

LAURE MOUGHAIZEL EVALUATES LEBANESE LAWS



Attorney and Human Rights Activist
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Conducted by Ghena Ismail

Ghena Ismail: How do you evaluate Lebanese laws from the perspective of human rights in general and women's rights in particular?

Laure Moughaizel: First, I would like to stress that women's rights are inevitably part of human rights. There cannot be

human rights without women's rights, nor can there be women's rights outside the framework of human rights. All of the issues raised by women's movements are essentially humanitarian issues. Consequently, both men and women should work on them. This is what I have been advocating for fifty years now, since I first became active in the humanitarian field. I simply cannot imagine humanity divided into two sections: one for women and another for men. Concerning my own evaluation of the Lebanese law, I have to point out that there is a gap between the legislation and its application. As for the legislation, it is relatively modern; it emerges from a democratic system and emphasizes the respect of human rights, especially the new Introduction added to the Constitution in 1990, which clearly affirms Lebanon's commitment to all international conventions and declarations concerning human rights.

GI: What does this commitment imply?

LM: It merely implies respecting the international declarations, which have no legal force, as you may know. A country only becomes legally obliged to follow a certain code when it ratifies the agreements issued by the UN. Although Lebanon has always committed itself to the international declarations, it was only last July (1996) that the Lebanese Government became a signatory to CEDAW (The Convention for the Elimination of All Forms of Discrimination Against Women). Even though the Lebanese legislation emphasizes respect for human rights, this does not mean that it has no flaws or deficiencies. A flaw is a present law that violates human rights, e.g., a farmer is excluded from the legal protection offered to

Lebanese workers; a deficiency is a missing law, e.g., Lebanon lacks sanctions against "sexism". Some laws need to be amended, some need to be canceled, and others need to be added. However, the laws which violate human rights are much fewer than the violations of human's rights that take place in everyday life. This reminds us of the Arabic proverb, "Iqra' tafrah, jarrib tahzan", i.e., "If you read, you become happy, but if you try, you become sad!" In other words, theory and practice are not the same thing! The real problem is in the application more so than in the legislation.

GI: What is being done to monitor the application of the laws, especially those recently amended or added?

LM: Follow-up efforts are made, but not, of course, by the Government. We in the Non-Governmental Organization for Human Rights monitor the Government regularly; never has the Government taken the initiative to respect human rights. For instance, when the law concerning women's testimony was amended, due to our constant efforts, enabling women to give their testimony in all matters and be considered equal with men, many mayors still refused to accept the testimony of women. Here, our work began. We conducted studies, carried out investigations, and wrote reports which we submitted to the relevant ministries. At our request, the Director of Public Security issued a public announcement stating that mayors must accept women's testimonies. For the purpose of monitoring the application of the law, we have established two offices: one for complaints and petitions and another for free legal consultations. Now, I am attempting, along with the National Committee for Women's Rights headed by Lebanese First Lady Mona El-Hrawi, to institutionalize these two offices so that services will be expanded to benefit the greatest number of people. Today, in light of the present economic difficulties, voluntary work has become virtually impossible. People might be enthusiastic for a little while, but faced with the demands of everyday life, they eventually quit. Therefore, institutionalizing these two offices is imperative.

Monitoring the application of laws alone is inadequate. If a right exists and people do not know about it, it is simply useless. In an attempt to promote legal literacy among Lebanese citizens, I issued two guidebooks, one for the working woman and another one for the Lebanese citizen. Now I am preparing a third guide entitled "The Right to Health." Moreover, we in the Lebanese Association for Human Rights have carried out a comprehensive campaign to introduce and explain the law to Lebanese citizens, to inform them about their rights, and more

importantly, to teach them how these rights should be used. If a woman knows that she, as a worker, has the right to 50 percent salary for every one extra working hour, but does not know how to practice this right, she may not know that she can simply go to the labor disputes tribunal council and submit a complaint without appointing a lawyer. Thus, she is not likely to pursue her right. Three goals need to be achieved: First, the citizen must become aware of his or her rights; second, the citizen should learn how he or she can practice these rights; and finally, citizens must learn how to amend the deficient existing laws. In a survey that preceded the campaign, we discovered that legal illiteracy affects not only college students, men and women alike, but even those in the Parliament!

GI: Does anyone in any position of authority promote women's issues today?

LM: No, not at all. In the past, there was Joseph Moughaizel, my late husband, who was the first one to call for the elimination of all forms of discrimination against women, and there was also Auguste Bakhos, a parliamentarian who used to support all of our goals and plans.

GI: What is your strategy to change the laws which still need to be amended?

LM: The strategy was drawn up in 1947, half a century ago. After we had made a survey of all the laws which needed to be amended, canceled, or added, we used to choose, for each stage, a specific law to adopt or change. Last year, for instance, we focused on the Government's ratification of CEDAW, which we eventually succeeded in having the Lebanese Government sign, but not without major reservations. (See explanation on facing page.)

GI: What are your priorities for the coming year?

LM: Our priorities for 1997 are the amendment of laws related to crimes of honor and laws concerning economic and work regulations. According to Lebanese law, a man who kills his wife or sister upon witnessing her in an act of adultery benefits from an exempting excuse, whereas if he kills her because he witnesses her in a state that arouses suspicion of adultery, he benefits from an extenuating excuse which reverts his punishment from a death sentence to a one-year imprisonment. Regarding economical legislation, there is no equality between the woman employee and the male employee with regard to financial grants, privileges and insurance.

GI: What are your criteria for deciding on legislative priorities, and what method do you employ to effect the desired changes?

LM: There are two criteria: first, the extent of need for the

change of a particular law; and second, the likelihood of realizing the aim. This second criterion is important, since we try to avoid public provocation or discontent about a subject which we know is too far-fetched. As for our method, the first step is to prepare a legal study and a proposal for an amendment in the law. Then, we convene the non-governmental organizations for a meeting. If the organizations are convinced and supportive, we sign the proposal, forward it to the authorities, and form a follow-up committee.

GI: Wasn't the law for transferring Lebanese nationality through the mother among the priorities last year?

LM: Of course it was. In fact, it was the top priority for the year 1995-96. Seventy non-governmental organizations had signed the proposal, and then we held three meetings with the parliamentary committees, in the presence of the Minister of Justice, the Minister of Interior Affairs, and the Committee for Management and Justice, headed by Auguste Bakhos. Unfortunately, though, certain political circumstances related to the issue of the settlement of Palestinian refugees in Lebanon hindered the progress of our work. So we changed the title of our proposal from transferring the nationality of the Lebanese mother to her children to transferring the nationality of the Lebanese mother to her fatherless children. Now, we are just waiting for the right opportunity to activate this subject.

GI: Through your long and rich legal experience, do you agree with those who say that a change in mentality should necessarily precede any change of laws?

LM: I think this is a lousy excuse! Undoubtedly, it is important to change people's mentality. However, we cannot freeze the legal progress, waiting interminably for the mentality to change; in many cases this may mean waiting forever. In 1956, for instance, we called for the amendment of the law of inheritance so that women could inherit equally with men, and in 1959 the law was amended. Definitely, this amendment did not conform to the mentality prevalent then, and not even to that prevalent today. Many families would still prefer to give their son more than they give to their daughter. However, the compulsory nature of the law deters the citizen and eventually contributes to changing the mentality. Whoever tries to discriminate in inheritance matters will know that if his daughter goes to court, she will win the case. Let's take Tunisia as an example. Although it is a Muslim country, many important changes were made in its personal status code. Divorce is no longer allowed except in front of a judge, and polygamy is prohibited, unless for extreme reasons, and then only with a judge's approval. Once a law is promulgated, people have to adapt to it. What really hinders the development of our laws in Lebanon is the fact that our system is sectarian. The only solution would be to establish an elective (non-compulsory), unified civil law. Unfortunately, though, this law had more poten-

tial of being implemented before the war. We in the Democratic Party (which was secular), and in co-operation with Abdullah Lahhoud, had prepared a proposal for such a law, and MP Auguste Bakhos presented the proposal in the Parliament. The proposal was discussed several times in the administrative committee. However, as a result of the war, this law is now perceived as being very far-fetched.

GI: What about the reinterpretation of religion as a possible solution for updating some of our rigid laws?

LM: The reinterpretation of religion is extremely important. It was the reinterpretation of religion that facilitated many legal changes in several Arab countries. A pioneering country in this respect is Tunisia, which amended many of its laws without sacrificing its religious identity. Tunisia declared that its official religion is Islam, and then made all the amendments in light of this declaration, unlike Turkey, a non-Arab country which abandoned Islam, and then made civil amendments. It is necessary to change some of the rules which are not directly related to one's faith in accordance with the times in which we are living. Otherwise, the religious rules become meaningless and empty, and will repel young people. It is very sad that religious laws are not keeping pace with the international development of human rights; I fear that this may be harmful to the religions themselves, all of which were founded on the basis of respecting human rights. It is illogical to conclude that any of the newly established laws aiming at protecting human rights could possibly violate any of the existing religious rules.

GI: We have learned that you have attained a new position as a Member of the United Nations Committee for Human Rights. What is the importance of your membership in this committee?

LM: This committee constitutes a body of experts from different countries throughout the world. It is elected by the member countries of the UN for a period of four years. The election is conducted confidentially, and in the presence of two-thirds of the UN's members. Any candidate, in order to win, needs a majority of the votes. The mission of this committee is monitoring all countries' reports about human rights, giving the comments of these countries, receiving complaints from one country about another, and complaints from individuals and NGOs about their own countries. I consider my new position in this committee an important responsibility, especially since no one was elected this year from any of the Arab or Asian countries. Furthermore, I am the first Arab woman ever to be elected to serve on this committee.

Thus, I believe that I will have a double mission: On one hand, I will try to unite the efforts of all those concerned with human rights, in order to get Lebanon to implement the laws of the

international conventions for civil and political rights. Despite my international role on the committee, I am a Lebanese first and thus, it is of great importance to me that Lebanon implements these laws.

On the other hand, I will do my best to perform my international mission. I consider this a good opportunity for Lebanon to contribute to the defense of human rights and their development on the global level. This is both an honor and a responsibility at the same time.

The Lebanese Government attached reservations to its ratification of CEDAW concerning the following issues:

1. The provision that gives women equal rights with men with respect to the nationality of their children (para. 2 of article 9). This means that Lebanese women married to foreigners cannot bequeath the Lebanese nationality to their children. This reflects the patriarchal and patrilineal characteristics of Lebanese society, whereby children's social identity must follow that of their fathers.
2. The provisions that give men and women the same rights and responsibilities during marriage and at its dissolution (para. 1c of article 16). This reservation is due to the fact that there is no civil code for personal statute laws in Lebanon; all these laws are governed by religion; thus, the woman is not allowed to enact or dissolve a marriage on her own.
3. The provision that gives men and women the same rights and responsibilities as parents, irrespective of their marital status, on matters relating to their children (para. 1d of article 16). This is also related to the fact that the father is the main authority in the family, and it is he who is always rewarded custody in the event of divorce.
4. The provision that ensures equal rights to men and women with regard to guardianship, wardship, trusteeship and adoption of children (para. 1f of article 16).
5. The provision that gives equal personal rights to husband and wife, including the right to choose a family name (para. 1g of article 16). This is obviously due to the patrilineal character of Lebanese society.
6. The article that calls for arbitration of disputes by the International Court of Justice (para. 1 of article 19).

It is worth noting that the above reservations made by the Lebanese authorities may not be the only reservations on CEDAW. There is still a need to compare the compliance of the Lebanese laws and codes with each of the articles of CEDAW in order to assess Lebanon's situation concerning discrimination against women.