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Regional issues

The right of women and girls to access justice in the Arab region

Summary

Access to justice is not only a right in itself, applicable to all contexts and people; it is also a requisite for the achievement of equality and human rights. The present document addresses women's right to access justice in the Arab region, with particular focus on the member States of the United Nations Economic and Social Commission for Western Asia (ESCWA). It examines the ability of women in these countries, both citizens and non-citizens, to access judicial processes and gain just remedy for violations of their rights.

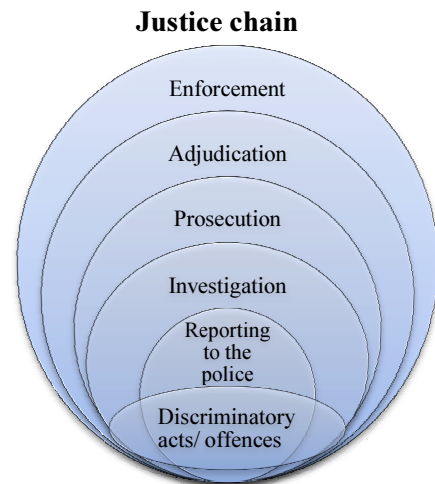
Through an assessment of the legal, institutional and structural impediments and challenges facing women's access to justice, this document explores the extent to which national legal frameworks meet the requirements set forth in ratified international human rights treaties; reviews the measures currently taken by Arab Governments to improve the availability, adaptability and affordability of women's access to justice; and provides policy recommendations aimed at improving women's access to justice, thereby translating internationally guaranteed rights into practice.

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Introduction

1. Although access to justice has typically been defined as the ability to gain access to courts and tribunals, the present paper addresses it from a more holistic perspective. It reviews the right of women, whether as victims or offenders, to access every level of the justice chain, in order to seek and obtain remedy in conformity with international standards. The term ‘access to justice’ does not simply refer to access to judiciary and adjudicatory mechanisms, but includes the right to legal protection, equality before the courts and the ability to obtain a just and timely remedy for violations of rights without discrimination of any kind. The justice chain includes various elements, such as the existence of non-discriminatory laws, the ability to file a complaint in police stations, the ability to undergo just and impartial investigation processes, access to fair litigation and adjudication processes, and the ability to receive just and enforced remedy. In this context, this paper addresses issues of substantive justice (the rights available to those seeking remedy for injustice); procedural justice (the ability to gain access to courts and other legal institutions); and symbolic justice (the extent to which legal frameworks promote equality and empowerment for all individuals). It also assesses obstacles confronting women at both legal and practical levels in their enjoyment of the right to access justice, and the actions States should take to ensure access to justice for women and enhance the availability, accessibility, affordability and adaptability of justice mechanisms. This paper emphasizes the need to mainstream gender issues throughout the entire justice chain to achieve equality for women in inclusive non-discriminatory societies.



2. This document bases its analysis upon legal research that examines the extent to which national justice structures in the Arab region are compliant with international obligations, as well as the extent to which the right of access to justice is integrated within national constitutions and legal systems. This approach allows for greater understanding of the applicability of the *de jure* right of access to justice at a procedural *de facto* level. By analysing women’s access to justice within legal, institutional and structural frameworks, this paper explores the socio-legal obstacles and gaps that impede women’s ability to access justice, assesses actions taken by Governments and non-governmental organizations to facilitate access to justice, and provides policy recommendations for translating the rights guaranteed by ratified international treaties into practice.

I. ACCESS TO JUSTICE

3. Access to justice is a core element of both equality and sustainable human development. As such, it plays a crucial role in region-wide efforts to combat discrimination, reduce poverty and enforce principles of equality throughout all policy and programmatic structures. Access to justice benefits countries and individuals by promoting stability and development and furthering human rights. The international community has set forth principles of non-discrimination and equality in international legal instruments, such as the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and regional legal instruments, such as the Arab Human Rights Charter and the African Charter on Human and Peoples’ Rights, which affirm the principles of equality and human rights. However, although most Arab States have ratified these legal instruments, albeit with reservations, thus affirming equality and non-discrimination (table 1), women in the Arab region still face persistent social, economic and political disparities rooted in discriminatory laws, institutions and practices. Gender equality is impeded by individual and structural obstacles, including lack of education, lack of inclusion in political and decision-making processes, inadequate economic resources and discriminatory national laws. Moreover, even when national legislation affirms gender equality, women confront many legal gaps that impede their access to justice and

face many practical obstacles in receiving just remedies for discrimination. Access to international adjudication by women in the region has been curtailed because only two Arab countries have ratified the Optional Protocol to CEDAW. By doing so, States recognize the competence of the CEDAW Committee to receive and consider complaints from individuals or groups within their jurisdictions. As such, non-ratification of the Optional Protocol by most Arab States has deprived women and girls from submitting their complaints on rights violations to international protection mechanisms when domestic remedial channels are exhausted.

TABLE 1. RATIFICATION STATUS OF INTERNATIONAL HUMAN RIGHTS INSTRUMENTS
IN THE ARAB REGION

Treaties Country	CERD	ICCPR	ICESCR	CAT	CEDAW	OP- CEDAW	CRC	CMW	CED	CRPD	Status of Refugees Conv.
Algeria	x	x	x	x	x		x	x		x	x
Bahrain	x	x	x	x	x		x			x	
Comoros	x				x		x				
Djibouti	x	x	x		x		x			x	x
Egypt	x	x	x	x	x		x	x		x	x
Iraq	x	x	x	x	x		x		x	x	
Jordan	x	x	x	x	x		x			x	
Kuwait	x	x	x	x	x		x				
Lebanon	x	x	x	x	x		x		x		
Libya	x	x	x	x	x	x	x	x			
Mauritania	x	x	x	x	x		x	x	x	x	x
Morocco	x	x	x	x	x		x	x	x	x	x
Oman	x				x		x			x	
Palestine	x	x	x	x	x		x	x	x	x	
Qatar	x			x	x		x			x	
Saudi Arabia	x			x	x		x			x	
Somalia	x	x	x	x							x
Sudan	x	x	x				x			x	x
Syrian Arab Republic	x	x	x	x	x		x	x		x	
Tunisia	x	x	x	x	x	x	x		x	x	x
United Arab Emirates	x			x	x		x			x	
Yemen	x	x	x	x	x		x			x	x

Source: www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx.

Note: CERD: International Convention on the Elimination of All Forms of Racial Discrimination.

ICCPR: International Covenant on Civil and Political Rights.

ICESCR: International Covenant on Economic, Social and Cultural Rights.

CAT: Convention against Torture and Other Cruel Inhumane or Degrading Treatment or Punishment.

CEDAW: Convention on the Elimination of All Forms of Discrimination against Women.

OP-CEDAW: Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

CRC: Convention on the Rights of the Child.

CMW: International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

CED: Convention for the Protection of All Persons from Enforced Disappearance.

CRPD: Convention on the Rights of Persons with Disabilities.

Status of Refugees Conv.: 1951 Convention relating to the Status of Refugees.

4. Regional conditions of conflict, post-conflict, displacement, and migration accentuate or create new obstacles impeding women's access to justice. Access to justice may be challenged by the destruction of infrastructure, weak law enforcement agencies, a lack of security and widespread violence. Justice systems may not function with any level of efficiency or effectiveness in times of conflict, leaving cases unreported and allowing a culture of impunity to prevail. Moreover, violence and ensuing forced or involuntary displacement can place women and girls in vulnerable positions, subjecting them to sexual violence, exploitation and trafficking. In such situations, existing public institutions may undermine women's rights rather than protect them, which in turn can deter women and girls from seeking justice. Female refugees often fall outside the protection of legal frameworks and judicial processes unless the host country has signed and ratified the 1951 Convention on the Status of Refugees.¹

5. Migrant workers also often fall outside the legal structure and find themselves deprived of their right to access justice. In 2013, around 30,308,131 international migrants were working in the Arab region, of which 32 per cent were women; female migrants are mostly engaged in domestic work.² The requirement of citizenship in Arab States' constitutions for rights enjoyment - as opposed to all individuals in the territory - compounded by non-ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families³ and various other policy impediments (e.g. the sponsorship system commonly known as *Kafala*) have limited the ability of female migrant workers to enjoy the right to access justice.

6. Addressing the issue of Arab women's access to justice is therefore important, not only for its own merit, but also for its significance to the realization of gender equality and human rights. It is an essential element for member States to meet their obligations under various international instruments.

II. PUTTING PRINCIPLES INTO ACTION

7. The right of access to justice is firmly linked in international law to principles of equality and non-discrimination. States ratifying international human rights treaties are called upon to incorporate these core principles into their respective constitutions and legislations, and to take action at the national level to end discrimination and ensure equality. The constitutions of most Arab countries affirm the principles of equality and non-discrimination, and reflect elements of access to justice in their legislative frameworks, including equality before the law and courts; equality in seeking effective remedy; and equal access to a fair and impartial trial.

8. Most Arab countries have enshrined the prohibition of discrimination in their respective constitutions and basic laws. However, constitutions differ in their definition of discrimination (table 2). Some Arab countries' constitutions do not clearly establish the prohibition of discrimination on the basis of sex. Absence of such reference allows a wide spectrum for interpretation and impedes women's effective enjoyment of equality and constitutional guarantees, and therefore their equal access to justice. For instance, the Jordanian Constitution prohibits discrimination between citizens with regard to their rights and duties, but on the limited grounds of race, language and religion, without any reference to sex.⁴ The Lebanese Constitution enshrines the principle of non-discrimination and protects the right to equality before the judiciary, which provides for the right to legal aid in all cases and ensures equal access to courts for all individuals. However, the Constitution does not explicitly note discrimination on the basis of a person's sex, race or religion.

¹ Only five ESCWA member States, namely Egypt, Morocco, the Sudan, Tunisia and Yemen, have ratified the 1951 Convention on the Status of Refugees.

² UN Women, *Managing Labour Migration in ASEAN: Concerns for Women Migrant Workers*, 2013; International Labor Organization, *Domestic workers across the world: global and regional statistics and the extent of legal protection*, 2013.

³ Only four ESCWA member States have ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

⁴ Article 6 of the Jordan Constitution, 1952. Available from www.kinghussein.gov.jo/constitution_jo.html.

9. In addition, most Arab countries' constitutions, excepting that of Saudi Arabia,⁵ limit their guarantees of equality before the law to citizens only. Exclusion of non-citizens from guarantees of equality before the law impedes refugees and migrant workers, the majority of whom are women and girls, from enjoying guarantees of equality before the law. For example, article 21 of the Tunisian Constitution states that all *citizens*, male and female alike, have equal rights and duties, and are equal before the law without any discrimination. Similarly, the Egyptian 2014 Constitution guarantees elements of access to justice, including the rights to litigation, fair trial and legal aid, to citizens only. Likewise, article 6 of the 2011 Libyan Constitutional Declaration states that only Libyans are equal before the law.⁶

TABLE 2. PROHIBITING DISCRIMINATION IN ARAB COUNTRIES' CONSTITUTIONS

Country	Is there a non-discrimination clause in the constitution?	If there is a non-discrimination clause in the constitution, does it explicitly mention sex as the basis of discrimination?
Algeria	Yes	Yes
Bahrain	Yes	Yes
Comoros	Yes	Yes
Djibouti	Yes	Yes
Egypt	Yes	Yes
Jordan	Yes	No
Iraq	Yes	Yes
Kuwait	No	No
Lebanon	Yes	No
Libya	Yes	Yes
Mauritania	Yes	Yes
Morocco	Yes	Yes
Oman	Yes	Yes
Palestine	Yes	Yes
Qatar	Yes	Yes
Saudi Arabia (basic law)	No	No
Somalia	Yes	Yes
Sudan	Yes	Yes
Syrian Arab Republic	Yes	Yes
Tunisia	Yes	Yes
United Arab Emirates	Yes	No
Yemen	No	No

Source: Compiled by ESCWA.

10. Even when national legislation specifically affirms equality on the basis of sex, women must be able to access the justice system to attain justice, because a right cannot be fully enjoyed if remedies cannot be sought when a right is violated. The core elements of availability, accessibility, affordability and adaptability of justice mechanisms are fundamental to the implementation of the right of access to justice and to guaranteeing just remedies for violations.

11. The elements of availability, accessibility, affordability and adaptability inform the actions States should take to ensure access to justice for women. In addition to making sure that the principle of the right of access to justice is incorporated into national legislation, States should provide police stations, courts and tribunals in geographical proximity to women in both urban and rural settings. They should make legal structures accessible to women without any forms of discrimination; for example, without requiring the

⁵ Article 47 of the Saudi Basic Law of Governance stipulates that "all people, either citizens or residents in the Kingdom, are entitled to file suit on an equal basis. The Law shall specify procedures for this purpose".

⁶ Libya Constitutional Declaration, 2011. Available from www.constituteproject.org/constitution/Libya_2011.pdf.

approval of male relatives to file a complaint. A State should guarantee the availability of legal assistance, in the form of information, advice or representation, at a cost affordable to all individuals within its territory. States should further be prepared to adapt to changing needs to ensure the right of access to justice for all individuals under their jurisdiction, including women.

III. LEGAL, INSTITUTIONAL AND STRUCTURAL CHALLENGES

A. DISCRIMINATORY LEGAL FRAMEWORK

12. The following sub-sections highlight gaps in the various laws regarding women's access to justice and, as such, impact Arab countries' compliance with CEDAW.

1. *Personal status code*

13. Most Arab countries, except Saudi Arabia, have codified their personal status codes. In general, the provisions of personal status codes in the region stem from religious principles and are linked to religious courts. The lack of unified and civil personal status codes is a major factor curtailing women's access to justice. Although equality before the law, the right to litigation and the right to seek remedy are guaranteed in principle, these rights are contradicted by the provisions of personal status codes (family law) that instate inequalities in exercising the right to marriage, divorce and custody, as explained below.

(a) *Right to marriage*

14. The right of a woman to enter into marriage with her free and full consent is not adequately protected in the laws of Arab countries. Women, regardless of age in some countries, need the legal approval of their guardians, usually the eldest male figure in the family, to enter a marriage, as is the case in Jordan, Qatar and Yemen. Few national personal status codes in the region recognize women as heads of families, as is the case in the personal status codes of Mauritania, Oman and Tunisia. Such provisions discriminate against the equal rights and responsibilities of men and women during marriage, in contradiction with CEDAW obligations.

(b) *Right to divorce*

15. Arab women do not have an equal right to divorce. Men are not obliged to provide reasons for divorce, whereas women must establish legal grounds for divorce, such as maltreatment, imprisonment of the husband for three years or malicious abandonment. In cases where the parties are Christian, depending on the sects, divorce is either granted on the basis of very exceptional conditions or is forbidden. Some member States, however, have introduced provisions for an equal right to divorce in their personal status codes, as is the case in Morocco and Tunisia. In 2000, Egypt introduced law reforms, granting women the right to divorce without the provision of legal grounds; this right is known as *khula'a*. However, *khula'a* does not guarantee women all their rights and entitlements, including maintenance, payment of the agreed dowry and custody, which has limited women's ability to resort to courts to exercise their right to divorce.

(c) *Custody of children*

16. In most Arab countries, guardianship of the children is always granted to the father; children cannot travel without their father's written and notarized approval, as is the case in the Syrian Arab Republic. Reforms were recently introduced in Egypt and Lebanon lifting the requirement that permission must be granted by the father for the mother to travel with her children (Egypt) or for a mother to open a bank account for her children (Lebanon). Child custody, in case of divorce or death, is determined using mainly religious interpretations, based on the age and sex of the child. Under Sharia law, divorced women have custody of their daughters until the age of 12, and their sons until the age of 9. Two other criteria that legally affect the right of a mother to custody are her remarriage and/or affiliation with a different religious community, but they do not apply to men if they remarry.

2. Criminal code

17. Criminal codes in Arab countries ensure the principles of equality and non-discrimination in general. Their provisions are *de facto* applicable to all individuals within a State's territories, men and women, citizens and non-citizens alike. Despite this, some clauses in penal codes remain discriminatory.

(a) *So-called honour killings*

18. Criminal codes in some Arab countries provide for lenient rulings for so-called honour killings committed by men, while requiring much more severe penalties for women convicted of similar cases. Article 232 of the Yemeni Penal Code states that "if a man kills his wife or her alleged lover in the act of committing adultery, or attacking them, causing disability, he may be fined or sentenced to imprisonment for a term not exceeding one year." However, in most Arab countries, a woman in the same situation would be tried for murder and sentenced to life imprisonment. In some countries, this disparity has been addressed in an attempt to combat so-called honour killings. For instance, Jordan and Lebanon have annulled articles in their respective penal codes⁷ that mitigated the sentences of men who had killed or injured their wives, daughters or other female relatives to protect family honour.

(b) *Criminalization of rape*

19. In all Arab countries, rape is penalized in the criminal code. However, some countries include leniency clauses for rape cases, which obstruct women's right to seek remedies. In Bahrain, Jordan, Kuwait, Lebanon, Libya, the Sudan, the Syrian Arab Republic and Tunisia, the male rapist can escape punishment if he marries his victim. The criminal codes of Egypt, Qatar and the United Arab Emirates do not include explicit leniency clauses for rapists.

(c) *Sexual harassment in the workplace*

20. In matters related to protecting women in the workplace, penal codes provide women with protection against sexual harassment. Penalties for sexual harassment in the workplace vary from short-term imprisonment to minimal monetary fines. However, there are calls in the region, including in Egypt and Lebanon, for legal reforms that consider sexual harassment as a specific offence as opposed to "an act of indecency", with appropriate punishment corresponding to the gravity of the violation.

3. Non-criminalization of discrimination

21. The non-criminalization of certain behaviour in which women are the sole or main victims restricts women's ability to access justice. One area where legal gaps are longstanding in the region is violence against women. The issue of violence against women has recently moved beyond the solely private sphere into a wider public realm, with recognition of States' obligations to protect individuals in both public and private spheres. Arab countries have made a number of legislative reforms to criminalize violence against women, particularly domestic violence, and have undertaken corrective measures to strengthen protective mechanisms. Jordan, Lebanon and Saudi Arabia have criminalized domestic violence, while Morocco, Palestine and Tunisia are proposing draft laws criminalizing violence against women.

4. Labour code

22. Women face several challenges in exercising their right to work as stipulated in article 11 of CEDAW. Legal gaps and discriminatory provisions still exist in Arab labour codes, hampering women's economic participation. These include unequal opportunities in accessing the workforce, insufficient legal protection during pregnancy and maternity leave, a lack of legal protection for domestic workers, the non-

⁷ Article 562 of the Lebanese Penal Code; and articles 98 and 340 of the Jordanian Penal Code.

criminalization of harassment at work and inequality in social security. These discriminatory gaps have impeded women's enjoyment of protection laws, and undermined their right to access justice.⁸

23. The right to maternity leave in Arab countries is ensured. The right not to be dismissed during maternity leave is also protected. However, the duration of maternity leave varies from one country to another and in many it is still below the ILO standard of 12 to 14 weeks; only five Arab countries comply with the ILO standard of 14 weeks. In addition, maternity leave laws do not ensure that leave is publicly financed, and thus place the responsibility on the employer. This leads employers to discriminate against the employment of women of fertile age, and as such limits women's access to job opportunities. Maternity leave is covered by a national fund in only five Arab countries. Social security policies and taxation laws are also unfavourable to women. Article 81 of the Jordanian Social Security law No. 1 of 2014, for instance, includes discriminatory provisions regarding family indemnities. In cases of remarriage, a woman does not receive her deceased husband's indemnities, but this rule does not apply to the husband of a deceased woman.⁹

24. Another gender gap occurs with regard to tax regulations and retirement ages. Discriminatory tax laws are recognized as an obstacle to Arab women's economic participation.¹⁰ With the exception of Bahrain, Egypt, Kuwait, Lebanon, Morocco, the Sudan and Tunisia, which have similar retirement ages for men and women,¹¹ women's retirement age in the rest of the region is still statutorily five years less than men's. This adversely impacts women's benefits and allowances at the time of retirement.

25. Women in the Arab region represent the majority of the agricultural labour force.¹² Typically, they receive no payment for their labour or are at best low-paid. They are generally engaged in seasonal work, which carries no security or benefits. This informal economy is not yet regularized by law in most Arab countries. Consequently, these women do not receive appropriate legal protection and their right of access to justice continues to be undermined.¹³

26. It should also be noted that citizen and non-citizen domestic workers, the majority of whom are women, are not included in most of the region's labour codes. This creates a legal vacuum regarding the availability of protection for this group. However, initiatives have been carried out in the region to expand the protection afforded in labour codes to domestic workers in terms of the number of daily working hours, freedom of movement and seeking remedies in labour mediations. Jordan, for example, passed a regulation in 2012 that has limited the number of daily working hours for domestic workers to eight hours, and stipulates that domestic workers are not required to seek permission from employers to leave their homes during non-working hours.¹⁴

⁸ International Labour Organization/Regional Office for Arab States, Labour Inspection, Gender Equality and Non-Discrimination in the Arab States, Guide Book, Beirut, 2014, p. 17.

⁹ Jordanian Social Security Law No.1 of 2014. Available from www.ssc.gov.jo/Arabic/SocialSecurityLaw/Documents/temp_law2014.pdf.

¹⁰ League of Arab States, ESCWA, and UN Women, Cairo Declaration on the Post-2015 Development Agenda for Arab Women: Opportunities and Challenges, 2014.

¹¹ ESCWA, Addressing barriers to women's economic participation in the Arab region, 2012.

¹² Ibid.

¹³ ILO, 2014.

¹⁴ Jordan, Law No. 48 of 2008 amending the Labour Code No. 8 of 1996. Available from www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=JOR&p_classification=01.02&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY. In 2008, Jordan approved amendments to its Labour Law to include domestic workers. The regulation of 2009, issued in implementation of the Law, fails to refer to basic rights, such as the right to termination, minimum wage, end-of-service indemnity, overtime payment and public holidays. In principle, these matters are defined in the Labour Law and are supposed to apply to domestic workers. The Social Security Act of 2010 stipulates (in article 4-c) that the application of insurance on housemaids and servants, or labourers at the same level, is permissible upon decree by the Council of Ministers with recommendation from the Social Security Corporation Board of Directors.

B. INSTITUTIONAL AND PROCEDURAL OBSTACLES

27. The realization of the right of access to justice mainly depends on the existence of effective institutions that enforce laws and policies. As per obligations under international human rights instruments, States parties must implement laws through a functioning justice chain that is gender responsive. However, women in the region still face various institutional and procedural obstacles, some of which are described below.

1. *Plurality of civil and religious orders*

28. There are both civil and religious legal orders in the Arab region. Family matters are governed by religious laws and adjudicated by religious courts according to citizens' religious affiliation. The plurality of legal systems may create overlapping laws. Some crimes stipulated in civil laws may not be considered for legal action and judicial remedies in religious laws and vice versa. For example, in Lebanon, violence against a woman by her husband may lead to his imprisonment by a criminal court; however, a religious court may not immediately approve her request for divorce. Furthermore, article 22 of law No. 293 (2014) on the Protection of Women and Family Members from Domestic Violence states that in case of a contradiction between this law and the personal status code, supremacy goes to the provisions of the personal status law. Women's rights may suffer when such contradictions come into play.

2. *Institutional weakness and lack of enforcement*

29. Women subjected to violence often cite attempts by police officers to convince them of the non-justiciability of their complaints and to interfere in the justice process by proposing mediation. To address these gaps in capacity and knowledge, the Jordanian Ministry of Justice in 2009 established specialized units within five courts to hear cases involving gender-motivated crimes.¹⁵ The Lebanese law on domestic violence provides for severe punishment of officials who obstruct the justice process.¹⁶

30. Courts may also demonstrate gender bias in exercising their jurisdiction and in their rulings. This is due to a lack of gender-sensitization, and a lack of appropriate monitoring of and sanctions against judicial personnel for failure to uphold the principles of equality and non-discrimination. With regard to gender-based violence, there is a general unwillingness on the part of law enforcement officials to exercise powers of arrest, file charges, pursue criminal prosecutions and enforce protective measures or other remedies. Before the adoption of the Lebanese Law on the Protection of Women and Family Members from Domestic Violence, Lebanese women subjected to violence, which led to death in some instances, were not able to obtain effective remedies owing to improper investigation, biased judgment in favour of male perpetrators, or the unwillingness of victims to pursue criminal prosecution.¹⁷ Women have expressed their reluctance to approach the police, the prosecution and the judiciary because these sectors are embedded in systems of social discrimination, inequality and bias.

¹⁵ Human Rights Council, twentieth session, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 2012, A/HRC/0016/Add.1, para. 26.

¹⁶ Article 8 of Law No. 293 of 2014 stipulates that a judicial officer who exercises pressure to force a person who has been subjected to violence to withdraw his or her complaint will face one month to three years imprisonment, and will pay a fine ranging from LBP 20,000 (\$14) to LBP 200,000 (\$140).

¹⁷ Nizar Saghieh, رلى يعقوب، قضيتان في قضية واحدة: جبه العنف الأسري وأحقية المساءلة الإعلامية للقضاء، Legal Agenda, 10 February 2014. Available in Arabic from www.legal-agenda.com/article.php?id=656&folder=articles&lang=ar.

3. *Underrepresentation of women in the justice chain*

31. The representation of Arab women in the judiciary is among the lowest in the world.¹⁸ In 2011, 20.12 per cent of judges in Morocco were women.¹⁹ In the United Arab Emirates, amendments to the federal judicial law in 2008 paved the way for the appointment of female federal judges and prosecutors.²⁰ In Libya, 130 of a total of 959 appointees to judiciary posts in 2012 were women, and 120 women were public prosecutors. Women are generally excluded from appointment as judges in religious courts. However, in Palestine, two women were appointed as judges to the Islamic Sharia Court in the West Bank in 2009, becoming the first female judges in Palestinian Islamic courts dealing with family affairs.²¹ In Lebanon, one woman has been appointed to the ecclesiastical Anglican court.²² Women are also underrepresented in other sectors of the justice chain, such as prosecution services and police forces. However, there have been recent efforts in a number of Arab countries to increase the number of female police officers and prosecutors.

4. *Inaccessibility of justice processes and economic dependency*

32. Another obstacle facing Arab women in accessing justice is the inaccessibility of the justice system. Inaccessibility may be linked to many factors, including a centralized justice system, the guardianship system, economic dependency, and factors related to occupation and security situations. Courts are generally centralized in capitals or major cities, resulting in rural women having to travel long distances to reach them. Furthermore, rural women are mostly engaged as daily labourers in agricultural activities, and cannot sacrifice a day's income to travel to court. The inability of most women to afford transportation costs adds another level of difficulty in accessing justice. Moreover, the security situations in Iraq, Libya, Palestine, the Syrian Arab Republic and Yemen play a role in limiting women's ability to seek and access justice.

33. Unaffordable legal procedures, a lack of access to financial resources and the limited availability of legal aid and counselling services also pose impediments to women's access to justice in the region. Women are reluctant to file claims in court because of a lack of financial resources. Alternatively, they may initiate a claims process without a lawyer because of their inability to pay lawyer fees, which could adversely impact their level of success.²³ Some judicial systems in the region provide financial assistance to claimants. In Egypt, fees are waived in cases related to family matters and in labour cases if the complainant is the worker.²⁴ In Lebanon, fees are waived in domestic violence cases. In Bahrain, as stipulated in article 6 of the Labour Law, fees are waived in labour cases.²⁵

5. *Guardianship system*

34. Some Arab countries still impose restrictions on the movement of women and girls without their male guardian's approval or without the presence of a male relative. Saudi Arabian law requires the written consent of a male guardian for a woman to travel, access tertiary education, enter into legal contracts, work

¹⁸ UN Women, *Progress of the World's Women: In Pursuit of Justice, 2011-2012*, 2012, p. 61.

¹⁹ Woodrow Wilson International Center for Scholars, *Women in democratic transitions in the MENA region*, 2013, p. 12.

²⁰ Sanja Kelly, *United Arab Emirates, Women's Rights in the Middle East and North Africa: Progress Amid Resistance*, 2010.

²¹ See www.nbcnews.com/id/29369838/ns/world_news-mideast_n_africa/t/palestinian-women-now-islamic-court-judges/#.VA67WvmSzTo.

²² N. Saghieh and R. Saghieh, *Access of Women to Justice in four Arab Countries: Jordan, Lebanon, Syria, and Palestine*, 2014.

²³ World Bank, *Jordan country gender assessment: economic participation, agency and access to justice in Jordan*, p. 78.

²⁴ ESCWA, *Access to Justice for Women and Girls in the Arab Region: From Ratification to Implementation of International Instruments*, 2015.

²⁵ Bahrain Labour Law No. 36 of 2012. Available from www.legalaffairs.gov.bh/LegislationSearchDetails.aspx?id=2045#.VCvw2fmSzTp.

and undertake medical procedures. Such requirements hinder women's ability to seek redress, especially when their male guardian is the perpetrator. Moreover, the guardianship system creates another level of discrimination for female offenders, who often overstay their sentences because of the unwillingness of their male guardians to pay the required release fees and to accompany them upon leaving prison, as is the case in Yemen.

5. Lack of legal aid

35. Although the constitutions of Arab countries provide for the right to counsel and legal aid, they are provided under strict eligibility criteria and, in some countries, are only offered for criminal cases. Insufficient funding in national budgets has a detrimental effect on legal aid, and leaves room for discrimination in its provision. National women's machineries, civil society organizations and lawyers' syndicates are filling this gap, as is the case in Egypt, Jordan and Lebanon. Legal clinics in universities and legal research centres also provide legal services and consultations. However, owing to limited funding, the quality of the services is questionable. Legal clinics providing *pro bono* legal assistance, legal education and training to marginalized groups²⁶ have been introduced in universities in Iraq, Lebanon, Morocco and Palestine. Although this is a relatively new concept in the region, it has gained broad support, particularly from the communities that these legal clinics serve.²⁷ However, the legal profession codes of Arab countries do not allow lawyers who are not registered with respective syndicates to practise law or represent clients in any legal proceeding, which, together with reliance on donor funding, hinders the value and sustainability of the service.

C. SOCIAL BARRIERS

36. The fear of reprisal or social exclusion has adversely impacted Arab women's ability to access justice. Women sometimes face social disapproval in pursuing justice, particularly in cases related to family matters and gender-based violence. Women are often reluctant to seek justice in cases related to sexual harassment in the workplace, fearing scandal or the loss of their jobs. Female victims may be pressured into accepting certain arrangements to avoid bringing shame on themselves and their families, and to protect themselves from becoming victims of honour crimes, as is the case when women and girls are forced to marry their rapists.²⁸

D. CAPACITY BARRIERS

37. The lack of legal empowerment is another obstacle confronting Arab women in their access to justice. Information on laws (rights and duties) and on legal procedures is often complicated and difficult to access. Women are not aware of their rights, let alone how to navigate the legal orders of their respective countries.²⁹ High rates of illiteracy, especially in rural areas, have left Arab women unaware of their rights, of the remedies available and of what justice mechanisms offer and how to access them. "Major obstacles to access are related to weak legal education among women as well as absence of effective awareness on rights, obligations, and legal procedures that could provide women with tools to better access to justice."³⁰

²⁶ Mutaz Qafisheh, The role of legal clinics in leading legal education: a model from the Middle East, *Legal Education Review*, 2012, p. 180.

²⁷ *Ibid.*, p. 179.

²⁸ Saghieh and Saghieh, 2014.

²⁹ Oxfam, Women's access to justice in the Middle East: challenges and recommendations, 2014, p. 11.

³⁰ *Ibid.*

E. OTHER BARRIERS

1. *Duration of legal proceedings*

38. Lengthy legal proceedings, compounded by their unaffordable cost, may seriously hinder women's enjoyment of their right of access to justice. It is well acknowledged that legal proceedings in civil and religious courts are extremely lengthy. Settlements for family cases may require as long as five years to be completed.

2. *Language*

39. In all Arab countries, the law states that interpreters must be made available to non-Arabic speakers undertaking legal proceedings. However, reports indicate that migrant workers and trafficked persons do not have easy access to interpreters or legal information in their native languages.

IV. CONCLUSION AND PROPOSED RECOMMENDATIONS

40. The main premise of this document is that access to justice does not only involve access to courts, but the ability of women to receive just and fair remedy for violations of their rights. As such, to fulfil their legal obligations to enact equality, States must take concrete action to ensure women's right to access justice and receive appropriate remedies. Measures include establishing police stations, courts and tribunals in geographical proximity to women in both rural and urban settings; making legal structures accessible to women without discrimination (e.g. enabling women to file a complaint without the approval of a male relative); providing legal assistance at a cost affordable to all individuals; enacting gender-sensitive legal reform to remove discriminatory legal provisions; empowering women by providing access to information and counselling; and reforming the law enforcement sector to avoid revictimizing women who seek recourse for injustice.

41. The following is a set of specific policy recommendations that respond to gaps identified above towards improving women's access to justice in the Arab region in every step of the justice chain.

A. LEGISLATIVE REFORM

42. ESCWA member States are encouraged to:

(a) Lift reservations to all provisions of international human rights instruments, in particular, to important articles of CEDAW, including articles 16.1(c), (d), (f) and (g), thereby granting women equality to men with respect to rights and responsibilities during marriage and at its dissolution, including in matters relating to children, guardianship and adoption;

(b) Ratify the 1951 Convention on the Status of Refugees;

(c) Ratify the Optional Protocol to CEDAW, allowing women to seek redress through international mechanisms once national legal mechanisms are exhausted;

(d) Adopt a comprehensive and holistic approach to reforming the justice chain.

(e) Amend national constitutions to explicitly prohibit discrimination on the basis of sex;

(f) Harmonize national legislation and legal orders to eliminate contradictory elements;

(g) Amend discriminatory provisions of national legislation, particularly personal status codes, and promote equal legal capacity by removing all discrimination with regard to legal capacity in civil and religious courts;

(h) Enact laws and amend existing legislation on protection of women from family violence, thereby promoting the accountability of perpetrators;

(i) Introduce provisions in labour codes to protect women at work by sanctioning harassment, and extend protection to domestic workers and migrant domestic workers;

(j) Amend clauses with regard to the provision of legal aid services to all types of cases, whether criminal or civil.

B. INSTITUTIONAL REFORM

43. ESCWA member States are encouraged to:

(a) Increase the number of courts to ensure physical access to courts in urban and rural areas;

(b) Increase women's representation and ensure an equal distribution of women and men in the judiciary and law enforcement sectors;

(c) Provide sufficient funds for legal aid services in the national budget;

(d) Remove fees for legal proceedings related to personal status issues;

(e) Develop gender-sensitized training programmes for the judiciary and police;

(f) Engage in capacity-building activities to raise the legal awareness of women.
