paternal authority and abuses his wife and children is going to be punished by law.

To conclude,

The National Coalition for the Protection of Women from Family Violence, while respecting all religions and the Lebanese Constitution, urges all national authorities as well as the *shari'a* and Christian religious courts to treat this draft law objectively, and to consider it as complementary to the personal status law and not in contradiction to it. Domestic violence and the necessity to combat it are no glittering slogans. Domestic violence is an undeniable phenomenon, and the state has to assume its responsibilities vis-à-vis the citizens by providing them with basic rights, i.e. protecting them against violence in both the private and public spheres. Nothing justifies the abuse of women in the domestic sphere, and nothing should prevent the state from interfering and putting an end to this violence before it leads to murder.

Translated by from Arabic by Rada Soubra

The Communiqué was issued on June 29, 2011 and is available on the following website: <http://www.kafa.org.lb/News.aspx?Newscode=29&title>