

Reform from the bottom: How judiciary, civil society can loosen the sectarian grip from Lebanese citizens

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I advocate in this article a fundamental change to the deadlocked Lebanese political system from the perspective of human rights, nothing less than liberating the citizens from their communal captors. A reform from the bottom needs determined actors, in the judiciary and in civil society, to resist the violence of political-sectarian speech and the concomitant use of arms inside the country as did Hizbullah and other groups in May 2008.

Sensational measures – such as deleting the religious mention from identity cards or from the personal status files, or recognizing the right of individuals to choose not to be identified with reference to their religion, as in the legal opinion just issued by the Department of Legislation and Consultation at the Justice Ministry at the request of “The Civil State Initiative” led by former Speaker of Parliament Hussein al-Husseini, – highlight the incapacity of officials to discharge their tasks according to the Constitution. They are, however, inconsequential.

From a human rights perspective, we need to inject universal values under the form of norms and standards that are integrated in the national legal framework by ratifying and implementing international human rights treaties in everyday cases. This is a powerful vector of change in as much as it gives citizens recourse before national courts for their universally recognized rights. Its effectiveness depends on judicial activism, which remains timid in the Lebanese context, but brings serious added value to the power of bottom-up reform in Lebanon.

Invoking international human rights conventions before national tribunals collides however with the “consociative” political system as practiced in Lebanon.

The Lebanese legal system is unique in its duality, especially since the constitutional 1990 amendments to the 1926 Constitution.

On the one hand the Constitution makes it an obligation for the state to effectively protect public freedoms and fundamental rights and to integrate in national law all the principles expressed by the UN Charter, the 1948 Universal Declaration of Human Rights and various UN human rights conventions.

On the other hand, the Constitution imposes personal status laws of the historic communities of Lebanon and gives religious leaderships the right to challenge the constitutionality of laws which they deem to be contrary to their respective personal status laws.

For judicial activism in honoring international human rights conventions to be effective, it requires the adoption of an optional civil personal status law open to citizens irrespective of their religious belief, which is based on the constitutional guarantee of “freedom of conscience” as protected under the Constitution (Preamble, Section C and Article 9). It also requires the legal shaping of ‘a civil law community’ open to citizens who choose to free themselves from the grip of their respective religious communities.

Since 1951, attempts at enacting an optional personal status civil law have invariably failed, the most recent one in 1997. A draft law proposal adopted by the Cabinet was blocked by the late Prime Minister Rafik Hariri following the opposition of the Lebanese religious leadership across the board, especially the mufti.

Such a reform has long been mandated by the United Nations. In its consideration of the Lebanese Government National Periodic Report of 2005 on the application of the 1995 Convention on the Elimination of Discrimination against Women (CEDAW), the CEDAW Committee urged the Lebanese state “to adopt a unified personal status code which is in line with the convention and would be applicable to all women in Lebanon, irrespective of their religious affiliation.”

This can be helped by the rebirth of the “civil law community” which was provided for by Legislative Decree LR 60 in 1936, but was suspended in 1939 following the outcry of the Sunni religious leadership in Syria and Lebanon then under French mandate.

The idea of a civil law community is the cornerstone of a plural political system of Lebanon. It accelerates the mutation of the system toward more equality between individuals at the expense of rights deriving from their mandatory membership in a particular sect and religion. This can be achieved without putting at risk equality between the historical communities of Lebanon and their time-honored recognition.

To balance past and future, the reshaping of a nineteenth century civil community law requires careful legal arrangements that need to be identified and put in place progressively in the process of the emergence of such a civil law community alongside the other eighteen ‘official’ ones.

Freeing Lebanon’s citizens from the diktat of their sectarian captors, the reform commands a wider control by the Supreme Court (Cour de Cassation) over the civil aspects of family law as applied by religious courts, with due consideration to international human rights conventions applicable in Lebanon, together with a legislative reform for a common space for Lebanese citizens to express their political opinion independently from sectarian considerations.

Free choice of a common civil status regime constitutes the preliminary step toward a civil law community whose members will be able as such to participate to the political process as citizens rather than as religious subjects.

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